Proxy Exempt Solicitation Campaigns

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Abstract

Using a hand-collected novel dataset, we provide the first in-depth study of solicitations exempt from proxy filing requirements. Our findings indicate that proxy exempt solicitations (ES) are an effective, lower-cost alternative to proxy contests. They provide a unique, more flexible way for shareholders to initiate solicitation through communicating shareholder dissatisfaction both by opposing management- and supporting shareholder-sponsored proxy voting items. Our findings indicate the message is heard. We observe high levels of clicks for ES filings, 74% are accessed by a major investment bank, and the market reacts positively to the filing. ES filings are associated with a 43% rate of withdrawal or improved terms for targeted M&A proposals, an increased likelihood of "no confidence" votes, an increased likelihood of forced CEO turnover, and an increased likelihood of takeover activity. These results indicate proxy exempt solicitations not only influence voting outcomes but also signal shareholder discontent to boards and potential acquirers.

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"Effective communication with shareholders is a critical element of the operation of today's public company, indicated by the increase in S&P 500 companies reporting shareholder engagement since the 2010 concept release – up from 6 percent in 2010 to 72 percent in 2017. The importance of constructive shareholder engagement drives the need for a shareholder proposal process that is robust, productive and oriented toward long-term value creation for all shareholders."

Business RoundTable[1]

Shareholder voting ensures shareholders can voice their opinions on board nominees and other proxy initiatives and corporate actions; however, the rise in shareholder activism and institutional ownership has raised concern that the influence of certain shareholders, such as those with short-term investment horizons, or stakeholders, such as proxy advisory services with no ownership, may result in voting outcomes that deviate from the preferences and welfare of a broad shareholder base (e.g., Levit, Malenko, and Maug, 2022; Kakhbod, Loginova, Malenko, and Malenko, 2022; Malenko, Malenko, and Spatt, 2022). These concerns highlight the critical influence shareholder communication or vote solicitation can have in the proxy process, especially with the rise of passive index funds, since engagement is their primary recourse if they are displeased with certain corporate policies (Boone and White, 2015; Appel, Gormley, and Keim, 2016; Crane, Michenaud, and Weston, 2016; Azar, Schmalz, and Tecu, 2018; Guernsey, Guo, Liu, and Serfling, 2022).

The purpose of this paper is to analyze proxy exempt solicitations. In 1992, proxy reforms included the provision for a new form of solicitation, or shareholder communication, which is exempt from costly proxy filing requirements, "exempt solicitations" henceforth. Unlike proxy contests, which are commonly used by activists seeking board representation or control, exempt solicitations are communications to solicit shareholder votes without seeking proxy authority. To our knowledge, this is the first in-depth study to examine the use and effects of exempt solicitations directly. Like proxy contests, they solicit votes through communications expressing dissatisfaction

[1] See e.g., the Business Roundtable discussion on corporate governance, titled "Promoting Responsible Shareholder Engagement," which describes policy related to shareholder proposals and the proxy process: https://www.businessroundtable.org/policy-perspectives/corporate-governance/promoting-responsible-shareholder-engagement.

or attempting to drive change. However, they are distinct in that they do not seek control, do not have the same high costs, and do not have advance notice requirements. Moreover, Brochet, Ferri, and Miller (2021) and Iliev, Kalodimos, and Lowry (2021) provide initial evidence suggesting that investors pay attention to filing an exempt solicitation.[2] Thus, exempt solicitations could offer an ideal platform for constructive shareholder engagement. We attempt to fill the gap in our limited understanding of this unique, flexible, and potentially important tool available to shareholders. We first discuss the distinction between exempt solicitations and other forms of shareholder activism and present descriptive statistics providing insight into how they are used. We then investigate whether exempt solicitations effectively express dissatisfaction or drive change. We examine how the market reacts to filing an exempt solicitation and whether such solicitations influence pre-voting outcomes on management-proposed merger deals, voting outcomes, and post-voting outcomes through forced CEO turnover and the external market for corporate control.

Using hand-collected data from Form PX14A6G filings with the SEC, we analyze a comprehensive sample of exempt solicitations for 788 corporate governance issues between 1997 and 2019. We find the use of exempt solicitations increases dramatically over time and is distinct from traditional forms of shareholder activism in that they tend to be initiated after the proxy filing date when the initiation of other forms of activism by shareholders is restricted. This trend indicates its perceived potential benefit by shareholders as uncertainty regarding implementing the new rule diminishes. Distinct from traditional forms of activism, about half of the exempt solicitations are used to dissent against management-sponsored proxy voting items directly, and the other half support shareholder proxy items. Of particular interest, exempt solicitations against management-sponsored items become more frequent than those supporting shareholder-sponsored items and proxy contests during the latter part of the sample period. During the period with observable data, exempt solicitation (ES) filings are viewed an average of 586 times, and typically by investment banks. Moreover, this number increases to 858 views in the latter part of the sample, suggesting ES filings draw comparable or even higher attention than proxy statement attention measured by

[2] Iliev et al. (2021) indicate investor attention increases with indicators of a contentious shareholder meeting, and Brochet, et al. (2021) find positive market reactions before contentious shareholder meetings. Although neither study analyzes exempt solicitations directly, both include them as one of their indicators of contentiousness.

Iliev et al. (2021). Thus, ES filings appear to be a potential source of information for both shareholders and external stakeholders, including potential investors or acquirers.

Regarding how they are used, we find exempt solicitations express dissatisfaction most commonly through targeting the board with solicitations against management-nominated directors representing 36% of the sample and solicitations supporting shareholder board-related proposals representing 29% of the sample. Compensation is the next most common issue receiving attention through both solicitations for shareholder compensation proposals (9%) and against certain management-sponsored governance proposals like "Say on Pay" proposals. Exempt solicitations are also used in mergers and acquisitions (M&As) related matters. Around 12% are used to either solicit support to weaken antitakeover provisions or solicit dissent against management-proposed M&As. The focus of exempt solicitations is consistent with shareholder communication when disclosure improves the dissemination of unbiased information (Malenko et al., 2022).

Filers of exempt solicitations are primarily public pension funds (38%), union funds (26%), and other institutions, including hedge funds (22%). While public pension and union funds use exempt solicitations to both solicit against management proposals and for shareholder proposals, other institutions primarily rely on exempt solicitations to directly solicit votes against management-sponsored proxy voting items. Overall, the solicitors are in between the types of shareholders who pursue higher cost activism (e.g., hedge funds) and lower cost activism (e.g., public pension and union funds). However, we see very few individuals file exempt solicitations. The reliance on exempt solicitations by passive funds suggests they may be associated with an increased likelihood of beneficial shareholder engagement (Kakhbod et al., 2022).

To study the effectiveness of campaigns in disseminating valuable information, we analyze market reactions to ES filings as a measure of perceived effectiveness or expected value creation. We find a significantly positive reaction to the initial ES filing date when information is first made public, suggesting solicitations are associated with outcomes, presumably because they help more effectively signal shareholders' views through improved communication and coordination. The average full sample CAR ranges from 0.26% to 0.59%, depending on the window. The perceived value creation is higher when the solicitation dissents directly against management (0.39% to

1.94%) or indirectly through showing support to improve ease of takeover (1.06% to 2.35%). CARs are also higher when solicitation filings receive more views (0.70% to 0.93%).

We next examine different outcomes and signals of coordinated shareholder discontent to study possible sources of variation in the value creation associated with different types of exempt solicitations. Higher CARs for direct solicitations against management proxy items suggest an increased likelihood that shareholders' interests are revealed and prompt a response from management or directors. Outcomes associated with management responses can occur before or after a proxy item goes to a vote. To the extent the shareholder vote reveals the degree of shareholder discontent, we may only observe outcomes associated with exempt solicitations for management-proposed items that do not have enough pre-meeting votes to pass (e.g., proposed M&As). Although we are unable to observe what the voting outcomes would be for these deals as originally proposed, firms are able to view pre-meeting votes. We therefore examine whether exempt solicitations spur management to action before the shareholder meeting by focusing on solicitations against management-proposed M&As where we can directly relate the outcome to the solicitation. While these represent a small fraction of the sample, M&As represent one of the most economically significant decisions a firm can make but are typically difficult for shareholders to influence (e.g., Hartzell, Ofek, and Yermack, 2004; Moeller, 2005; Moeller, Schlingemann, and Stulz, 2005; Harford, Humphery-Jenner, and Powell, 2012). We identify 35 transactions where shareholders file exempt solicitations to oppose a proposed takeover, most of which have exempt solicitations filed by target shareholders. The small number of such incidences suggests that shareholders less frequently use exempt solicitations to influence merger outcomes compared to proxy contests involving activist arbitrageurs (Jiang, Li, and Mei, 2018). However, the result is quite impressive: shareholders affect deal outcomes before the shareholder meeting in 43% of the opposed transactions. The proposed deals are either withdrawn or the terms are revised to benefit shareholders before a vote. Moreover, the information surrounding the deals suggests that deals are withdrawn or voting is delayed to a later special meeting date to allow management time to respond by revising the terms of a deal due to a shortage of votes for the deal to pass.

For the vast majority of proxy items that go to a vote, we study the degree to which exempt solicitations effectively facilitate signaling shareholders' preferences by analyzing their influence on voter support. We find that proxy voting items targeted by exempt solicitations receive significantly different voter support than similar non-targeted proxy voting items at industry- and size-matched control firms, especially related to crossing important voting thresholds that can signal a shared view of "no confidence." For example, management-sponsored proxy voting items, depending on the category, are 23% to 30% more likely to receive voter support less than 80% relative to control firms even after controlling for ISS recommendations. This is a significant increase in a vote of "no confidence" as management proposals tend to receive voter support above 94% on average and infrequently fall below 80% (e.g., Burch, Morgan, and Wolf, 2004; Cai, Garner, and Walkling, 2009; Ertimur, Ferri, and Oesch, 2018; Aggarwal, Dahiya, and Prabhala, 2019). We also find board- and compensation-related shareholder-sponsored proposals are 26% and 13%, respectively, more likely to receive voter support greater than 50%, even after controlling for ISS recommendations. This result indicates that shareholders use exempt solicitations to increase pressure for change, given that firms are significantly more likely to respond to shareholder proposals when voter support passes the 50% threshold, i.e., signals no confidence (Cunat, Gine, and Guadalupe, 2012).

Given the evidence that exempt solicitations are significantly related with "no confidence" votes, we examine two additional outcomes one might anticipate after shareholders' preferences are revealed to directors and external stakeholders. First, we analyze whether exempt solicitations are related to forced CEO turnovers. In an early study of "Vote No" campaigns, Del Guercio, Seery, and Woidtke (2008) find a significant increase in forced CEO turnovers after boards are targeted with these campaigns. To the extent exempt solicitations signal significant shareholder dissatisfaction to the board, directors may feel pressure to replace management who has not responded to shareholders. Second, we examine whether exempt solicitations are related to the external market for corporate control. Even though exempt solicitors are not seeking control, to the extent that their solicitations effectively signal extreme shareholder dissatisfaction with current management and favorable disposition towards discipline from the external market for corporate control as suggested by the CARs for an antitakeover subsample, these filings may alert potential acquirers that shareholders are favorably disposed to a potential takeover.

We find significant support for both outcomes. Within one year following an ES filing, forced CEO turnovers are close to three times more likely at targeted firms than control firms. The CEO turnover effect is even stronger for ES campaigns that solicit dissent against management-sponsored director elections. This result is consistent with the higher subsample CARs suggesting the market anticipates a higher likelihood of meaningful change when directors are targeted directly and feel the greatest pressure. We also find that targeted firms with no proposed merger at the time of the ES filing are significantly more likely to be taken over than control firms. Within one year following an ES filing, targeted firms are twice as likely to be taken over than control firms. The acquisition effect is stronger when exempt solicitations support decreasing takeover costs and when exempt solicitations are filed during industry merger waves.

Overall, our results indicate that exempt solicitations are an effective means by which shareholders can disclose information and facilitate revelation of widespread views to management, directors, and external stakeholders. They provide greater flexibility than traditional forms of shareholder activism and are a lower cost alternative to blockholder activism and proxy contests. Although ES filings appear to be accessed frequently in practice, they have not been studied in depth by academics. Our paper takes an important first step in contributing to our understanding of exempt solicitations and contributes to the literature along several dimensions.

First, our findings contribute to the literature on shareholder activism. While proxy contests are widely followed by both practitioners and scholars, exempt solicitations are relatively unknown uses of solicitations.[3] While higher-cost shareholder activism is associated with significant firm changes (e.g., Greenwood and Schor, 2009; Boyson, Gantchev, and Shivdasani, 2017), little evidence of significant change is associated with shareholder proposals (e.g., Denes, Karpoff, and McWilliams, 2017).[4] Moreover, scholars argue that proxy contests are the least efficient way to

[3] For example, Georgeson provides a list of proxy contests and shareholder proposals each year in their proxy season annual review, and existing studies predominantly focus on proxy contests or blockholder activism, typically by hedge funds, as forms of high-cost activism or shareholder proposals as the most common form of low-cost activism.
[4] An exception is found for a subset of proposals receiving greater than a majority vote support in more recent periods (Bach and Metzger, 2017; Ertimur, Ferri, and Oesch, 2015; Ferri, 2012).

discipline managers since they require high solicitation costs (Pound, 1998; Grossman and Hart, 1980; Buchanan, Netter, Poulsen, and Yang, 2012). Importantly, we present evidence that a lower cost alternative to proxy contests and blockholder activism is associated with a significant increase in the likelihood of a "no confidence vote" and economically meaningful outcomes.

We also contribute to the literature on shareholder engagement and information dissemination. Existing models highlight disincentives shareholders have to engage in lieu of trading and limitations of the informativeness of shareholder communication (e.g., Levit, Malenko and Maug, 2022; Kakhbod et al., 2022). However, Kakhbod et al. predict that passive funds increase incentives for shareholders to engage. Malenko et al. (2022) predict shareholders would be better off communicating information, especially when proxy advisory recommendations are likely biased, but may not if such communication triggers proxy rules. Our findings suggest exempt solicitations overcome frictions in these models. In addition to the short-term effect of greater voter support against management, exempt solicitations are also associated with economically meaningful subsequent corporate outcomes, including affecting proposed merger terms, forced CEO turnover, and the likelihood of a subsequent takeover. Thus, exempt solicitations can be a promising tool for shareholders to effectively communicate widespread beliefs when disagreeing with management or when proxy advisory recommendations are biased. They are more flexible than traditional forms of activism, less costly than high-cost activism, and much more effective than shareholder proposals. Moreover, although the stated purpose of SEC disclosure is to "ensure that investors are provided with material information in order to make informed investment decisions," our results suggest a much broader set of users of ES filings, including investment banks, and complement the literature on investor attention. [5] Section 1 provides a more detailed discussion of the proxy process and the use of exempt solicitations. Section 2 includes an empirical analysis of different measures of the effectiveness of exempt solicitations, and Section 3 concludes.

[5] See e.g., Division of Corporation Finance section, titled "About the Division," which describes the mission: https://www.sec.gov/page/corpfin-section-landing.

1. The Proxy Process and Proxy Exempt Solicitations

The proxy voting process is an important way for shareholders to communicate with management. However, a feedback loop between trading and voting can result in swings in the shareholder base that complicate decisions based on voting outcomes (Levit, Malenko and Maug, 2022). Thus, the timing and relation between communication, trading and voting may impact the interpretation of voting outcomes. The model in Kakhbod et al. (2022) predicts that when shareholders and management have different beliefs, each shareholder engages more effectively when other shareholders engage as well, and advisory voting is likely to have a positive effect on managerial learning when shareholder voting provides useful information and allows a cost-effective way for management to get the views of a large number of shareholders on a decision. While the presence of passive funds can lead to a wider shareholder base to facilitate complementary shareholder engagement, it is costly for institutional investors with large portfolios to examine each holding on a firm-by-firm basis. Sources of information that allow them to digest and process vast quantities of data, such as ISS reports available only to subscribers, can therefore be valuable.[6] Ironically, this value provides incentive for proxy advisory services like ISS to provide biased public recommendations to create controversy on certain proposals to increase demand for their proprietary research reports (Malenko et al., 2022). In their model, Malenko et al. predict that it would be in the ex-post interest of shareholders when all shareholders' interests are aligned to disclose their information. However, they note that such communications may be limited if it could be considered as "forming a group," which may trigger a poison pill or require filing a form 13D. In the extreme, communications calculated to affect voting decisions by seeking proxy voting authority, or proxy contests, are subject to all the SEC's requirements for proxy solicitations. We examine whether proxy exempt solicitations, communications *not* subject to such costly triggers, may serve to increase the effectiveness of shareholder engagement without incurring the costs associated with more costly forms of shareholder communication or activism.

[6] For example, Dey, Starkweather, and White (2022) show that a review of firms' shareholder engagement by ISS increases firms' responsiveness to shareholder concerns.

1.1. Background

Proxy solicitations serve to inform shareholders on corporate voting issues and garner shareholder votes (Choi, 2000). Prior to 1992, the ability of investors to communicate with one another was constrained under the proxy rules. Any communication reasonably calculated to affect voting decisions was treated as a "solicitation," in which case the "solicitor" would be subject to all of the SEC's requirements for proxy solicitations. Institutional investors, spearheaded by CalPERS (a largely indexed or passive fund), complained that the SEC's proxy rules "prevented them from communicating with one another and participating effectively in corporate governance..." and lobbied intensely for reforms (Fisch, 1994). In October 1992, the SEC instituted expansive reforms aimed at increasing the ability of investors to communicate on proxy voting issues.[7] In particular, Rule 14a-2(b)(1) (17 C.F.R. §240.14a-2(b)(1)) exempts from most proxy rules any communication by "any person, whether or not a shareholder, who conducts a solicitation but does not seek proxy voting authority or furnish shareholders with a form of consent, authorization, abstention, or revocation, and does not act on behalf of any such person." Of particular note are exemptions from the burden of preparation and delivery requirements of a separate proxy statement under Rules 14a-3 to 14a-6.[8] Instead, each written communication other than certain widespread public communications, such as press releases, and any scripts used for oral solicitations must be filed with the SEC no later than three days after first use under Rule 14a-2(b)(1) for persons relying upon this exemption and holding shares of the company's stock with a market value over $5 million (17 C.F.R. §240.14a-6(g)).

Because the exemptions have lower burdens for preparation and filing, they provide a quick, easy, and cost-effective way for filers to express their views beyond the 500-word limit allowed for proposals and supporting statements in a proxy.[9] Since there is no limit to words in an

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[7] See e.g., SEC Release No. 34-31326 (October 16, 1992). For a detailed review of the 1992 rule changes, see Jill Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 Vanderbilt Law Review at 1165 (1993).

[8] Rule 14a-2(b) relieves communicating parties from the burdens of Exchange Act Rules Sections 240.14a-3 through 240.14a-6 (other than § 240.14a-6(g) and (p)), 240.14a-8, 240.14a-10, 240.14a-12 through 240.14a-15, and 240.14a-19). Rule 240.14a-9's antifraud prohibition, nevertheless, continues to apply (Choi, 2000).

[9] Under Rule 14a-8 of the Securities and Exchange Act of 1934, a shareholder may submit no more than one proposal to a company for a particular meeting, a shareholder proposal may not exceed 500 words, and a proponent must

ES filing, under this exemption, a person can fully develop arguments to others in order to express discontent and affect voting outcomes by communicating those arguments through personal solicitations, direct mailings or press releases and other media.[10] Further, unlike sponsors of shareholder proposals, exempt solicitors can express views for more than one proxy voting item and can communicate information to solicit voter support any time prior to the shareholder meeting. Another unique advantage of exempt solicitations is that they provide a lower cost, more flexible way for shareholders to solicit votes against management proposals compared to contested proxy solicitations. For example, there is no advance notice requirement for exempt solicitations. Moreover, they provide greater flexibility for shareholders to directly solicit against management-nominated directors without imposing the burden of identifying replacement directors in an alternate slate through either proxy access or a proxy contest and meeting the nomination deadlines (Wolosky and Freedman, 2011). They also provide a mechanism for shareholders to communicate dissatisfaction with a management-proposed sale or acquisition. Thus, exempt solicitations may be an inexpensive but valuable option for most independent investors to disclose information and facilitate shareholder engagement.[11] Appendix A provides examples to illustrate how solicitors utilize exempt solicitations to elaborate their opinions.

Although exempt solicitations offer several potential advantages relative to other forms of shareholder activism, uncertainty over interpretation of the relaxed proxy rules in practice may limit the use or credibility of such solicitations. For example, the Second Circuit Court of Appeals reversed the SEC staff position in a 2004 decision and held that if an investor mails a duplicate of

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have owned at least $2,000 of company stock or 1% of a company's securities for at least one year during our sample period.

[10] We find that 66% of exempt solicitation filings that are supporting shareholder proposals are sponsored by the same shareholder that filed the shareholder proposal.

[11] Exemptions under Rule 14a-2(b)(1) are not available for persons seeking control or with substantial interest in the outcome, i.e., who stand to gain more than pro rata with shareholders. For example, this exemption does not apply to any person who is required to report beneficial ownership of the company's stock on a Schedule 13D, unless such person has filed a Schedule 13D and has not disclosed an intent, or reserved the right, to engage in a control transaction, or any contested solicitation of directors. See Rule 14a-2(b)(1) for the list of persons who are ineligible for solicitation exemptions:
http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=11f1d615e1595fae06c7207706f724ee&r=PART&n=17y4.0.1.1.1#se17.4.240_114a_62.

the company's proxy card to other shareholders, it would render the investor ineligible for the exemption.[12] This decision may have limited the usefulness of exempt solicitations to the extent that it has led to excessive shareholder caution in dissenting against management proposals and limited the exempt solicitor's ability to make voting on proxy issues more convenient for shareholders. In addition, shareholders relying on the exemption are not required to disclose ownership, and shareholders who own less than the $5 million threshold can file an exempt solicitation, even though they are not required to.[13] Thus, the information provided in an ES filing may not be perceived to be credible, or represent widespread shareholders' beliefs, or be accessed widely. While ES filings are subject to the anti-fraud provisions for all solicitations under Rule 14a-9, which may mitigate any perceived lack of credibility, these potential costs may limit the use of exempt solicitations. Thus, the use and effectiveness of exempt solicitations is an empirical question.

We focus on exempt solicitations relying on Rule 14a-2(b)(1), but we should note the 1992 proxy reforms also include provisions for two other types of communications among shareholders. However, both types of communications are much more limited in nature than communications under Rule 14a-2(b)(1). The first, Rule 14a-1(1)(2)(iv), essentially excludes from the proxy solicitation rules widespread public statements that are confined to communicating a shareholder's intent to vote and why but are restricted from including communications that are reasonably calculated to affect the voting outcome.[14] The second, Rule 14a-2(2), exempts private communications, or any solicitation made otherwise than on behalf of the company, where the total number of persons solicited is not more than ten, and therefore, limits the communications to a small number of shareholders. Thus, the constraints on either information content or information

[12] *MONY Group Inc. v. Highfields Capital Management LP*, 368 F.3d 138 (2nd Cir. 2004).
[13] In response to aggressive use of Notices of Exempt Solicitation by shareholder proponents that did not beneficially own over $5 million in shares, the SEC staff issued two Compliance and Disclosure Interpretations on July 31, 2018, clarifying that a Notice of Exempt Solicitation may be provided on a voluntary basis for filers that do not own $5 million of the relevant securities, but the notice must specifically state that it is filed voluntarily and that all of the information required by Rule 14a-103 must be presented in the submission (such as name, address, and other identifying information) before any soliciting materials (see https://www.sec.gov/divisions/corpfin/cfguidance.shtml).
[14] Statements can be made "by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis."

dissemination not only make these types of communications difficult for us to observe in a comprehensive manner, but they also limit the extent to which these communications can communicate discontent or solicit support for a firm's wider shareholder base.

1.2. Exempt Solicitations Within the Shareholder Meeting and Proxy Process

Figure 1 presents a simplified, high-level timeline of the proxy process to illustrate the flexibility exempt solicitors enjoy relative to the restrictions shareholders face under traditional forms of shareholder activism. For a regular shareholder meeting, the deadline for shareholder proposal submissions and shareholder-sponsored board nominations to be included on the company's proxy card[15] is *120 calendar days prior to the anniversary of the date of the company's proxy filing from the previous year's annual meeting*.[16] Following the shareholder submission deadline, the company has 14 calendar days after receipt of a shareholder proposal to notify the sponsor of any procedural defects and the sponsor then has 14 days to respond to the defects. If the company wishes to submit a request for no-action relief to the SEC, it is allowed to do so up until 80 calendar days before the definitive proxy statement filing. The company can send an opposition statement to the sponsor up until 30 calendar days[17] before the company files its definitive proxy statement.

In certain cases, a company must submit preliminary proxy materials to the SEC,[18] which should be submitted at least 10 days prior to the mailing date of the definitive proxy materials. In our sample, preliminary proxy materials (PRE Filing) that are filed are submitted a median (mean) of 15 (22.6) days before the definitive proxy filings. The SEC does not impose specific deadlines for the delivery of definitive proxy materials to stockholders beyond requiring delivery before the

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[15] The ability to nominate candidates through the company's proxy materials begins as of the August 2010 proxy access adoption of Exchange Act Rule 14a-11 and amendments to Rule 14a-8(i)(8).

[16] For special meetings the deadline is classified as within a "reasonable time" before the company begins to print and send proxy materials.

[17] In cases where the SEC requires revisions of the proposal to be included in the proxy, the company must send its opposition statement to the proponent no later than five calendar days after receiving the revised proposal.

[18] If the company is seeking stockholder action on anything other than the election of directors, ratification of auditors, adoption/amendments to employee benefit plans, stockholder advisory vote on executive compensation, and shareholder proposals, it must submit the preliminary proxy materials to the SEC for review.

shareholder meeting date.[19,20] In practice, companies tend to distribute their proxy materials (DEF Filing) as far ahead of the meeting date as possible. In our sample, we find the median (mean) distance is 42 (46.1) days before the meeting.

The lengthy proxy process illustrated in Figure 1 shows that shareholders face several restrictions that require them to make decisions about shareholder activism prior to receiving information from management. If investors wish to submit a shareholder proposal or nominate a director on the proxy, the deadline for doing so is typically 120 days prior to receiving information on other proxy items and 162 days prior to the shareholder meeting date. If an investor intends to launch a separate proxy contest, the investor likely will be subject to company-specific advance notice requirements with a deadline somewhere between 60 and 120 days prior to the annual meeting date, which is also prior to the company's PRE filing date.[21] It might not be always practical for investors to know so far in advance whether to pursue this type of activism. If the company makes problematic corporate decisions (such as announces acquisitions or other investments), displays poor corporate governance practices, or responds inadequately to shareholder requests after these deadlines, exempt solicitations provide an ideal platform for shareholders to express their discontent without having to wait until the next proxy season.

Consistent with increased flexibility in timing, we find the majority of exempt solicitation campaigns are launched after the company's DEF filing, and approximately 75% of campaigns begin within 30 days of the meeting date. The first filing of an exempt solicitation campaign occurs a median (mean) of 20 (17.8) days after the DEF filing and 22 (29.9) days before the meeting date.[22] If a campaign has more than one ES filing, the last filing of the campaign is filed a median (mean) of 8 (11.6) days before the meeting date. Thus, ES filings appear to be primarily used to

[19] The company must file the proxy statement with the SEC no later than the day that it begins to deliver its proxy materials to its stockholders. However, the SEC leaves definitive proxy material and annual meeting date deadlines up to applicable state corporate law. Many states have specific requirements for the date and notice of annual meetings. For example, Delaware law generally requires that notice of a meeting of a DE company be sent to stockholders between 10 and 60 days before the meeting.

[20] As of January 2007, proxy materials and annual reports must be posted on a publicly available website. If a company decides not to make any paper deliveries of proxy materials unless specifically requested by a stockholder, the SEC requires the company to mail its notice of internet availability to stockholders at least 40 days before the meeting date.

[21] Most firms have advance notice by-laws requiring stockholders to give advance notice to the corporation in order to propose nominations or other business at the annual meeting. Though specific to each firm, the deadlines generally range between 60-120 before the anniversary of the preceding year's annual meeting.

[22] In the case of management-sponsored merger items, we find that the first filing of the exempt campaign occurs a median of only 5 days after the definitive proxy statement filing and 56 days prior to the meeting date.

communicate discontent and solicit for votes against management during the window that shareholders may dissent from recently revealed information when other forms of activism are limited, i.e., after the proxy statement is filed and proxy proposals are made public and after shareholder submission and advance notice deadlines are past. The unique timing of ES filings suggests they are an important alternative form of activism during the window when other forms of shareholder activism are restricted and merit further study.

1.3. Sample and Descriptive Statistics

Notices of Exempt Solicitations are filed with the SEC using Form PX14A6G and include the following information (specified in Rule 14a-103): name of registrant (i.e. the name of the company which is the subject of the communication amongst shareholders), name of the person or entity relying on the exemption, description of written materials, actual written materials (e.g., actual letter submitted to fellow shareholders), including the nature and detail of the communication and filing date. We obtain a list of all Form PX14A6G filings with the SEC during 1997 to 2019 from EDGAR. We supplement filings available electronically with hard copies received through a FOIA request. Examples of ES filings supporting a shareholder proposal and dissenting against a management proposal are provided in Appendix A.

We read through the filings to identify filers and corporate governance proxy items that are the subject of exempt solicitations at the firm-meeting level. We exclude 65 observations that are atypical or have concurrent proxy contests to focus on the question of whether exempt solicitations are an effective low-cost alternative for shareholders to communicate dissent against management. Around 75% of excluded observations are filed to support a management-sponsored proposal, e.g., encourage shareholders to vote for a management-proposed amendment, which is in response to a shareholder-sponsored proposal that passed the prior year, and requires a super majority vote support to become binding. Approximately 15% of excluded observations are filed at firms that also have a proxy contest. The final exempt solicitation sample includes 788 firm-year-proposal observations, including management-sponsored and shareholder-sponsored corporate governance proposals at 478 unique firm-years.

We present descriptive statistics for the Exempt Solicitation (ES) sample in Table I. For simplicity, proposals refer to proxy voting items, year refers to the year of the meeting when voting takes place. The left panel presents summary statistics at the campaign level and includes all proxy items specifically targeted by an exempt solicitor at a firm. The right panel separates the proxy items into management-sponsored and shareholder-sponsored. Overall, we see 788 issues are referenced by filers relying upon exempt solicitations for 478 unique firm-years, indicating that each ES firm is targeted for an average of 1.65 items. Approximately half of the sample encourages shareholders to vote against a management-sponsored proposal, and approximately half encourages shareholders to vote for a shareholder-sponsored proposal.[23] On average, solicitations are communicated through multiple filings. Overall, we observe an average of 1.98 ES filings for a shareholder meeting over an average of 8.7 days between initial and final ES filings. Both the average number of items targeted (2.18 vs. 1.15) and the average number of ES filings (2.76 vs. 1.73) are greater in the management proposal sample relative to the shareholder proposal sample. In reading through the filings, the frequency of ES management proposal filings tends to be associated with the solicitor providing additional information or responding to additional information provided by the firm in order to further support their position and solicit dissent against management.

Figure 2 illustrates the distribution of exempt solicitations over time. The figure shows exempt solicitations increase dramatically over time. The management-sponsored proposals sample more than triples from 92 to 302 around the 2011 proxy season, while the shareholder-sponsored proposal sample more than doubles from 125 to 266. Figure 3 compares trends across different forms of shareholder activism. Voting Analytics coverage does not begin until 2003, so we collect the frequency of proxy contests and non-individual shareholder-sponsored corporate governance proposals from Georgeson Annual Reports. While both exempt solicitations targeting management and shareholder proposals increase over time, proxy contests and non-individual shareholder corporate governance proposals both decrease in frequency after 2011. Of particular

[23] Three observations voice dissatisfaction against management over certain issues but are not linked directly to a specific proxy voting item.

interest, exempt solicitations targeting management proposals are slightly more frequent than proxy contests (302 vs. 301) after 2011, and the proportion of shareholder proposals further supported by exempt solicitations increases from 5.49% to 28.90% around 2011. Possible explanations for the increase include resolution of uncertainty regarding the interpretation of the relaxed proxy rules in practice over time, the increasing value of information as the incentive of proxy advisory services to bias public recommendations increases, e.g., increased likelihood of close call votes (Malenko et al., 2022), and the increased effectiveness of shareholder information sharing with the increase in passive funds (Kakhbod et al, 2022).

1.4. The Use of Exempt Solicitations

In Panel A of Table 2, we classify ES proposals into categories. Management-sponsored proposals are classified as director election, merger or sale related, and corporate governance. The latter category includes ratify auditor, say on pay, and other management proposals. Shareholder-sponsored proposals are classified as antitakeover, board-related, compensation-related and other corporate governance. The targeted proposal categories are listed in order of frequency in the full sample, the 1997-2011 sample period, and the 2012-2019 sample period. We obtain click data within a week of the initial ES filing to determine the number of views to get a sense of the level of interest ES filings generate. We additionally identify whether an ES filing is viewed by a top investment bank or Bloomberg to examine whether they are a potential source of information for external stakeholders.[24]

We observe that ES filings are used predominantly to target board-related matters. ES campaigns solicit dissent against management-sponsored director elections 285 times (36%) and solicit support for shareholder-sponsored board-related matters, such as separate CEO and Chair, 230 times (29%). The third most common focus is soliciting support for shareholder compensation

[24] The SEC provides a log file containing the following historical EDGAR search volume information, including the Internet protocol (IP) address of every web-click. We link the accession number to a full SEC index file from the EDGAR database to match the form type (e.g. PX14A6G) for each firm to obtain number of clicks. Data on EDGAR search volume is available only for from March 1, 2003 through June 30, 2017. Additionally, as noted by Loughran and McDonald (2015), there is a timespan from September 24, 2005 through May 10, 2006 where the SEC reports that the web-click data is either missing or lost, so these filings are excluded from our search volume analyses.

proposals. While these are the second most common representing 19% of ES proposals in the 1997-2011 period, they are less common later on and represent only 10% in the full sample. Solicitations dissenting against management-sponsored governance proposals is just behind at 9% overall with increasing frequency, representing 10% in the 2012-2019 period. While these include management proposals, such as reincorporation and ownership thresholds to call special meetings, the majority of these are related to compensation. Thus, the focus on compensation also occurs in both the management and shareholder samples. Also of interest are solicitations dissenting against management-sponsored sales or acquisitions. Since we excluded ES filings at firms with concurrent proxy contests, these represent cases where management and the board approve the terms of a deal and the ES campaign is the primary tool available during the period prior to the meeting for a shareholder to solicit dissent against the proposal and affect the outcome. These are less common, representing 5% of the sample. However, the direct economic impact of these deals on shareholders and the potential of an exempt solicitation to coordinate dissent among shareholders who have no interest in control but would like to protect their investment make these of particular interest. Furthermore, we are able to observe the outcomes of these directly.

ES filings appear to become an increasing source of information over time during the period when click data is reported as evidenced by the increase of average clicks from 114 in the 2003-2011 period to 858 in the 2012-2016 period. Likewise, the percentage of initial ES filings viewed by at least one top investment bank (Bloomberg) increases from 51% (3%) to 87% (61%). Moreover, these results suggest that, by the end of the sample period, shareholder attention of ES filings may be comparable to or even higher than proxy statement attention measured by Iliev et al. (2021), who observe that during the proxy season (i.e., 30 days prior to the release of the current proxy statement through the annual meeting date), the average firm proxy statement is viewed 659 times, while firm-year level aggregate proxy-related attention includes 1,106 views. During the same window, financial information with 10Ks or 10Qs exceeds 3,500 views on average. Taken together, these indicate that ES filings are a potential source of information not only for shareholders but also for external stakeholders, including potential investors or acquirers.

In Panel B, ES filers are classified into the following solicitor types: public pension fund, union fund, large shareholder (e.g., hedge fund and other institutions)[25], and other (e.g., individuals and social issue entities). Overall, exempt solicitations are used most frequently by public pension funds and union funds (38% and 26% of the overall sample, respectively). Large shareholders are a close third representing 23% of the sample. The remaining filers represent only 13% of the sample. It is interesting to note that large shareholders are the most frequent users in the early sample period, while other filers rarely use an exempt solicitation. While large shareholders tend to use exempt solicitations at a similar frequency, the remaining three categories all increase their use of exempt solicitations explaining the significant increase in ES filings and shift in user distribution over time.

In untabulated results, we observe that public pension funds and union funds use exempt solicitations both against management proposals and for shareholder proposals, while large shareholders primarily use exempt solicitations to urge shareholders to vote against a management proposal. Outside of a proxy contest, exempt solicitations are one of the few tools an investor has to dissent against a management proposal. Within the shareholder proposal subsample, at least one of the ES filers is also the sponsor of the shareholder proposal 66% of the time. Thus, the ES filers appear to use exempt solicitations in the shareholder proposal subsample as a supplement to sponsoring a shareholder proposal in order to provide information beyond the restrictive word limit allowed in a firm's proxy statement. In sum, the distribution of ES filer type includes types seen in both higher cost and lower cost shareholder activism, with the exception of less frequent use by gadfly investors or social issue entities.

1.5. How does the market perceive the impact of exempt solicitations?

Given that the fundamental question about exempt solicitations is whether they create value for shareholders, we next conduct event studies to test how stock prices react to the initial

[25] Though rare, founders or former CEOs with a sizable ownership stake are included in this group as a large shareholder.

disclosure of ES filings. The market may react to exempt solicitations positively if they are effective and create value for shareholders. There are several reasons to support this argument.

First, compared to other solicitations, this lower cost alternative due to exemptions from most proxy rules not only allows shareholders who might not have the resources and capacity to launch a proxy fight to express their disagreement with management, but also facilitates coordination among shareholders. In addition, exempt solicitations are easier to manage, allow shareholders to better focus on specific concerns with a company, avoid the complexities and potential pitfalls associated with nominating candidates, and escape potential restrictions and liabilities that may result if one or more nominees are elected to the board (Willkie Farr & Gallagher LLP, 2010).[26] Moreover, in contrast to the 500-word limit in a company's proxy statement permitted to a shareholder sponsoring a proposal, the length of communication in an exempt solicitation is unlimited. Finally, exempt solicitations are potentially more credible than other public communications which are not defined as solicitations, because ES filings are subject to anti-fraud provisions and the exempt solicitor cannot have a "substantial interest," e.g., solicitation benefits them differently than other shareholders, in the outcome to qualify for the exemption. Exempt solicitations are therefore a potentially viable mechanism to decrease the cost for shareholders to become informed voters, thus potentially mitigating special interest concerns while decreasing the collective action problem, which is often valuable for shareholders (Doidge, Dyck, and Yang, 2021). These characteristics suggest that exempt solicitations can potentially be value creating and provide a novel shareholder mechanism for overcoming collective action problems, in addition to tools identified by prior researchers like decision delegation to the board (Levit, Malenko and Maug, 2022).

Conversely, critics argue that the surge in the use of exempt solicitations does not necessarily indicate its effectiveness. In fact, the substantial increase in use could be an area ripe for abuse. Companies and shareholders cannot determine the magnitude of a voluntary filer's

[26] Potential restrictions and liabilities that may result from having one or more nominees elected to the board include trading restrictions, fiduciary duty issues, conflict of interest concerns and reporting obligations and short-swing profit liability under Section 16 of the Securities Exchange Act of 1934.

ownership position, or whether the filer is in fact a shareholder at all, because Notices of Exempt Solicitations do not require disclosure of the filer's stock ownership.[27] As a result, in recent years, shareholders are often using these filings outside of the Rule's intended scope to publicize their views on various proposals as EDGAR does not restrict their use of these filings, resulting in some compliance issues and potential confusion for other shareholders when evaluating the items on which to vote.[28] Moreover, the low-cost nature of exempt solicitations, the potential liability associated with the anti-fraud provisions, and the court decision to disallow a blank copy of a company's proxy card may limit the information provided and the effectiveness of exempt solicitations.

Ultimately, it is an empirical question how the market perceives the impact of exempt solicitations. Table III reports the average cumulative abnormal return (CAR) for ES firms over alternative event windows, where day 0 is the initial ES filing date in an ES campaign and the abnormal returns are estimated using the market model parameters based on CRSP value-weighted returns during the window (-250, -50). We present different windows to allow for possible information dissemination and processing after the initial ES filing. Panel A shows that for the full sample, the market reacts positively and significantly when exempt solicitations are filed with the SEC, with CARs increasing from 0.26% to 0.59% as the window lengthens. Panel B reports market reactions for firms targeted with exempt solicitations against any management proposal category and for the subset against management-nominated directors. ES management proposal firms experience significantly, positive abnormal returns ranging from 0.36% to 1.03%, while the subset management-nominated director targets experience even larger positive returns ranging from 0.45% to 1.91%. Panel C present CARs for the shareholder proposal subsample and the subset of solicitations to support removing one of the top 3 antitakeover provisions (classified board, poison pill or supermajority voting requirement). Although we find some evidence of a positive reaction in the shareholder proposal sample, the magnitude is more modest, ranging from 0.17% to 47%,

[27] Notices of Exempt Solicitations are only required to have an indication of whether or not the filer crosses the $5 million threshold.

[28] Nearly 20% of exempt solicitation filings in 2020 failed to comply with Staff guidance (see e.g., Shareholder Proposal Developments During the 2020 Proxy Season - Gibson Dunn: https://www.gibsondunn.com/shareholder-proposal-developments-during-the-2020-proxy-season/).

and the statistical significance weakens. In contrast, the shareholder antitakeover subsample experiences the largest abnormal returns ranging from 1.06% to 2.35%, though the statistical significance is weaker in the longer windows perhaps due to the small sample size. Panel D presents CARs for ES firms with click data based on whether the ES filing is accessed more or less widely, i.e., number of clicks to view the filing are above or below the sample median. We find little evidence of positive returns when filings are accessed less widely. In contrast, we find positive returns ranging from 0.49% to 0.93% when allowing time for information that is accessed more widely through electronic filings to disseminate and be processed.

It is worth noting that the positive market reactions are not only statistically significant, but they are also economically meaningful, especially relative to other types of shareholder activism. Denes, Karpoff, and McWilliams (2017) survey empirical studies examining market reactions to shareholder proposals and find that most studies report *negative* but insignificant abnormal returns (e.g., Karpoff, Malatesta and Walkling, 1996; Smith, 1996; Del Guercio and Hawkins, 1999). On the positive side, Renneboog and Szilagyi (2011) find a small positive valuation effect of 0.36% during the four-day window around the earlier of the proxy mailing or first public announcement. In contrast to the low-cost shareholder proposals, high-cost proxy contests have been shown to have stronger valuation effects although they range widely from less than 1% (Renneboog and Szilagyi, 2011) to over 10% (Dodd and Warner, 1983).

Our results reported in Table III indicate the market views exempt solicitations as effective and therefore anticipates positive valuation effects, especially when solicitors are targeting management proposals, and specifically targeting directors, when solicitations target antitakeover measures, and when solicitations are widely accessed. In the next section, we further explore mechanisms through which exempt solicitations create value for shareholders.

2. Different Measures of Effectiveness of Exempt Solicitations

To shed light on how exempt solicitations create value for shareholders, we follow the literature and investigate potential outcomes for targeted firms. We start by investigating whether management takes actions sought by exempt solicitors in management proposed M&As. We then examine vote support since vote outcome directly measures the effectiveness of shareholder coordination. Finally, we examine whether exempt solicitations are associated with corporate governance changes measured by subsequently forced CEO turnover and whether exempt solicitations facilitate the acquisition market.

2.1. M&A Proposed Transactions

Shareholders may use exempt solicitation campaigns to pressure firms to make specific economically meaningful changes. We start with management-proposed M&As for two reasons. First, M&As are one of the most economically meaningful decisions a firm makes. Moreover, investors learn the M&A news only after its announcement; therefore, it is very difficult (if not impossible) for investors to anticipate and prepare for activism if they are dissatisfied with the proposed M&A deals. In this situation, exempt solicitations are investors' only alternative other than a formal proxy contest. Second, we can observe the initial merger terms proposed by management when the deal is announced, which allows us to directly measure changes following an exempt solicitation dissenting against management based on discontent with the stated terms of the deal. The M&A literature provides evidence that target management may not search for best deal terms for their shareholders (e.g., Hartzell, Ofek, and Yermack, 2004; Moeller 2005). On the other hand, acquirors can also overpay in acquisitions (e.g., Moeller, Schlingemann, and Stulz, 2005; Harford, Humphery-Jenner, and Powell, 2012). To the extent exempt solicitations are associated with significant shareholder dissent, the merging firms may be more likely to either withdraw or change the terms of the proposed transaction to placate shareholders or avoid an unfavorable voting outcome.

To investigate whether and how exempt solicitations can affect management-proposed merger outcomes, we manually identify 35 M&A transactions in which shareholders filed exempt solicitations against the proposed takeover transaction. This relatively small number of transactions allows us to conduct a case-study type of analysis and manually investigate whether and how exempt solicitations affect deal outcomes, case by case. We find that among these 35 deals, 25 deals have exempt solicitations filed by target shareholders, and ten deals have exempt solicitations filed by bidder shareholders. On average, these filings are made five days after the company's proxy statement filing date, much faster than the full sample of about 20 days. This result suggests that shareholders utilize exempt solicitations and take immediate action to express their opposition to the proposed transaction. We verify whether deal outcomes are altered in response to shareholders' demands stated in the ES filings for each deal. We find impacted outcomes for 15 of 35 deals (43%). Table IV lists these 15 transactions together with brief descriptions of the content in the ES filings and deal outcomes.

Among the 25 transactions with target shareholder ES filings, we find that transaction outcomes are affected in ten: five deals were withdrawn due to shareholder opposition, and five deals offered upward price revision (ranging between 4% to 50%). Appendix A.2 presents an example of a founder and former CEO of Oplink who filed exempt solicitations to oppose the transaction proposed by the current management in 2002 (the second observation of Table IV). The exempt solicitations contain fully developed arguments by the former CEO about why shareholders should vote against the proposed transaction. Despite the opposition from the former CEO, management still proceeded to have shareholders vote on the proposed transaction. However, Shareholders of Oplink Communications Inc. voted to reject the deal.

Among the ten deals with bidder shareholder ES filings, transaction outcomes are affected in five: four deals were withdrawn, and one deal had a favorable offer price adjustment.[29] These results suggest that target shareholder exempt solicitations are just as likely to result in offer price revisions or withdrawals, while bidder shareholder exempt solicitations are more likely to result in deal withdrawals. It is also worth noting that several transactions were terminated without a shareholder meeting because majority approval from shareholders is unlikely.

Overall, Table IV shows that although investors do not frequently use ES filings to oppose a management-proposed merger, once they do file exempt solicitations to challenge the deal, they can influence a non-trivial portion of the transaction. The effectiveness of ES filings in opposing

[29] As shown in Table IV, in the last transaction where Dell initially offers $109 to buy back the tracking stock. The initial proposal was opposed by shareholders. The final offer price is $120, representing a 10% increase compared to the initial offer price. Thus, the increased offer price represents a favorable term given the nature of the buyback transaction.

M&A deals is remarkable, given that management merger proposals typically receive very high voter support.[30] Moreover, our finding that existing long-term shareholders can utilize low-cost exempt solicitations to influence and persuade fellow shareholders to achieve their goals complements Jiang, Li, and Mei (2018), who document that short-term activist arbitrageurs, who acquire minority stakes in a target company after the takeover announcement, tend to use proxy solicitations to alter the deal terms. Our results that bidder shareholders can utilize exempt solicitations to vote against share issuance after the merger is proposed also extend Li, Liu, and Wu (2018), who find that the 20% rule of shareholder voting requirement has an ex-ante deterrence effect.

2.2. Control Firms

We next examine the vote outcome for the full sample to investigate the effectiveness of exempt solicitations. To do so, in each year for each firm targeted by an ES campaign, we identify up to five similarly sized non-targeted control firms from the same industry. Specifically, our procedure, which mimics that in Bena and Li (2014), requires that the difference in market capitalization between the targeted firm and the matched firms in the year before the ES campaign is between 50% and 200%. To ensure we do not bias our results in favor of finding CEO turnover or takeover activity in the ES sample, we require control firms to be either headquartered or incorporated in the US. Following Bena and Li (2014), industry definitions are based on the narrowest SIC grouping.[31] We start with four-digit SIC industry groups to search for matching non-ES firms within the required size range. If there are no industry peers that satisfy the size requirement within the four-digit SIC industry group, we move up to the three-digit SIC industry group. If there are no industry peers within the three-digit SIC industry group within the size range, we move up to the two-digit SIC industry group. If there are no industry peers within the two-digit

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[30] Burch, Morgan, and Wolf (2004) report that for a sample of acquiring-firm merger votes occurring between 1990 and 2000, acquiring-firm shareholders rarely vote against proposed mergers. In their sample, the mean approval rate of votes cast is 95%. Similarly, target shareholders, particularly mutual funds, overwhelmingly support merger proposals (Matvos and Ostrovsky, 2008; Bodnaruk and Rossi, 2016).
[31] We use historical SIC industry codes from Compustat.

SIC industry group within the size range, we move up to the one-digit SIC industry group. For 16 ES firms that do not have industry peers within the size range, we relax the size restriction to find the closest match with the same one-digit SIC industry group. Using this approach, we are able to find matches for 474 ES firm-year observations during 1997-2019 for our comparative analysis.

A comparison of firm characteristics between sample firms and their control firms is presented in Table V. Definitions for variables are in Appendix B. Panel A reports comparison for the full sample, while Panels B and C report similar comparisons for the management proposal and shareholder proposal subsamples, respectively. While sample and control firms are similar in size when measured by total assets, sample firms are significantly larger than control firms when size is measured by market capitalization when including the 16 ES firms with no close size match in the full sample and shareholder proposal. This is similar to studies on shareholder proposals, which find target firms are among the largest in their industry (e.g., Karpoff, Malatesta and Walkling, 1996; Denes, Karpoff and McWilliams, 2017). ES firms also have slightly larger boards in the full sample, 11.3 vs. 10.9 directors for the closest match, and the shareholder subsample. We do not observe significant differences in firm or board size in the management proposal subsample. Consistent with ES campaigns targeting firms because shareholders are dissatisfied with management performance, ES firms have significantly lower abnormal stock returns in the full, shareholder proposal and management proposal samples, with the greatest difference in the management proposal sample (-4.1% vs. 3.4% for the closest match). Otherwise, ES firms and controls appear to be similar.

2.3. Vote Outcomes

To investigate whether exempt solicitations are effective in gathering voter support, we obtain voting outcomes from Voting Analytics. We manually match proposal descriptions in ES filings to proposal descriptions for the same firm meeting year in Voting Analytics. When ES filings urge voting against members of a specific board committee in lieu of targeting the entire board or providing individual director names, we identify the directors from the proxy statement. When we are unable to match ES observations to Voting Analytics, we manually collect the voting outcomes from IRRC reports, Georgeson Annual Reports and 10-Qs. For control firms, we obtain voting results for all proposals during the same meeting year in Voting Analytics and classify their management and shareholder proposals into the same proposal categories. Voting Analytics begins coverage in 2003, so we do not have comparison voting outcomes for control firms prior to 2003. However, we only have 29 ES proposals prior to 2003 and our results are consistent in the later period, so we do not believe this significantly impacts our comparison results.

Table VI presents a univariate analysis of voting results between sample and control firms for ES proposal categories for the full sample period, the 1997-2011 period, and the 2012-2019 period. Voter support is defined as votes cast for a proposal as a percentage of the sum of votes cast for, votes cast against and votes abstained. No Confidence Vote is an indicator variable that equals 1 for management proposals when Voter Support < 80% and for shareholder proposals when Voter Support > 50%, and otherwise, equals 0. ISS For is an indicator variable that equals 1 when ISS recommends voting for a proposal, and otherwise, equals 0. The results indicate ES campaigns are associated with significantly different voting outcomes. The most striking result is the significant difference in the likelihood of ES proposals receiving a no confidence vote. For example, voter support varies between 16% to 20% lower for management proposals, depending on the category. More importantly, while management proposals at control firms rarely receive no confidence votes (4% to 13%), a substantial fraction of management proposals targeted by exempt solicitations receive no confidence votes (44% to 64%). Voter support is also significantly greater for the ES shareholder proposals, but there is greater variation. The increase in voter support ranges from 5% to 17%, depending on category. Even though we see evidence of no confidence votes for shareholder antitakeover proposals in the control sample, no confidence votes are significantly more likely in ES shareholder proposals across all categories with the increase in the likelihood of a no confidence vote ranging from 12% to 35%. We see some evidence of differences in shareholder compensation as well, though these appear to be period specific.

We further compare ISS recommendations between ES and control proposals. ISS is more likely to recommend against management proposals in the ES sample (22% to 36% fewer ISS For recommendations). ISS is also more likely to recommend for management proposals in the ES shareholder board-related and other categories (17% and 68%, respectively). We will control for ISS recommendations along with other factors to see if the relation between exempt solicitations and voting outcomes remain significant. We should also note that Malenko et al. (2022) analyze proxy advisor recommendations and suggest they may not be the best benchmark to evaluate shareholder voting, especially given the frequent blanket recommendations and one-size fits all approach that has been previously documented to be imperfect governance (Iliev and Lowry, 2015; Coles, Daniel, and Naveen, 2008; Johnson, Karpoff, and Yi, 2014).

In Table VII, we control for firm characteristics in a regression analysis of voter support and ES campaigns. In Panel A, we analyze whether differential voter support associated with ES campaigns varies by management and shareholder proposal category. Specifications (1)-(3) include management-sponsored proposals for ES and control samples. Voter support tends to be high for management proposals, averaging 94% for the control sample. Therefore, we do not control for management proposal category separately but include an interaction for Exempt Solicitation with each management proposal category. Specifications (4)-(6) include shareholder-sponsored proposals for ES and control samples. Voter support does vary across shareholder proposal category. We therefore include controls for shareholder proposal category in addition to the Exempt Solicitation interaction with each category. The omitted category includes antitakeover and other corporate governance proposals.[32] All regressions include year fixed effects, and standard errors are clustered at the firm level. Voter support tends to be influenced by proposal category rather than by industry, so the primary regressions do not include industry fixed effects. However, the main results are robust to including industry fixed effects. Board characteristics are missing for several observations, so we do not include them in the main specifications. However, all results are robust to the inclusion of board independence and CEO duality.

The results in Table VII are consistent with the univariate results. Management proposals targeted by ES campaigns receive significantly less voter support than those at control firms after controlling for firm characteristics and fixed effects. For example, targeted directors receive 15% lower voter support and targeted management governance proposals receive 21% lower voter

[32] The omitted shareholder proposal categories average the highest shareholder vote support during the sample period.

support than non-targeted management proposals in specification (1) for the full sample period. Targeted management proposed mergers or sales that go to a vote receive 14% lower voter support; however, we note that a portion of these votes take place after terms of the deal are revised, which mitigates dissenting votes in this category.

We continue to find shareholder board-related proposals targeted by ES campaigns receive significantly greater voter support by 13% (17%) than similar proposals at control firms during the full sample (2012-2019) period in specification (4) ((6)), and targeted shareholder compensation proposals receive significantly greater voter support by 8% (12%) than similar proposals at control firms during the full sample (1997-2011) period in specification (4) ((5)).

In Panel B, we further examine the likelihood of no confidence votes and control for ISS recommendations and whether a proposal was also included in the prior proxy statement, i.e., is a repeat proposal. We continue to find lower voter support for ES management proposals with additional controls; however, the magnitude is lower. Voter support is lower by 7% and 9% for ES management director elections and governance proposals. We no longer find a significant difference for ES management merger proposals. Although the magnitude of the likelihood of receiving a no confidence vote also decreases when controlling for ISS recommendations, ES management proposals continue to be 25% to 30% more likely to receive a no confidence vote in specification (3). The voter support for ES shareholder board and compensation proposals continues to be significantly higher, and the likelihood of a no confidence vote (i.e., majority vote) is also significantly higher (26% and 13%, respectively) even after controlling for ISS recommendations.

In untabulated results, we examine abnormal returns on the meeting date when voting outcomes are revealed. Overall, the average abnormal return is not statistically different from zero for the full sample, suggesting new information is primarily incorporated when the exempt solicitation is filed. We only observe an average positive abnormal return of 0.24% on the meeting date when incremental information appears to be revealed (e.g., the no confidence vote subsample where the degree of shareholder discontent may be informational). Taken together, the results reported in Tables VI and VII suggest that ES campaigns significantly influence voter support, which appears to be mostly incorporated at the time of the initial filing.

2.4. CEO Turnover

The degree of shareholder discontent associated with exempt solicitation campaigns may pressure boards to implement meaningful change, especially if management does not respond. In this section, we investigate CEO turnover to assess the effectiveness of exempt solicitations in communicating shareholders' discontent to the board because the decision to replace a CEO is among the most important decisions made by the board. Aggarwal et al. (2019) find shareholder votes can have negative consequences for directors, and Del Guercio et al. (2008) find evidence that increased pressure on boards targeted for poor performance and strategy reasons through "Vote No" campaigns are followed by a significant increase in the likelihood of a forced CEO turnover. Moreover, higher CARs in the ES director election subsample suggest investors anticipate an economically significant outcome. To the extent exempt solicitations effectively signal extreme dissatisfaction or no confidence in current management, targeted firms may experience an increased probability of forced CEO turnover.

We merge the ES and control samples with data on whether CEOs are forced to leave the firm from 1997 to 2020 for firms covered by ExecuComp and BoardEx.[33] We begin by providing a univariate comparison in Table VIII, which presents the likelihood of a forced CEO turnover for both the ES and control samples. Panel A compares the ES firm turnover rate to that of their peer firms using the closest of up to three, four, and five firms in size within the same industry and year as the corresponding ES observation. $Forced_{t}$, $Forced_{t\ to\ t+1}$, and $Forced_{t\ to\ t+2}$ are indicator variables that equal 1 if the firm has a forced CEO turnover announcement in the same year as the ES filing year or subsequent 1 or 2 calendar years, respectively. $Forced_{t\ to\ t+2}$ is missing for 2019 ES and control firms. To avoid confounding effects and reverse causality, we remove firms (and

[33] We are grateful to Florian Peters, Alex Wagner, Dirk Jenter, Fadi Kannan, Brian Connelly, Qiang Li, Wei Shi, and Kang-Bok Lee for sharing their manually assembled forced CEO turnover data (Peters and Wagner, 2014; Jenter and Kanaan, 2015; Connelly, Li, Shi and Lee, 2020).

their control firms) if the exempt solicitation is filed after the CEO turnover announcement date. The results suggest ES firms exhibit significantly higher turnover than the corresponding peer firms. During the ES filing year and subsequent calendar year, ES firms experience a forced turnover rate of 11% compared to 4% in the peer group (p-value<0.01). The difference grows as we allow more time between the ES filing and the turnover event, increasing from 2 percentage points in year t to 8 percentage points during the [t, t+2] window (p-value<0.01 for each window).

We further analyze the impact of ES filings on subsequent turnover likelihood using linear probability regressions to limit parameter bias that can arise in logit models using fixed effects (Angrist, 2001), since we include industry- and year-fixed effects in our tests.[34] Our key independent variable is an indicator variable, *Exempt Solicitation*, that equals one for the firm targeted by an ES campaign, and zero for the control firms. The main dependent variables are $Forced_{t}$, $Forced_{t\ to\ t+1}$, and $Forced_{t\ to\ t+2}$.

The results of the regression analysis are presented in Table IX. Specification (1) indicates that *Exempt Solicitation* is positively (an increase of 3.1 percentage points) and significantly (p<0.01) related to forced CEO turnover likelihood. In specifications (2)-(3), economic magnitude is even larger over longer time horizons. The likelihood of a forced CEO turnover increases by 6.5 and 8.3 percentage points, respectively, for firms targeted by ES campaigns (p<0.01). Both the economic and statistical significance persist throughout mirroring the univariate analyses across different matching samples after controlling for other factors.

Panels B and C further analyze the likelihood of forced CEO turnover associated with different measures of pressures directors may feel from an ES campaign. In Panel B we create two ES indicator variables: ES – Director Election that equals one if at least one of a firm's nominated directors is directly targeted in the ES campaign, and zero otherwise; and ES – Non-DE that equals one if none of the firm's nominated directors are targeted in the ES campaign, and zero otherwise. Consistent with directors feeling greater pressure when directly targeted, we find a larger increase in the likelihood of a forced CEO turnover following an ES campaign directly targeting directors.

[34] Our results remain robust if we use a logit or probit model. We also repeat our analysis for the sample for which all future turnover data are available, and our results persist.

However, though the magnitude is smaller, we continue to find a significant increase even when an ES campaign does not directly target directors. For example, in Panel B, the likelihood of a forced CEO turnover within the year following the ES campaign is 16% in the director election sample and 4% in the non-director election sample in specification (2), though these differences persist for other specifications as well. Panel C extends the director pressure measures by further separating the director election sample into two samples: ES – DE only is an indictor variable that equals one when an ES campaign only targets nominated directors, and zero otherwise; ES – DE & Other is an indicator variable that equals one when targeted director elections are part of a broader ES campaign that also targets other proxy items, and zero otherwise. The impact is greatest when ES campaigns apply the greatest amount of pressure, i.e., pressure through targeting directors directly along with targeting other proxy items. For example, the likelihood of a forced CEO turnover increases by 28 percentage points when ES campaigns directly target directors as part of a broader campaign, by 11 percentage points when ES campaigns only target directors, and by 4 percentage points when ES campaigns do not directly target directors. The increased incidence of forced CEO turnover following directed pressure on directors associated with solicitations from shareholders signaling strong dissatisfaction is consistent with the findings in Del Guercio et al. following certain "Vote No" campaigns and suggests exempt solicitations can be an effective way to spur boards to action when shareholders are dissatisfied with performance. The varying degree of increased incidence of forced CEO turnovers by type of ES campaign combined with the higher CARs for the director election sample is consistent with the market anticipating a higher likelihood of meaningful change when directors feel the greatest pressure.

Finally, although we include a control for prior performance in our previous analysis, Panel D presents the relation separately for high and low performance ES firms. The results indicate the increase in the likelihood of a forced CEO turnover for ES firms is not driven by poorly performing ES firms. We find the likelihood of a forced CEO turnover is significantly greater in both high and low performance ES firms. For example, we find the turnover rate is 6.7 and 6.3 percentage points higher in the ES low performance and ES high performance firms, respectively, in specification (2). Overall, our results show a significant increase in internal forced CEO turnovers, especially when directors feel greater pressure, and these results are robust to controlling for prior performance. These significant results for the non-DE ES firms contrast prior findings that show negligible effects on top management turnover associated with shareholder-sponsored proposals, even when receiving a majority of shareholder votes (Karpoff, Malatesta, and Walkling, 1996).

2.5. External Market for Corporate Control

Even though exempt solicitors may not seek control, exempt solicitations may not only inform the board of directors that shareholders are dissatisfied with firm management, but also send an external signal to outside potential acquirers. As a result, in addition to affecting internal decisions (i.e., firms changing proposed M&A transactions or boards firing the CEO), exempt solicitations may be useful in supporting external governance in the form of subsequent takeovers. The literature has mainly focused on how hedge fund activism is related to the likelihood of being acquired (e.g., Greenwood and Schor, 2009; Boyson, Gantchev, and Shivdasani, 2017). These studies show that activist investors facilitate the market for corporate control. We thus conjecture exempt solicitations are positively related to subsequent takeover likelihood.

We collect information on all completed M&A deals announced from 1997 to 2021 covered in the Thomson One Banker SDC database involving a publicly-traded target firm. We then impose standard sample filters including that the deal value reported by SDC is at least $1 million and the acquirer holds less than 50% of the target shares before the deal announcement and seeks to buy 50% or more of the shares of the target firm after the deal. After we obtain the M&A sample, we merge it with ES firms and control firms to identify acquisition announcements after the ES filings. Similar to the CEO turnover analysis, we estimate linear probability regressions to study the impact of ES filings on subsequent takeover likelihood.

Our key independent variable is an indicator variable, *Exempt Solicitation*, which equals one for the firm targeted by an ES campaign, and zero for the control firms. The main dependent variables are $Takeover_{t}$, $Takeover_{t\ to\ t+1}$, and $Takeover_{t\ to\ t+2}$. $Takeover_{t}$ is an indicator variable that equals one if the firm has a takeover announcement in the same year as the ES filing year. To avoid confounding effects or reverse causality, we remove firms (together with their control firms) if the exempt solicitation is filed after the takeover announcement date in year *t*. *Takeover* $_{t\ to\ t+1}$ is an indicator variable that equals 1 if the firm has a takeover announcement during the window [t, t+1], and *Takeover* $_{t\ to\ t+2}$ is defined similarly.

We first provide univariate evidence on mean differences for the takeover likelihood between firms targeted by ES campaigns and matched control firms in Table X. The results show that firms targeted by ES campaigns have a significantly higher likelihood of having a takeover announcement following the ES filings. For example, 1.3% and 3.5% of ES firms have a takeover announcement compared with 0.0% and 1.8% based on one-to-three matched firms in the remainder of year t and period [t, t+1], respectively. The differences for these windows are similar and statistically significant across different match sampling in Panels A – C.

Table XI Panel A reports multivariate regression results.[35] The coefficients on our main variable, *Exempt Solicitation*, are positive and statistically significant at the 5% level for specifications (1), (2), (4) and (5). The magnitudes of the estimates are similar and of first-order economic importance. Relative to the unconditional probability of 2.3% of having a takeover announcement among both ES and control firms during the window [t, t+1], the coefficient of 2.1% in specification (2) represents close to a 100% increase in the odds of having a takeover announcement associated with ES campaigns over the unconditional sample average.

Panel B removes firms with a forced CEO turnover prior to the acquisition to separate the effects of internal governance changes versus the external market for corporate control. We find a slightly higher acquisition probability once we remove firms that implemented internal governance changes. For example, the acquisition probability increases by 2.4 percentage points during the window [t, t+1], compared to 2.1 previously reported in Panel A.

Panel C focuses on the subsample of solicitations against management proposals that would make takeovers more costly and for shareholder proposals that make takeovers less costly. The issues include removing antitakeover provisions such as poison pills or classified boards or proposing to put the firm up for sale or restructuring. We expect this type of proposal to have the

[35] We follow Schwert (2000) and Bena and Li (2014) to include firm size, operating performance, past stock returns, growth opportunities, and R&D intensity as control variables.

strongest signal of investors' willingness to sell the firm. Panel C shows that the economic magnitude becomes much larger. For example, the likelihood of takeover increases by about 10 percentage points in specifications (2) and (5) and more than 10 percentage points in specifications (3) and (6) following ES campaigns soliciting support to make takeovers less costly. The results are similar or greater when we focus on the top 3 antitakeover shareholder proposals, which is consistent with the higher CARs for this subset of ES campaigns reflecting investors anticipation of an increased likelihood of takeover activity.

Finally, Panel D tests the effects of exempt solicitations filed during versus outside a merger wave. We follow Maksimovic, Phillips, and Yang (2013) and define industry merger wave years as years in which the percentage of deals in a certain industry using the two-digit SIC code in a given year is at least one standard deviation higher than the industry mean rate over all years. The results suggest that perhaps not surprising, exempt solicitations filed during a merger wave are associated with a much higher likelihood of being acquired in the subsequent one year (20 percentage points) and two years (24 percentage points).

Overall, these results show that ES filings are followed by significantly more frequent takeovers, and the magnitude is especially pronounced when arguably more likely to signal to the external market for corporate control or when the takeover market is more active. These results contrast the argument that low-cost activism may allow shareholders with special interests to intensify pressure on management to further their own agenda at the expense of other shareholders, and therefore have very limited ability to facilitate the market for corporate control.[36]

3. Conclusion

This paper uses a manually collected novel dataset to examine a potential tool for constructive shareholder engagement that could serve as an effective, lower cost alternative to proxy contests: proxy exempt solicitations. Exempt solicitations were introduced in 1992 and are

[36] Choi (2000) finds an increase in the usage of shareholder proposals by sponsors with their own agenda, such as labor unions and religious organizations, after the 1992 proxy reforms. Matsusaka, Ozbas, and Yi (2019) provide evidence that union shareholders use proposals opportunistically to influence contract negotiations and withdrawn union proposals are accompanied by higher wage settlements. However, the results in Del Guercio and Woidtke (2019) indicate that strong corporate governance can selectively mitigate the negative influence of special interest activists.

unique in that they allow shareholders who are not seeking control to communicate throughout the proxy process to solicit shareholder votes without triggering costly proxy rules. Existing theoretical models on voting behavior typically assume that shareholders make voting decisions in private without the knowledge of other shareholder voting preferences (Levit and Malenko, 2010) or raise concerns regarding the usefulness of shareholder engagement in management learning (Kakhbod et al., 2022). The rise in ownership by retail investors and passive funds has been associated with increased scrutiny both over how institutional investors vote and the rising influence of proxy advisory services as a source of information. The flexibility exempt solicitations provide shareholders to engage with other shareholders suggests they have the potential to increase the informativeness of shareholder votes and influence outcomes. Moreover, because exempt solicitations are filed with the SEC, they also provide a potentially useful source of information to a broader audience.

Using a comprehensive sample of exempt solicitation filings from 1997 to 2019, we examine the use of exempt solicitations and ways they are distinct from traditional forms of shareholder activism and examine whether exempt solicitations are effective in expressing dissatisfaction or driving change. Exempt solicitations are typically filed during the window when traditional forms of shareholder activism are restricted, between the proxy statement filing and meeting date. They are used in situations where shareholders are not openly engaging management in proxy fights but instead are sending written communications outside of a shareholder proposal or management proposal to explain why they are dissenting from management. Our results indicate that exempt solicitations are widely accessed through filing views and can be used as an effective alternative to higher cost activism and as an effective supplement to sponsoring shareholder proposals. We observe a positive market reaction to the filing of an exempt solicitation and identify several outcomes associated with exempt solicitations. Firms targeted by exempt solicitation campaigns experience an increased likelihood of changes in proposed mergers and acquisition deals prior to a vote, significantly greater voting dissent against management for targeted items going to a vote, especially with respect to crossing meaningful voting thresholds, an increased likelihood of forced CEO turnover, and an increased likelihood of takeover activity. Taken together, our results suggest that exempt solicitations are an effective tool for shareholder engagement, facilitating shareholders' preferences on targeted corporate governance issues. Although it is beyond the scope of our study, a potentially fruitful area of future research is whether the use of exempt solicitations evolves to include increasingly popular but often debated topics, such as socially responsible topics, and whether they would facilitate constructive shareholder engagement or affect change in these situations.

References

Aggarwal, R., Dahiya, S., & Prabhala, N. R. (2019). The power of shareholder votes: Evidence from uncontested director elections. *Journal of Financial Economics, 133*, 134-153.

Appel, I. R., Gormley, T. A., & Keim, D. B. (2016). Passive investors, not passive owners. *Journal of Financial Economics*, *121*(1), 111-141.

Azar, J., Schmalz, M. C., & Tecu, I. (2018). Anticompetitive effects of common ownership. *The Journal of Finance, 73*(4), 1513-1565.

Bach, L., & Metzger, D. (2017). How do shareholder proposals create value? *Available at SSRN 2247084*.

Bena, J., & Li, K. (2014). Corporate innovations and mergers and acquisitions. *The Journal of Finance*, *69*(5), 1923-1960.

Bodnaruk, A., & Rossi, M. (2016). Dual ownership, returns, and voting in mergers. *Journal of Financial Economics, 120*(1), 58-80.

Boone, A. L., & White, J. T. (2015). The effect of institutional ownership on firm transparency and information production. *Journal of Financial Economics, 117*(3), 508-533.

Boyson, N. M., Gantchev, N., & Shivdasani, A. (2017). Activism mergers. *Journal of Financial Economics*, *126*(1), 54-73.

Brochet, F., Ferri, F., & Miller, G. S. (2021). Investors' Perceptions of Activism via Voting: Evidence from Contentious Shareholder Meetings. *Contemporary Accounting Research, 38*(4), 2758-2794.

Buchanan, B. G., Netter, J. M., Poulsen, A. B., & Yang, T. (2012). Shareholder Proposal Rules and Practice: Evidence from a Comparison of the United States and United Kingdom. *American Business Law Journal, 49*(4), 739-803.

Burch, T. R., Morgan, A. G., & Wolf, J. G. (2004). Is acquiring-firm shareholder approval in stock-for-stock mergers perfunctory?. *Financial Management*, 45-69.

Cai, J., Garner, J. L., & Walkling, R. A. (2009). Electing directors. *The Journal of Finance, 64*(5), 2389-2421.

Choi, S. (2000). Proxy issue proposals: Impact of the 1992 SEC proxy reforms. *Journal of Law, Economics, and Organization, 16*(1), 233-268.

Coles, J. L., Daniel, N. D., & Naveen, L. (2008). Boards: Does one size fit all?. *Journal of Financial Economics, 87*(2), 329-356.

Connelly, B. L., Li, Q., Shi, W., & Lee, K. B. (2020). CEO dismissal: Consequences for the strategic risk taking of competitor CEOs. *Strategic Management Journal, 41*(11), 2092-2125.

Crane, A. D., Michenaud, S., & Weston, J. P. (2016). The effect of institutional ownership on payout policy: Evidence from index thresholds. *The Review of Financial Studies, 29*(6), 1377-1408.

Cuñat, V., Gine, M., & Guadalupe, M. (2012). The vote is cast: The effect of corporate governance on shareholder value. *The Journal of Finance, 67*(5), 1943-1977.

Del Guercio, D., & Hawkins, J. (1999). The motivation and impact of pension fund activism. *Journal of Financial Economics*, *52*(3), 293-340.

Del Guercio, D., Seery, L., & Woidtke, T. (2008). Do boards pay attention when institutional investor activists "just vote no"? *Journal of Financial Economics, 90*(1), 84-103.

Del Guercio, D., & Woidtke, T. (2019). Can strong corporate governance selectively mitigate the negative influence of "special interest" shareholder activists? Evidence from the labor market for directors. *Journal of Financial and Quantitative Analysis*, *54*(4), 1573-1614.

Denes, M. R., Karpoff, J. M., & McWilliams, V. B. (2017). Thirty years of shareholder activism: A survey of empirical research. *Journal of Corporate Finance*, 44, 405-424.

Dey, A., Starkweather, A., & White, J. T. (2022). Proxy advisory firms and corporate shareholder engagement. *Harvard Business School Accounting & Management Unit Research Paper Series*, (21-137).

Dodd, P., & Warner, J. B. (1983). On corporate governance: A study of proxy contests. *Journal of Financial Economics, 11*(1-4), 401-438.

Doidge, C., Dyck, A., & Yang, L. (2021). Collective activism. *Working paper*.

Ertimur, Y., Ferri, F. & Oesch, D. (2018). Understanding Uncontested Director Elections. *Management Science*, 64, 2973-3468.

Ertimur, Y., Ferri, F., & Stubben, S. R. (2010). Board of directors' responsiveness to shareholders: Evidence from shareholder proposals. *Journal of Corporate Finance, 16*(1), 53-72.

Ferri, F. (2012). 'Low-Cost 'Shareholder Activism: A Review of the Evidence. *Research handbook on the economics of corporate law.*

Fisch, J. E. (1993). From legitimacy to logic: Reconstructing proxy regulation. *Vand. L. Rev.*, 46, 1129.

Fisch, J. E. (1994). Relationship Investing: Will It Happen--Will It Work. *Ohio St. LJ*, 55, 1009.

Greenwood, R., & Schor, M. (2009). Investor activism and takeovers. *Journal of Financial Economics, 92*(3), 362-375.

Grossman, S. J., & Hart, O. D. (1980). Takeover bids, the free-rider problem, and the theory of the corporation. *The Bell Journal of Economics*, 42-64.

Guernsey, S., Guo, F., Liu, T., & Serfling, M. (2022). Classified boards: Endangered species or hidden in plain sight? *Working paper, University of Tennessee.*

Harford, J., Humphery-Jenner, M., & Powell, R. (2012). The sources of value destruction in acquisitions by entrenched managers. *Journal of Financial Economics, 106*(2), 247-261.

Hartzell, J. C., Ofek, E., & Yermack, D. (2004). What's in it for me? CEOs whose firms are acquired. *The Review of Financial Studies, 17*(1), 37-61.

Iliev, P., Kalodimos, J., & Lowry, M. (2021). Investors' attention to corporate governance. *The Review of Financial Studies, 34*(12), 5581-5628.

Iliev, P., & Lowry, M. (2015). Are mutual funds active voters? *The Review of Financial Studies, 28*(2), 446-485.

Jenter, D., & Kanaan, F. (2015). CEO turnover and relative performance evaluation. *The Journal of Finance, 70*(5), 2155-2184.

Jiang, W., Li, T., & Mei, D. (2018). Influencing control: Jawboning in risk arbitrage. *The Journal of Finance*, *73*(6), 2635-2675.

Johnson, W. C., Karpoff, J. M., & Yi, S. (2015). The bonding hypothesis of takeover defenses: Evidence from IPO firms. *Journal of Financial Economics, 117*(2), 307-332.

Kakhbod, A., Loginova, U., Malenko, A. and Malenko, N. (2022). Advising the management: A theory of shareholder engagement. *The Review of Financial Studies, Forthcoming.*

Karpoff, J. M., Malatesta, P. H., & Walkling, R. A. (1996). Corporate governance and shareholder initiatives: Empirical evidence. *Journal of Financial Economics*, *42*(3), 365-395.

Levit, D., & Malenko, N. (2011). Nonbinding voting for shareholder proposals. *The Journal of Finance*, *66*(5), 1579-1614.

Levit, D., Malenko, N. & Maug, E. (2022). Trading and Shareholder Democracy. *The Journal of Finance,* Forthcoming.

Li, K., Liu, T., & Wu, J. (2018). Vote avoidance and shareholder voting in mergers and acquisitions. *The Review of Financial Studies*, *31*(8), 3176-3211.

Malenko, A., Malenko, N., & Spatt, C. S. (2021). Creating controversy in proxy voting advice. *National Bureau of Economic Research* (No. w29036).

Maksimovic, V., Phillips, G., & Yang, L. (2013). Private and public merger waves. *The Journal of Finance*, *68*(5), 2177-2217.

Matsusaka, J. G., Ozbas, O., & Yi, I. (2019). Opportunistic proposals by union shareholders. *The Review of Financial Studies*, *32*(8), 3215-3265.

Matvos, G., & Ostrovsky, M. (2008). Cross-ownership, returns, and voting in mergers. *Journal of Financial Economics*, *89*(3), 391-403.

Moeller, T. (2005). Let's make a deal! How shareholder control impacts merger payoffs. *Journal of Financial Economics*, *76*(1), 167-190.

Moeller, S. B., Schlingemann, F. P., & Stulz, R. M. (2005). Wealth destruction on a massive scale? A study of acquiring-firm returns in the recent merger wave. *The Journal of Finance*, *60*(2), 757-782.

Peters, F. S., & Wagner, A. F. (2014). The executive turnover risk premium. *The Journal of Finance*, *69*(4), 1529-1563.

Pound, J. (1988). Proxy contests and the efficiency of shareholder oversight. *Journal of Financial Economics*, *20*, 237-265.

Renneboog, L., & Szilagyi, P. G. (2011). The role of shareholder proposals in corporate governance. *Journal of Corporate Finance*, *17*(1), 167-188.

Schwert, G. W. (2000). Hostility in takeovers: in the eyes of the beholder? *The Journal of Finance*, *55*(6), 2599-2640.

Smith, M. P. (1996). Shareholder activism by institutional investors: Evidence from CalPERS. *The Journal of Finance*, *51*(1), 227-252.

Wolosky, S., and Freedman, A. (2011). "'Just Vote No' Campaigns Come of Age in 2011." *The Activist Report* 1, 3 1-7.

Figure 1: Timeline of the proxy solicitation process

This figure presents a simplified, high-level timeline of the proxy process to illustrate the approximate length of alternative forms of shareholder activism. We compare exempt solicitations with traditional forms of shareholder activism such as shareholder proposals and proxy contests. For a regular shareholder meeting, the deadline for shareholder proposal submissions and shareholder-sponsored board nominations to be included on the company's proxy card (after 2010) is 120 calendar days prior to the anniversary of the date of the company's proxy filing from the previous year's annual meeting. For a proxy contest, the investor who intends to launch the contest is subject to all proxy rules. In addition, the investor likely will be subject to company-specific advance notice requirements with a deadline somewhere between 60 and 120 days prior to the annual meeting date. *DEF filing* is the definitive proxy statement filing. *PRE filing* is the preliminary proxy statement filing. Under Rule 14a-8(j), a company seeking to exclude a shareholder proposal (i.e., *No-action relief*) must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission.

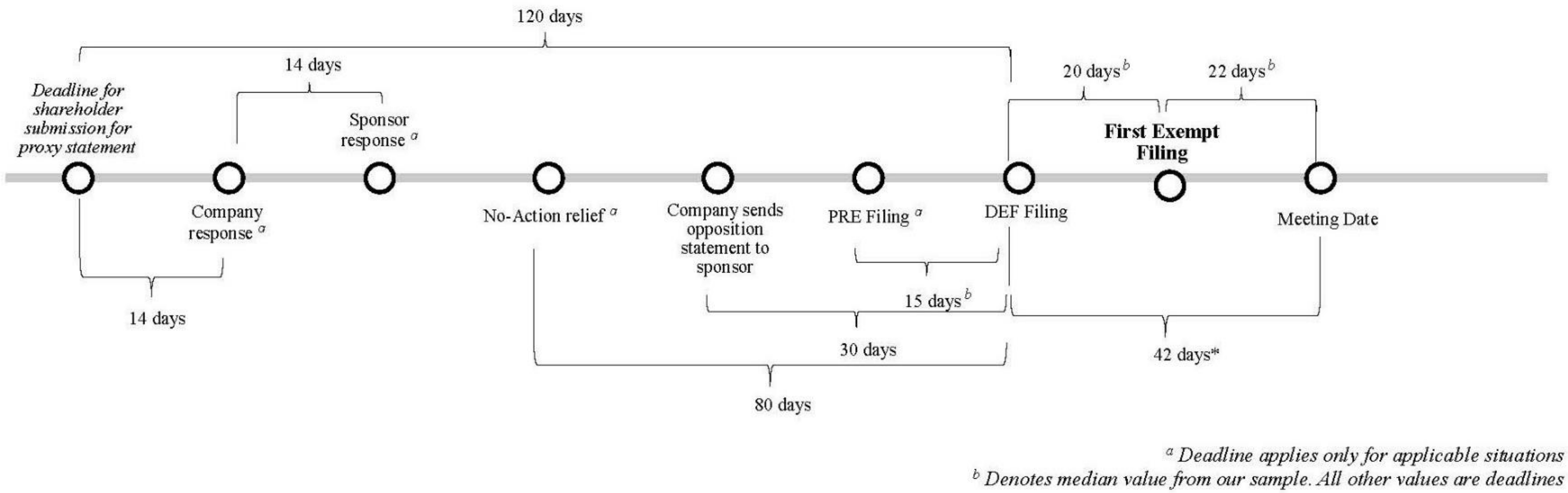

Figure 2. Distribution of Proxy Exempt Solicitations Over Time

This figure illustrates the distribution of exempt solicitations over time. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. We report three sub-periods: 1997-2002 (i.e., the pre-Voting Analytics coverage period), 2003-2011 (i.e., the first half of the post-Voting Analytics period), and 2012-2019 (i.e., the second half of the post-Voting Analytics period). Management-sponsored proposals and shareholder-sponsored proposals are separately reported during each sub-period.

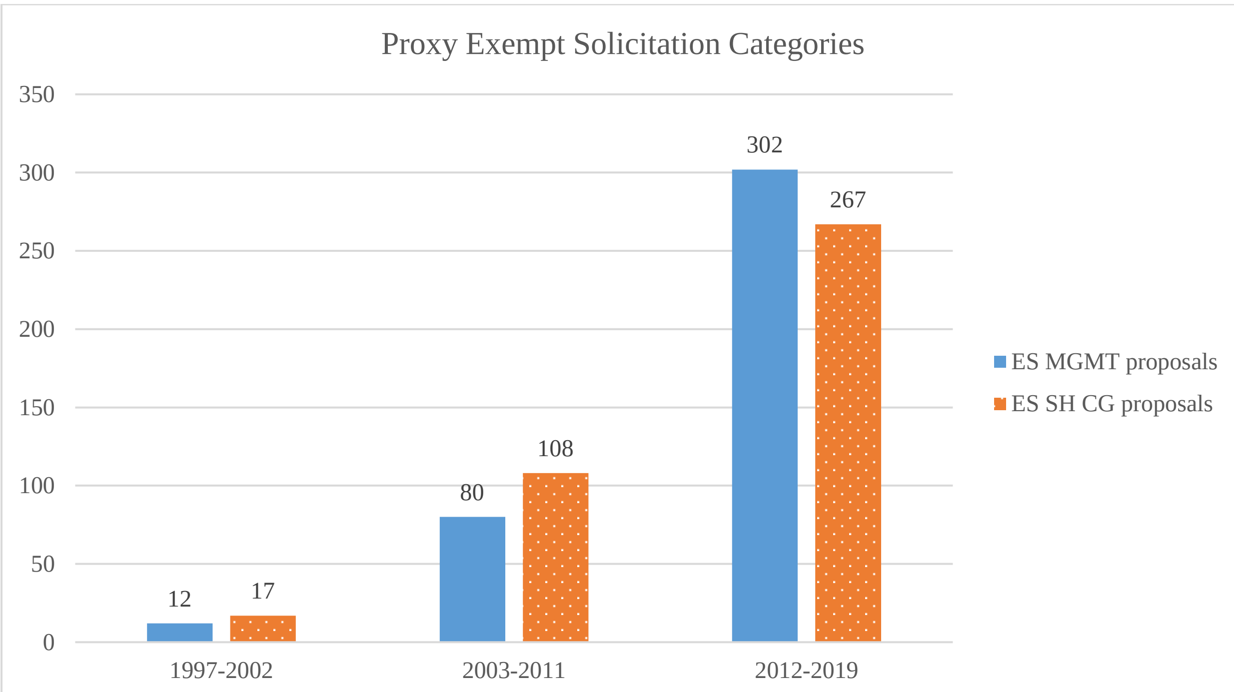

Figure 3. Proxy Exempt Solicitations and Trends in Shareholder Activism

This figure compares trends across four different forms of shareholder activism: (1) exempt solicitations targeting management proposals, (2) exempt solicitations promoting shareholder proposals, (3) proxy contests, and (4) non-individual shareholder corporate governance proposals. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. We report three sub-periods: 1997-2002 (i.e., the pre-Voting Analytics coverage period), 2003-2011 (i.e., the first half of the post-Voting Analytics period), and 2012-2019 (i.e., the second half of the post-Voting Analytics period). We collect the frequency of proxy contests and non-individual shareholder-sponsored corporate governance proposals from Georgeson Annual Reports because Voting Analytics coverage starts in 2003.

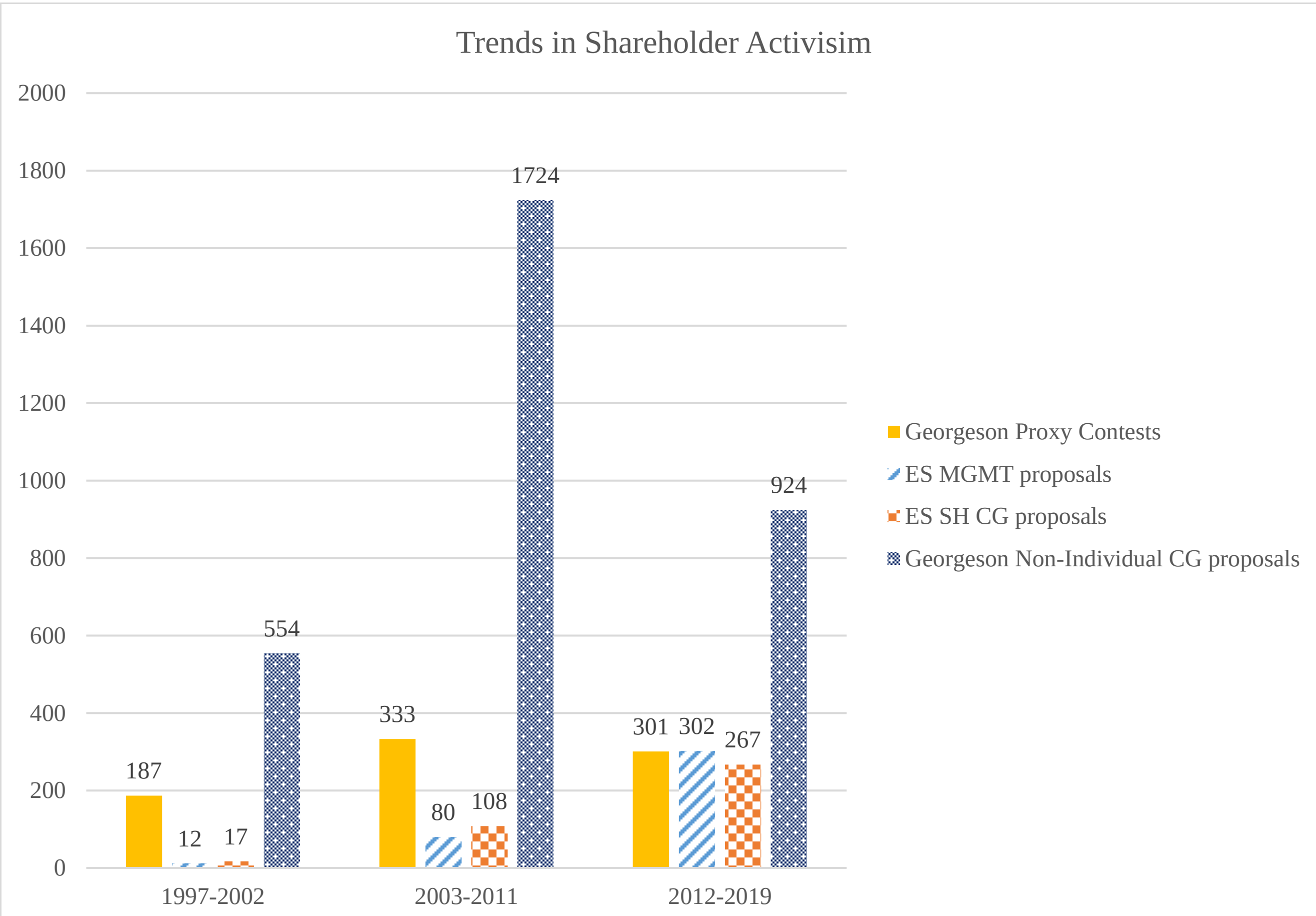

Table I. Exempt Proxy Solicitation Sample Distribution

This table reports the distribution of exempt proxy solicitations by year for the sample period of 1997 to 2019. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. We summarize the frequency of exempt proxy solicitations over time. "ES Issues" is the total number of proxy issues targeted in exempt solicitation filings during a proxy season. "Unique Firms" is the number of unique firms with exempt solicitations filed in each year. "ES Filings Per Firm" is the average number of exempt solicitation filings per firm. "First to Last Filing" is the number of days between the initial and final ES filing per firm. We also report the distribution for targeted management-sponsored and targeted shareholder-sponsored proxy voting items separately.

Year	ES Issues (N)	Unique Firms (N)	ES Filings (Mean)	First to Last Filing (Days)	MP Issues (N)	Unique MP Firms	ES Filings (Mean)	SP Issues (N)	Unique SP Firms	ES Filings (Mean)
1997	3	3	1.67	15.67	2	2	2.00	1	1	1.00
1998	2	1	4.00	20.00	2	1	4.00	0	0	0.00
1999	7	4	1.50	7.25	3	1	1.00	4	4	1.50
2000	3	3	1.00	0.00	1	1	1.00	2	2	1.00
2001	3	3	1.00	0.00	1	1	1.00	2	2	1.00
2002	11	7	1.86	7.43	3	3	2.67	8	5	1.20
2003	13	9	2.44	8.00	2	2	5.50	11	8	1.75
2004	21	12	5.58	18.42	10	5	10.80	11	8	3.88
2005	20	16	1.63	2.19	4	4	3.25	16	13	1.08
2006	20	9	1.22	0.44	8	1	2.00	12	8	1.13
2007	24	18	2.56	7.17	10	7	4.00	14	11	1.64
2008	21	14	1.50	17.14	12	5	1.60	9	9	1.44
2009	34	17	1.35	2.82	15	5	1.80	19	15	1.40
2010	19	11	1.82	6.00	9	6	2.50	10	7	1.29
2011	16	10	1.80	4.30	10	5	2.60	6	6	1.50
2012	37	23	1.65	7.52	20	11	1.91	17	15	1.73
2013	79	24	2.38	12.46	56	14	2.93	21	16	2.63
2014	31	20	2.90	27.30	22	13	3.31	9	8	2.63
2015	98	88	1.51	4.15	21	17	2.53	77	77	1.34
2016	67	37	1.84	8.11	40	17	1.94	27	27	1.93
2017	81	48	2.00	8.71	45	19	2.47	36	32	1.81
2018	68	43	2.16	12.58	38	22	2.59	29	23	1.87
2019	110	58	1.97	8.78	60	19	2.21	50	43	2.07
Total	788	478	1.98	8.70	394	181	2.76	391	340	1.73

Table II. Exempt Proxy Solicitation Descriptive Statistics

This table reports descriptive statistics of exempt proxy solicitations. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. Panel A (B) presents descriptive statistics on the frequency of proposal categories by proposal (solicitor) category during the full sample period, the 1997-2011 period, and the 2012-2019 period, respectively. "Average ES Filing Downloads" is the average number of total clicks on the initial ES electronic filing within the first five days during the sample period when click data are available. "% Downloaded by Investment Bank (Bloomberg)" indicates percentage of clicks associated with the IP address of one of the top investment banks (Bloomberg) during first week.

Panel A. Exempt Solicitations by Proposal Category Frequency

Ranking	Proposal Category	Frequency	Percent	Average ES Filing Views	% Viewed by Investment Bank	% Viewed by Bloomberg
Full sample: 1997-2019	***(Download N=298 of 478 ES filings)***			**580.28**	**73.8**	**39.9**
1	Management-Sponsored: Director Election	285	36.3	575.1	81.4	30.1
2	Shareholder-Sponsored Proposal: Board	230	29.3	548.0	79.5	56.8
3	Shareholder-Sponsored Proposal: Compensation	77	9.8	223.2	59.1	6.8
4	Management-Sponsored: Corporate Governance	74	9.4	525.7	65.9	29.5
5	Shareholder-Sponsored Proposal: Antitakeover	60	7.6	383.2	57.5	22.5
6	Management-Sponsored: M&A Related	35	4.5	818.7	87.0	30.4
7	Shareholder-Sponsored Proposal: Other	24	3.1	1659.0	81.3	6.3
Sample period: 1997-2011	***(Download N=109 of 137 ES filings)***			**113.70**	**51.4**	**2.8**
1	Management-Sponsored: Director Election	57	26.3	149.3	53.5	9.3
2	Shareholder-Sponsored Proposal: Compensation	42	19.4	114.5	45.2	0.0
3	Shareholder-Sponsored Proposal: Board	41	18.9	92.4	47.1	0.0
4	Shareholder-Sponsored Proposal: Antitakeover	36	16.6	109.1	44.8	3.4
5	Management-Sponsored: Corporate Governance	18	8.3	187.0	50.0	8.3
6	Management-Sponsored: M&A Related	17	7.8	255.6	92.9	7.1
7	Shareholder-Sponsored Proposal: Other	6	2.8	101.0	40.0	0.0
Sample period: 2012-2019	***(Download N=189 of 341 ES filings)***			**857.5**	**86.8**	**61.4**
1	Management-Sponsored Director Election	228	40.1	737.1	92.0	38.1
2	Shareholder-Sponsored Proposal: Board	189	33.3	686.3	89.3	74.1
3	Management-Sponsored: Corporate Governance	56	9.9	652.8	71.9	37.5
4	Shareholder-Sponsored Proposal: Compensation	35	6.2	482.4	92.3	23.1
5	Shareholder-Sponsored Proposal: Antitakeover	24	4.2	1105.8	90.9	72.7
6	Management-Sponsored: M&A Related	18	3.2	1694.7	77.8	66.7
7	Shareholder-Sponsored Proposal: Other	18	3.2	2367.2	100.0	9.0

Panel B. Exempt Solicitations by Exempt Solicitation Filer Type Frequency

Ranking	Exempt Solicitation Filer Type	Frequency	Percent	Average ES Filing Downloads	% Downloaded by Investment Bank	% Downloaded by Bloomberg
Full sample: 1997-2019						
1	Public Pension Fund	299	37.9	499.0	78.2	42.8
2	Union Fund	205	26.0	580.0	74.1	25.2
3	Large Shareholder or Institution	179	22.7	671.4	69.8	25.6
4	Other	105	13.3	645.1	81.0	42.9
Sample period: 1997-2011						
1	Large Shareholder or Institution	94	43.3	221.8	67.2	9.8
2	Public Pension Fund	61	28.1	84.0	45.0	1.7
3	Union Fund	53	24.4	93.0	38.5	0.0
4	Other	9	4.1	50.8	50.0	0.0
Sample period: 2012-2019						
1	Public Pension Fund	238	41.7	646.3	89.9	57.4
2	Union Fund	152	26.6	777.9	88.5	35.4
3	Other	96	16.8	1,010.9	100.0	69.2
4	Large Shareholder or Institution	85	14.9	1,768.3	76.0	64.0

Table III. Market Reactions to Exempt Solicitation Filings

This table reports market reactions for different event windows around the exempt solicitation filing dates. *CAR(0, x)* is the cumulative abnormal returns around the event window (0, x), where day 0 is the exempt solicitation filing date and the abnormal returns are estimated using the market model parameters based on CRSP value-weighted returns during the window (-250, -50). Panel A reports results for the full sample of ES firms. Panel B includes management-sponsored proposals and a subsample of management proposals focused on director election. Panel C reports market reactions based on ES filing download intensity. Significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A: ES Initial Filing Date – Full Sample

			N=473			
Variable	Mean	Std Dev	t	Median	P25	P75
CAR(0,0)	0.26%***	1.86%	2.63	0.14%	-0.68%	0.93%
CAR(0, 3)	0.39%**	3.41%	2.51	0.36%	-1.36%	2.05%
CAR(0, 5)	0.42%**	4.42%	2.07	0.43%	-1.71%	2.43%
CAR(0, 10)	0.59%**	6.02%	2.07	0.31%	-2.72%	3.93%

Panel B: ES Initial Filing Date – By Management Proposals

	Management Proposals			Management Director Elections		
	N=177			N=97		
Variable	Mean	Std Dev	t	Mean	Std Dev	t
CAR(0,0)	0.39%**	2.23%	2.33	0.40%*	2.19%	1.81
CAR(0, 3)	0.59%**	3.66%	2.15	0.81%**	3.53%	2.25
CAR(0, 5)	0.58%	4.80%	1.62	0.97%**	4.43%	2.16
CAR(0, 10)	1.15%**	6.44%	2.37	1.94%***	6.57%	2.90

Panel C: ES Initial Filing Date – By Shareholder Proposals

	Shareholder Proposals			Shareholder Antitakeover (top 3)		
	N=342			N=36		
Variable	Mean	Std Dev	t	Mean	Std Dev	t
CAR(0,0)	0.17%*	1.65%	1.85	1.06%**	2.60%	2.45
CAR(0, 3)	0.34%*	3.32%	1.90	0.88%	5.25%	1.01
CAR(0, 5)	0.37%*	4.19%	1.65	1.03%	6.04%	1.03
CAR(0, 10)	0.47%	5.99%	1.45	2.35%*	7.33%	1.93

Panel D: ES Initial Filing Date – By Downloading Clicks

	High Total Clicks			Low Total Clicks		
	N=149			N=148		
Variable	Mean	Std Dev	t	Mean	Std Dev	t
CAR(0,0)	0.19%	1.74%	1.36	0.27%*	1.96%	1.67
CAR(0, 3)	0.49%*	3.22%	1.86	0.45%	3.64%	1.49
CAR(0, 5)	0.70%**	4.08%	2.08	0.15%	4.70%	0.39
CAR(0, 10)	0.93%**	5.75%	1.97	0.43%	6.23%	0.84

Table IV. Exempt Solicitations and Management-Proposed M&A Deal Outcomes

This table lists 15 M&A transactions in which exempt proxy solicitations are filed after the merger announcement dates and prior to deal completion or withdrawn dates. For each deal, we manually verified that deal outcomes are affected in responding to shareholders' demand stated in the exempt proxy solicitations. We report the year the deal is announced, deal status, target name, acquirer name, which side of the shareholders filed exempt solicitations, brief description of the content in the exempt proxy solicitation filings, and how the deal outcome is affected.

Year	Deal Status	Target Name	Acquirer Name	ES filer	ES Description	Deal Outcome
1997	Withdrawn	Conrail Inc	CSX	Target shareholder	Wyser-Pratte & Co., a registered broker-dealer urged shareholders to reject CSX proposed merger by voting AGAINST 'opt out' of Penn law proposal which would allow it.	Conrail shareholders defeated board's proposal to 'opt out' of a Pennsylvania law
2002	Withdrawn	Oplink Communications	Avanex Corp	Target shareholder	Founder and CEO of Telelight Communication (which was acquired by Oplink Communications) urged shareholders to vote against the merger.	Shareholders of Oplink Communications Inc. voted to reject the acquisition.
2006	Completed	ICOS Corp	Eli Lilly & Co	Target shareholder	HealthCor, an investment advisor, does not believe the consideration offered ($32) adequately compensates the Company's shareholders	Offer price was increased by 6.25% to $34 per share
2009	Withdrawn	Cedar Fair LP	Apollo Global Management LLC	Target shareholder	Q Funding III, L.P. and Q4 Funding, L.P., the largest unitholder of Cedar Fair, urged to vote AGAINST the proposed acquisition	The deal was called off in the face of major shareholder opposition.
2013	Completed	EnergySolutions	Energy Capital Partners II LLC	Target shareholder	Carlson Capital, L.P., the largest beneficial institutional owner of the Company's stock, voiced opposition to the acquisition for $3.75 per share. After the terms were amended to $4.15, Carlson Capital switched to support the deal.	Offer price was increased by 11%.
2015	Completed	MarkWest Energy Partners	MPLX LP	Target shareholder	Former CEO and and beneficial owner urged shareholders to reject the transaction.	Offer price was increased by 4% (from $78.6 to $81.5).
2015	Completed	Towers Watson & Co	Willis Group Holdings PLC	Target shareholder	Driehaus Capital Management, investment adviser for shareholders of Towers Watson issued a white paper urging TW shareholders to vote against the proposed transaction.	One time cash dividend was increased to $10 from $4.87. Total implied consideration has increased by $10.48 per share, or +8.6%, based on the revised terms.

Table IV. Exempt Solicitations and Management-Proposed M&A Deal Outcomes (Continued)

Year	Deal Status	Target Name	Acquirer Name	ES filer	ES Description	Deal Outcome
2016	Completed	PrivateBancorp	Canadian Imperial Bk Commerce	Target shareholder	Glazer Capital, the manager of investment funds issued an open letter today to shareholders detailing reasons for rejecting the proposed acquisition.	Offer price was increased twice, a total of 50% increase (from $47 to $72) to push the deal through ahead of shareholder vote.
2018	Withdrawn	Medley Capital Corp	Sierra Income Corporation	Target shareholder	Moab Capital Partners, significant holders of Medley Capital Corp, believes that shareholders should reject the transaction.	Sierra Income Corporation terminated the merger agreement because the merger has not been consummated on or before March 31, 2020 (the "Outside Date")
2019	Withdrawn	Penn Virginia Corp	Denbury Resources	Target shareholder	Contrarian Capital Management, as investment manager to significant holders of common stock of Penn Virginia Corp opposes the merger.	The deal was terminated because the the transaction was unlikely to receive the necessary super majority approval from Penn Virginia shareholders.
2001	Withdrawn	Eos Biotechnology	Pharmacopeia Inc	Bidder shareholder	OrbiMed Advisors, a significant beneficial owner of the common stock of Pharmacopeia believed that the proposed acquisition of Eos is highly dilutive to Pharmacopeia shareholders and Pharmacopoeia is paying too much for Eos.	Opposed by Pharmacopeia's major shareholder, the merger was canceled hours before the vote.
2004	Withdrawn	King Pharmaceuticals	Mylan Laboratories Inc	Bidder shareholder	UBS Global Asset Management states that the proposed transaction appears highly dilutive to Mylan Shareholders. The transaction would prove highly dilutive to GAAP Earnings per Share in the out years of five year modeling horizon.	Mylan Laboratories Inc. ended its pursuit of King Pharmaceuticals.

Table IV. Exempt Solicitations and Management-Proposed M&A Deal Outcomes (Continued)

Year	Deal Status	Target Name	Acquirer Name	ES filer	ES Description	Deal Outcome
2010	Withdrawn	WuXi PharmaTech (Cayman)Inc	Charles River Labs Intl Inc	Bidder shareholder	JANA Partners, the Company's largest shareholder intends to vote against the issuance of Company stock required to complete the proposed acquisition because they believe that the high cost, significant integration risks and inopportune timing simply make the proposed acquisition the wrong path for Charles River shareholders	Charles River calls off WuXi Pharmatech buy on shareholder opposition
2017	Withdrawn	99 Restaurant	J. Alexander's Holdings, Inc.	Bidder shareholder	Marathon Partners Equity Management, one of the largest shareholders of J. Alexander's Holdings opposes the proposed transaction between J. Alexander's and 99 Restaurants	The merger agreement is terminated because shareholders voted down the deal
2018	Completed	VMware Class V Tracking Stock	Dell Technologies Inc	Bidder shareholder	Dell's offers $109 per share to buy back and eliminate the tracking stock was opposed by major shareholders because they believe that the offer price undervalues the DVMT Common Stock	Dell sweetens tracking stock offer and increases price to $120

Table V. Descriptive Statistics for Exempt Solicitations Firms and Control Firms

This table reports summary statistics for key firm characteristics for firms with exempt solicitations (ES) filed with the SEC and matched firms separately. Panel A reports summary statistics for the full ES sample and the control sample. Panel B reports summary statistics for management proposals and the control sample. Panel C reports summary statistics for shareholder proposals and the control sample. We report summary statistics for the closest matched control, as well as for up to five controls where we first average firm characteristics among multiple controls that are matched to the same ES firm and then average across the control group. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. For each firm with an ES filing in year *t*, we find up to five matching firms by industry, where the industry definitions are based on the narrowest SIC grouping that includes at least one matched firm (with no ES filing in that year) that has a size range between 50% to 200% of the ES firm. Specifically, we start with four-digit SIC industry groups to search for matching non-ES firms within the required size range. If there are no industry peers that satisfy the size requirement within the four-digit SIC industry group, we move up to the three-digit SIC industry group. If there are no industry peers within the three-digit SIC industry group within the size range, we move up to the two-digit SIC industry group. If there are no industry peers within the two-digit SIC industry group within the size range, we move up to the one-digit SIC industry group. For 16 ES firms that do not have industry peers within the size range, we relax the size restriction to find the closest match within the same one-digit SIC industry group. We also provide univariate evidence on mean differences for firm characteristics between ES firms and matched non-ES firms. Definitions of all variables are provided in Appendix B. Control firms are found for 474 ES firms from 1997 to 2019. Significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A: Descriptive Statistics: Full Sample

Variable	Mean	Std Dev	Mean	Std Dev	Diff	Mean	Std Dev	Diff
	ES firms (N=474)		Control firms (N=474) one to one match			Control firms (N=1,380) one five match		
	(1)	(2)	(3)	(4)	(5) (1)-(3)	(6)	(7)	(8) (1)-(6)
Total Assets (M)	92,013	303,351	76,175	289,666	15,838	77,075	285,767	14,939
Market Cap. (M)	58,248	124,938	44,493	83,021	13,754**	43,669	80,652	14,578**
Q	1.897	1.406	1.925	1.321	-0.028	1.935	1.057	-0.038
Leverage	0.957	2.506	1.076	2.495	-0.119	0.964	1.446	-0.007
ROA	0.029	0.156	0.038	0.148	-0.010	0.041	0.103	-0.012
Sales Growth	0.086	0.243	0.103	0.271	-0.017	0.115	0.204	-0.029*
Profitability	0.402	0.332	0.414	0.344	-0.013	0.417	0.273	-0.016
RD	0.062	0.164	0.049	0.087	0.013	0.046	0.076	0.015
Stock return	-0.018	0.383	0.039	0.315	-0.057**	0.048	0.286	-0.067***
Institutional Ownership	0.700	0.250	0.694	0.269	0.006	0.693	0.202	0.007
Board Size	11.337	3.385	10.918	3.166	0.419*	10.841	2.765	0.496**
Board Independence	0.731	0.133	0.723	0.145	0.008	0.727	0.115	0.004
CEO Duality	0.533	0.499	0.493	0.501	0.040	0.508	0.388	0.025

Panel B: Descriptive Statistics: Management Proposals

Variable	Mean	Std Dev	Mean	Std Dev	Diff	Mean	Std Dev	Diff
	ES firms (N=178)		Control firms (N=178) one to one match			Control firms (N=553) one to five match		
	(1)	(2)	(3)	(4)	(5) (1)-(3)	(6)	(7)	(8) (1)-(6)
Total Assets (M)	103,356	371,518	70,214	280,229	33,141	75,676	284,051	27,679
Market Cap. (M)	42,244	95,796	33,484	72,012	8,761	33,589	71,354	8,656
Q	1.819	1.453	1.767	1.138	0.052	1.882	0.948	-0.063
Leverage	1.244	2.473	0.970	2.469	0.274	0.995	1.789	0.248
ROA	0.041	0.121	0.036	0.136	0.005	0.043	0.075	-0.002
Sales Growth	0.105	0.298	0.093	0.252	0.012	0.113	0.194	-0.008
Profitability	0.385	0.256	0.394	0.281	-0.009	0.415	0.202	-0.030
RD	0.047	0.098	0.034	0.056	0.013	0.038	0.056	0.009
Stock return	-0.041	0.371	0.034	0.332	-0.075**	0.057	0.277	-0.098***
Institutional Ownership	0.689	0.266	0.716	0.251	-0.027	0.703	0.204	-0.013
Board Size	10.832	3.184	10.708	3.286	0.124	10.455	2.714	0.377
Board Independence	0.732	0.144	0.740	0.137	-0.008	0.742	0.108	-0.009
CEO Duality	0.497	0.502	0.503	0.502	-0.006	0.496	0.376	0.001

Panel C: Descriptive Statistics: Shareholder Proposals

Variable	Mean	Std Dev	Mean	Std Dev	Diff	Mean	Std Dev	Diff
	ES firms (N=340)		Control firms (N=340) one to one match			Control firms (N=930) one to five match		
	(1)	(2)	(3)	(4)	(5) (1)-(3)	(6)	(7)	(8) (1)-(6)
Total Assets (M)	101,869	307,599	82,995	286,306	18,873	85,495	291,248	16,374
Market Cap. (M)	69,932	135,992	53,936	90,978	15,996*	52,909	88,434	17,023*
Q	1.946	1.402	1.991	1.381	-0.044	1.959	1.108	-0.013
Leverage	0.825	2.453	1.146	2.403	-0.321*	0.971	1.177	-0.146
ROA	0.026	0.164	0.040	0.144	-0.014	0.041	0.109	-0.015
Sales Growth	0.072	0.199	0.104	0.275	-0.032*	0.113	0.205	-0.041***
Profitability	0.409	0.355	0.425	0.359	-0.016	0.418	0.295	-0.009
RD	0.063	0.176	0.054	0.094	0.009	0.049	0.082	0.014
Stock return	0.000	0.389	0.046	0.312	-0.046*	0.048	0.288	-0.048*
Institutional Ownership	0.706	0.234	0.684	0.275	0.022	0.690	0.201	0.016
Board Size	11.644	3.399	11.199	3.152	0.445*	11.212	2.783	0.432*
Board Independence	0.728	0.133	0.719	0.148	0.009	0.722	0.120	0.006
CEO Duality	0.556	0.498	0.508	0.501	0.048	0.524	0.397	0.032

Table VI. Exempt Solicitations and Voter Support - Univariate Analysis Statistics

This table compares voter support and ISS recommendations between proposals targeted at firms through exempt solicitations (ES) filed with the SEC and non-targeted proposals at matched firms by proposal category for the 1997-2019 full sample period, 1997-2011 sample period, and 2012-2019 sample period. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. For each proposal, Voter Support is measured as votes cast for as a percentage of the sum of votes cast for, votes cast against and votes abstained. No Confidence Vote is equal to 1 for Management Proposals when Voter Support < 80%, is equal to 1 for Shareholder Proposals when Voter Support > 50%, and is equal to 0 otherwise. ISS For is equal to 1 when ISS Recommends a "For" vote for a proposal and is equal to 0 otherwise. Significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Full sample: 1997-2019	ES = 1			ES = 0			Difference		
	(1)	(2)	(3)	(4)	(5)	(6)	(1) – (4)	(2) – (5)	(3) – (6)
Proposal Category	Voter Support %	% No Confidence Vote	% ISS For	Voter Support %	% No Confidence Vote	% ISS For	Voter Support %	% No Confidence Vote	% ISS For
Management-Director	78.73	44.24	62.26	95.82	3.68	92.3	-17.09***	40.57***	-30.16***
N		*278*			*8,595*				
Shareholder-Board	48.71	48.46	89.77	31.56	13.04	72.46	17.15***	35.41***	17.30***
N		*227*			*138*				
Shareholder-Compensation	33.01	16.88	75.47	28.00	5.04	74.79	5.11**	11.84***	0.68
N		*77*			*119*				
Management-Governance	68.32	63.49	51.79	88.68	13.24	87.44	-20.36***	50.25***	-35.65***
N		*63*			*2,937*				
Shareholder-Antitakeover	58.07	58.33	93.62	46.58	31.48	95.37	11.50***	26.85***	-1.75
N		*60*			*108*				
Management-M&A Related	80.63	50.00	75.00	96.36	6.06	96.97	-15.73***	43.94***	-21.97**
N		*28*			*33*				
Shareholder-Other	27.22	5.56	78.57	10.11	0.00	11.11	17.11***	5.56	67.46***
N		*18*			*18*				

Table VI. Exempt Solicitations and Voter Support - Univariate Analysis Statistics (Continued)

Sample period: 1997-2011	ES = 1			ES = 0			Difference		
	(1)	(2)	(3)	(4)	(5)	(6)	(1) – (4)	(2) – (5)	(3) – (6)
Proposal Category	Voter support %	% No Confidence Vote	% ISS For	Voter support %	% No Confidence Vote	% ISS For	Voter support %	% No Confidence Vote	% ISS For
Management-Director	74.21	59.26	46.34	94.80	4.69	90.61	-20.59***	54.57***	-44.27***
N		*54*			*1,790*				
Shareholder-Compensation	38.31	23.81	77.78	28.87	9.23	66.15	9.44***	14.58**	11.62
N		*42*			*65*				
Shareholder-Board	35.56	19.51	58.62	34.75	11.11	81.48	0.81	16.18	-22.86*
N		*41*			*27*				
Shareholder-Antitakeover	71.79	83.33	95.65	55.42	61.54	92.31	16.37***	21.79*	3.34
N		*36*			*26*				
Management-Governance	71.31	61.54	100.00	89.35	15.32	89.11	-18.04***	46.22***	10.89
N		*13*			*496*				
Management-M&A Related	78.17	58.33	87.50	98.38	0.00	100.00	-20.21***	58.33***	-12.50
N		*12*			*7*				
Shareholder-Other	33.25	NA	NA	21.17	NA	NA	12.08	NA	NA
N		*4*			*6*				

Table VI. Exempt Solicitations and Voter Support - Univariate Analysis Statistics (Continued)

Sample period: 2012-2019	ES = 1			ES = 0			Difference		
	(1)	(2)	(3)	(4)	(5)	(6)	(1) – (4)	(2) – (5)	(3) – (6)
Proposal Category	Voter support %	% No Confidence Vote	% ISS For	Voter support %	% No Confidence Vote	% ISS For	Voter support %	% No Confidence Vote	% ISS For
Management-Director	79.82	64.00	65.18	96.09	12.82	92.90	-16.27***	37.22***	-27.72***
N		*224*			*6,850*				
Shareholder-Board	51.61	54.84	94.62	30.79	13.51	70.27	20.82***	41.33***	24.35***
N		*186*			*111*				
Management-Governance	67.54	82.00	44.90	88.58	93.20	87.10	-21.01***	51.18***	-42.20***
N		*50*			*2,441*				
Shareholder-Compensation	26.66	8.57	74.29	26.73	0.00	85.19	-0.71	8.57**	-10.90
N		*35*			*54*				
Shareholder-Antitakeover	37.49	20.83	91.67	43.77	21.95	96.34	-6.28	-1.12	-4.67
N		*24*			*82*				
Management-M&A Related	82.48	43.75	68.75	95.81	7.69	96.15	-13.33***	36.06***	-27.40**
N		*16*			*26*				
Shareholder-Other	25.50	7.14	78.57	4.58	0.00	0.00	20.92***	7.14	78.57***
N		*14*			*12*				

Table VII. Voter Support and Exempt Solicitations - Regression Analysis

This table reports a regression analysis of exempt proxy solicitations on voter support. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. Observations are at the proposal-firm-year level. The dependent variable in Panel A is Voter Support, measured as votes cast for as a proportion of the sum of votes cast for, votes cast against and votes abstained. Management-sponsored proposals and shareholder-sponsored proposals are examined separately. Exempt Solicitation is an indicator variable equal to one when a proposal is targeted by an ES campaign and equal to zero for non-targeted proposals at control firms. Exempt Solicitation is interacted with indicator variables for different management and shareholder proposal categories. Controls are included for shareholder proposal category and firm characteristics. Panel B includes linear probability specifications for Voter Support < 80% in the Management Proposal sample and Voter Support > 50% in the Shareholder sample. Additional controls for an ISS "For" Recommendation and whether the proposal is repeated from the prior year are also included in Panel B. Each regression includes year fixed effects. Standard errors are clustered at the firm level. Robust t-statistics are reported in parentheses. Significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A. Voter Support and Proposal Category Over Time

	Dependent variable = Voter Support					
	1997-2019	1997-2011	2012-2019	1997-2019	1997-2011	2012-2019
	(1)	(2)	(3)	(4)	(5)	(6)
Exempt Solicitation * Director Election	-0.15***	-0.20***	-0.13***			
	(-7.96)	(-4.99)	(-6.79)			
Exempt Solicitation * Governance	-0.21***	-0.11**	-0.23***			
	(-6.62)	(-2.41)	(-6.96)			
Exempt Solicitation * Merger	-0.14***	-0.20***	-0.08**			
	(-3.91)	(-3.64)	(-2.09)			
Exempt Solicitation * Board				0.13***	-0.01	0.17***
				(3.60)	(-0.35)	(3.95)
Exempt Solicitation * Compensation				0.08**	0.12***	0.03
				(2.45)	(3.26)	(0.85)
Shareholder: Board				-0.10***	-0.19***	-0.05
				(-2.93)	(-4.46)	(-1.43)
Shareholder: Compensation				-0.16***	-0.25***	-0.11***
				(-6.42)	(-6.61)	(-3.54)
Log(Market Capitalization)	0.01***	0.00	0.01***	-0.04***	-0.04***	-0.03***
	(4.40)	(0.74)	(4.39)	(-6.03)	(-3.51)	(-4.38)
Leverage	-0.00	-0.00	0.00	-0.00	-0.01	0.00
	(-0.01)	(-1.27)	(1.21)	(-0.48)	(-1.05)	(0.15)
Log(Abnormal Stock return)	0.01**	0.02**	0.01	0.05*	0.04	0.07
	(2.16)	(2.37)	(1.00)	(1.73)	(1.16)	(1.54)
Market-to-Book	-0.00	-0.00	-0.00	0.00	0.01	0.00

	(-0.70)	(-1.08)	(-0.50)	(0.64)	(0.81)	(0.05)
Institutional Ownership	0.01	-0.01	0.01*	0.15***	0.16	0.14**
	(1.48)	(-0.35)	(1.84)	(2.77)	(1.56)	(2.44)
Constant	0.81***	0.84***	0.89***	0.92***	0.87***	0.69***
	(4.43)	(6.35)	(62.81)	(11.63)	(5.59)	(6.73)
Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	11,186	2,271	8,915	716	224	492
Adjusted R^2	0.08	0.14	0.07	0.31	0.41	0.33

Panel B. Voter Support Threshold, ISS Recommendation and Proposal Category

	Voter Support	Voter Support < 80%	Voter Support < 80%	Voter Support	Voter Support > 50%	Voter Support > 50%
	1997-2019	1997-2019	1997-2019	1997-2019	1997-2019	1997-2019
	(1)	(2)	(3)	(4)	(5)	(6)
Exempt Solicitation * Director Election	-0.07***	0.37***	0.23***			
	(-3.39)	(6.81)	(3.78)			
Exempt Solicitation * Governance	-0.09***	0.53***	0.30***			
	(-4.20)	(6.28)	(4.54)			
Exempt Solicitation * Merger	-0.03	0.46***	0.25**			
	(-0.83)	(4.20)	(2.29)			
Exempt Solicitation * Board				0.10***	0.27***	0.26***
				(3.87)	(4.73)	(4.89)
Exempt Solicitation * Compensation				0.06***	0.17***	0.13***
				(3.00)	(3.56)	(2.95)
Shareholder: Board				-0.06**	-0.15***	-0.11**
				(-2.35)	(-3.14)	(-2.47)
Shareholder: Compensation				-0.13***	-0.26***	-0.24***
				(-6.04)	(-6.12)	(-5.40)
ISS = "For"	0.28***		-0.52***	0.28***		0.18***
	(14.34)		(-11.86)	(15.80)		(5.44)
Repeat Proposal	0.03***		-0.03***	0.00		-0.04
	(7.73)		(-3.41)	(0.08)		(-1.25)
Log(Market Capitalization)	0.00	-0.01***	-0.00*	-0.03***	-0.08***	-0.07***
	(0.65)	(-3.56)	(-1.70)	(-4.28)	(-6.71)	(-5.58)
Leverage	-0.00	-0.00	0.00	-0.01	-0.00	-0.01
	(-0.99)	(-0.16)	(0.35)	(-0.93)	(-0.29)	(-0.80)
Stock return	-0.01	-0.01	0.03*	0.08***	0.11**	0.17***
	(-1.14)	(-0.60)	(1.78)	(2.70)	(1.98)	(2.93)
Market-to-Book	0.00**	0.00	-0.00	-0.00	0.01	0.00
	(2.52)	(1.16)	(-1.20)	(-0.05)	(0.69)	(0.26)
Institutional Ownership	-0.02**	0.01	0.07***	0.16***	0.41***	0.41***
	(-2.02)	(0.74)	(3.38)	(3.13)	(4.66)	(4.79)
Constant	0.72***	0.11	0.51***	0.44***	1.50***	0.73***
	(29.64)	(0.30)	(10.13)	(4.98)	(11.07)	(4.24)
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	10,902	11,186	10,902	664	716	664
Adjusted R^2	0.44	0.10	0.43	0.53	0.30	0.34

Table III. Exempt Solicitations and Forced CEO Turnover - Univariate Analysis

This table reports a univariate analysis of exempt proxy solicitations on the likelihood of a forced CEO turnover. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. Dependent variables are $Forced_{t}$, $Forced_{t\ to\ t+1}$, and $Forced_{t\ to\ t+2}$. $Forced_{t}$ is an indicator variable that equals 1 if the firm has a forced CEO turnover announcement in the same year as the exempt solicitation filing year. To avoid confounding effects and reverse causality, we remove firms (and control firms) if the exempt solicitation is filed after the CEO turnover announcement date. $Forced_{t\ to\ t+1}$ is an indicator variable that equals 1 if the firm has a forced CEO turnover announcement in the same year as the exempt solicitation filing year or the subsequent year. $Forced_{t\ to\ t+2}$ is an indicator variable that equals 1 if the firm has a forced CEO turnover during the window [T, T+2]. Panel A compares firms with exempt proxy solicitations to three peer firms with the smallest size difference in the same industry and same year. Panels B and C present the same analysis for the four and five smallest peer firm differences, respectively. The sample period for ES firms and controls firms is from 1997 to 2019. The forced turnover sample period is from 1997 to 2020. Significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A: One-to-Three Matching

		ES = 1			ES = 0			
Variable	**Mean**	**Std Dev**	**N**	**Mean**	**Std Dev**	**N**	**Diff**	**t Value**
Forced t	5.3%	22.3%	457	1.8%	13.5%	974	3.40%	3.57***
Forced t to t+1	11.2%	31.5%	457	3.8%	19.1%	974	7.36%	5.46***
Forced t to t+2	15.4%	36.2%	402	5.5%	22.8%	855	9.93%	5.91***

Panel B: One-to-Four Matching

		ES = 1			ES = 0			
Variable	**Mean**	**Std Dev**	**N**	**Mean**	**Std Dev**	**N**	**Diff**	**t Value**
Forced t	5.3%	22.3%	457	1.6%	12.7%	1,155	3.61%	4.07***
Forced t to t+1	11.2%	31.5%	457	3.5%	18.3%	1,155	7.70%	6.10***
Forced t to t+2	15.4%	36.2%	402	5.1%	22.0%	1,016	10.30%	6.52***

Panel C: One-to-Five Matching

		ES = 1			ES = 0			
Variable	**Mean**	**Std Dev**	**N**	**Mean**	**Std Dev**	**N**	**Diff**	**t Value**
Forced t	5.3%	22.3%	457	1.5%	12.3%	1,299	3.71%	4.39***
Forced t to t+1	11.2%	31.5%	457	3.4%	18.1%	1,299	7.77%	6.39***
Forced t to t+2	15.4%	36.2%	402	5.1%	21.9%	1,144	10.35%	6.77***

Table IX. Exempt Solicitations and Forced CEO Turnover - Regression Analysis

This table reports a regression analysis of exempt proxy solicitations on the likelihood of a forced CEO turnover. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. Dependent variables are $Forced_{t}$, $Forced_{t\ to\ t+1}$, and $Forced_{t\ to\ t+2}$. $Forced_{t}$ is an indicator variable that equals 1 if the firm has a forced CEO turnover announcement following the exempt solicitation filing in the same calendar year. To avoid confounding effects and reverse causality, we remove firms (and control firms) if the exempt solicitation is filed after the CEO turnover announcement date. $Forced_{t\ to\ t+1}$ is an indicator variable that equals 1 if the firm has a forced CEO turnover during the window [T, T+1]. $Forced_{t\ to\ t+2}$ is an indicator variable that equals 1 if the firm has a forced CEO turnover announcement during the window [T, T+2]. Panel A analyzes the full sample using one to three and one to five matching, and Panels B and C focus on comparing exempt proxy solicitations related to director elections with other items. In particular, Panel B compares director elections to other items, while Panel C compares campaigns focused on director elections to broader campaigns and others. Finally, Panel D analyzes exempt proxy solicitations by firm performance, where high performance is defined as firms with above median accounting performance measured by net profit margins. The sample period for ES firms and controls firms is from 1997 to 2019. The forced turnover sample period is from 1997 to 2020. Robust t-statistics are included in parentheses, and significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A: Exempt Solicitation Campaigns and Peer Firm Forced CEO Turnover Announcements

	(1)	(2)	(3)	(4)	(5)	(6)
	One-to-Five Match			One-to-Three Match		
VARIABLES	$Forced_{t}$	$Forced_{t\ to\ t+1}$	$Forced_{t\ to\ t+2}$	$Forced_{t}$	$Forced_{t\ to\ t+1}$	$Forced_{t\ to\ t+2}$
Exempt Solicitation	0.031***	0.065***	0.083***	0.028**	0.062***	0.082***
	(2.71)	(3.97)	(4.27)	(2.33)	(3.63)	(4.07)
Log(Market Cap)	0.003	0.008*	0.011**	0.004	0.008*	0.009
	(1.12)	(1.81)	(2.01)	(1.48)	(1.65)	(1.36)
Q	-0.007*	-0.010	-0.009	-0.006	-0.010	-0.015
	(-1.91)	(-1.60)	(-1.10)	(-1.55)	(-1.33)	(-1.64)
ROA	-0.013	-0.062	-0.135	-0.058	-0.116	-0.222*
	(-0.32)	(-0.91)	(-1.45)	(-1.12)	(-1.29)	(-1.92)
Sales growth	0.007	0.018	-0.043*	-0.013	0.004	-0.045
	(0.38)	(0.70)	(-1.70)	(-0.81)	(0.14)	(-1.59)
Leverage	0.002	0.002	0.007**	0.002	0.002	0.009**
	(0.93)	(0.51)	(2.18)	(0.71)	(0.47)	(2.36)
Profitability	0.008	0.028*	0.050**	0.012	0.036*	0.064**
	(0.85)	(1.93)	(2.00)	(0.83)	(1.84)	(1.99)
RD	0.026	-0.027	-0.261	0.024	-0.059	-0.295
	(0.36)	(-0.27)	(-1.47)	(0.26)	(-0.46)	(-1.31)
Stock return	-0.022	-0.035	-0.061**	-0.025	-0.042	-0.068*
	(-1.21)	(-1.49)	(-2.13)	(-1.15)	(-1.50)	(-1.96)
Constant	0.074	-0.012	-0.028	0.059	-0.024	-0.013
	(0.53)	(-0.08)	(-0.21)	(0.40)	(-0.16)	(-0.09)
Industry & Year FEs	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,683	1,683	1,489	1,374	1,374	1,211
R-squared	0.104	0.133	0.155	0.116	0.144	0.177

Table IX. Exempt Solicitations and Forced CEO Turnover - Regression Analysis (Continued)

Panel B: Director Elections Compared to Other Proxy Items

	(1)	(2)	(3)	(4)	(5)	(6)
	One-to-Five Match			One-to-Three Match		
VARIABLES	Forced $_{t}$	Forced $_{t\ to\ t+1}$	Forced $_{t\ to\ t+2}$	Forced $_{t}$	Forced $_{t\ to\ t+1}$	Forced $_{t\ to\ t+2}$
ES – Director Election	0.067**	0.160***	0.204***	0.067**	0.156***	0.198***
	(2.06)	(3.65)	(3.95)	(2.03)	(3.54)	(3.80)
ES – Non-DE	0.022*	0.041**	0.053***	0.018	0.037**	0.053**
	(1.92)	(2.42)	(2.64)	(1.52)	(2.12)	(2.53)
Industry & Year FEs	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,683	1,683	1,489	1,374	1,374	1,211
R-squared	0.107	0.143	0.166	0.119	0.154	0.189

Panel C: Director Elections Campaigns and Broader Campaigns

	(1)	(2)	(3)	(4)	(5)	(6)
	One-to-Five Match			One-to-Three Match		
VARIABLES	Forced $_{t}$	Forced $_{t\ to\ t+1}$	Forced $_{t\ to\ t+2}$	Forced $_{t}$	Forced $_{t\ to\ t+1}$	Forced $_{t\ to\ t+2}$
ES – DE Only	0.051	0.108**	0.164***	0.050	0.103**	0.153**
	(1.41)	(2.32)	(2.76)	(1.37)	(2.17)	(2.53)
ES – DE & Other	0.104	0.278***	0.290***	0.105	0.279***	0.294***
	(1.61)	(3.09)	(2.92)	(1.63)	(3.11)	(2.99)
ES – Non-DE	0.023**	0.042**	0.054***	0.019	0.039**	0.054***
	(1.96)	(2.51)	(2.70)	(1.56)	(2.21)	(2.60)
Industry & Year FEs	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,683	1,683	1,489	1,374	1,374	1,211
R-squared	0.108	0.149	0.168	0.120	0.161	0.192

Panel D: Performance Comparison

	(1)	(2)	(3)	(4)	(5)	(6)
	One-to-Five Match			One-to-Three Match		
VARIABLES	Forced $_{t}$	Forced $_{t\ to\ t+1}$	Forced $_{t\ to\ t+2}$	Forced $_{t}$	Forced $_{t\ to\ t+1}$	Forced $_{t\ to\ t+2}$
ES – Low Performance	0.051***	0.067***	0.061**	0.047**	0.064***	0.061**
	(2.74)	(3.06)	(2.47)	(2.45)	(2.82)	(2.35)
ES – High Performance	0.012	0.063***	0.105***	0.009	0.059**	0.103***
	(0.84)	(2.62)	(3.52)	(0.62)	(2.40)	(3.39)
Industry & Year FEs	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,683	1,683	1,489	1,374	1,374	1,211
R-squared	0.107	0.133	0.156	0.118	0.144	0.179

Table X. Exempt Solicitations and Takeover Likelihood - Univariate Analysis

This table reports a univariate analysis of exempt proxy solicitations on the likelihood of being successfully acquired. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. Dependent variables are $Takeover_{t}$, $Takeover_{t\ to\ t+1}$, and $Takeover_{t\ to\ t+2}$. $Takeover_{t}$ is an indicator variable that equals 1 if the firm is acquired in the same year as the exempt solicitation filing year. To avoid confounding effects/reverse causality, we remove firms (and control firms) if the exempt solicitation is filed after the takeover announcement date. $Takeover_{t\ to\ t+1}$ is an indicator variable that equals 1 if the firm is acquired in the same year or the year after the exempt solicitation filing year. $Takeover_{t\ to\ t+2}$ is an indicator variable that equals 1 if the firm is acquired during the window [T, T+2]. Panel A compares firms with exempt proxy solicitations to the peer firm with the three smallest size difference in the same industry and same year. Panels B and C present the same analysis for the four and five smallest peer firm differences, respectively. The sample period for ES firms and controls firms is from 1997 to 2015. The takeover sample period is from 1997 to 2019. Significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A: One-to-Three Matching

	ES = 1 (N=453)		ES = 0 (N=972)			
Variable	Mean (1)	Std Dev (2)	Mean (3)	Std Dev (4)	Diff (1)-(3)	t
$Takeover_{t}$	1.32%	11.44%	0.00%	0.00%	1.32%***	3.61
$Takeover_{t\ to\ t+1}$	3.53%	18.48%	1.75%	13.12%	1.78%**	2.09
$Takeover_{t\ to\ t+2}$	5.30%	22.42%	4.53%	20.80%	0.77%	0.64

Panel B: One-to-Four Matching

	ES = 1 (N=453)		ES = 0 (N=1,149)			
Variable	Mean (1)	Std Dev (2)	Mean (3)	Std Dev (4)	Diff (1)-(3)	t
$Takeover_{t}$	1.32%	11.44%	0.00%	0.00%	1.32%***	3.92
$Takeover_{t\ to\ t+1}$	3.53%	18.48%	2.00%	14.01%	1.53%*	1.79
$Takeover_{t\ to\ t+2}$	5.30%	22.42%	4.87%	21.54%	0.42%	0.35

Panel C: One-to-Five Matching

	ES = 1 (N=453)		ES = 0 (N=1,293)			
Variable	Mean (1)	Std Dev (2)	Mean (3)	Std Dev (4)	Diff (1)-(3)	t
$Takeover_{t}$	1.32%	11.44%	0.00%	0.00%	1.32%***	4.16
$Takeover_{t\ to\ t+1}$	3.53%	18.48%	1.93%	13.78%	1.60%*	1.93
$Takeover_{t\ to\ t+2}$	5.30%	22.42%	4.64%	21.04%	0.66%	0.56

Table XI. Exempt Solicitations and Takeover Likelihood – Regression Analysis

This table reports multivariate regression analysis of exempt solicitations on the likelihood of being acquired. Exempt solicitations are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6. The sample includes firms with exempt proxy solicitations and up to five peer firms with the smallest size difference in the same industry and the same year. Dependent variables are $Takeover_{t}$, $Takeover_{t\ to\ t+1}$, and $Takeover_{t\ to\ t+2}$. $Takeover_{t}$ is an indicator variable that equals 1 if the firm is acquired in the same year as the exempt solicitation filing year. To avoid confounding effects/reverse causality, we remove firms (and control firms) if the exempt solicitation is filed after the takeover announcement date. $Takeover_{t\ to\ t+1}$ is an indicator variable that equals 1 if the firm is acquired in the same year or the year after the exempt solicitation filing year. $Takeover_{t\ to\ t+2}$ is an indicator variable that equals 1 if the firm is acquired during the window [T, T+2]. Panel A includes the full sample. Panel B excludes observations with forced CEO turnover prior to the acquisition. Panel C investigates M&A-friendly proposals (i.e., merger, sale, restructuring, and removing anti-takeover provisions) and the other proposals. Panel D examines the effect of ES filings on versus off merger waves. The sample period for ES firms and controls firms is from 1997 to 2019. The takeover sample period is from 1997 to 2021. Robust t-statistics are included in parentheses, and significance is indicated as follows: *** p<0.01, ** p<0.05, * p<0.1.

Panel A: All Exempt Solicitation Campaign Proposals

	(1)	(2)	(3)	(4)	(5)	(6)
VARIABLES	$Takeover_{t}$	$Takeover_{t\ to\ t+1}$	$Takeover_{t\ to\ t+2}$	$Takeover_{t}$	$Takeover_{t\ to\ t+1}$	$Takeover_{t\ to\ t+2}$
	One to five match			One to three match		
Exempt Solicitation	0.015**	0.021**	0.014	0.015**	0.023**	0.016
	(2.56)	(2.10)	(1.09)	(2.57)	(2.25)	(1.24)
Log(Market Capitalization)	0.000	-0.002	-0.007**	0.001	-0.003	-0.010***
	(0.56)	(-0.83)	(-2.30)	(0.87)	(-1.35)	(-2.90)
Q	-0.002*	-0.005	-0.006	-0.003*	-0.006	-0.005
	(-1.73)	(-1.14)	(-0.94)	(-1.89)	(-1.11)	(-0.65)
ROA	0.010	-0.099	0.004	0.008	-0.100	0.014
	(0.86)	(-1.51)	(0.05)	(0.57)	(-1.25)	(0.15)
Sales growth	-0.006	-0.013	-0.032**	-0.008*	-0.024**	-0.048***
	(-1.63)	(-1.10)	(-1.97)	(-1.70)	(-1.98)	(-2.76)
Leverage	0.002	0.002	0.004	0.002	0.002	0.005*
	(1.04)	(0.99)	(1.53)	(1.01)	(0.79)	(1.70)
Profitability	0.002	0.021	0.023	0.004	0.017	0.024
	(0.51)	(1.07)	(1.02)	(0.72)	(0.71)	(0.90)
RD	0.034	0.060	0.097	0.049*	0.032	0.082
	(1.36)	(0.55)	(0.75)	(1.66)	(0.26)	(0.55)
Stock return	0.005	0.012	0.006	0.008	0.015	0.012
	(1.19)	(0.94)	(0.28)	(1.40)	(1.00)	(0.46)
Constant	-0.009	0.134	0.162	-0.010	0.143	0.178
	(-0.77)	(1.01)	(1.20)	(-0.80)	(1.05)	(1.28)
Industry/Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,667	1,667	1,667	1,363	1,363	1,363
R-squared	0.084	0.065	0.063	0.099	0.082	0.085

Table XI. Exempt Solicitations and Takeover Likelihood – Regression Analysis (Continued)

Panel B: Removing Forced CEO Turnovers

VARIABLES	(1) Takeover $_{t}$	(2) Takeover $_{t\ to\ t+1}$	(3) Takeover $_{t\ to\ t+2}$	(4) Takeover $_{t}$	(5) Takeover $_{t\ to\ t+1}$	(6) Takeover $_{t\ to\ t+2}$
	One to five match			One to three match		
Exempt Solicitation	0.017***	0.024**	0.012	0.017***	0.025**	0.013
	(2.58)	(2.20)	(0.88)	(2.61)	(2.28)	(0.97)
Controls	Yes	Yes	Yes	Yes	Yes	Yes
Industry/Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,556	1,556	1,556	1,263	1,263	1,263
R-squared	0.092	0.077	0.071	0.111	0.097	0.097

Panel C: Takeover Friendly Proposals

VARIABLES	(1) Takeover $_{t}$	(2) Takeover $_{t\ to\ t+1}$	(3) Takeover $_{t\ to\ t+2}$	(4) Takeover $_{t}$	(5) Takeover $_{t\ to\ t+1}$	(6) Takeover $_{t\ to\ t+2}$
	One to five match			One to three match		
ES -M&A friendly	0.041	0.097*	0.124**	0.039	0.094*	0.118**
	(1.41)	(1.92)	(2.17)	(1.38)	(1.90)	(2.10)
ES - other	0.011**	0.012	0.000	0.012**	0.014	0.003
	(2.12)	(1.27)	(0.03)	(2.12)	(1.49)	(0.27)
Controls	Yes	Yes	Yes	Yes	Yes	Yes
Industry/Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,667	1,667	1,667	1,363	1,363	1,363
R-squared	0.089	0.072	0.070	0.104	0.089	0.092

Panel D: ES Filed on vs off Merger Waves

VARIABLES	(1) Takeover $_{t}$	(2) Takeover $_{t\ to\ t+1}$	(3) Takeover $_{t\ to\ t+2}$	(4) Takeover $_{t}$	(5) Takeover $_{t\ to\ t+1}$	(6) Takeover $_{t\ to\ t+2}$
	One to five match			One to three match		
ES during merger wave	0.055	0.204**	0.238**	0.055	0.205**	0.238**
	(0.98)	(2.12)	(2.29)	(0.97)	(2.14)	(2.34)
ES during outside merger wave	0.013**	0.013	0.004	0.013**	0.015	0.006
	(2.33)	(1.38)	(0.32)	(2.33)	(1.54)	(0.49)
Controls	Yes	Yes	Yes	Yes	Yes	Yes
Industry/Year fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Observations	1,667	1,667	1,667	1,363	1,363	1,363
R-squared	0.089	0.080	0.074	0.104	0.100	0.099

Appendix A – Exempt Solicitation Examples

Appendix A.1. Vote For Shareholder Proposed Items

JUNE 25, 2001

DEAR FELLOW AIRGAS, INC. SHAREHOLDER:

Wynnefield Capital Management and the affiliated funds that we manage (collectively, "Wynnefield") have owned a significant position in Airgas, Inc. ("Airgas" or the "Company") for over five years. We have submitted a shareholder proposal in the name of one of our funds, Wynnefield Partners Small Cap Value, L.P., for your approval at this year's Annual Meeting of the Company's shareholders. The proposal requests the Airgas Board of Directors to establish and authorize a committee of independent, non-employee directors to work with the Company's management and to engage outside professional advisors, as necessary, to identify and develop strategic alternatives to maximize current shareholder value.

Airgas, in its public filing on May 7, 2001, stated that it had previously formed a special Board committee to review the Company's strategic direction and that the committee concluded that the best course of action was to continue implementation of management's business plan. We believe that any committee examining strategic directions must take a far more independent and proactive approach. We believe that an independent committee, together with the Company's outside financial advisors, should be actively soliciting, in a public and formal process, expressions of interest and proposals for a business combination or sale transaction with a suitable buyer which may well yield a significant premium for Airgas' shareholders.

OUR PROPOSAL WILL BE INCLUDED IN THE COMPANY'S PROXY MATERIALS WHICH YOU SHOULD READ CAREFULLY AND IN ITS ENTIRETY WHEN THE COMPANY MAKES SUCH MATERIALS AND INFORMATION AVAILABLE TO YOU. WE URGE YOU TO VOTE "FOR" OUR PROPOSAL INCLUDED IN THE COMPANY'S PROXY MATERIALS.

WHY IS OUR PROPOSAL NECESSARY?

Wynnefield has been an Airgas shareholder for over five years and has lost confidence in the ability of the current Board and management to lead Airgas to fulfill its potential in the current business environment and to maximize shareholder value. While Airgas' original business plan of leasing packaged gas cylinders to customers and buying and integrating smaller core competitors was initially successful, we believe Airgas' diversification initiatives over the last five years have impaired the Company's balance sheet and have seriously eroded shareholder return on investment. The 1998 initiative to improve profitability - - "Repositioning Airgas for Growth" - - was unable to reverse earnings deterioration. While the latest profitability initiative - - "Airgas One" - - seems attractive on the surface, do you really want to bet that "this time will be different?" We strongly believe the Company's shareholders could be better served if Airgas combined with or agreed to be acquired by a larger, economically stronger industry participant.

WE BELIEVE THE MOST RISKY COURSE OF ACTION THE COMPANY CAN TAKE IS TO TAKE NO ACTION AT ALL AND TO REMAIN INDEPENDENT WITHOUT CONSIDERING ALL AVAILABLE ALTERNATIVES.

Of course we do not want the Company to rush out and conduct a "fire sale." Our proposal simply requests the Company to seek outside advice from independent financial advisors in an open and transparent process that would enable an independent committee of the Board to take a fresh look at ALL strategic alternatives available in the market place. We do not believe that this process has taken place to date.

WE BELIEVE THE ENGAGEMENT OF A NATIONALLY RECOGNIZED INVESTMENT BANKING FIRM WITH A SUCCESSFUL TRACK RECORD IN SIMILAR TRANSACTIONS AND WITH A SPECIFIC MANDATE TO IDENTIFY AND PURSUE WITH MANAGEMENT APPROPRIATE TRANSACTIONS TO

MAXIMIZE SHAREHOLDER VALUE, THAT MAY INCLUDE A BUSINESS COMBINATION OR SALE OF THE COMPANY, IS THE BEST COURSE OF ACTION FOR AIRGAS' SHAREHOLDERS AT THIS TIME.

JUST MAKE THE CALL!

Did you know that in a June 1999 Forbes article, Airgas CEO Mr. Peter McCausland was quoted as saying, "I'm just one phone call away from $34 a share," referring to the larger rivals such as Praxair and BOC's desire to pursue the acquisition of Airgas. Obviously, the call should have been made then. We believe it's not too late to make that call. According to that same Forbes article, one frustrated potential buyer noted "the problem with Airgas is that it's got a built-in poison pill... it's called Peter McCausland."

While Airgas' stock has risen since we first submitted our proposal to Airgas last March, and while we are gratified that the Company coincidentally held its first analyst conference in three years on May 24, 2001, we believe that the Airgas shareholders have paid the price for management's strategic misadventures and inertia.

DON'T JUST SIT ON THE SIDELINES; YOUR SUPPORT IS NEEDED NOW!

The way we see it, the time is ripe for Airgas to find a partner willing to pay a significant premium, lest management run the risk of watching the franchise further erode and then be forced to pursue a sale or financial restructuring transaction in a materially weakened condition. As Airgas' shareholders, we should not have to bear that risk!

PLEASE REMEMBER -- Airgas' stock was trading as high as $25 only four years ago and it was trading at only $8.24 on March 1st when we submitted our proposal. This is, by any measure, share value diminution.

Let's send the Board a message that we do not intend to remain spectators. Please join us in urging the Company to explore all alternatives to maximize shareholder value today!!

WE STRONGLY RECOMMEND THAT YOU VOTE "FOR" OUR PROPOSAL INCLUDED IN THE COMPANY'S PROXY MATERIALS.

We encourage you to contact your financial and other professional advisors for their advice and to discuss potential premiums paid in similar transactions with companies comparable to Airgas and its competitors.

If you have any questions or need assistance in voting your shares, please call Rick Grubaugh at D.F. King & Co., who is assisting us, toll free at 1-800- 431-9629 or (212) 493-6950.

Thank you for your consideration.

Sincerely,

Wynnefield Capital Management, LLC

Appendix A.2. Vote Against Management Proposed Items

August 2002

Dear Oplink Shareholder:

My name is Zhimin Liu. Like you, I'm a shareholder in Oplink. I and my family own about 3,000,000 shares of Oplink. I was the founder and CEO of Telelight Communication Inc., which was acquired by Oplink Communications, Inc. in April 2000. From April 2000 to October 2001, I was the Senior Fellow with Oplink with advisory responsibility for all research projects at Oplink.

I sent you a letter approximately two weeks ago to explain why the Oplink/Avanex merger is not a good deal for Oplink, due to significant adverse developments affecting Avanex since Oplink signed the merger agreement. I have updated that letter and added a quantitative financial comparison of some key indicators for the two companies. Please visit my personal website to review this revised and additional information: www.nomerger.com. A copy of the list of key points from the website is attached. I welcome hearing from you. You can reach me at zhiminliu@yahoo.com.

In deciding your vote, please keep in mind that even if the Oplink board changed its mind about the Avanex merger, the merger agreement requires them to keep recommending the merger, whatever their true views are. Unfortunately, the merger agreement restricts what the directors can say to Oplink's own stockholders about the merger.

The number of people who know Oplink's business and who oppose the Avanex merger is growing. Two key founders of Oplink, Dr. Yu Zheng and Ms. Margaret Chao, have expressed their opposition to the transaction. Dr. Zheng was Oplink's original Engineering Vice President, and Ms. Chao was Oplink's original Financial Vice President.

Additionally, Mr. Jesse Chen, the managing director of Maton Venture, also expressed his opposition to the merger. Mr. Chen has over twenty years' experiences in the IT industry and was Chairman of the Monte Jade Science and Technology Association from 1998 to 2000.

In addition, Dr. Chinlon Lin, one of the best-known and most respected optical communications scientists and an Oplink shareholder, has expressed his opposition to the merger. Dr. Lin, an early advisor to Oplink, worked at AT&T Bell Labs/Bellcore for 25 years in the field of optical fiber communications. He is the inventor of nine patents and is a Fellow of both the Institute for Electrical and Electronic Engineers (IEEE) and the Optical Society of America (OSA).

I urge you to consider these individuals' views on the merger carefully, together with the material on my website. They are very familiar with Oplink and the optical communication industry, and do not believe the merger is in Oplink's interest.

The current Avanex deal is unfair to Oplink shareholders. There is no rush for Oplink to combine with Avanex quickly, especially on **unfair** terms. If the current Avanex merger is consummated, there will be no going back for Oplink shareholders. Let us first stop this deal, and give the Oplink board the opportunity to review alternatives which are **fair** to Oplink shareholders, including a revised deal with Avanex.

Thank you for your interest. Please vote your shares **AGAINST** the merger. Alternatively, if you prefer, please **ABSTAIN** from voting on the merger.

Zhimin Liu
zhiminliu@yahoo.com
http://www.nomerger.com

Reasons for Vote Against the Avanex Merger

Dear Oplink Stockholder:

Welcome to my website. I am Zhimin Liu. I was CEO and Founder of Telelight Communication Inc,, which was acquired by Oplink in April 2000. From April 2000 to October 2001, I was the Senior Fellow of Oplink with advisory responsibility for all of Oplink's research projects. I and my family own about 3,000,000 shares of Oplink.

I have studied the publicly-available information about Avanex and the proposed merger, and have concluded that I will VOTE AGAINST the merger. My list of key points gives the principal reasons for my decision to vote against the merger.

Below are links to other information sources relevant to my decision. I hope you will find them helpful.

If you also decide to VOTE AGAINST the merger, please send an e-mail to the CEO and directors of Oplink, indicating the number of shares you own (Joe Liu, Chairman of the Board, joeliu@bcdsemi.com, and Frederick Fromm, Chief Executive Officer, fredf@oplink.com). Please send me a copy at zhiminliu@yahoo.com. Thank you in advance.

1. Key Points Against the Merger

a. List of Key Points

2. Analyst Reports

a. For a full copy of the Gilder Technology Report on Avanex, including the significance of Dr. Simon Cao's resignation, see http://www.gildertech.com or telephone Gilder Technology toll free: (888) 484-2727.

b. For a full copy of the CIBC World Markets report on Avanex, including the significance of Dr. Simon Cao's resignation, telephone CIBC World Markets: (212) 667-7000

3. Dr. Simon Cao

a. Resignation Press Release

b. Biography (from Lightbit Corporation website)

6. Hon Hai Complaint Against Avanex

7. Avanex Corporate Information

a. Proxy statement for Oplink merger (latest available draft).
b. Avanex annual report on Form 10-K for fiscal year ended June 30, 2001, as filed with the SEC on September 17, 2001.

c. Avanex amendment to annual report on Form 10-K for fiscal year ended June 30, 2001, as filed with the SEC on May 29, 2002.

d. Avanex quarterly report on Form 10-Q for quarter ended March 31, 2002, as filed with the SEC on May 13, 2002.

e. Avanex amendment to quarterly report on Form 10-Q for quarter ended March 31, 2002, as filed with the SEC on May 29, 2002.

4. <u>Oplink June 30 Earning Release</u> NEW

5. <u>Avanex June 30 Earning Release</u> NEW

Avanex/Oplink

List of Key Points

On March 18, 2002, the Oplink board of directors signed a merger agreement with Avanex, subject to later stockholder approval. However, since then:

- **On May 20, 2002, Dr. Simon Cao, resigned as an officer, director and employee of Avanex, effective June 30, 2002.** Dr. Cao was the key technical founder of Avanex, and is the inventor or co-inventor of many of Avanex's key patented technology. Prior to co-founding Avanex, Dr. Cao had worked in the optical networking field at Oplink and at E-Tek Dynamics, Inc. According to Avanex's press release, Dr. Cao resigned to pursue personal interests.

  Dr. Cao's departure raises significant concerns in my mind about Avanex's ability to maintain its technical leadership in the fast-changing, competitive optical network device industry. George Gilder's Technology Report of May 23, 2002 viewed Dr. Cao's resignation as a "potentially life-threatening blow" to Avanex.* CIBC World Markets' June 30, 2002 report found Dr. Cao's departure "troublesome."*

  I believe that Dr. Cao's departure is a **loss of critical talent.**

- **On May 31, 2002, Hon Hai Precision Industry Co., Inc., a leading Asian electronics manufacturer, sued Avanex for more than $40 million.** In its complaint, Hon Hai makes detailed allegations of an oral agreement by Avanex to pay $30 million to Hon Hai or its affiliate in order to secure a release of the exclusive manufacturing commitment Avanex had previously made to Concord Micro-Optics, Inc. ("CMI"). According to the complaint, the plaintiffs invested $40 million to acquire CMI's facility and CMI's release of Avanex's exclusive manufacturing commitment. The complaint recites detailed negotiations between the plaintiffs and Avanex over a 15-month period concerning how Avanex would make the $30 million payment.

  Although Avanex has issued a general denial of liability, I believe that, absent a clear and convincing explanation, the Hon Hai lawsuit is a significant risk that may seriously harm Avanex.

When the Oplink board of directors approved the merger with Avanex, Avanex was a company supported by Dr. Cao's active involvement and not burdened with the risk of a major lawsuit. In my opinion, merging with the remaining Avanex, without Dr. Cao's active involvement and subject to this significant risk, is not in the best interest of Oplink stockholders.

For example, although Oplink stockholders would own only **50%** of the combined company, Oplink is expected to contribute **77%** the combined company's expected gross profit in calendar year 2002, and to contribute **63%** of the combined company's estimated tangible book value for calendar year 2002. (See page 64 of the proxy statement.) Oplink would contribute **62%** of the cash, cash equivalents and short-term investments of the combined company and **65%** of its working capital (before pro forma adjustments), based on June 30, 2002 balance sheet information. (See the unaudited financial information in the Avanex earnings release of July 29, 2002 and the Oplink earnings release of July 30, 2002.)

Furthermore, Avanex's core operating expenses are significantly higher than Oplink's despite comparable revenue. For example, in the quarter ending June 30, 2002, Avanex had revenues of $8,026,000 and Oplink had revenues of $7,703,000. However, Avanex's operating expenses (excluding special items) were $10,830,000 or **135%** of revenue, while Oplink's pro forma operating expenses were $6,653,000 or **86%** of revenue. (See the unaudited financial information in the Avanex earnings release of July 29, 2002 and the Oplink earnings release of July 30, 2002.)

I therefore believe that the financial aspects of the merger are **not sufficient to overcome the loss of Dr. Cao and the risk of the Hon Hai lawsuit.**

The directors of Oplink have recommended that Oplink stockholders proceed with approving the merger, although the proxy statement does not indicate that they specifically considered Dr. Cao's resignation or the Hon Hai lawsuit. (See pages 67-68 of the proxy statement.) However, I believe it is important for stockholders to make up their own minds independently, because the merger agreement restricts what Oplink's directors can say to Oplink's own stockholders about the merger.

The Merger Agreement requires the Board to keep recommending the Avanex merger unless a third party makes a higher offer for Oplink, and prohibits the Board from changing its recommendation due to adverse developments at Avanex. (See Section 5.2(b) on page A-39 of the proxy statement.) If the board were to change its recommendation of the merger, Avanex would have an immediate right to terminate the merger and to require Oplink to pay $12 million within 2 days, and, in addition, sue Oplink for additional damages. (See Sections 7.1(f), 7.1(definition of "Triggering Event") and 7.3(b) on pages A-50 to A-53 of the proxy statement.) It is unfortunate that the Board accepted these restrictions on its own communications with Oplink's stockholders, because they put the burden of deciding how to vote in light of Dr. Cao's departure and the Hon Hai lawsuit directly on the stockholders.

That is what I have sought to do. I hope other stockholders will do the same, using their independent judgment.

Please let the Oplink board know how you feel about the merger. Please send me a copy of your letter. My e-mail address is zhiminliu@yahoo.com. The addresses of the Oplink Chairman and Oplink CEO are as follows:

Joe Liu, Chairman of the Board
joeliu@bcdsemi.com
c/o Oplink Communications
3469 North First Street
San Jose, CA 95134
fax: (408) 433-0606

Frederick Fromm, Chief Executive Officer
fredf@oplink.com
c/o Oplink Communications
3469 North First Street
San Jose, CA 95134
fax: (408) 433-0606

Appendix B – Variable Definitions

This table provides the definitions for the main variables used in this study.

Variable	Definition (Compustat and CRSP variables are in italics when appropriate)
Firm level characteristics	
Total Assets	The value of total book assets in millions.
Market Capitalization	The total market value of equity (price × share outstanding) in millions.
Q	Market value of assets scaled by book value of assets.
Leverage	Value of total debt scaled by book value of equity.
ROA	Net income scaled by total assets.
Sales Growth	Annual percentage change in total sales.
Profitability	Gross Profit (Loss) divided by total sales.
RD	Annual R&D expenses scaled by total assets.
Stock Return	The firm's cumulative stock return over prior calendar year less the cumulative return of the CRSP value-weighted index over the same time period.
Institutional Ownership	Percentage of a firm's shares outstanding owned by institutional investors at the end of prior fiscal year (data from Thomson Reuters 13-F filings feed).
Board Size	Total number of directors on the board.
Board Independence	Percentage of independent directors in a board.
CEO Duality	Indicator variable that equals 1 if the CEO is the chair of the board.
Forced CEO turnover	Indicator variable that equals 1 if the firm has a forced CEO turnover announcement, and zero otherwise.
Takeover	Takeover is an indicator variable that equals 1 if the firm has a takeover announcement, and zero otherwise.
Merger wave	Industry merger wave is an indicator variable that equals 1 if the year in which the percentage of deals in a certain industry using the 2 digit SIC code in that year is at least one standard deviation higher than the industry mean rate over all years (Maksimovic, Phillips, and Yang, 2013).
CAR(0, x)	Cumulative abnormal returns around the event window (0, x), where day 0 is the exempt solicitation filing date and the abnormal returns are estimated using the market model parameters based on CRSP value-weighted returns during the window (-250, -50).
CAR(x, y)	Cumulative abnormal returns around the event window (x, y), where day 0 is the CEO turnover announcement date or the acquisition announcement date. Abnormal returns are estimated using the market model parameters based on CRSP value-weighted returns during the window (-250, -50).

Proposal level characteristics

Exempt Solicitation	Indicator variable equal to 1 if the firm receives at least one exempt solicitation filing. Exempt solicitation filings are defined as solicitations on proxy voting issues exempt under Rule 14a-2(b)(1) – solicitations not seeking proxy authority and exempt from Rules 14a-3 to 14a-6.
Director Election	Indicator variable that equals 1 if the proposal related to director elections.
Governance	Indicator variable that equals 1 if the proposal related to governance.
Merger	Indicator variable that equals 1 if the proposal related to merger.
Social	Indicator variable that equals 1 if the proposal related to social issues.
Compensation	Indicator variable that equals 1 if the proposal related to executive compensation.