Who's Minding Your Business? Preliminary Observations on Data and Anecdotes Collected on the Role of Institutional Investors in Corporate Governance

Jayne Elizabeth Zanglein
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I. INTRODUCTION

This article is an annotated collection of empirical data, anecdotes, and other observations on the role of institutional investors in corporate governance. It is not meant to be exhaustive. The primary purpose of this article is to report, in a timely manner, the results of

* Associate Professor, Texas Tech University School of Law.

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Thanks also to all of the people who generously gave of their time to respond to the survey. Their interest and commitment ensured a survey with a good response rate.

Gratitude is especially extended to Dr. Benjamin Bates of Texas Tech University, and to Dr. James Dyer of Texas A & M University, both survey experts, who assisted us in designing the survey and planning follow-up. Thanks also to Peg O’Hara of the Investor Responsibility Research Center (IRRC) for permission to base some of our survey questions on IRRC materials. In particular, we relied on Writing Proxy Voting Guidelines—A Handbook for Institutional Investors published by IRRC. Thanks to Nell Minow, now with the Lens Fund, and Sharon Cayelli, formerly with the Council of Institutional Investors, for their suggestions on our survey questions.

This survey would not have been possible without the help of students who spent countless hours working on the surveys. I am particularly indebted to Chuck Kretek whose enthusiasm for the project was unmatched. Chuck had enthusiasm for even the tedious and enormously time-consuming task of gathering addresses for the people to be surveyed. Chuck did all of the background research, prepared the first draft of the survey, and graduated.

Three students replaced Chuck. Tim Brown skillfully supervised the pension survey and the collection of proxy anecdotes, and discussed the nuances of jazz during otherwise tedious mass mailings. Jim Iserman was in charge of the investment manager and proxy guideline surveys. Jim was our computer expert: he formatted the surveys, did all of the graphics and taught me how to use a mouse. Martin Illner, our enigmatic world traveller, was in charge of the director survey and helped edit the article. Martin claims that he got a suntan from the computer screen but I suspect the tan really was from skiing and mountain-climbing in Mexico. Finally, thanks to Jack Elrod who filled in the gaps when we needed him.

Special thanks to Leona Wyatt, who calmly and patiently retyped the forty pages the computer mysteriously gobbled up.
three original surveys on the role of institutional investors in corporate governance and one additional survey on proxy voting guidelines.\(^1\) The three surveys on corporate governance and proxy voting were conducted from May through September 9, 1992 and the survey of proxy voting guidelines was conducted from April through August 1992. The data and anecdotes collected have been supplemented with anecdotes and empirical evidence collected by others. This article contains preliminary observations on the data we collected. Readers are invited to comment on these observations. In a sequel article, we hope to examine in greater detail some of the issues we surveyed and offer solutions for some of the problems described.\(^2\)

Originally, we intended only to survey union and public pension fund trustees to determine the extent of their interest and involvement in monitoring corporate performance and influencing corporate governance. Although many public pension funds are active in corporate governance, our research and experience led us to believe that union funds are slow to follow.\(^3\) We designed a survey to gather information which would allow us to compare the involvement of union and public pension funds in the proxy process. As we developed the first survey, we began to wonder if pension funds that delegate proxy voting authority to investment managers are limited by the inability of their investment managers to vote proxies in accordance with specific guidelines. We suspected that some investment managers are not capable of, or interested in, complying with the Department of Labor's mandate to vote proxies on issues which have an impact on the economic value of plan-held stock.\(^4\) We developed a second survey to determine how investment managers vote proxies on behalf of their pension fund clients. In particular, we sought information as to how often pension fund clients direct investment managers to vote proxies in a particular manner, and the extent of the managers' ability to respond to the increasing involvement of pension funds in the proxy process.

As we prepared the second survey, related questions surfaced.

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1. See appendices A-E for copies of the surveys.
2. In a previous article, I discussed ERISA and SEC requirements with respect to proxy voting. See Jayne Zanglein, Pensions, Proxies and Power: Recent Developments in the Use of Proxy Voting to Influence Corporate Governance, 7 LAB. LAW. 771 (1991).
3. My perceptions are influenced by my prior experience as a union-side labor attorney who primarily represented Taft-Hartley Funds.
For example, what do corporate directors think about the increasing involvement of institutional investors in corporate governance? We designed a third survey to obtain information on how often corporate directors communicate with institutional investors, and what role, if any, directors believe that institutional investors should have with regard to corporate governance.

The survey on proxy voting guidelines was an offshoot of the surveys of pension fund trustees and investment managers. Our survey experts advised us to keep the surveys self-contained so that respondents were not required to enclose other documents with the survey. Consequently, we developed an independent one-page survey to find out which funds invest in stock and to obtain proxy voting guidelines of the trustees and investment managers we surveyed.

**METHODOLOGY AND RESPONSE RATES**

The first survey is the corporate director survey. We sent this survey to two randomly selected directors at each of the publicly-held Fortune 250 companies. We received responses from directors at 19% of the companies surveyed. Fifty-three percent are inside directors and 47% are outside directors. The median time served as a director is 12.25 years.

The second survey had an excellent response rate. We sent surveys to the one hundred largest public pension funds that invest in corporate stock. We received responses from 47% of the public pension funds. Surveys were also sent to the one hundred largest union pension funds that invest in corporate stock. The union funds were less responsive to the survey and we received responses from 13% of the union funds.

Sixty pension funds responded to the survey. Seventy-eight per-

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5. Four non-directors completed the survey. We did not count these surveys in the statistics but included anecdotes where appropriate.
6. Survey Of Corporate Directors On Institutional Investors And Corporate Governance Q 2 [hereinafter Director Survey].
7. Director Survey Q 1.
8. This list was compiled from the Pension & Investments directory of the largest funds. See Top 200 Pension Funds/Sponsors, PENSIONS & INVESTMENTS, Jan. 20, 1992, at 20; Ranking of Funds/Sponsors 201-1000, PENSIONS & INVESTMENTS, Jan. 20, 1992, at 22. Through our proxy voting guideline survey, we were able to weed out the funds that do not invest in stock.
9. This list also was compiled from the Pensions & Investments directory of the largest funds. See id.
cent of the respondents were public funds, 6% were international unions, and 15% were local unions.10 Approximately 95% of the respondents maintain defined benefit plans and the rest maintain defined contribution plans.11 All of the respondent funds have pension assets in excess of $300 million.12

The third survey was sent to 212 investment managers.13 The selection of investment managers was tied to the union and public pension funds surveyed. We selected investment managers who fit two criteria: 1) the investment manager has at least one of the union or public pension funds surveyed as clients and 2) the investment manager is one of the largest 250 managers, as reported in the Pensions & Investments 1991 directory of managers. Eighteen percent of the investment managers responded to the survey.

The investment managers who responded to the survey manage an average of $3.78 billion of equity portfolios on behalf of more than 4150 pension fund clients.14 These investment managers collectively manage $51.39 billion for corporate pension funds, $28.64 billion for government pension funds, $6.18 billion for union pension funds, $4.55 billion for foundations, and $920 million for other types of funds.15

The last survey was designed to collect proxy voting guidelines from the same union funds, public funds, and investment managers that received the other surveys. Twenty-eight percent of the public funds sent proxy voting guidelines, only 5% of the union funds provided guidelines, and 62% of the investment managers sent us their voting guidelines.

The surveys are reproduced as appendices to this article.

10. Proxy Voting Survey For Pension Trustees Q 1 [hereinafter Pension Survey].
11. Pension Survey Q 2. Of those public funds answering this question, 7% sponsor defined benefit plans exclusively, 86% maintain defined contribution plans exclusively, and 7% sponsor both. Of the union funds, 85% maintain defined benefit plans exclusively, while 15% sponsor both defined benefit and defined contribution plans.
13. This list was compiled from Pensions & Investments 1991 directory of money managers. See Who Manages the Most Money?, PENSIONS & INVESTMENTS, May 20, 1991.
14. Survey Of Investment Managers On Proxy Voting And Corporate Governance Q 1 and Q 6 [hereinafter Investment Manager Survey].
15. Investment Manager Survey Q 2.
II. SURVEY RESULTS

WHAT PERCENTAGE OF ASSETS DO PENSION FUNDS ALLOCATE TO STOCK?

Typically, defined benefit plans invest more assets in stock than defined contribution plans.\(^{16}\) For example, in 1990, defined benefit public funds invested 36.7% of plan assets in stock, while public defined contribution plans invested only 15.6% of plan assets in stock.\(^{17}\) Union defined benefit plans invested 37.3% in stocks in 1990, while union defined contribution plans invested only 14.7% of assets in equities.\(^{18}\) Defined contribution plans are typically more risk-adverse, in part, because plan sponsors do not want participants to notice a decline in their individual accounts when they receive their annual statement of accrued benefits. Because employer contributions can be reduced if investment performance exceeds actuarial projections, defined benefit plans generally accept more risk.

The pension funds that responded to our survey invested an average of 43% in stock as of December 31, 1991.\(^{19}\) Public funds invest an average of 42% of plan assets in stock, while union funds invest about 37% of assets in stock.\(^{20}\) Defined contribution plans invest 39% of plan assets in stock in contrast with the 43% that defined benefit plans invest in stock.\(^{21}\)

HOW CONCENTRATED IS THE OWNERSHIP OF CORPORATE STOCK?

Pension funds own about 25 percent of the stock of U.S. public corporations.\(^{22}\) The Department of Labor predicts that by the turn of


\(^{18}\) Id.

\(^{19}\) Pension Survey Q 4.

\(^{20}\) Most of the union funds that responded to our survey were building trades funds.

\(^{21}\) Pension Survey Q 4.

\(^{22}\) David M. Walker, Corporate Governance Issues and Their Fiduciary Implications,
the century, pension funds will own approximately 40% of corporate stock.Taken together, all institutional investors (including pension funds), currently own about 50% of the stock of the largest U.S. public corporations. For example, institutional investors own 80% or more of Chiquita Brands, Storage Technology and Owens-Corning Fiberglass, and more than 75% of Deere, Gannett, Hercules, Whirlpool, Xerox, Armstrong World Industries, and Pitney Bowes.

This ownership is oftentimes concentrated in the hands of only a few investors. In 1989, the twenty largest pension funds, with assets of $621.7 billion, controlled 7.7% of the stock of the top ten corporations ranked by stock market value. The Columbia Institutional Investor Project predicts that by the year 2000, these top twenty funds could control between 22% and 29% of the equity in the top ten corporations.

Where corporate ownership is diffused, it is clearly harder for shareholders to act in concert. T. Boone Pickens tells this tale:

A Fortune 500 chief executive officer once told me his dream was to have a million shareholders, none of whom owned more than 100 shares. Hidden in his statement was the idea that the more dispersed and fragmented the company's ownership, the more freedom he would have to run the company as he — and only he — saw fit. This adversity to accountability is at the root of the modern chief executive officer's disdain for institutional investors.


24. Institutional investors include pension funds, mutual funds, insurance companies, bank-managed funds, and charitable and educational endowments. Approximately 38% of all institutional investors are pension funds. COLUMBIA INSTITUTIONAL INVESTOR PROJECT, INSTITUTIONAL INVESTORS AND CAPITAL MARKETS: 1991 UPDATE, at Chart 1 (1991).

25. Id. at Table 19.


27. See generally Alfred F. Conard, Beyond Managerialism: Investor Capitalism?, 22 U. MICH. J.L. REF. 117, 132 (1988); see infra Appendix F.


29. Id. at 26.

30. T. Boone Pickens, Jr., Company Watchdogs; Institutions Push for Maximum Value,
Pension funds are not this CEO's dream investors. One manager who runs a $6.5 billion pension fund told us that his firm has "more influence than . . . [his] clients would have individually."³¹ Another manager noted that "the more shares you own, the more important your voice."²²

As the holdings of pension fund investors become more concentrated, it will be easier to informally effect corporate changes.³³ The question then becomes whether pension funds are, in fact, in a position to influence the long-term direction of the corporations whose stock they hold. Or, have pension funds adopted such a short-term approach that corporations won't seriously consider them as partners for the long run?

ARE PENSION FUNDS LONG-TERM INVESTORS? SHOULD THEY BE?

Logically, this position of potential control should provide pension funds with incentive to take a long-term perspective. However, many directors have criticized institutional investors for taking a short-term approach. The former chairman of one of the big three major auto makers once described these "so-called 'investors' [as] nothing more than predators, opportunists, speculators, traders, arbitragers, scavengers, even black-mailers, whose focus is on nothing more than trying to capitalize on the short-term . . . profit to them, regardless of the consequences" elsewhere.³⁴

Fred Hartley, former chairman of Unocal Corporation, describes short-termism:

Can you run America with a fairly large percentage of your investors being casino gamblers? That's the problem you've got with all of your managers of your pension funds and foundation funds . . . . You know they trade on a tenth of a point. They'll sell and buy

³¹ Survey #248 ("It is not unusual for us to be among the largest holders of [the] companies in which we invest").
³² Survey #369.
³³ This statement is made without consideration of SEC restrictions.
your stock twice in one day. They have no wait, no holding peri-
ods, no taxes to pay . . . it’s entirely fast buck.  

Another chief executive officer complains, “A year from now, 70% of
my stockholders will have changed. On that basis, I put my custom-
ers, and my employees, way ahead of [institutional investors].”

Some commentators blame institutional investors for management’s short-term focus on quarterly earnings. According to
A. A. Sommer, Jr.:

Inevitably the short-term perspective of institutional investors breeds
similar perspectives in management. Realizing the tentativeness of
the ownership of large amounts of their company’s stock, and sensi-
tive to the market penalties accruing to short-term adverse perfor-
formance, management perspective is necessarily foreshortened and the
maintenance of quarter-to-quarter earnings improvement becomes a
paramount goal.

This complaint is not new. In 1976, Peter Drucker wrote that

American asset management today suffers from . . . [an] “excess of
competition.” It has become so competitive and so volatile that the
participants outdo each other in promising miracles to “beat the
market” . . . . Pension funds cannot beat the market — they are the
market . . . . But because the ability of the asset managers to attract
pension fund business heavily depends on their promise to perform
such miracles, they tend to concentrate on short-term results: the

35. T. Boone Pickens, Jr., Professions of a Short-Term, HARV. BUS. REV., May-June
1986, at 76.

36. Id.

37. Ira Millstein, Chair of Governor Cuomo’s Task Force on Pension Investments, ob-
serves that

[i]t is corporate managers’ perception that to raise stock prices and keep entrepre-
neurial bidders away, companies must utilize short-term solutions at the expense of
the long-term research and development, training of employees and reinvestment in
new and existing plants necessary for future growth and competitiveness. Whether
this perception is in fact correct is not terribly important; this perception seems to
be driving much short-term corporate decision-making. The point for us is that
pension funds seem all too willing to further this perception by quickly, and per-
haps automatically, accepting immediate benefits and riskier higher yields to fuel
those immediate benefits.

J. Edward Fowler, Corporate Governance Issues in the Takeover Era, reprinted in OUR ECO-

38. A. A. Sommer, Jr., Introduction to JAMES F. HOGG, THE PREDATOR AND THE
PREDATEE (National Legal Center for Public Interest) at viii (1988), reprinted in OUR ECO-
next ninety days or, perhaps, the next swing in the stock market. Yet, by definition, pensions are long-term. Pension fund management therefore requires long-term strategies for true performance. It is an axiom proven countless times that a series of short-term tactics, no matter how brilliant, will never add up to a successful long-term strategy.

Pension funds don’t need to focus on quarter-to-quarter earnings: they are funding benefits that won’t become due for decades. Federal law requires pension funds to be funded over thirty or forty years. Because pension funds have long-term obligations, they are fully able to adopt a long-term investment strategy. Consequently, certain funds such as CREF have implemented a long-term investment strategy and describe themselves as “the quintessential long-term investors.”

We asked two questions to find out whether the survey respondents perceive pension funds as long term investors. The first question is normative: “Do you believe that pension fund investors should be long term investors?” The second question is “Do you believe that pension fund investors are long term investors?”

More respondents believe that pension funds should be long-term investors than believe that pension funds are long-term investors. Eighty-seven percent of public funds believe that pension funds should be long-term investors, but only 79% of public funds believe that pension funds are long-term investors. Seventy-four percent of investment managers believe that pension funds should be long-term investors, yet the number drops precipitously to 37% who believe that

41. Michael Jacobs, author of *Short-Term America* writes:
One would expect these institutional investors to be the ideal long-term shareholders. Pension funds and insurance companies collect money that does not need to be paid out for many years into the future. However, on average, these institutions hold stocks for much shorter periods than individuals do.

43. Pension Survey Q 48; Investment Manager Survey Q 36; Director Survey Q 35. The surveys’ questions sometimes were worded slightly differently for the directors, investment managers, and pension funds. For example, on this question we asked directors if institutional investors should be long term investors. We will not point out these minor differences in wording with respect to each question. Copies of the surveys are attached as appendices.
44. Pension Survey Q 49; Investment Manager Survey Q 37; Director Survey Q 36.
pension funds are long-term investors. All of the union funds surveyed think pension funds should be long-term investors and 92% believe that pension funds are long-term investors. The gap was even greater for corporate directors: 71% of directors believe institutional investors should be long-term investors and only 11% believe that institutional holders invest for the long-term.\textsuperscript{45}

\begin{center}
\textbf{CHART 1}
\end{center}

\begin{center}
\textbf{PERCENTAGES}
\end{center}

\begin{center}
\begin{tabular}{|c|c|c|c|}
\hline
\textbf{RESPONDENTS} & \textbf{Believe PF Should Be} & \textbf{Believe PF Are} \\
\hline
Public Funds & \\
Union Funds & \\
Inv Mgrs & \\
CorpDirs & \\
\hline
\end{tabular}
\end{center}

Do you believe that pension funds should be long-term investors?
Do you believe that pension funds are long-term investors?

\textsuperscript{45} One director noted that institutional investors cannot be long-term investors "given our current legal/finance system [and] statutes." Survey #100386.
One public fund described "the long term vs. short term question" as "silly": "everyone is a long term investor until things change." Another public fund noted that whether pension funds are long term investors "depends on their funding and cash flow needs."

On the other hand, directors, who perhaps are in a better position to observe institutional holders as they collectively invest, are less likely to stereotype institutional investors as "short-term" or "long-term." Many directors said that "some are; some aren’t." One director replied that it "varies with institutional group" and another clarified that pension funds generally are long term investors but mutual funds usually are short-termers. Another director proclaimed: "When push comes to shove . . . No! [Institutional investors are not long-term investors. But] they will argue to the contrary."

One investment manager complained that there is "too much emphasis on short-term (one-year) performance." Others were more ambivalent: "Some are [long-term investors], some aren’t" or "We are!" but "No, for a more general response."

We asked directors how corporations can encourage long-term investment by institutional investors. Many suggestions were made. Most directors said that the board needs to earn the long-term commitment of institutional investors by "build[ing] a record of long-term fine performance." Other directors stressed communication: Corporations need to demonstrate consistent superior results, pay good dividends and significant yield, have high ratio of earnings/dividends/ROIs growth, make it clear that they perform well and consistently over time, communicate well, continue to regularly fund dividends, and by performing well, the shareholders must try to maximize return, regardless of holding period. surveys #369.

46. Survey #511.
47. Survey #530.
48. Survey #100476; see also Surveys #100227, 100113, 100085, 100212, and 100232.
49. Survey #100477.
50. Survey #100399.
51. Survey #100225.
52. Survey #230. One investment manager said that pension funds are "long term investors in [the] equity market, but not necessarily long term) in a particular stock — investors must try to maximize return, regardless of holding period." Survey #369.
53. Survey #257.
54. Survey #222.
55. Survey #397.
56. Director Survey Q 37.
57. Survey #100314; see also Surveys #100467 ("perform better"), 100137 ("by producing consistent superior results, paying good dividends and significant yield"), 100158 ("performance"), 100397 ("high ratio of earnings/dividends/ROIs growth; i.e. earn it"), 100334 ("perform"), 100477 ("continue to regularly fund dividends"), 100311 ("by good long-term performance"), 100476 ("steady patterns of increases in profits and dividends"), 100261 ("performance"), 100223 ("perform well and consistently over time, communicate."), 100257 ("by performing well"), 100227 ("consistent and well understood performance"), 100232 ("through good performance"), 100270 ("steady and superior rate of return to shareholders"), and
lations can encourage long-term investment by institutional investors "by communicating [the] long-term strategies of the corporation." For example: "[There should be a] frequent, no holds barred communication program covering issues in which institutional investors have [a] particular interest." Another suggested: "Be very select in the institutional investors that you pay attention to — keep them well informed." (In other words, keep shareholder activists like CalPERS informed, so that the company is not placed on a "hit list" for shareholder proposals. As Dale Hanson, CalPERS’ CEO, says: “Hell hath no fury like an institutional investor scorned.”)

Some directors were negative. One director said, “I don’t think [corporations] . . . can” encourage long-term investment by institutional investors. An outside director said: "[You] can’t! Investors — all investors must make their own timing decisions. Some will be long term — some will not. Some will change their minds!" Another director simply stated that “[this is] out of their sphere of influence.” “[There’s] little that a corporation can do as long as their clients judge them on short-term performance. As one said to me recently, ‘It’s a cruel world out there.’ We’re judged not only quarterly but [on] month to month performance.”

SHOULD PENSION FUNDS TAKE THE QUICK TAKEOVER BUCK?

Because a long-term investment approach generally seems at odds with the decision to tender shares to make an easy dollar, we asked pension funds under what circumstances they would tender shares to make a quick buck.

100349 ("sustained earnings growth").

58. Survey #100363; see also Survey #100227 ("sound strategies, open communications, consistent and well understood performance"), 100223 ("communicate well"), and 100315 ("communicate plans for [the] future"). Other suggestions include "acting in [the] long-term interest [of shareholders]" (Survey #100382) and "taking the initiative to create a community of interest" (Survey #100399).

59. Survey #100036.

60. Survey #100212.

61. Interview with Dale Hanson, CEO of CalPERS, in New York, N.Y. (Dec. 6, 1991). Hanson describes CalPERS as "the ‘Good Housekeeping Seal of Approval’. If we speak out," they listen. Id.

62. Survey #100171; see also Survey #100502 ("Corporations should not [encourage long-term investment], but public policy could.")

63. Survey #100445a.

64. Survey #100386.

65. Survey #100225.
shares to a corporate raider. Of the public funds, 4% said that they would tender shares to a raider only if they were offered a substantial premium, 42% said they would tender only if the premium was adequate, 2% would not tender under any circumstances, and 51% would not tender if it was in the long-term economic best interest of the plan participants not to tender. Several funds said that they left the decision to tender to the investment manager.

The loyalty of union funds to incumbent directors was surprising. Union funds responded differently from public pension funds. Not one of the union funds would tender the shares simply because they were offered a substantial premium; 42% said that they would tender only if the premium was adequate; 8% would not tender under any circumstances, and 42% would not tender if tendering was not in the long-term economic best interests of the plan participants. One union fund said that the decision needs to be made on a case-by-case basis, and another union fund said the trustees delegate these types of issues to their money manager.

We asked investment managers a similar question. Nine percent of investment managers said they would tender shares only if offered a substantial premium, 34% said they would only tender if the premium was adequate, and 49% said they would not accept the premium unless it was in the long-term interests of the plan participants to tender.

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66. Pension Survey Q 50.
67. Surveys #586, 540, and 559. The answers for this question (and other questions) do not always total 100% because some respondents answered more than once and because we did not report the number of respondents who answered “Other.” Total responses can be found in Chart 2.
68. Survey #479.
69. Survey #436.
70. Investment Manager Survey Q 38.
71. One investment manager clarified that “[t]he premium is only one of the issues we review prior to deciding [on] a tender.” Survey #248. Another investment manager clarified, “We don’t advise; we act because we have delegated responsibilities.” Survey #351. Another said, “Each case is unique.” Survey #397.
CHART 2

PERCENTAGES

RESPONDENTS

PUBLIC FUNDS  UNION FUNDS  INVESTMENT MANAGERS

Yes, SP Yes, AP No No, LTBI Other

SP = Substantial Premium
AP = Adequate Premium
LTBI = Long Term Best Interests of Participants

Would you tender your shares to an acquirer?
The willingness of pension funds and investment managers to accept the fast takeover buck is surprising, given the fact that most pension funds don’t stand to net a profit from takeovers:

While a target’s shares go up in a takeover, the acquirer’s shares go down, and institutional investors, who own both companies’ common stock and usually their bonds as well, are left with no net profit, even in the short term. The only way for them to enhance value is through effective involvement in the affairs of the portfolio companies they hold in virtual perpetuity.72

Apparently most pension funds haven’t caught on to this concept as they still rush to tender shares for a fast buck:

Antipathy toward raiders certainly does not come from investors. Stockholders of target companies almost universally rush to accept the premiums paid in takeovers. Some institutional investors favor takeovers so much that they have banded together to pressure managements not to take certain actions that might stop or retard the process. And individual investors have begun to organize, under the leadership of T. Boone Pickens, to try to ensure that the rules aren’t changed to make takeovers harder to initiate.73

Possible reasons for this apparent contradiction will be examined later.

DOES INDEXING AFFECT AN INVESTOR’S ABILITY TO INFLUENCE CORPORATE GOVERNANCE?

Indexing has become a popular investment strategy.74 We found that 81% of public funds invest in index funds while only 38% of union funds index. Investment managers are less likely to invest in index funds: 15% of investment managers index.

According to the Columbia Institutional Investor Project, in 1990,


74. See generally Lowenstein, supra note 34. “[I]ndexing is based on an ‘if you don’t beat ‘em, join ‘em’ mentality. Index funds effectively buy one of everything, guaranteeing that they will do no worse and no better than average.” JACOBS, supra note 41, at 54.

75. Pension Survey Q 42; Investment Manager Survey Q 32.
15% of the assets of the largest 200 pension funds were invested in equity index funds. Public funds are more heavily indexed than union funds. On average, public funds index 41% of their stock portfolio while union funds index only 24% of their stock portfolio. Of the investment managers who index, 61% of the assets they manage are indexed.

Whether index funds can be good corporate owners has become a hotly debated topic. An investment manager with over one hundred pension fund clients told us: As an indexer, "[y]ou're not 'owning' a specific company for a reason. You're merely owning a piece of the company 'by default.' Why would an owner of an index fund have an interest?" A director put it more bluntly: "No brainers = no value." The director of proxy voting services at Wells Fargo aptly describes the problem: "[S]ince we invest by formula, we vote by formula . . . . [Voting proxies] is a production job."

Where a pension fund invests in an index fund with hundreds of corporations, it is impossible for the fund to effectively monitor every corporation. CalPERS, for example, holds stock of more than 2,500 companies. DeWitt Bowman, the fund's chief investment officer, hopes to substantially reduce the fund's stock holdings to 700 or 800 companies. Bowman explains that this reduction would permit CalPERS "to do much more individual security analysis on the com-

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77. Lowenstein, supra note 34, at 13.
78. Survey #326.
79. Survey #100225.
80. Lowenstein, supra note 34, at 15.
82. Id.
panies themselves." 83 Dale Hanson of CalPERS says, "I hate indexing with a passion... I want to get rid of it." 84

Louis Lowenstein describes another shortcoming of indexing:

Indexing... introduces a new reason for apathy. CalPERS, for example owns about $250 million of GM stock, a tidy sum and one worth protecting. But even large improvements at any one company will have only trivial consequences in a portfolio of over 1,000 companies. It's like hitting only singles, with no one on base... ever. 85

Elmer Johnson, former inside counsel for GM, describes three additional problems of indexing:

First, it is not in the interest of any one holder of a trivial portion (however large the dollar value) of a public company to spend a lot of time and energy monitoring management when most of the benefits will accrue to other people. Second, we have created a culture that judges money managers on short-term performance — how well they perform quarter by quarter against various indexes. Third, professional investors are playing with other people's money, so there is little incentive to make long-term, company-specific investment decisions. 86

Most of the public funds we surveyed that index believe that indexing does not affect the fund's ability to influence corporate governance. 87 Twenty-seven percent of public funds believe that indexing affects a fund's ability to influence corporate governance, 59% think indexing does not affect a fund's ability to influence corporate governance, and 14% are unsure. Surprisingly, one public fund said that indexing "makes corporate governance more important" 88 "because it encourages us to be more proactive to defend the value of our investment." 89 Not one of the union funds believe that indexing affects the fund's ability to influence corporate governance, 60% believe that indexing has no effect, and 40% are unsure. Investment

83. Id.
84. Interview with Dale Hanson, CEO of CalPERS, in New York, N.Y. (Dec. 6, 1991).
85. Lowenstein, supra note 34, at 16.
87. Pension Survey Q 45.
88. Survey #500.
89. Survey #500a.
managers were more ambivalent. Forty-one percent of investment managers believe that indexing affects an investor's ability to influence corporate governance, 27% disagree, and 32% are not sure.  

CHART 3

PERCENTAGES

- Yes
- No
- Not Sure

RESPONDENTS

- PUBLIC FUNDS
- UNION FUNDS
- INVESTMENT MANAGERS

Does indexing affect an investor's ability to influence corporate governance?

90. Investment Manager Survey Q 33. One investment manager remarked that indexing "negatively" affects an investor's ability to influence corporate governance. Survey #295. Another said that it "[d]epends on [the] size of [the] fund and the clout it exercises." Survey #385.
A public fund described one of the many problems with indexing: "Most directors do not have a large enough interest in the companies they oversee to really care about the company's performance."91 The same public fund noted that the legal structure of indexing creates additional obstacles: "Index fund advisors cannot vote in accordance with clients' [directions] and guidelines. All investors have an indivisible share of the underlying securities. Shares cannot be prorated by client ownership and then voted in accordance with client guidelines. All shares are voted according to the money manager's proxy voting guidelines."92 Another public fund disagreed: "Our ability to influence corporate governance is a function of owning the shares, meeting with management, and expecting responsiveness to concerns. The 'form' of ownership, i.e. active investment decisions vs. passive index, has not changed our focus."93

Finally, one investment manager clarified that:

Index fund managers lack input and knowledge to assess the issues of the corporation. Much of the current dialogue on corporate governance today is misguided in that it is geared toward index fund managers. Active managers, such as ourselves, have long-standing records of trying to improve our clients' wealth through all legal means at our disposal.94

We asked directors if they regard indexers differently from investors who actively select their stock for investment.95 Directors were divided on this question: exactly fifty percent of corporate directors regard indexers differently than active investment managers and the other 50% do not regard indexers differently. In response to this question, one director wrote: "Who wants to 'go to bed' with a computer or an index?"96 Another director noted that "index investors are not 'natural' buyers of [a] corporation's stock and are not necessarily aware of the issues and prospects of the corporation."97

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91. Survey #588.
92. Id.
93. Survey #509. Another fund commented: "We are activist shareholders through the voting and [shareholder] proponent process." Survey #502.
94. Survey #222.
95. Director Survey Q 34.
96. Survey #100225.
97. Survey #100036. One director complained that indexers are indifferent to "corporate business cycles." Survey #100235.
IS THERE A CORRELATION BETWEEN TURNOVER RATES AND 
PERCENTAGE OF INSTITUTIONAL OWNERSHIP?

The average institutional investor holds stock for approximately two years. 98 Don Clark, CEO of Household International Inc., says: “I don’t think I’ve had any institutional investor talk about where we are going to be five years from now . . . . We want to meet with them, want to hear their view[s], but the views we end up hearing are all short-term.” 89

The Council of Institutional Investors recommends that investors take a long-term perspective. 100 The average turnover rate of institutional investors who are council members is less than forty percent and holding periods exceed seven years (“longer than the average executive holds a particular job”). 101

We found that the estimated average annual turnover rate for stockholdings of all pension funds is 35%. 102 Public pension funds have an average turnover rate of 33%, union funds have an average turnover rate of 45%, and the mean turnover rate for investment managers is 54%. 103

The turnover rate for individual corporations varies widely. For


Pension fund turnover rates have steadily increased. Turnover rates rose from 39.5% in 1980 to 61.3% in 1986:

<table>
<thead>
<tr>
<th>Year</th>
<th>Turnover Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>39.5%</td>
</tr>
<tr>
<td>1981</td>
<td>51.9%</td>
</tr>
<tr>
<td>1982</td>
<td>56.4%</td>
</tr>
<tr>
<td>1983</td>
<td>60.2%</td>
</tr>
<tr>
<td>1984</td>
<td>57.1%</td>
</tr>
<tr>
<td>1985</td>
<td>63.2%</td>
</tr>
<tr>
<td>1986</td>
<td>61.3%</td>
</tr>
</tbody>
</table>

JOINT COMM. ON TAXATION, TAX TREATMENT OF SHORT-TERM TRADING, at 14 (1990) [JCS-8-90].

99. Salwen & Lublin, supra note 98.


101. Id.

102. Pension Survey Q 5.

103. For additional information on turnover rates, see COLUMBIA INSTITUTIONAL INVESTOR PROJECT, REPORT TO THE BOARD OF ADVISORS — PENSION FUND TURNOVER AND TRADING PATTERNS: A PILOT STUDY (1991); Memorandum from Ira M. Millstein and Carolyn Kay Brancato to Board of Advisors, Columbia Institutional Investor Project regarding Interpretation of the Results of the Pilot Study on Pension Fund Turnover (Jan. 11, 1990).
example, of the Fortune 250, Quantum Chemical has the highest turnover rate at 529.3% and Fina has the lowest rate at 2%.\textsuperscript{104} We examined corporate turnover rates to determine if there is a correlation between a corporation’s turnover rate, the percentage of stock held by institutional investors, and the number of institutional holders. No correlation is obvious. Our tabulation is attached as an appendix.

**DO THE INTERESTS OF INSTITUTIONAL INVESTORS DIFFER FROM DIRECTORS’ INTERESTS?**

We asked whether the interests of institutional investors differ from the interests of the board of directors.\textsuperscript{105} The respondents who believe that interests differ significantly include 35% of the public funds, 46% of the union funds, 30% of investment managers, and 21% of corporate directors. Some respondents believe that the interests of institutional investors differ only slightly from the interests of directors: 39% of public funds, 38% of union funds, 54% of investment managers, and 35% of corporate directors. The remainder believe that there is no difference in interests: 26% of public funds, 15% of union funds, 16% of investment managers, and 43% of corporate directors. Interestingly, 78% of the directors surveyed (who are perhaps in the best position to observe the conduct of funds as well as directors) believe that the interests of directors and institutional investors differ slightly or not at all.


\textsuperscript{105} Director Survey Q 30; Investment Manager Survey Q 34; Pension Survey Q 46.
Do the interests of institutional investors differ from the interests of the board of directors?
One union fund responded that institutional investors focus on stock price and performance, whereas "directors may have other priorities."

An equal number of pension trustees said that interests should not differ. One public fund noted that "in theory, there should be no difference. However, in practice some directors seem to be more interested in pleasing [the] CEO than in representing shareholders." The same public fund also noted that although "directors are representatives of the owners (shareholders), their duty is to the corporation." The responses of corporate directors varied. Many directors believe that institutional investors have a short-term perspective while directors take a long-term view: "Institutions can vote with their feet. Directors are locked in." "Institutional views [are] often short-term rather than balanced or long term." Another director was emphatic: "They should not differ! I think institutional investors, like other shareholders, can tend to have a shorter time horizon for performance than desirable — and not weigh long term strategic goalmaking as heavily in the performance equation as optimal." Another director refused to stereotype, saying "They could differ; they don't automatically differ." Perhaps the following comment most accurately reflects the view of a majority of the directors who responded to the survey: "I don't differentiate between the kinds of investors. One shareholder should have the same rights as any other."

Investment managers responded to the same question. One

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106. Survey #479.
107. Surveys #529 and 597.
108. Surveys #503 and 589. Survey #502 responded that "they should not differ significantly, they should look to the long-term growth of the company."
109. Survey #500. Survey #511 noted that "most directors are appointed to provide for management and not the owners."
110. Survey #500.
111. Survey #100397.
112. Survey #100053; see also Survey #100171 (in which one director observed: "I think they played a substantial role in the 'crazy 80s' [characterized by heavy trading and mergers and acquisition activity] to the detriment of many constituencies").
113. Survey #100445a; see also Survey #100113 (indicating that institutional investors "often serve the short-term interests of shareholders").
114. Survey #100257.
115. Survey #100232.
116. Investment Manager Survey Q 34.
answered that the interests of institutional investors should not differ from the interests of the board:

[The] board of directors is the shareholders' representative — *but* investors can have different horizons than directors — some invest for short-term while directors can and should look at longer term goals for the company. That means they may make decisions [that] affect stock adversely short-term, [but] that are in the best interests of the company, long-term.\(^{117}\)

Another investment manager likened the relationship “to the relationship between taxpayers and politicians. Theoretically, the goal is the same but the agenda sometimes differs.”\(^ {118}\) Another said: “Directors frequently have their own agendas”,\(^ {119}\) “[I]t depends on who [the] representative is and what [the] pension fund’s agenda is.”\(^ {120}\) “In many cases, the board is too complacent with existing management.”\(^ {121}\)

Many respondents think that corporations would perform better if pension fund representatives serve on the board of directors: 28% of public funds, 23% of union funds, 18% of investment managers, but only 7% of corporate directors predicted better corporate performance.\(^ {122}\) Several directors commented on this question. One director said, “I believe that directors should not represent specific constituencies.”\(^ {123}\) Another said, “No question. [They would perform worse.] Institutional investors are *not* investors. They are money managers/traders who do not have interests that are aligned to long term shareholders.”\(^ {124}\) Another commented: “[There is] no difference if they are well chosen.”\(^ {125}\) One investment manager said that “one representative isn’t going to make a huge difference.”\(^ {126}\)

\(^{117}\) Survey #369; *see also* Survey #100386 (indicating that “institutional investors are not investor interests, they are money manager interests. Director interests are shareholder interests”); *see also* Survey #284 (in which an investment manager stated that “for the most part, [the interests of pension fund investors] are in line” with the interests of corporate directors); *see also* Survey #364 (stating that interests “should not differ”).

\(^{118}\) Survey #326.

\(^{119}\) Survey #230.

\(^{120}\) Survey #385.

\(^{121}\) Survey #259.

\(^{122}\) Director Survey Q 33; Pension Survey Q 47; Investment Manager Survey Q 35.

\(^{123}\) Survey #100036.

\(^{124}\) Survey #100386.

\(^{125}\) Survey #100133.

\(^{126}\) Survey #284.
Many directors refused to regard institutional investors differently than other investors. When asked if corporate performance would improve if institutional investors were represented on the board, one director replied, "I don't believe they bring any special skills not obtainable [otherwise] with occasional meetings." Another director said: "I believe institutional investors are gate-keepers and traders. Very few are good business [persons]. Very few have money on the line. Our president has over $200 million on the line! He is interested in value creation." Another director responded, "[It] depends on the agenda of the institutional investor. All directors should have the interests of all shareholders in mind all of the time. Institutional investors are chosen for their stock picking talent, not management talent." Another director agreed: "[it] is not possible to separate institutional investors [who are] "good" from "bad", "long term" vs. "opportunist."

A lesser number of respondents surveyed believe performance would suffer if pension fund representatives served on corporate boards: 7% of public funds, none of the union funds, 15% of investment managers, and 15% of directors. Seventeen percent of public funds thought performance would not change, as compared to 31% of the union funds, 21% of investment managers, and 67% of corporate directors who predicted no change.

127. Survey #100397.
128. Survey #100386.
129. Survey #100225.
130. Survey #100171.
131. Many respondents were unsure of the effect pension fund representation would have on corporate performance: 48% of public funds, 46% of union funds, 46% of investment managers, and 18% of corporate directors.
Do you believe that corporations would perform better or worse if a representative of pension fund investors served on the board of directors?
We asked directors whether, during the nomination process, they consider the relationship between a director nominee and institutional investors. Seventeen percent of corporate directors stated that their board or nominating committee considers whether a prospective nominee has ties to institutional investors when nominating directors. Sixty-one percent reported that relations with institutional investors are not considered when nominating directors, 5% said "sometimes", and 17% were unsure. Although one director said that the board has asked institutional investors for nominations, not one of the corporate directors reported that directors had been appointed at their corporation at the request of institutional investors. Directors apparently sometimes consider the nominations of institutional directors, but none of the directors who responded serves on a board where an institutional representative was actually elected.

Unlike directors, the pension funds and investment managers we surveyed had direct experience with electing institutional representatives to serve on corporate boards. Nine percent of public pension funds and 15% of union funds have representatives who serve on at least one corporate board of directors. Thirty-six percent of investment managers reported that they have representatives who serve on corporate boards. One investment manager whose firm has over one thousand pension fund clients said that his firm serves on "hundreds" of boards.

132. Director Survey Q 29.
133. Survey #100399.
134. Director Survey Q 31; Survey #100399; see also interview with Dale Hanson, CEO of CalPERS, in New York, N.Y. (Dec. 6, 1991) (Hanson, CEO of CalPERS, said that nine corporations have asked CalPERS for names of potential directors).
135. Pension Survey Q 38
136. Investment Manager Survey Q 27.
137. Survey #316; see also Survey #263 (in which one investment manager stated that his firm serves on 8 boards); see also Survey #295 (indicating that another management firm sits on 4 boards).
Corporate Directors: When nominating directors, does the board or nominating committee consider whether the prospective nominee has ties to institutional investors?
According to a 1989 director survey by Egon Zehnder International, although one-third of directors agree that the interests of shareholders may not be effectively represented on corporate boards, only twelve percent of corporate directors believe that institutional investors should be represented on corporate boards.\(^\text{138}\) Roughly one-third of directors disagree with the statement that “while pension fund managers may wield a great deal of power because of the sheer size of their funds, perhaps they [are] . . . not sufficiently knowledgeable about the companies they invest in to serve as directors.”\(^\text{139}\)

The Egon Zehnder survey also asked corporate directors to describe the ideal composition of a board of directors. Directors said that outside directors should be given more than two-thirds of the seats; inside directors should hold less than a quarter of the seats, and institutional investors should have less than one-tenth of the seats.\(^\text{140}\)

Thirty-three percent of the directors who responded to our survey said that their board has a policy with respect to the ratio of inside to outside directors. The policies vary. Approximately one-third of corporate boards have a policy of a majority of outside directors.\(^\text{141}\) A few directors reported that they only have one or two inside directors.\(^\text{142}\) According to a recent survey by SpencerStuart, the “median ratio of outsiders to insiders currently is 3 to 1.”\(^\text{143}\) SpencerStuart also reported that “[m]ore than a fourth of the Boards now have an outside Director ratio of 5 to 1 or greater.”\(^\text{144}\) We found that, on average, most corporations maintain a ratio of outside directors to inside directors of 3 to 1.\(^\text{145}\) Eighty-five percent of public funds and 38% of union funds favor a majority of independent directors.\(^\text{146}\) One director favored a ratio of one outsider to five insiders.\(^\text{147}\)


\(^{139}\) *Id.* The survey asked whether respondents agreed with the statement that “Pension fund managers do not really know enough about the companies they invest in to serve as directors.” *Id.* 29% strongly agreed, 31% agreed somewhat, 24% disagreed somewhat, 5% strongly disagreed and 11% were not sure. *Id.* at 3.

\(^{140}\) *Id.* at 2.

\(^{141}\) Surveys #100158, 100085, 100113, 100311, 100223 and 100257.

\(^{142}\) Surveys #100397 and 100232.


\(^{144}\) *Id.*

\(^{145}\) Director Survey Q 22, 23 and 24.

\(^{146}\) Pension Survey Q 25.

\(^{147}\) Survey #100232.
WOULD SHAREHOLDER ADVISORY COMMITTEES BE HELPFUL?

A 1990 survey by Institutional Investor reported that 45% of plan officials believe "that there should be shareholder advisory committees at corporations, or at least at those companies that are troubled."148 Only one of the corporations we surveyed has a shareholder advisory committee.149 According to the Investor Responsibility Research Corporation, very few corporations have established a formal shareholder advisory committee.150

Most corporate directors we surveyed (79%) believe that it is unlikely that a shareholder advisory committee will be established at their corporation within the next year.151 Nine percent said it is possible that a shareholder advisory committee will be established.

Six percent of public pension funds surveyed had representatives serving on a shareholder advisory committee.152 None of the union funds had representatives on shareholder advisory committees,153 but 33% of investment managers serve on shareholder advisory committees.154

DOES ANYONE KNOW WHAT THE AVON LETTER MEANS?

In the Avon Letter, the Department of Labor indicated that pen-

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149. Director Survey Q 5.
151. Director Survey Q 8.
152. Pension Survey Q 37.
153. Id.
154. Investment Manager Survey Q 26. We are unable to explain why this response rate is so high, given the very small number of advisory committees at corporations. Perhaps investment managers included participation in very informal committees, or perhaps the number of advisory committees is underreported.
sion fund trustees must vote proxies on issues that have an economic impact on plan-held stock. The Department gave two examples of proxy issues that have an economic impact on plan-held stock: reincorporation and poison pills. In order to determine whether those affected by the Avon Letter understand on what types of issues they are required to vote, we listed 28 common proxy issues and asked which of these issues usually have an impact on the economic value of stock. The answers varied tremendously. Obviously, not all of the respondents understood the rationale behind the question, as one director refused to answer saying it was a "dumb question."

Most respondents believe that a contested election of directors has an impact on stock value: directors (48%), investment managers (73%), public funds (71%) and union funds (58%). There is a similar consensus that an uncontested election does not have an impact on stock value. A majority of respondents believe that recapitalization has an economic impact on stock prices: directors (59%), investment managers (76%), public funds (95%) and union funds (92%). Interestingly, these were the only two categories (contested elections and recapitalization) which a majority of all respondents believe have an economic impact on plan-held stock. Even the two examples provided by the Department of Labor in the Avon Letter (reincorporation and poison pills) did not receive a definitive majority vote from all four groups of respondents. Twenty-six percent of directors, 47% of investment managers, 63% of public funds, and 42% of union funds believe that reincorporation usually affects stock value. Respondents also disagreed on whether a vote to redeem a poison pill or put a poison pill to shareholder vote has an impact on stock price: 36% of directors believe it affects stock value, as do 77% of investment managers, 86% of public funds, and 75% of union funds.

Public funds are more likely than any other group to believe that proxy issues affect stock value. A majority of public funds think that the following issues affect stock value: recapitalization (95%), golden parachutes (86%), redemption of or vote on poison pills (86%), provi-

156. Id.
157. Director Survey Q 16; Pension Survey Q 29; Investment Manager Survey Q 28.
158. Survey #100386.
159. See supra notes 159-60 and accompanying text for statistics.
160. Recapitalization was described as an increase in authorized common stock, blank check preferred stock, or in corporate debt.
sions which opt out of Delaware law (81%), approval of executive stock option plans (81%), supermajority voting requirements (79%), independent directors (69%), contested elections of directors (71%), dual class voting (72%), classified boards (72%), cumulative voting (71%), preemptive rights (67%), targeted share placement (65%), restrictions on executive compensation (65%), shareholders' right to call special meetings (63%), reincorporation (63%), independent compensation committees (56%), disclosure of executive compensation (56%), and confidential voting (50%). Directors took the opposite approach and said that only one category, recapitalization, affects stock price.

Of all of the issues we surveyed, there was only one category that no groups believe had an impact on stock prices. A majority of respondents believe that an uncontested election of directors does not have an impact on the economic value of plan-held stock: directors (86%), investment managers (84%), public funds (58%), and union funds (58%). The union funds surveyed were more uncertain about the effect of proxy issues on stock prices than any other group. Fifty percent of union funds surveyed did not know if dual class voting affects stock value. Forty-two percent of union funds did not know if the following issues have an economic impact on stock prices: reincorporation, board size, supermajority voting requirements, classified boards, shareholder advisory committees, targeted share placement, and independent compensation committees. Thirty-three percent of the union funds did not know if uncontested election of directors, independent directors, cumulative voting, minimum director stock ownership, preemptive rights, provisions which opt out of Delaware takeover laws, and independent nominating committees affect stock value. But unions were not alone in this regard. More than 25% of investment managers did not know if the following issues affect stock price: confidential voting, classified boards, shareholder advisory committees, preemptive rights, director compensation, targeted share placement, independent compensation committee, independent nominating committees, and provisions which limit director terms. More than 20% of directors did not know if contested election of directors, supermajority voting requirements, confidential voting preemptive rights, reincorporation, targeted share placement, and provisions which limit the terms of directors affect stock prices.
CHART 7A
CONTESTED ELECTION OF DIRECTORS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE

CHART 7B
UNCONTESTED ELECTION OF DIRECTORS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE
CHART 7C
PROVISIONS LIMITING DIRECTOR LIABILITY

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT
NO IMPACT
NOT SURE

CHART 7D
APPROVAL OF EXEC. STOCK OPTION PLANS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT
NO IMPACT
NOT SURE
**CHART 7E**
**RECAPITALIZATION**

- PUBLIC FUNDS
- UNION FUNDS
- INVESTMENT MANAGERS
- CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

- HAS IMPACT
- NO IMPACT
- NOT SURE

**CHART 7F**
**REINCORPORATION**

- PUBLIC FUNDS
- UNION FUNDS
- INVESTMENT MANAGERS
- CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

- HAS IMPACT
- NO IMPACT
- NOT SURE
CHART 7G
REDEMPTION OF OR VOTE ON POISON PILLS

CHART 7H
BOARD SIZE
CHART 7I
INDEPENDENT DIRECTORS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

\[\text{HAS IMPACT} \quad \text{NO IMPACT} \quad \text{NOT SURE}\]

CHART 7J
SUPERMAJORITY VOTING REQUIREMENTS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

\[\text{HAS IMPACT} \quad \text{NO IMPACT} \quad \text{NOT SURE}\]
CHART 7K
DUAL-CLASS VOTING

- PUBLIC FUNDS
- UNION FUNDS
- INVESTMENT MANAGERS
- CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

- HAS IMPACT
- NO IMPACT
- NOT SURE

CHART 7L
CONFIDENTIAL VOTING

- PUBLIC FUNDS
- UNION FUNDS
- INVESTMENT MANAGERS
- CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

- HAS IMPACT
- NO IMPACT
- NOT SURE
CHART 7M
INDEPENDENT TABULATION OF PROXIES

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

IMPACT  NO IMPACT  NOT SURE

CHART 7N
CLASSIFIED BOARDS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT  NO IMPACT  NOT SURE
CHART 7-0
CUMULATIVE VOTING

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE

CHART 7P
SHAREHOLDERS' RIGHT TO CALL SP. MEETINGS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE
CHART 7Q
GOLDEN PARACHUTE

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE

CHART 7R
SHAREHOLDER ADVISORY COMMITTEES

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE
CHART 7S
MINIMUM DIRECTOR STOCK OWNERSHIP

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE

CHART 7T
OPT OUT OF DELAWARE PROVISIONS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE
CHART 7U
PREEMPTIVE RIGHTS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE

CHART 7V
DISCLOSURE OF EXECUTIVE COMPENSATION

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

HAS IMPACT

NO IMPACT

NOT SURE
CHART 7W
RESTRICTIONS ON EXECUTIVE COMPENSATION

CHART 7X
DIRECTOR COMPENSATION
CHART 7AA
INDEPENDENT NOMINATING COMMITTEE

PUBLIC FUNDS
- HAS IMPACT
- NO IMPACT
- NOT SURE

UNION FUNDS
- HAS IMPACT
- NO IMPACT
- NOT SURE

INVESTMENT MANAGERS
- HAS IMPACT
- NO IMPACT
- NOT SURE

CORPORATE DIRECTORS
- HAS IMPACT
- NO IMPACT
- NOT SURE

CHART 7BB
PROVISIONS WHICH LIM. TERMS OF DIRECTORS

PUBLIC FUNDS
- HAS IMPACT
- NO IMPACT
- NOT SURE

UNION FUNDS
- HAS IMPACT
- NO IMPACT
- NOT SURE

INVESTMENT MANAGERS
- HAS IMPACT
- NO IMPACT
- NOT SURE

CORPORATE DIRECTORS
- HAS IMPACT
- NO IMPACT
- NOT SURE

http://scholarlycommons.law.hofstra.edu/hlelj/vol10/iss1/2
This data suggests that no one (perhaps not even the Department of Labor) knows exactly what the *Avon Letter* means. This is especially discouraging since the Department of Labor specifically indicated in the *Avon Letter* that reincorporation and poison pills affect stock value. The Chief Economist for the Securities and Exchange Commission has also determined that poison pills, supermajority voting requirements, authorization of blank-check preferred stock, dual class voting, greenmail, and classified boards affect stock value. Other studies have concluded that the number of independent directors at a corporation may affect stock value. We are left to guess if other proxy issues affect stock prices. Some, such as golden parachutes, are seen as clearly affecting stock value by everyone except the surveyed directors. Others are impossible to guess. If pension funds and their advisors are to comply


162. Office of the Chief Economist, Securities and Exchange Commission, *Shark Repellents and Stock Prices: The Effects of Antitakeover Amendments Since 1980* (July 24, 1985), reprinted in *Corporate Takeovers (Part 2),* id. at 604 [hereinafter *Shark Repellents and Stock Prices*] (stating that the Chief Economist concluded that after the adoption of a supermajority provision, stock prices typically decline by 1.25%). *Id.* at 661 (Table 4).

163. *Id.* at 661 (Table 4) (issuance of blank-check preferred stock results in net-of-market return of negative 2.84%).

164. *Id.* at 661 (Table 4) (issuance of blank-check preferred stock results in net-of-market return of negative 2.84%).

165. *Id.* at 661 (Table 4) (issuance of blank-check preferred stock results in net-of-market return of negative 2.84%).

166. *Id.* at 661 (Table 4) (issuance of blank-check preferred stock results in net-of-market return of negative 2.84%).

167. Michael S. Weisbach, *Outside Directors and CEO Turnover,* 20 J. FIN. ECON. 431, 440-442 (1988) (A corporate board with at least 60% independent directors is more likely to fire a poorly performing CEO; stock value is affected positively when the CEO resigns); Stuart Rosenstein & Jeffrey G. Wyatt, *Outside Directors, Board Independence, and Shareholder Wealth,* 26 J. FIN. ECON. 175 (1990) (noting that stock prices increase when additional outside directors are appointed); see also discussion of these and other studies in Bernard S. Black, *The Value of Institutional Investors Monitoring: The Empirical Evidence,* 39 UCLA L. REV. 895, 900-901 (1992).

168. Only 26% of directors believe that golden parachutes affect stock prices. Director Survey Q 19.
with the Avon Letter, more explicit direction is obviously needed.

Even more revealing was the response to the question "Do you believe that ERISA requires trustees to vote proxies?" Thirty-one percent of union and 13% of public funds replied "no" although ERISA, as clearly interpreted by the Department of Labor, requires pension funds to vote proxies in accordance with the Avon Letter. Perhaps we should have asked whether trustees, or their delegates, must vote proxies; however, it does not appear that union trustees were misled by the question. Many public funds noted that ERISA does not govern the conduct of public funds. Although public funds are not bound by the Avon Letter, it is "widely accepted as a standard by public funds."

The Department of Labor has stated that a trustee who abstains on a proxy issue which has an economic impact on plan-held stock will violate ERISA's prudence rule. We asked whether the trustees or their fiduciaries ever abstain on proxy issues. Two percent of public pension funds, 8% of union funds, and 3% of investment managers frequently abstain. Some abstain with respect to controversial or social issues: 18% of public funds, none of union funds, and 6% of investment managers. Others abstain with respect to de minimis issues: 4% of public funds, none of union funds and none of investment managers. One investment manager abstains "when withholding [proxies] would prevent management from obtaining a quorum." Another manager only abstains "for lack of sufficient information."

169. Pension Survey Q 44.
171. For example, one union trustee marked "yes" and commented that it is "OK to delegate to [an] investment manager." Survey #496. Three funds noted this distinction and their votes were counted as "Yes, ERISA does require trustees to vote."
172. Surveys # 586 and 502.
174. A fiduciary who "fails to vote, or casts a vote without considering the impact of the question, or votes blindly with management," will violate the prudence rule. David G. Ball, Where the Government Stands on Proxy Voting, 6 FIN. EXECUTIVE INST., No. 4, at 31 (July 1990).
175. Pension Survey Q 23; Investment Manager Survey Q 45.
176. Fifty-four percent of union funds said they did not know whether the trustees ever abstain on proxy issues.
177. Survey #248.
178. Survey #382.
Table 1
Do the trustees (or their fiduciaries) ever abstain on proxy issues?
Check all applicable.

<table>
<thead>
<tr>
<th></th>
<th>Public Funds</th>
<th>Union Funds</th>
<th>Investment Managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Don’t Know</td>
<td>7%</td>
<td>54%</td>
<td>0%</td>
</tr>
<tr>
<td>Frequently</td>
<td>2%</td>
<td>8%</td>
<td>3%</td>
</tr>
<tr>
<td>Occasionally</td>
<td>20%</td>
<td>0%</td>
<td>12%</td>
</tr>
<tr>
<td>Rarely</td>
<td>27%</td>
<td>15%</td>
<td>41%</td>
</tr>
<tr>
<td>Yes, with respect to controversial or social issues</td>
<td>18%</td>
<td>0%</td>
<td>6%</td>
</tr>
<tr>
<td>Yes, with respect to de minimis issues</td>
<td>4%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Never</td>
<td>18%</td>
<td>23%</td>
<td>35%</td>
</tr>
<tr>
<td>Other</td>
<td>7%</td>
<td>0%</td>
<td>3%</td>
</tr>
</tbody>
</table>

ARE PENSION FUNDS SPONSORING MORE SHAREHOLDER PROPOSALS?

We asked whether institutional investors should have the right to sponsor shareholder proposals in an effort to influence corporate governance.179 Eighty-five percent of public funds replied affirmatively, 69% of unions agreed, and 76% of corporate directors replied in the affirmative. This is surprisingly low, given that institutional investors already have the right to sponsor shareholder proposals.

179. Director Survey Q 10; Pension Survey Q 52. We did not ask investment managers this question.
Do you believe that institutional investors should have the right to sponsor shareholder proposals in an effort to influence corporate governance?
Of the corporate directors who responded to our survey, 40% reported that institutional investors had sponsored a shareholder resolution at least once in the last five years. Most directors reported that institutional investors have frequently sponsored shareholder proposals at their corporation.

CHART 9

Number of corporate directors who report that institutional investors have sponsored a shareholder resolution within the last five years.

180. Director Survey Q 11. Fifty-two percent of directors said that no institutional investors have sponsored a shareholder proposal within the last five years and 7% are not sure.

181. Director Survey Q 12.
We asked pension funds and investment managers whether they have ever sponsored a shareholder proposal.\textsuperscript{182} Twenty-one percent of public funds have sponsored a proposal. Not one of the union funds has sponsored a shareholder proposal.

The Investor Responsibility Research Corporation has reported a dramatic increase in shareholder proposals on corporate governance issues over the last five years.\textsuperscript{183} In the 1992 proxy season, the number of shareholder proposals decreased, in part, because of CalPERS' experiment in “quiet diplomacy.”\textsuperscript{184} The strategy has been unproductive and CalPERS has retreated from its position.\textsuperscript{185} In light of CalPERS' experience, we asked if directors would be willing to meet with investors to negotiate settlements.\textsuperscript{186} Fifty-two percent of corporate directors expressed a willingness to meet with institutional investors who sponsor shareholder proposals to negotiate a settlement. Five percent will not meet to negotiate,\textsuperscript{187} and 42% said it depends on the proposal and the proponent.

\textsuperscript{182} Pension Survey Q 39.
\textsuperscript{184} Id. The purpose of “quiet diplomacy” is to approach corporate directors quietly, rather than bombarding them with shareholder proposals. As Dale Hanson put it: “You can get more with honey than with vinegar . . . We're into our kinder, gentler phase.” Interview with Dale Hanson, CEO of CalPERS, in New York, N.Y. (Dec. 6, 1991); see also \textit{Proposals Considered by Shareholders Down 45 Percent in 1992, Statistics Show}, 19 Pens. Rep. (BNA) No. 24, at 999 (June 15, 1992); John Pound, \textit{After Takeovers, Quiet Diplomacy}, WALL ST. J., June 8, 1992, at A10.
\textsuperscript{186} Director Survey Q 13.
\textsuperscript{187} Two respondents criticized the wording of the survey as too strong and suggested “meet to resolve an issue” (Survey #100257) or meet “to discuss each other's positions” (Survey #100225).
Corporate directors: Is your corporation willing to meet with institutional investors who have sponsored shareholder proposals to negotiate a settlement?
HAVE PENSION FUNDS ADOPTED PROXY VOTING GUIDELINES?

The Department of Labor has suggested that trustees or their delegates adopt proxy voting guidelines. Yet, according to our survey, only 89% of public funds have proxy voting guidelines, and 77% of union funds have adopted voting guidelines. Where the fund employs external equity managers, public fund trustees report that 69% have adopted guidelines, and 85% of union funds report that their equity managers have adopted guidelines. Ninety-seven percent of all investment managers report that they have adopted standard voting guidelines.

WHAT DO THE PROXY VOTING GUIDELINES SAY?

We received proxy voting guidelines from 62 investment managers, 28 public funds, and 5 union funds. Twenty-eight percent of the public funds we surveyed sent us a copy of their guidelines. Eighteen percent of the public funds advised us that they have delegated proxy voting authority to an investment manager, and 9% either said that


189. Pension Survey Q 9.

190. Pension Survey Q 10.


Written proxy guidelines are most common in corporate pension funds which manage plan assets in house and in large public pension plans. A 1987 survey of 334 corporate plan sponsors by the Employee Benefit Research Institute found that 43% of corporate plans which manage funds internally had a written voting policy, while only 21% of the externally managed plans had a policy. A 1988 survey by Greenwich Associates found that 19% of public funds have voting policies and 16% discuss proxy votes during meetings. Twenty-eight percent of public funds with assets of $1 billion have written policies, and only 16% discuss votes during meetings.
they had no guidelines or are in the process of drafting guidelines. Four percent of the public funds surveyed do not invest in stock. Although only 5% of the union funds provided proxy guidelines, another 11% replied to the survey, noting that they had delegated voting authority to their investment managers. Almost all of the guidelines we collected require the proxy voter to vote for management's slate of directors and to support management on routine issues. Conversely, the guidelines typically require the proxy voter to vote against any management or shareholder proposal which would frustrate takeover attempts or empower shareholders. An overwhelming number of proxy guidelines did not specifically address many of the most common management and shareholder proposals.

Proxy voting guidelines vary tremendously in length and content. Many guidelines are just one or two sentences: "We typically vote with management except with regard to confidential voting and other matters detrimental to shareholders." Others are meticulously detailed. One set of proxy voting guidelines we received is 99 pages.

Given such disparity, it is difficult to summarize the content of these proxy voting guidelines or to give representative examples. We have listed the contents of the guidelines by issues in the appendix.

Many of the funds and investment managers described their voting policies in ERISA language, incorporating either the prudence rule or exclusive benefit rule into instructions on how to vote proxies. Twenty percent of the union funds and 27% of the investment managers have adopted voting guidelines which use ERISA terminology.

WHO VOTES PROXIES?

The board of trustees retains authority to vote proxies at 15% of the public funds. Two percent of public funds have delegated voting authority to an investment committee. Thirty-four percent of public funds and all of union funds have delegated voting authority to external equity managers. Seventeen percent of public funds vote proxies through in-house equity managers. Four percent of

---

194. Pension Survey Q 8.
195. Id.
196. Id.
197. Id.
public funds have delegated a portion of their proxy voting authority to a custodian bank or master trustee.  

Table 2
Who has responsibility for voting proxies with respect to the fund’s stock portfolio? (Check all applicable).

<table>
<thead>
<tr>
<th></th>
<th>Union</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Trustees</td>
<td>0%</td>
<td>15%</td>
</tr>
<tr>
<td>Investment Committee</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>External equity managers or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>investment advisors</td>
<td>100%</td>
<td>34%</td>
</tr>
<tr>
<td>In-house equity manager(s)</td>
<td>0%</td>
<td>17%</td>
</tr>
<tr>
<td>Custodian bank/Master trustee</td>
<td>0%</td>
<td>4%</td>
</tr>
<tr>
<td>Other</td>
<td>0%</td>
<td>34%</td>
</tr>
</tbody>
</table>

**DO TRUSTEES AND INVESTMENT MANAGERS FOLLOW THE GUIDELINES?**

We asked trustees who have delegated voting authority if they have ever instructed a proxy voter to vote contrary to the proxy voting guidelines. Ten percent of public funds and none of the union funds had so instructed a proxy voter.

198. *Id.*

199. Pension Survey Q 11; Investment Manager Survey Q 11.
CHART 11

PERCENTAGES

<table>
<thead>
<tr>
<th>Freq’ly</th>
<th>Occas’ly</th>
<th>Rarely</th>
<th>Never</th>
<th>Not Sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>📈</td>
<td>📈</td>
<td>📈</td>
<td>📈</td>
<td>📈</td>
</tr>
</tbody>
</table>

RESPONDENTS

- [ ] PUBLIC FUNDS
- [ ] UNION FUNDS
- [ ] INVESTMENT MANAGERS

Have pension funds asked an investment manager to vote a proxy contrary to the manager’s proxy voting guidelines? If so, how frequently?
A few respondents reported that within the last year trustees had formally disagreed at least once with a vote made by a proxy voter. Only 4% of public funds and no union fund reported this type of disagreement. Eleven percent of investment managers reported that their clients had disagreed with a proxy-voting decision by their firm.

An investment manager said that his firm had once been requested to vote on a poison pill, contrary to voting guidelines. Some managers establish separate accounts to handle clients who want to vote differently than the firm’s investment guidelines:

We have four group trust accounts and two separate accounts which are voted according to our guidelines. One separate account is voted according to our client’s guidelines. The one separate account with their guidelines has a few issues that require votes contrary to our own guidelines: [Issues such as] cumulative voting, classified boards, increase in common stock, [and] redemption of poison pills.

Several investment managers stressed that they were not criticized, but were questioned: “[It was] more of questioning why we voted in a certain way” and “some [clients] have questioned [the] rationale for a particular vote.” Another said that when they were questioned about their votes on executive compensation issues, “we responded by explaining our policy in depth.”

201. Survey #364. This investment manager also noted that despite any disagreements over proxy voting issues, his firm still “votes based on our best judgments as to what is best for beneficiaries.” Id.
202. Survey #391.
203. Survey #259.
204. Survey #369.
205. Survey #382. Another investment manager told us that a pension fund client had voiced disagreement with “corporate governance issues [when her] . . . firm voted according to [its] . . . guidelines.” Survey #341.
Within the last two years, have the trustees formally disagreed with a vote made by a proxy voter? If yes, how often within the last two years?
We asked whether fund trustees had ever asked a proxy voter to return proxies to the trustees to vote.\textsuperscript{206} Although not one of the public funds or union funds had reversed this delegation of proxy voting authority, 19\% of investment managers reported that this had occurred in the funds they managed. One investment manager has a client that is considering whether to ask the manager to return the proxies to the trustees.\textsuperscript{207} Another investment firm reported that it was asked to return proxies when “we disagreed with [the fund's] voting policy.”\textsuperscript{208} One investment manager told us that his firm will return proxies upon the request of pension fund clients “who reserve the right to vote” their proxies.\textsuperscript{209}

Table 3
Have the fund’s trustees ever asked a proxy voter to return proxies to the trustees to vote?

<table>
<thead>
<tr>
<th></th>
<th>Public Funds</th>
<th>Union Funds</th>
<th>Investment Managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>0%</td>
<td>0%</td>
<td>19%</td>
</tr>
<tr>
<td>No</td>
<td>95%</td>
<td>100%</td>
<td>67%</td>
</tr>
<tr>
<td>Not sure</td>
<td>5%</td>
<td>0%</td>
<td>14%</td>
</tr>
</tbody>
</table>

In response to the question, “Has a proxy voter ever refused to vote proxies according to the fund’s proxy voting guidelines?”, 90\% of public funds and 92\% of union funds responded that this had not occurred.\textsuperscript{210} One investment manager expressed its unwillingness to cater to a client’s special interests: “If they want [to] vote proxies, they can by not delegating; they cannot do so on a spot basis.”\textsuperscript{211}

No public funds have fired a proxy voter who refused to vote a

\textsuperscript{206} Pension Survey Q 17; Investment Manager Survey Q 17. The Department of Labor has stated that “to the extent that anyone purports to direct an investment manager as to the voting of proxies, . . . the manager would not be relieved of its own responsibilities and related liabilities merely because it . . . follows the direction of some other person . . . “ \textit{Avon Letter, supra} note 4, at 5.

\textsuperscript{207} Survey #382.

\textsuperscript{208} Survey #295. Another respondent clarified that his firm had been asked to return proxies to the fund to vote, but only prior to the Department of Labor’s ruling in the \textit{Avon Letter}. Survey #364.

\textsuperscript{209} Survey #311.

\textsuperscript{210} Pension Survey Q 18.

\textsuperscript{211} Survey #222.
proxy according to trustees' directions. Nor has any union fund fired an investment manager for refusing to follow instructions.

These results are surprising for three reasons. First, anecdotal evidence suggests that this occurs with some frequency. Second, a 1987 report by the Investor Responsibility Research Center concluded that "[i]nstitutional investors, a potential check on corporate management, face serious conflicts of interest in voting, and many institutions have succumbed to management pressures to support voting proposals that are not in the shareholders' interests." Third, according to a recent survey by Greenwich Associates, during 1991 large corporate and public pension funds and foundations terminated almost one thousand investment management firms. This is a fifteen percent increase from the previous year. Most plans (58%) terminated investment management firms for poor performance, while 42% cited the loss of key managers at the firm as the reason for termination. In addition, 39% fired firms because they failed to adapt investments to the fund's specific goals. In response to our survey, only one investment manager reported that his firm had been fired because a manager had refused to vote proxies as directed by the pension fund. Perhaps the results are lower than expected because pension funds refused to state whether they had fired an investment manager. Perhaps investment managers who were fired simply refused to disclose this fact. We are more inclined to believe that a controversial proxy vote is just one of several reasons the manager is fired, and that trustees and investment managers have a selective memory when it comes to the reason the manager was fired.

212. Pension Survey Q 19.
213. Id.
214. In my experience as fund counsel, I have often observed occasions when trustees have challenged or criticized an investment manager's decision.
217. Id.
218. Id.
219. Survey #311.
IS MANAGEMENT SOLICITATION IMPROPER?

We asked directors whether management solicits the votes of institutional investors.\footnote{Director Survey Q 14.} Thirty-seven percent responded that solicitation occurs frequently, 24% said occasionally, 20% said rarely, and 20% of corporate directors said that the votes of institutional investors are never solicited.

According to our survey, votes are most often solicited for the election of directors,\footnote{Surveys #100314, 547, and 500.} proxy issues,\footnote{Surveys #100314, 100382, 100387, 100477, 100223, 100257, 100270, 503, 502, and 500.} takeovers,\footnote{Surveys #100334, 100053, 100311, 100315, 527, 536, 505, 558, 579, 528, and 500.} major strategy changes,\footnote{Survey #100334.} poison pills,\footnote{Surveys #100387, 100349, 536, 538, 576, and 500.} mergers,\footnote{Surveys #507, 503, 502, and 100315.} social issues,\footnote{Surveys #509, 502, 522 and 100212.} option plans,\footnote{Survey #100036.} compensation issues,\footnote{Survey #100133.} staggered boards,\footnote{Surveys #100225, 501, and 542.} and "any and all issues"\footnote{Survey #100476.} "just to get the vote out."\footnote{Pension Survey Q 20.}

Pension funds and investment managers reported different experiences with management solicitation. Public funds have encountered solicitation frequently (15%), occasionally (35%), rarely (37%), and never (4%).\footnote{Id.} Eight percent of union funds reported frequent solicitation, 46% reported occasional solicitation, 15% responded that solicitation rarely occurs, and 15% said that solicitation never occurs.\footnote{Investment Manager Survey Q 42.} Investment managers reported that solicitation occurs frequently (11%), occasionally (60%), rarely (26%), and never (3%).\footnote{Surveys #369 and 341.} According to investment managers, the most common types of issues solicited are corporate governance issues,\footnote{Surveys #316 and 341.} tender offers,\footnote{Id.} reorganizations,\footnote{Id.} stock option plans,\footnote{Id.} contested elections,\footnote{Id.}
mergers, board composition, reincorporation and increase of authorized shares, and executive compensation. One investment manager told us that her firm is occasionally solicited "when the vote is expected to be close." Another manager replied that his firm is frequently solicited on "virtually all material proposals." Dale Hanson, chief executive of CalPERS, has testified before Congress that an investor relations staff person once told him that he "had to call some shareholders two or three times to convince shareholders to see it [the corporation's] . . . way" and get them to change their votes. Hanson reports that CalPERS has experienced "considerable pressure . . . [as] a state agency with firmly established voting guidelines, as well as reporting responsibilities to our Board; we are not particularly vulnerable to this type of pressure. But if we are encountering the pressure, you can surely expect that other investors — investors that are not as insulated as are we — are also being pressured.

We asked trustees and investment managers whether they ever had been resolicited to change a proxy vote that already had been cast on behalf of a pension fund client. The survey respondents reported that they are not frequently resolicited. Only 2% of public funds, none of the union funds, and 3% of investment managers had been frequently solicited to change a vote that already had been cast. More respondents were occasionally resolicited: public funds (20%), union funds (0%), and investment managers (21%). Eleven percent of corporate directors admit that they occasionally resolicit votes.

A corporate director indicated that management will attempt to change a vote "only when an institution directly advises [the] compa-

239. Survey #339.
240. Surveys #325, 391, and 257.
241. Survey #391.
242. Id.
243. Survey #294.
244. Survey #257.
245. Survey #295.
246. Survey #248.
248. Id.
249. Pension Survey Q 21; Investment Manager Survey Q 43.
250. Director Survey Q 15.
ny that they voted against management proposals regarding charter amendments and/or compensation benefit plans.\textsuperscript{251} Several investment managers reported that they have experienced improper solicitation.\textsuperscript{252} One investment manager said, "There should be no solicitation to change votes."\textsuperscript{253} Another said "I do not think management should solicit."\textsuperscript{254} In contrast, an investment manager with over one thousand pension fund clients, who manages over five billion dollars in assets said that he had not experienced any improper solicitation.\textsuperscript{255}

\begin{footnotesize}
\begin{enumerate}
  \item Survey #100036.
  \item Surveys #339 and 341.
  \item Survey #341.
  \item Survey #257.
  \item In particular, he said, "We are very large — [the risk of] exposure to [the proxy] solicitor would be high (risk of publicity)." Survey #316.
\end{enumerate}
\end{footnotesize}
Does management solicit the votes of institutional investors?
Does management resolicit institutional investors to request them to change a proxy vote?
Improper and coercive management solicitation has been the focus of Congressional hearings. One lawyer who has served as a corporate director testified before Congress that:

Management has a lot of leverage. They can threaten to withdraw pension funds from any fund manager that dares to oppose [them] . . . I know of cases where hundreds of millions of dollars have been taken away from fund managers who have voted against management proposals . . . .256

Yet only a small number of respondents reported that they consider some management solicitation improper.257 Eight percent of public funds, 0% of union funds, and 6% of investment managers consider some of the solicitation improper.

Several public pension funds complained of improper management solicitation. One fund said that management had threatened to call the governor over a contested proxy vote.258 Another management group threatened “not to build a factory in [the fund’s] state” unless the fund voted for management.259 Another fund told us that if they didn’t vote for management the first time, “a second proxy may show up or a call may come inquiring about returning [the] proxy.”260

257. Pension Survey Q 22; Investment Manager Survey Q 44.
258. Survey #511. See also Survey #502: “A company lobbied us heavily to vote against a shareholder proposal.”
259. Survey #511.
260. Survey #538.
Do you believe that any management solicitation has been improper?
We also asked investment managers if they had ever simultaneously represented a corporation and a pension fund client which intended to vote its proxies against that corporation’s management. 261 Only 21% of investment managers reported that this occurs occasionally and 12% said it occurred rarely. Surprisingly, 68% of investment managers said this never occurred. 262 Eighteen percent of investment managers believe that this simultaneous representation had placed them in a conflict of interest. 263 A pragmatic manager commented “[there’s] no conflict if no pressure is applied.” 264 Only one investment manager specifically stated that simultaneous representation “exposes the firm to business risk — certainly an implied conflict of interest exists.” 265

Table 4
Has your firm ever simultaneously represented a corporation and a pension fund client which intended to vote its proxies against that corporation’s management?

<table>
<thead>
<tr>
<th>Frequency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequently</td>
<td>0%</td>
</tr>
<tr>
<td>Occasionally</td>
<td>20%</td>
</tr>
<tr>
<td>Rarely</td>
<td>12%</td>
</tr>
<tr>
<td>Never</td>
<td>68%</td>
</tr>
</tbody>
</table>

If so, do you feel this placed your firm in a conflict of interest?

<table>
<thead>
<tr>
<th>Response</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>18%</td>
</tr>
<tr>
<td>No</td>
<td>45%</td>
</tr>
<tr>
<td>Not sure</td>
<td>27%</td>
</tr>
</tbody>
</table>

According to a 1987 survey by the Employee Benefit Research Institute, 65% of pension fund investment managers “have felt pressure to direct their proxy votes in favor of corporate management.” 266 Three percent of investment managers were frequently

261. Investment Manager Survey Q 39.
262. None of the investment managers told us it occurs frequently.
263. Investment Manager Survey Q 40.
264. Survey #222.
265. Survey #382.
266. Marcia Parker, The Proxy Pressure’s on; Managers Admit to More than Fund Execs,
presured, 25% were sometimes pressured, 38% rarely experienced pressure, and 34% never were pressured. Investment managers were more likely to experience pressure than plan sponsors. EBRI noted that "[b]ecause the experience of financial pressure may be a sensitive topic for some plan sponsors, its occurrence may not be recorded as accurately as other survey information . . . . Some sponsors may be anxious to reveal any unwanted pressure, while others may try to hide its occurrence."  

We asked investment managers for suggestions on ways to avoid these types of conflicts of interest. Most suggested that confidential voting would prevent such conflicts. Other methods used by investment managers to avoid conflicts include: abstaining, allowing beneficiaries to cast the votes, and having a written policy that clients "agree to accept". An investment manager with over one thousand pension fund clients was more realistic: "[This] requires limiting what clients we will accept — [it's] not economically practical."  

Several investment managers invoked the language of ERISA, as if it were a shield which would protect them from conflicts of interest. For example, one manager said, "We vote proxies only in the best interests of the plan participants." Another said, "The law is clear as to how we decide: in the interest of the plan beneficiaries." Another investment manager expressed some ambivalence; he was not sure if simultaneous representation placed his firm in a conflict of interest, but recited the familiar litany: "[We] have to vote to benefit [the] beneficiaries." Another manager said that dual

PENSIONS & INVESTMENT AGE, Sept. 21, 1987, at 3 [hereinafter Parker].

267. Id.


269. Parker, supra note 266.

270. Investment Manager Survey Q 41.

271. Surveys #369, 382, and 211.

272. Survey #325.

273. Survey #341.

274. Survey #364. "Pension fund client should have [a] clear provision in [the] policy as to who votes proxies." Survey #288. Another suggestion: set up a "Chinese wall" within the firm. Survey #345.

275. Survey #316.

276. Survey #339.

277. Survey #341.

278. Survey #364; see also #288 ("[We] represent plan participants").
representation has never placed his firm in a conflict of interest because the firm's proxy voting "guidelines are according to issues not manager preference."279

Although ERISA does not require trustees or their investment managers to take the quick takeover buck,280 or maximize short-term profits,281 it appears that many trustees and investment managers mistakenly believe that ERISA requires them to maximize short-term returns. One commentator has observed:

One of the reasons these [investment] managers are motivated to take short-term profits by tendering stock into tender offers, and to vote against antitakeover defense mechanisms presented at shareholder meetings, is what they perceive to be the constraints of a fiduciary or statutory duty, owed to the pension fund beneficiaries, always to maximize current investment results and take advantage of immediate profit-making opportunities.282

Trustees and investment managers need to be educated on the Department of Labor's position on proxy voting, as outlined in the Joint Statement of Pension Investments issued by the Department of Labor and the Department of the Treasury.283

DO INVESTMENT MANAGERS KEEP PROXY VOTING RECORDS?

The Department of Labor requires trustees to keep records of their proxy voting activity.284 In 1989, the Department of Labor found that almost 40% of investment managers surveyed did not keep proxy voting records.285 A 1991 survey by Greenwich Associates

279. Survey #391.
281. See infra note 471 and accompanying text.
283. Joint Dep't of Labor/Dep't of Treasury Statement of Pension Investments, Jan. 31, 1989, supra note 280; see also infra note 471 and accompanying text.
285. Joel Chernoff, Washington Working to Change System, PENSIONS & INVESTMENT AGE, Apr. 16, 1990, at 19. In its proxy project report, the Department of Labor noted that, "In one case, an investment manager did not know whether it had voted the proxies in question because no records were kept on proxy voting." U.S. DEP'T OF LABOR, PROXY PROJECT REPORT, at 7 (1989).
reported that 23% of pension funds criticized their investment managers because they had failed to send documentation to trustees for review in advance of fund meetings. Seventeen percent of plan sponsors said they were dissatisfied with investment managers because their reports to the trustees were too superficial. The Greenwich Associates survey “found that, on average, funds meet three times a year with their most important investment managers.”

We asked trustees and investment managers about their voting records. Fifteen percent of equity managers typically make presentations to the trustees at every meeting of public and union funds. Most proxy voters report to the trustees through written and oral reports.

Table 5
How do proxy voters report to the trustees on proxy voting? (Check all applicable).

<table>
<thead>
<tr>
<th></th>
<th>Public Funds</th>
<th>Union Funds</th>
<th>Investment Managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Through written reports</td>
<td>70%</td>
<td>92%</td>
<td>89%</td>
</tr>
<tr>
<td>Through oral reports at fund meetings</td>
<td>26%</td>
<td>38%</td>
<td>31%</td>
</tr>
<tr>
<td>Through discussion outside of fund meetings</td>
<td>4%</td>
<td>8%</td>
<td>11%</td>
</tr>
<tr>
<td>Our proxy voters do not provide proxy voting reports</td>
<td>17%</td>
<td>0%</td>
<td>14%</td>
</tr>
</tbody>
</table>

Most union funds meet monthly or as needed. Most public funds meet monthly. Proxy voters typically report to union trustees on proxy voting quarterly or annually and report to public funds annually.

287. *Id.*
288. *Id.*
289. Pension Survey Q 7; Investment Manager Survey Q 14. Responses to this question varied too greatly to extrapolate a typical response.
292. *Id.*
How often do proxy voters report to the trustees on proxy voting?

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Public Funds</th>
<th>Union Funds</th>
<th>Investment Managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly</td>
<td>11%</td>
<td>8%</td>
<td>3%</td>
</tr>
<tr>
<td>Quarterly</td>
<td>23%</td>
<td>33%</td>
<td>32%</td>
</tr>
<tr>
<td>Every 6 months</td>
<td>9%</td>
<td>17%</td>
<td>15%</td>
</tr>
<tr>
<td>Annually</td>
<td>36%</td>
<td>42%</td>
<td>35%</td>
</tr>
<tr>
<td>On request</td>
<td>32%</td>
<td>25%</td>
<td>56%</td>
</tr>
</tbody>
</table>

The Department of Labor has stated that trustees, or their investment managers, must match proxies to all record holders as of the record date and vote in accordance with the plan’s voting procedure.\(^{294}\) We found that 70% of investment managers match proxies, 8% cannot match, and 22% do not attempt to match.\(^{295}\)

\(^{294}\) Labor Department Letter on Proxy Voting, supra note 284, at 245.

\(^{295}\) Investment Manager Survey Q 4.
CHART 15

Does your firm match proxies to all record holders as of the record date?
DO INVESTMENT MANAGERS HAVE SUFFICIENT RESOURCES TO VOTE PROXIES ACCORDING TO CLIENT GUIDELINES?

Eighty-eight percent of investment managers reported that their firm has sufficient staff and resources to vote proxies according to proxy voting guidelines of individual pension fund clients.\textsuperscript{296} Six percent of investment managers do not have sufficient resources to provide individualized proxy voting, and 6% said they would do it only under certain conditions and for certain types of funds. When we asked if investment managers have sufficient resources to provide individualized proxy voting, one investment manager replied, "[O]f course not; we use only our own guidelines."\textsuperscript{297} This investment manager’s attitude was shared by other managers.\textsuperscript{298}

\textsuperscript{296} Investment Manager Survey Q 9.
\textsuperscript{297} Survey #351.
\textsuperscript{298} See Survey #364 ("We voted based on our proxy policy."); #385 ("We vote according to our own guidelines.").
Does your firm have sufficient staff and resources to vote proxies according to proxy voting guidelines of individual pension fund clients?
DO PROXY VOTERS USE PROXY SERVICES?

Sixty percent of public funds subscribe to proxy research services and 8% of union funds subscribe to such services.299 Eight percent of investment managers subscribe to proxy research services, 54% research proxy issues in-house, and 38% do both.300

ON WHAT TYPES OF ISSUES SHOULD INSTITUTIONAL INVESTORS HAVE A RIGHT TO VOTE?

We listed seven issues and asked whether respondents believe that pension fund investors should have a right to vote on these issues. Directors were less enthusiastic than trustees and investment managers about allowing shareholders to vote on these issues.

Poison pills: 48% of directors, 97% of investment managers, 91% of public funds, and 92% of union funds think institutional investors should have a right to vote on poison pills.301

Golden parachutes: 26% of directors think that institutional investors should have a right to vote on golden parachutes, as did 92% of investment managers, 96% of public funds, and 77% of union funds.302

Greenmail: 50% of corporate directors believe that institutional investors should be allowed to vote on greenmail, as do 92% of investment managers, 89% of public funds, and 77% of unions.303

Recapitalization Plans: 57% of corporate directors believe that

300. Investment Manager Survey Q 5. No funds do neither.
302. A 1990 survey by Institutional Investor reported that 54% of plan officials believe that institutional investors should vote against golden parachutes. Speaking Out, INSTITUTIONAL INVESTOR, July 1990, at 203. According to a 1992 survey by the National Association of Corporate Directors, 50% of corporate CEOs believe that shareholders should have the right to vote on golden parachutes. Survey Reveals CEO Attitudes on Reform, 9 CORP. GOVERNANCE BULL. (IRRC) No. 2, at 12 (Mar.-Apr. 1992).
303. According to a 1990 survey by Institutional Investor, 92% of plan officials believe that institutional investors should have the right to vote on poison pills, greenmail, mergers and acquisitions, and recapitalization plans. Speaking Out, INSTITUTIONAL INVESTOR, July 1990, at 203.
institutional investors should be able to vote on recapitalization plans; 95% of investment managers, 89% of public funds, and 77% of union funds agree.\textsuperscript{304}

\textit{Mergers and Acquisitions:} 38% of corporate directors think that shareholders should have the right to vote on mergers and acquisitions; as do 82% of investment managers; 91% of public funds, and 85% of union funds.\textsuperscript{305}

\textit{ESOPs Created as a Defensive Tactic:} 40% of corporate directors think that institutional investors should have a right to vote on defensive ESOPs; 97% of investment managers voted in favor, as did 87% of public funds, and 85% of union funds.\textsuperscript{306}

\textit{Executive Compensation:} Only 10% of corporate directors think that institutional investors should have a right to vote on executive compensation; 62% of investment managers, 78% of public funds, and 69% of union funds think investors should have a voice with respect to executive compensation.

\textbf{HOW MUCH SUPPORT EXISTS FOR CORPORATE CONSTITUENCY STATUTES AND CONFIDENTIAL VOTING?}

We also asked whether the respondents support corporate constituency statutes and confidential voting.

\textit{Corporate constituency statutes:} 27% of public funds and 92% of union funds support constituency statutes.\textsuperscript{307} Forty percent of directors do not favor corporate constituency statutes, 42% favor these statutes, and 17% are not sure.\textsuperscript{308} More than 27% of corporate directors do not know if their corporation is subject to a constituency statute.\textsuperscript{309} One director favors corporate constituency statutes but comments that, “It’s an extremely slippery slope.”\textsuperscript{310} Another direc-

\begin{itemize}
\item \textsuperscript{304} \textit{Id.}
\item \textsuperscript{305} \textit{Id.}
\item \textsuperscript{306} A 1990 survey by the Investor Responsibility Research Center (IRRC) reported that 85% of pension funds believe that shareholders should have the right to vote on the creation of ESOPs. \textit{Corporate Governance: Proxies Becoming Do-It-Yourself Task, PENSIONS & INVESTMENT AGE, Jan. 22, 1990, at 70.}
\item \textsuperscript{307} Pension Survey Q 26; Director Survey Q 17. We did not ask investment managers this question. One public fund refused to endorse corporate constituency statutes “if they put stakeholders ahead of shareholders.” Survey #500.
\item \textsuperscript{308} Director Survey Q 17.
\item \textsuperscript{309} Director Survey Q 18.
\item \textsuperscript{310} Survey #100476; see also #100397 (“Voluntary compliance [is] preferable.”).
\end{itemize}
tor supports the idea, but does not believe it should be legislated.\textsuperscript{311} One director noted that “it is the primary area of concern for the long term health of a company.”\textsuperscript{312} Another director said that “it could be overdone and become an excuse for poor results.”\textsuperscript{313} Another agreed: “The board room should not be a place where special interests come to cross swords.”\textsuperscript{314}

Confidential Voting: 60\% of directors support confidential voting, while 76\% of public funds and 54\% of union funds favor confidential voting.\textsuperscript{315} Of the companies surveyed, 44\% have confidential voting.\textsuperscript{316}

In response to the question, “Do you believe shareholder votes should be confidential?,”\textsuperscript{317} one director said confidential voting is “not really an issue.”\textsuperscript{318} Another director said it is “not necessary and burdensome.”\textsuperscript{319} One director stated that he opposes confidential voting and said that “the best way for a shareholder to avoid pressure after voting is to say ‘call me again and I will vote against management until management is changed.’”\textsuperscript{320} One director is against confidential voting but favors independent tabulation.\textsuperscript{321}

Yet, investment managers generally agree that if confidential voting were required, conflicts of interest and improper solicitation would not occur so frequently.\textsuperscript{322} Dale Hanson, CEO of CalPERS, favors confidential voting: “Currently corporate managers are free to tabulate votes as they are cast, to identify shareholders who are not

\begin{itemize}
\item[311.] Survey \#100036 (I “support [the] thrust but not in statutes.”).
\item[312.] Survey \#100212. \textit{See also} Survey \#100314 (“The corporation must consider those interests.”).
\item[313.] Survey \#100232.
\item[314.] Survey \#100133.
\item[315.] Pension Survey Q 24; Director Survey Q 21. We did not ask investment managers this question. A 1992 survey by the National Association of Corporate Directors found that 42\% of corporate CEOs supported mandated confidential voting. \textit{Survey Reveals CEO Attitudes on Reform, 9 CORP. GOVERNANCE BULL. (IRRC) No. 2, at 12 (Mar.-Apr. 1992).} A 1990 survey by Institutional Investor found that 77\% of plan officials favor confidential voting. \textit{Speaking Out, INSTITUTIONAL INVESTOR,} July 1990, at 203.
\item[316.] Director Survey Q 20.
\item[317.] Director Survey Q 21.
\item[318.] Survey \#100113.
\item[319.] Survey \#100225. \textit{But see} Survey \#100399 (“Absolutely essential. Otherwise, conflicts of interest are too inhibiting.”).
\item[320.] Survey \#100314.
\item[321.] Survey \#100060. Another director said that he does not “feel strongly one way or the other.” Survey \#100445a.
\item[322.] \textit{See supra}, notes 270-79 and accompanying text.
\end{itemize}
following management's voting recommendations and to pressure shareholders to change their vote.”

Independent tabulation and confidential voting would deter improper management solicitation.

SHOULD DIRECTORS BE REQUIRED TO OWN CORPORATE STOCK?

We asked whether corporate directors should be required to own corporate stock. Ninety-three percent of corporate directors said that directors should be required to own corporate stock; of those, 29% said that stock should be awarded as part of compensation and 64% said directors should be required to buy shares. The minimum suggested stock ownership ranged from 100 to 1,000 shares.

One director suggested that directors should hold between 5% and 100% of the director's annual fee in stock. Several suggested monetary amounts of $10,000 and one suggested $25,000. Other directors suggested no minimum and one director cautioned that the amount should not be too large: “Don't choose directors based on personal wealth.”

Several directors commented on the issue of stock ownership by directors, saying that it would have no effect: “[It's] not an issue.” “Stock ownership for independent directors is of practically no consequence to his position on issues.” “Again, a director is either going to fulfill his responsibility or not.”

Several directors said that stock ownership should be encouraged but not required: “Ownership should be encouraged and awarded as

323. Corporate Proxy Voting System, supra note 256, at 12 (statement of Dale M. Hanson, CEO of CalPERS).

324. Director Survey Q 25.

325. Director Survey Q 25.

326. Surveys #100060, 100311, 100386, and 100477.

327. Surveys #100116, 100334, 100452, 100225, and 100137.

328. Director Survey Q 26.

329. Survey #100270.

330. Surveys #100382, 100115, and 100314.

331. Survey #100490.

332. Surveys #100322 and 100158.

333. Survey #100200.

334. Survey #100113.

335. Survey #100171.

336. Survey #100232.
compensation but I'm against [a] mandatory requirement."\textsuperscript{337} "They should have [a] sizeable portion but [it should] not be required."\textsuperscript{338} "There should be no requirement but a strong practical and moral obligation."\textsuperscript{339}

The reactions of investment managers and pension funds varied. Forty-six percent of the investment managers agreed that directors should be required to own corporate stock, as compared with 68\% of public pension funds and 62\% of union funds.\textsuperscript{340} Twenty-three percent of investment managers, 31\% of public pension funds, and 31\% of union funds said the stock should be awarded as part of compensation, while 23\% of investment managers, 36\% of public funds and 31\% of union funds would require directors to buy the shares.\textsuperscript{341} Public pension funds suggested minimums that run the gamut from 1\% of the director's net worth,\textsuperscript{342} one year of retainer fees,\textsuperscript{343} $5,000,\textsuperscript{344} to the lesser of 1000 shares or $20,000.\textsuperscript{345} Public funds, like directors, also urged caution: "Mandatory minimum share ownership keeps well qualified people off boards; i.e., academics or religious leaders."\textsuperscript{346} Another fund trustee suggested two tiers: inside directors would be required to own a "very large amount" of stock while outside directors must own a "moderate amount."\textsuperscript{347} Another trustee suggested that whatever the amount, it should "have a meaningful impact on [director's] lifestyles."\textsuperscript{348} A director countered: "[It's] not material. This ownership will never be significant enough to influence decision-making by a director."\textsuperscript{349}

According to the 1989 Egon Zehnder survey previously described, 81\% of corporate directors believe that directors should be required to hold stock in companies on whose boards they serve.\textsuperscript{350}

\begin{itemize}
\item \textsuperscript{337} Survey #100212.
\item \textsuperscript{338} Survey #100265.
\item \textsuperscript{339} Survey #100036. "Shares as a part of director compensation are fine but should not be required. Director ownership on any other basis should be a personal — not a corporate decision." Survey 100445a.
\item \textsuperscript{340} Pension Survey Q 36; Investment Manager Survey Q 25.
\item \textsuperscript{341} Pension Survey Q 36.
\item \textsuperscript{342} Survey #562.
\item \textsuperscript{343} Survey #503.
\item \textsuperscript{344} Survey #530.
\item \textsuperscript{345} Survey #584.
\item \textsuperscript{346} Survey #502.
\item \textsuperscript{347} Survey #511.
\item \textsuperscript{348} Survey #588.
\item \textsuperscript{349} Survey #100133.
\item \textsuperscript{350} Egon Zehnder Int'l, \textit{Behind Closed Doors: Unrest in the Ranks}, CORP. ISSUES MONI-
Directors overwhelmingly (87%) disagree that they should be compensated only with stock.351 Sixty-nine percent of directors agree that "directors are likely to have the same commitment to representing shareholders’ interests regardless of their equity holdings."352

In 1992, Coopers & Lybrand surveyed attitudes toward minimum stock ownership.353 Most CEOs agree that executives should be required to retain significant amounts of company stock. Twenty-one percent of CEOs strongly agree that executives should be required to own significant amounts of company stock, and 31% simply agree.354 Board members agree even more enthusiastically: 28% strongly agree and 33% agree.355 The majority of CEOs356 and board members357 agree that directors should receive a major portion of their fees in stock.

**SHOULD INSTITUTIONAL INVESTORS MONITOR EXECUTIVE COMPENSATION?**

We asked pension funds whether they (or their representatives) monitor executive compensation.358 Fifty-five percent of all investment managers monitor executive compensation.359 Forty-one percent of public funds and 8% of union funds monitor executive compensation.360

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351. Id. 87% of directors disagreed, 9% agreed and 4% were not sure.
352. Id. at 5.
354. Id. On a scale of 1 (strongly agree) to 7 (strongly disagree), CEOs responded: "1" (21%), "2" (16%), "3" (15%), "4" (17%), "5" (8%), "6" (9%), and "7" (14%).
355. Id. Board members responded: "1" (28%), "2" (17%), "3" (16%), "4" (11%), "5" (7%), "6" (7%), and "7" (14%).
356. Id. CEOs responded: "1" (20%), "2" (19%), "3" (15%), "4" (18%), "5" (7%), "6" (9%), and "7" (12%).
357. Id. Board members responded: "1" (20%), "2" (16%), "3" (15%), "4" (15%), "5" (9%), "6" (8%), and "7" (17%).
358. Pension Survey Q 33.
359. Investment Manager Survey Q 22.
360. Pension Survey Q 33.
CHART 17

PERCENTAGES

RESPONDENTS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

Does your fund (or representative) monitor executive compensation?
SHOULD EXECUTIVE COMPENSATION BE TIED TO CORPORATE PERFORMANCE? 361

Our survey found that 51% of investment managers, 31% of union funds, and 34% of public funds said that corporate performance affects how they vote on director nominees. 362 Eighty-one percent of directors said that executive compensation should be tied to corporate performance, 5% disagreed, and 13% said it depends on the corporation. 363 Ninety-five percent of the corporations surveyed tie compensation to performance. 364 One director said that compensation is tied to performance at his corporation "but not tightly enough." 365 One fund representative who monitors executive compensation expressed astonishment: "The fact [that] anyone would need to ask this question is frightening." 366 Another fund replied that they were the only institutional investor in 1992 to file a shareholder proposal on a compensation committee. 367

Directors made several suggestions on how to tie compensation to performance. Suggestions include: "Compensation should have three components: Base — according to ability and contribution; Short-term — according to short-term (1-3 years); results; Long-term — according to 3+ year increases in financial value (not just stock price)." 368 Another director suggested that compensation "should be balanced and take into account all relevant factors including basic profitability, comparison with competition, growth, etc." 369 One director cautioned: "[You] need to be careful — in turnarounds for example, performance may take several years. [You] need to reward the turn-around manager during tough years for taking on the task." 370 Another director observed that the "big problem is how to separate these trends in markets served vs. net performance. Peer

361. Director Survey Q 27; Pension Survey Q 34; Investment Management Survey Q 23.
363. Director Survey Q 27.
364. Director Survey Q 28.
365. Survey #100133.
366. Survey #511; see also Survey #509 (stating that "[Performance measurement] benchmarks must be meaningful.").
367. Survey #502.
368. Survey #100314.
369. Survey #100171. Another director suggested that "at least annual bonuses and long-term plans should be tied to performance." Survey #100225.
370. Survey #100502.
analysis, so far, works best."

We asked investment managers and pension funds the same question. In response, 77% of investment managers said compensation should be tied to performance, 5% prefer no linkage, and 18% said that it depends. Eighty percent of public pension funds and 77% of union funds would tie compensation to performance, 2% of public funds and 15% of union funds would not link compensation with performance, and 18% of public funds and 8% of union funds said that it depends on the corporation. An investment manager observed that "in some cases, executive compensation has little correlation with corporate performance." Another said, "for most industries, yes, [compensation should be tied to performance, for] others, no." Another investment manager clarified that compensation "should be tied to long-term corporate performance."
CHART 18

Should executive compensation be tied to corporate performance?
According to the 1992 Coopers & Lybrand survey previously described, 30% of CEOs strongly agree that full disclosure of total executive compensation packages is necessary.\textsuperscript{377} Fifty-nine percent of board members were of like mind.\textsuperscript{378} Only 12% of CEOs strongly agree that shareholders should have more influence on executive compensation practices, while 21% disagree, and 26% strongly disagree.\textsuperscript{379} Thirty-one percent of board members think shareholders should have a stronger influence on executive compensation practices.\textsuperscript{380} Fifty-five percent of CEOs and sixty-eight percent of board members strongly agree that executive pay should be more directly linked to company performance. Not surprisingly, CEOs overwhelmingly objected to caps on executive compensation: 69% of CEOs oppose caps.\textsuperscript{383} Board members split on the issue of caps: 24% strongly favored caps, while 34% strongly opposed caps.\textsuperscript{384}

**SHOULD INSTITUTIONAL INVESTORS MEET WITH DIRECTORS TO DISCUSS CORPORATE PERFORMANCE?**

Should pension fund investors monitor corporate performance? Ninety-five percent of investment managers said yes; 73% of public funds agreed, and 38% of union funds replied in the affirmative.\textsuperscript{385} 95% of corporate directors believe that institutional investors should monitor corporate performance.

\textsuperscript{377} Coopers & Lybrand, *The Coopers & Lybrand Survey on Executive Compensation Issues in the 90's* (1992). On a scale of 1 (strongly agree) to 7 (strongly disagree), CEOs responded as follows: "1" (30%), "2" (20%), "3" (11%), "4" (10%), "5" (7%), "6" (10%), and "7" (12%).

\textsuperscript{378} Id. Board members responded: "1" (59%), "2" (13%), "3" (7%), "4" (5%), "5" (4%), "6" (5%), and "7" (7%).

\textsuperscript{379} Id. CEOs responded: "1" (12%), "2" (10%), "3" (9%), "4" (10%), "5" (12%), "6" (21%), and "7" (25%).

\textsuperscript{380} Id. Board members responded: "1" (31%), "2" (11%), "3" (14%), "4" (10%), "5" (9%), "6" (11%), and "7" (14%).

\textsuperscript{381} Id. CEOs responded: "1" (55%), "2" (23%), "3" (13%), "4" (6%), "5" (1%), "6" (1%), and "7" (1%).

\textsuperscript{382} Id. Board members responded: "1" (68%), "2" (18%), "3" (6%), "4" (3%), "5" (2%), "6" (1%), and "7" (2%).

\textsuperscript{383} Id. CEOs responded: "1" (13%), "2" (7%), "3" (6%), "4" (5%), "5" (9%), "6" (16%), and "7" (44%).

\textsuperscript{384} Id. Board members responded: "1" (24%), "2" (10%), "3" (5%), "4" (8%), "5" (6%), "6" (13%), and "7" (34%). A 1991 survey by Georgeson & Co. found that 61% of fund managers oppose caps on executive compensation. *News: Reports*, 19 Pens. Rep. (BNA) 18 (Jan. 6, 1992).

\textsuperscript{385} Director Survey Q 3; Pension Survey Q 30; Investment Manager Survey Q 19.
Seventy-nine percent of corporate directors believe that institutional investors should meet with management to discuss corporate performance.\textsuperscript{386} 58\% of investment managers, 44\% of public funds and 15\% of union funds agree.\textsuperscript{387}

\textbf{CHART 19}

\begin{figure}
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\includegraphics[width=\textwidth]{chart19.png}
\end{figure}

Do you believe that institutional investors should meet with management to discuss corporate performance?

\textsuperscript{386} Director Survey Q 4.
\textsuperscript{387} Pension Survey Q 31; Investment Manager Survey Q 20. A 1990 survey by Institutional Investor found that almost 63\% of plan officials “believe it is appropriate for a pension fund to meet with corporate management to talk about the company’s performance.” \textit{Speaking Out}, INSTITUTIONAL INVESTOR, July 1990, at 203.
Many investment managers reported that they meet with management to discuss corporate performance. Fifty-five percent meet with management frequently, 13% meet occasionally, 26% meet rarely, and 26% have not met in the last twelve months.

Twelve percent of public pension funds frequently meet with management to discuss corporate performance, 9% meet with management occasionally, 16% rarely meet, and 63% have not met with management in the last twelve months. Of the union funds, 15% occasionally meet with corporate management to discuss corporate performance and 85% have never met.

**SHOULD THE PROXY RULES BE CHANGED?**

Since CalPERS submitted its proposal for proxy reform to the Securities and Exchange Commission, there has been an outpouring of complaints about the proxy system. Nell Minow describes the problems with the proxy process:

A director once told me that shareholders who submit shareholder resolutions were ‘playing baseball on a football field.’ The problem is that sometimes you are standing on a football field and all they give you is a bat and a baseball . . . . [P]laying baseball on a football field . . . . is an awkward and inefficient way to get the football through the goalposts. Clearly, the proxy rules, written for a time when the shareholder community and the technology were very different, need to be overhauled . . . .

Shareholders do not want to be quarterbacks. But when they buy

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388. Investment Manager Survey Q 21.
389. Id.
390. Pension Survey Q 32.
stock, they find themselves on a football field, and they don’t want to have [to] swing a baseball bat just to get in the game.393

Minow is not alone in her criticism. Gray Davis, the Comptroller of California, says, “The proxy system is totally biased toward management, and you need a Ph.D. to understand it.”394 Raymond J. Sweeney, general counsel for the Sheet Metal Workers National Pension Fund recalls, “About two years ago, we decided we’d vote all the proxies and I was assigned to do it. I thought, ‘I can read and write, I can understand this,’ and after billing my clients for six hours and getting nowhere, I gave up.”395

Roderick M. Hills, a lawyer who has served as an officer and director of “a dozen large corporations,”396 describes the problems inherent in the current proxy system:

The principal problem with the proxy contest is that the “playing field is not level.” Management controls the process: they set the schedule and they can change the schedule. Management gets the voting lists quicker and management controls the shareholder meeting when it does occur . . . . Even where management is entirely fair, the dissidents will find that the process is clumsy. Voting lists are inaccurate, mailings are complex and some proxy solicitors are just inefficient.397

Economist John Pound explains:

The net effect of these [SEC regulations] . . . is an absurd situation, in which investing institutions are forced to function on an individual basis rather than through collective action. They cannot coordinate with the dozens of other institutions in the shareholder pool; they do not form coalitions. Rather, each institution acts as an island unto itself, monitoring its portfolio companies in a manner uncoordinated with those of any of its peers.398

393. Id. at 41.
395. Id.
398. William Taylor, Can Big Owners Make a Big Difference?, HARV. BUS. REV., Sept.-
Not all participants in the proxy process believe it is slanted toward management. John Wilcox, managing director of Georgeson and Company, a proxy solicitation firm, believes that "[w]hile the Proxy Process is technically complicated, cumbersome and inefficient in some respects, its impact is neutral and it does not give advantages to either incumbents or dissidents . . . ." 399

The Business Roundtable claims that the proxy rules did not need reform.400 The Business Roundtable criticized the initial SEC proxy proposals, saying they

would plunge the proxy process into secret back-room dealings among powerful institutional investors with billions of dollars of assets, rely on expensive after-the-fact, private litigation . . . and would place the fate of the corporations in the hands of many of the same financial intermediaries who were the driving force behind the excessive takeovers of the 1980s.401

Bruce Atwater, Chairman of the Business Roundtable's Corporate Governance Task Force also strongly criticized the SEC's proposed shareholder communication rules:

It is, if I may so characterize it, a radical proposal. I strongly believe it would undercut the SEC's historic premise that investors are best protected by the full disclosure of all actions that would change the nature or degree of an investor's interests or his ability to protect them. It would allow powerful institutional investors to solicit

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399. Corporate Proxy Voting System: Hearing Before the Subcomm. on Telecomm. and Fin. of the House Comm. on Energy and Commerce, 101st Cong., 1st Sess. 17-18 (1989) (testimony of John C. Wilcox, managing director of Georgeson & Co.). However, Wilcox admits that "it is absolutely horrendous [for both sides on a proxy fight] to try and get proxy material cleared by the Commission . . . . The role of the Commission in clearing proxy material has actually influenced the outcomes to certain proxy fights because they have taken so long to clear material and quibbled so long over small points of grammar and word usage. It's almost random." Id. at 57.

400. Patrick McGurn, Business, Shareholders Battle over Proxy Rule Changes, 8 CORP. GOVERNANCE BULL. (IRRC) No. 5, at 1, 4 (Sept.-Oct. 1991). Bruce Atwater, [chairman of the Business Roundtable's corporate governance task force] says, "The SEC appears to have come up with a cure [for a nonexistent disease] . . . Humpty Dumpty is not broken, but the 'proxy reformists' want to push him off the shelf without worrying about who is to put it all back together again . . . ." Id.

proxy voters in secret, without the other stockholders or the company management being aware of the action . . . .

It would give rumors, half-truths, and misinformation a new force that neither management nor the other shareholders would be able to respond to or correct.402

One director who opposed the SEC proposed proxy rules said, "I don’t think shareholders can understand in depth the company, the industry in which it operates, the competitive pressure and the scope of opportunities enough to play an adequate role in power-sharing . . . . I envy those who run privately owned companies."403

Our survey was conducted while the SEC was considering proposed changes to the proxy rules. On October 16, 1992, two-and-a-half months after we finished collecting data for our survey, the SEC amended its proxy rules. One of the major changes the SEC made was to exempt from proxy statement delivery and disclosure requirements certain communications between shareholders, including an announcement by a shareholder on how it intends to vote.404

We asked whether the respondents supported certain changes to proxy rules.405 Some results were surprising. Thirty-two percent of directors would require independent tabulation, 34% of directors would prohibit bundling of proposals, and 23% of directors would ease SEC restrictions on shareholder communications. Other responses were less surprising. Not one director was in favor of cumulative voting or a requirement that management include representative shareholders comments on director nominees in the proxy statement.

Several directors commented that no changes are necessary: "[The rules] are proven and time tested."406 "No changes needed to
obtain what shareholders want.” 407 "Real investors know good management and business. They don’t need more regulations and rules.” 408 One director took a different position: “The issue is not the proxy rules! The issue is to make corporate management understand that it works for the owners of the company and encourage communication between those holders, management, and the board.” 409 Another comment: “Ease restrictions on communications — let the CEO tell what he is trying to do without worrying about lawyers and the ‘strike’ firms that make a living out of ‘gotcha.’” 410 Another director suggested that the “support required for [a] proposal to be resubmitted for inclusion in [a] proxy statement should [be increased] from 1st year support of 3%, 2nd year support of 6% and following years of support of 10% to 5%, 8% and 12% respectively.” 411

Investment managers favor more changes to the proxy rules than directors. Fifty percent would mandate confidential voting, 50% would require independent tabulation of votes, 49% would ease restrictions on shareholder communications, 38% would require proxy materials to be distributed sooner so that investors have more time for review, 49% would allow shareholders to nominate directors, and 66% would prohibit the bundling of proxy proposals. 412

Public funds had the greatest support for changes to the proxy rules. Sixty-six percent of public funds would mandate confidential voting, 70% would require independent tabulation, 74% would ease restrictions on shareholder communications, 65% would give shareholders access to shareholder lists, 52% would allow large shareholders to submit more than one proposal, 64% would require proxy materials to be delivered sooner, 66% would allow shareholders to nominate directors, 68% would require management to include representative shareholder comments on director nominees in the proxy statement, 61% would require management to include representative shareholder comments on management in the proxy statement, 66% would regulate the counting of shareholder votes, and 77% would prohibit bundling of shareholder proposals. Public funds suggested

407. Survey #100334.
408. Survey #100386.
409. Survey #100502.
410. Survey #100397.
411. Survey #100036.
412. Final rules adopted by the SEC on October 16, 1992, ease shareholder communication and prohibit the bundling of proxy proposals.
additional changes from "simplify" to "encourage corporate democracy, in all its ramifications."\footnote{413}

Predictably, union funds were not as supportive of proxy reform. However, 75% of union funds would require proxy materials to be delivered sooner, 67% would require management to include representative shareholder comments on management proposals in the proxy statement, 67% would prohibit bundling, 58% would allow shareholders to nominate directors, 58% would require management to include representative shareholder comments on director nominees in the proxy statement, and 50% would require independent tabulation of votes.

The responses are noted in the following charts:

\begin{center}
\textbf{CHART 20A}
\end{center}

\begin{center}
\textbf{MANDATE CONFIDENTIAL VOTING}
\end{center}

\begin{center}
\begin{tikzpicture}
\begin{axis}[
width=\textwidth,\nheight=\textwidth,\nbar width=0.2cm,\n\sffamily,\n\nodes near coords,\n\enlarge y limits=0.07,\nxticklabels=\empty,\nxtick={0,20,40,60,80,100},\nxticklabel style={font=\footnotesize},\nyticklabels=\empty,\nytick={0,0.25,0.5,0.75,1},\nyticklabel style={font=\footnotesize,align=right},\n]
\addplot[\fill=black] coordinates {
(0,0) (20,0) (40,0) (60,0) (80,0) (100,0)
};\node at (axis cs:40,0) {\small CHANGE};
\addplot[\fill=white] coordinates {
(0,0) (20,0) (40,0) (60,0) (80,0) (100,0)
};\node at (axis cs:20,0) {\small NO CHANGE};
\addplot[\fill=gray] coordinates {
(0,0) (20,0) (40,0) (60,0) (80,0) (100,0)
};\node at (axis cs:0,0) {\small NOT SURE};
\end{axis}
\end{tikzpicture}
\end{center}

\begin{itemize}
\item \textbf{PUBLIC FUNDS}
\item \textbf{UNION FUNDS}
\item \textbf{INVESTMENT MANAGERS}
\item \textbf{CORPORATE DIRECTORS}
\end{itemize}

\footnote{413. Survey \#584; see also Survey \#517 ("Avoid legal language"); Survey \#540 (mandate a prescribed format for the proxy statement).}

\footnote{414. Survey \#567.}
**CHART 20B**

**INDEPENDENT TABULATION OF PROXIES**

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

- CHANGE
- NO CHANGE
- NOT SURE

**CHART 20C**

**EASE RESTRICTIONS ON SHAREHOLDER COMM.**

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

- CHANGE
- NO CHANGE
- NOT SURE
CHART 20D
REQUIRE S/H ACCESS TO S/H LIST

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0%  20%  40%  60%  80%  100%

CHANGE  NO CHANGE  NOT SURE

CHART 20E
REQUIRE CUMULATIVE VOTING

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0%  20%  40%  60%  80%  100%

CHANGE  NO CHANGE  NOT SURE
CHART 20F
ALLOW MORE THAN ONE PROPOSAL

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

CHANGE NO CHANGE NOT SURE

CHART 20G
LIFT 500 WORD LIMIT

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

CHANGE NO CHANGE NOT SURE
CHART 20H
DISTRIBUTION OF PROXY MATERIALS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

CHANGE

NO CHANGE

NOT SURE

CHART 20I
ALLOW SHAREHOLDERS TO NOMINATE DIRECTORS

PUBLIC FUNDS

UNION FUNDS

INVESTMENT MANAGERS

CORPORATE DIRECTORS

0% 20% 40% 60% 80% 100%

CHANGE

NO CHANGE

NOT SURE
CHART 20J
S/H COMMENTS ON DIRECTOR NOMINEES

CHART 20K
S/H COMMENTS ON MANAGEMENT PROPOSALS
CHART 20L
REGULATE COUNTING OF SHAREHOLDER VOTES

CHART 20M
NO PROPOSALS BUNDLING UNRELATED ISSUES
SHOULD EXECUTIVE COMPENSATION DISCLOSURE BE CHANGED?

Many suggestions for reform of executive compensation disclosure have been made. For example, the Business Roundtable supports independent compensation committees and encourages its members to appoint only non-management members of the board of directors to executive compensation committees.\textsuperscript{415} The Business Roundtable also suggests that “[t]he overall structure of executive compensation and share ownership programs should directly link the interests of the executives, either individually or as a team, to the long-term interests of the shareholders.”\textsuperscript{416} The Business Roundtable also suggests that annual compensation packages should not be compared with annual stock price movements “as such a practice would tend to foster short-term behavior and is not a useful barometer of current financial performance.”\textsuperscript{417}

Anthony O’Reilly, CEO of H.J. Heinz, criticizes accounting practices that include stock options in annual compensation: “It is absurd to say the pay of somebody is the same as what they earned in the year they exercised options . . . . It is financial illiteracy of the highest kind.”\textsuperscript{418} In response to our survey, one director suggested:

[The] reporting of option values needs attention. [The] present system leads to headlines that are inaccurate, misleading, and inflammatory. Options must be valued at [the] time of issue and reported only at that time as per stock award.\textsuperscript{419}

An outside director suggested that “compensation disclosure should and will be broken down into relevant components.”\textsuperscript{420}

Several investment managers also offered suggestions for proxy reform. One manager advocated “easier to read and fuller disclosure of executive compensation — SOPs, etc. in less technical ‘legalese’ language”.\textsuperscript{421} Another suggested that the SEC “standardize a more comprehensive requirement for disclosing executive compensa-

\textsuperscript{416} \textit{Id.}
\textsuperscript{417} \textit{Id.} at 4.
\textsuperscript{419} Survey #100133.
\textsuperscript{420} Survey #100445a.
\textsuperscript{421} Survey #339; \textit{see also} Survey #259 (“clearer English, less legalese”).
Several public pension funds suggested "improved disclosure on executive compensation," and "more extensive disclosure of executive compensation and stock options." Sarah A.B. Teslik, executive director of the Council of Institutional Investor says, "We're seeing more complicated packages and more finely tuned efforts to obfuscate the actual amount of pay." She claims that compensation packages are designed to avoid the attention of shareholders.

The SEC has addressed some of these issues in its final rules on executive compensation disclosure, which were adopted after our survey was completed. Among other things, the final rules require detailed compensation charts and disclosure of all current compensation (cash and non-cash), awarded or earned by certain executives in each of the three prior fiscal years and the corporate performance factors on which the board relied in setting the compensation. The SEC rejected an earlier proposal which would have required detailed disclosure of stock option grants, including the amount of gain that would be realized if the options were realized at certain levels. The new rules allow corporations to choose between two option valuation methodologies, a practice which will generate widely different valuations. Critics claim this new valuation rule will encourage a "race to the bottom" as companies perform the calculations required to ascertain the values under the various alternatives, then use the method producing the lowest value. One critic claims: "[t]he compensation consultants can figure it (the option value) 29 ways from Sunday ... and some of those ways produce considerably lower numbers than others."

422. Survey #382.
423. Survey #500.
424. Survey #509.
426. Id.
428. Id. at 1094.
432. Id.
FUTURE TRENDS

We asked each group of respondents whether they believe that in the next decade pension funds will become more active with respect to corporate governance. Sixty-nine percent of directors predict that institutional investors would become more active. One director succinctly said, "I hope not." Seventy-nine percent of investment managers predict increasing activism, as do 85% of the public and union funds. These responses indicate that pension funds plan to take a more active role with respect to corporate governance.

CHART 21

Do you believe that in the next decade institutional investors will become more active with respect to corporate governance?

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433. Director Survey Q 41; Pension Survey Q 51; Investment Manager Survey Q 48.
434. Survey #100386.
435. Director Survey Q 41; Pension Survey Q 51; Investment Manager Survey Q 48. Surveys, supra note 420; See also, Speaking Out, INSTITUTIONAL INVESTOR, July 1990, at 203 (containing a 1990 survey by Institutional Investor which reported that 93% of pension officials believe that "large shareholders will play an increasing role in corporate governance in the 1990s").
Twenty-one percent of directors reported that during the last five years their actions as directors have been affected by institutional investors.436 Two directors made specific comments. One said, "Absolutely not!"437 The other director said that as a result of institutional directors, a by-law amendment was passed regarding independent directors.438

Other director comments to this question varied. Two directors emphasized that institutional investors are no different than other shareholders: "Hard to say! All shareholders are the same."439 "Actions as [a] director are always governed by efforts to serve [the] best interests of shareholders."440 Two directors had completely opposite reactions. One director reported that "calls from large investors have been very influential,"441 while another director said, "So far [I've been influenced] only negatively."442

We invited respondents to comment on the role institutional investors should play with respect to corporate governance.443 Responses varied tremendously.

Union funds internally hold diametrically opposed views. For example, one union fund wrote that pension funds should have "plenty!" to do with corporate governance,444 while another union fund said that pension funds should have "very little" role in corporate governance.445 Another union trustee commented that the role of pension funds with respect to corporate governance is "to protect shareholder interest."446 Another noted that "most trustees of ERISA funds [are] not qualified" to be involved in corporate governance.447

Investment managers also offered suggestions. One investment manager recommended that "[p]ension funds should start acting more

436. Director Survey Q 39.
437. Survey #100386.
438. Survey #100036.
439. Survey #100382.
440. Survey #100227.
441. Survey #100490.
442. Survey #100225.
443. Director Survey Q 38; Pension Survey Q 53; Investment Manager Survey Q 50.
444. Survey #436; see also Survey #405 ("Reformation of the process and active ownership").
445. Survey #490; see also Survey #439 ("Any role in governance should be concerned only with mid to long term corporate economic performance").
446. Survey #479.
447. Survey #419.
like owners.\textsuperscript{448} "As the shareholders, pension funds should have an active role in corporate decision-making."\textsuperscript{449} One manager commented that institutional investors should have a "more active role in selecting directors — [the] process is too controlled by management."\textsuperscript{450} Another investment manager suggested that pension funds take a "supervisory" role.\textsuperscript{451}

Other investment managers favor a more neutral position for institutional shareholders: "Be involved with decisions, but not to influence."\textsuperscript{452} Another advocates the exit model: "They should have the right to vote their shares. They also have the right to sell."\textsuperscript{453} Another investment manager interpreted ERISA as requiring institutional investors to have a "purely economic" role: "ERISA requires that our sole duty is to act for [the] exclusive benefit of our plan participants."\textsuperscript{454}

Directors also had divergent views. Many said that institutional investors should play no role in corporate governance.\textsuperscript{455} "They are traders who don’t have a clue regarding running a business."\textsuperscript{456} Another director said that institutional investors should play no role in corporate governance "outside of voting ‘in the usual way.’"\textsuperscript{457} Most directors said that institutional investors are the same as any other shareholder.\textsuperscript{458} "They are no better and no worse than any other shareholder; they should have no special role."\textsuperscript{459} Other directors advocated more access to the board of directors and financial

\textsuperscript{448} Survey #326; see also Survey #211.
\textsuperscript{449} Survey #289; see also Survey #259 ("Should be active to protect their investment.")
\textsuperscript{450} Survey #263; see also Survey #248 ("Keep the playing field even, promote full disclosure, vote their conscience.") and Survey #222 ("I believe that some of the . . . securities acts removed the capability for owners to act as owners and as a result we have created a deified management culture in this country, [that] needs to change.").
\textsuperscript{451} Survey #325.
\textsuperscript{452} Survey #384; see also Survey #304: "Pension funds should have a ‘minimal’ role — to protect investment.”
\textsuperscript{453} Survey #257; see also #295 ("Generally, they should communicate their displeasure and if they continue rebuttal [ ] they should sell the stock").
\textsuperscript{454} Survey #316. This is an example of more rhetoric to justify short-term investments; see also Survey #284: "Vote shares in the best interest of shareholders.”
\textsuperscript{455} Surveys #100349, 100060, 100212, 100386, and 100477.
\textsuperscript{456} Survey #100386.
\textsuperscript{457} Survey #100445a; see also Survey #100054 ("Very little [role]. Investors’ primary concern should be financial performance."); Survey #100382 ("Vote and lobby board").
\textsuperscript{458} Surveys #100227, 100257, 100476, 100311, 100113, 100171, 100232, 100158, 100115, 100265, and 100315.
\textsuperscript{459} Survey #100476. They should have "1 vote per share." Survey #100467.
information: "[Institutional investors] need to have direct access to [the] board on [a] periodic basis." 460 Each company should be viewed on its own performance. As investors — particularly if long-term — they should ask for and expect to receive periodic reports on performance. Currently they are inclined to establish a program for all governance questions and [then] apply them indiscriminately." 461 Others stressed more caution before acting: "[Institutional investors should] watch carefully, ask questions, [and] act only if necessary." 462

Another director said that institutional investors should:

1. show interest
2. ask questions — listen to answers
3. vote for or against director slates. 463

Others encouraged institutional investors to "make their views known on issues in which they have an interest" 464 and "articulate their concern and insight." 465 But one director urged institutional investors not to forget that "they are agents for others . . . . [they can act] any [way] they want as long as they do not conflict with the interests of those whose money they invest." 466

The 1989 survey by Egon Zehnder International asked directors if "[t]he power of institutional investors in corporate governance is growing out of proportion and [whether] something should be done to control it." 467 Fifty percent of directors agreed that the power of institutional investors is growing out of control. 468 We did not ask this question, but clearly some directors are hostile to institutional investors.

460. Survey #100502; see also Survey #100036 ("Open-door communications with management and periodic formal review of issues with management as a group."); Survey #100137 ("Meeting with management on [a] regular basis and review[ing] operational results.")
461. Survey #100225.
462. Survey #100399.
463. Survey #100314; see also Survey #100133 ("Toss out or support board as a whole or individual director as [the] case may be.")
464. Survey #100270.
465. Survey #100397.
466. Survey #100334.
468. Id.
III. CONCLUSION

John Nash, president of the National Association of Corporate Directors, says, "The time is waning now when the CEO can say, 'It's my company. It's my board. . . . It's going to be the shareholders' company.'" Shareholder activism is on the rise, but investment managers, public funds, and union funds are diverse groups with divergent interests. In some areas, particularly with respect to interpretation of the Avon Letter, proxy voters need more guidance. They also need to be better educated on the Department of Labor's position on proxy voting. Investment managers need resources to better meet the needs of individual pension fund trustees. While this may not be a practical proposition for large managers, there is a niche to be filled by small and enterprising managers. The development of corporate governance index funds like the Lens Fund, headed by Robert A.G. Monks and Nell Minow, and the LongView Fund, sponsored by the Amalgamated Bank of New York, will provide a vehicle for increased trustee involvement in governance issues.

Perhaps most disturbing is the apparent misinterpretation of ERISA by some investment managers. Although ERISA requires trustees to act solely and exclusively in the interest of participants and beneficiaries, this does not mean that trustees must maximize short-term investment returns. The Department of Labor has stated that, with respect to tender offers, "plans are not required to take the 'quick buck' if they feel, based upon an appropriate and objective analysis, that they will achieve a higher economic value by holding the investment rather than tendering and reinvesting the proceeds." This allows trustees to favor long-term growth over short-
term gain if the decision is in the economic best interest of plan participants and beneficiaries. Pension funds can, and should be, long-term investors who protect their interests through communication with management and active monitoring of corporate agents.
APPENDICES

A Corporate Director Survey
B Investment Manager Survey
C Pension Trustee Survey
D Proxy Guideline Survey (Pension Funds)
E Proxy Guideline Survey (Investment Managers)
F Fortune 250 Arranged in Order of Institutional Holdings With Turnover Rates
G Proxy Voting Guidelines (Public Funds)
H Proxy Voting Guidelines (Union Funds)
I Proxy Voting Guidelines (Investment Managers)
APPENDIX A

SURVEY OF CORPORATE DIRECTORS ON INSTITUTIONAL INVESTORS AND CORPORATE GOVERNANCE

This survey is funded by grants from the Fund for Labor Relations Studies and Texas Tech University School of Law. The purpose of the survey is to obtain detailed information from directors of Fortune 250 corporations regarding their attitudes on the involvement of institutional investors in the proxy process. In particular, I am seeking information as to how often your corporation communicates with institutional investors, and what role, if any, institutional investors have with respect to corporate governance. Your responses to this survey will remain anonymous, unless you choose to waive anonymity. The results of the survey will be published in a scholarly legal article. If you wish to receive a copy of the article when it is published, please attach your business card to the completed survey. (You will remain anonymous even if you attach your business card unless you waive anonymity, in writing, at the end of the survey).

Thank you for participating in this survey. Please return the survey as soon as possible. A self-addressed envelope is provided for your convenience.

Send to:
Professor Jayne Zanglein
Texas Tech University
School of Law
Lubbock, Texas 79409-0004

If you have any questions, please call me at 806-742-3997. My FAX number is 806-742-1629.

Control Number ___________ (Anonymity is guaranteed. The control number will be used solely to monitor response rates.)
SURVEY OF CORPORATE DIRECTORS ON INSTITUTIONAL INVESTORS AND CORPORATE GOVERNANCE

1. How many years have you served as director of this corporation? _______

2. Specify any other affiliation or relationship to the corporation (i.e. officer, employee etc.) ____________________________________________

3. Do you believe that institutional investors should monitor corporate performance? ___Yes ___No ___Not sure

4. Do you believe that institutional investors should meet with management to discuss corporate performance? ___Yes ___No ___Not sure

5. Does your corporation have a shareholder advisory committee? ___Yes ___No

6. If yes, describe the composition of the committee. (Indicate numbers)
   ___Number of institutional investors
   ___Number of private investors
   ___Number of inside directors
   ___Number of outside directors
   ___Other (specify) ________________________________

7. If your corporation has a shareholder advisory committee, how often does it meet?
   ___Quarterly
   ___Once every six months
   ___Annually
   ___Other (specify) ________________________________

8. If your corporation does not have a shareholder advisory committee, is it likely that the board of directors will appoint an advisory committee within the next year?
   ___It is unlikely that a shareholder advisory committee will be established.
   ___It is likely that a shareholder advisory committee will be established.
   ___It is possible that a shareholder advisory committee will be established.
   ___I don't know.

9. If your corporation does not have a shareholder advisory committee, how often within the last twelve months has management met with institutional investors to discuss corporate performance?
   ___Frequently
   ___Occasionally
   ___Rarely
   ___Never
10. Do you believe that institutional investors should have the right to sponsor shareholder proposals in an effort to influence corporate governance?
   ___Yes ___No ___Not sure

11. Within the last five years, have institutional investors sponsored shareholder proposals at your corporation? ___Yes ___No ___Not sure

12. If yes, how often?
   ___Frequently
   ___Occasionally
   ___Rarely
   ___Never

13. Is your corporation willing to meet with institutional investors who have sponsored shareholder proposals to negotiate a settlement? ___Yes ___No ___Depends on the proposal and the proponent

14. Does management solicit the votes of institutional investors?
   ___Frequently
   ___Occasionally
   ___Rarely
   ___Never

   If so, on what types of issues?

15. Does management resolicit institutional investors to request them to change a proxy vote?
   ___Frequently
   ___Occasionally
   ___Rarely
   ___Never

   If so, on what types of issues?

16. Listed below are a number of common proxy issues. Which of these issues do you believe usually have an impact on the economic value of stock?

<table>
<thead>
<tr>
<th>Issue</th>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Contested election of directors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Uncontested election of directors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Provisions limiting director liability and providing indemnification</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
d. Approval of executive stock option plans

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

e. Recapitalization (increase in authorized common stock, blank check preferred stock, or increase in corporate debt)

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

f. Reincorporation

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

g. Redemption of or vote on poison pills

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

h. Board size

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

i. Independent directors

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

j. Supermajority voting requirements

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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</thead>
</table>

k. Dual class voting

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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</thead>
</table>

l. Confidential voting

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

m. Independent tabulation of proxies

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

n. Classified boards

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

o. Cumulative voting

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

p. Shareholders' right to call special meetings

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

q. Golden parachutes

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
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</table>

r. Shareholder advisory committees

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

s. Minimum director stock ownership

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

t. Provisions which opt out of Delaware takeover laws

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

u. Preemptive rights

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
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</table>

v. Disclosure of executive compensation

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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</table>

w. Restrictions on executive compensation

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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</table>

x. Director compensation

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
</thead>
</table>

y. Targeted share placement

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
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</table>

z. Independent compensation committee

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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</table>

aa. Independent nominating committee

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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</table>

bb. Provisions which limit terms of directors

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
</tr>
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</table>

17. Are you in favor of corporate constituency statutes which allow directors to consider the interests of groups such as employees, consumers, suppliers, and the community?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
</tr>
</thead>
</table>

Comment

18. Is your corporation subject to a shareholder constituency statute?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Not sure</th>
</tr>
</thead>
</table>
19. On which of the following issues do you believe that institutional investors should have a right to vote?

Poison pills
Golden parachutes
Greenmail
Recapitalization plans
Mergers and acquisitions
Executive compensation
ESOPs created as defensive tactic

20. Does your corporation have confidential shareholder voting?

Yes __
No ___

21. Do you believe shareholder votes should be confidential?

Yes __
No ___

Comment ____________________________
_________________________________________________________________

22. How many director positions are there on your board? ___

23. How many are held by outside directors? ___

24. Does the board have a policy with respect to the ratio of inside directors to outside directors?

Yes (Specify) ____________________________

No ___

Comment ____________________________
_________________________________________________________________

25. Do you believe corporate directors should be required to own corporate stock?

Yes, shares should be awarded to directors as part of compensation ___

Yes, directors should be required to buy shares ___

No ___

Not sure ___

Comment ____________________________
_________________________________________________________________

26. If you believe that corporate directors should be required to own corporate stock, what should be the minimum amount of stock ownership? ______

27. Should executive compensation be tied to corporate performance?

Yes ___
No ___
Depends on corporation ___

Comment ____________________________
_________________________________________________________________
28. Is executive compensation at your corporation tied to corporate performance? ___Yes ___No

Comment ____________________________________________________________________________

_________________________________________________________________________________

29. When nominating directors, does the board or nominating committee consider whether the prospective nominee has ties to institutional investors?
___Yes
___No
___Not sure
___Sometimes (Explain) __________________________________________________________________

_________________________________________________________________________________

30. Do you believe the interests of institutional investors differ from the interests of the board of directors?
___Yes, they differ significantly
___Yes, they differ slightly
___No, they do not differ

Comment ____________________________________________________________________________

_________________________________________________________________________________

31. Were any of your corporation's directors appointed at the request of institutional investors?
___Yes (If so, how many institutional representatives? ___)
___No

32. If your corporation has directors with ties to institutional investors, has your corporation performed better or worse as a result of the involvement of institutional directors?
___Better
___Worse
___Same
___Not sure

Comment ____________________________________________________________________________

_________________________________________________________________________________

33. If your corporation does not have directors with ties to institutional investors, do you believe that your corporation would perform better or worse if a representative of institutional investors served on the board of directors?
___Better
___Worse
___Same
___Not sure
34. Do you regard index fund investors differently than investors who actively select your corporation for investment? __Yes __No

Comment

35. Do you believe that institutional investors should be long term investors? __Yes __No __Not sure

36. Do you believe that institutional investors are long term investors? __Yes __No __Not sure

37. How can corporations encourage long-term investment by institutional investors? ______

Comment

38. What role, if any, do you believe institutional investors should have with respect to corporate governance? ______

Comment

39. During the last five years, have your actions as a director been affected by institutional investors? __Yes __No

Comment

40. Which of the following changes to the proxy rules do you think the SEC should make?

<table>
<thead>
<tr>
<th>Change</th>
<th>No Change</th>
<th>Not Sure</th>
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<tbody>
<tr>
<td>a. mandate confidential voting</td>
<td>______</td>
<td>______</td>
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<tr>
<td>b. require independent tabulation of proxies</td>
<td>______</td>
<td>______</td>
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<tr>
<td>c. ease restrictions on shareholder communications</td>
<td>______</td>
<td>______</td>
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<tr>
<td>d. require shareholder access to shareholder lists</td>
<td>______</td>
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<td>e. require cumulative voting</td>
<td>______</td>
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<tr>
<td>Change</td>
<td>No Change</td>
<td>Not Sure</td>
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<td>f. allow large shareholders to submit more than one proposal</td>
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<td>g. lift the 500 word limit on shareholder proposals</td>
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<td>h. require proxy materials to be distributed sooner so that investors have more time for review</td>
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<td>i. allow shareholders to nominate directors</td>
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<td>j. require management to include representative shareholder comments on director nominees in the proxy statement</td>
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<td>k. require management to include representative shareholder comments on management proposals in the proxy statement</td>
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<td>l. regulate the counting of shareholder votes (i.e. whether abstentions should count)</td>
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<tr>
<td>m. prohibit management proposals that bundle unrelated proxy issues</td>
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</table>

Describe any other ways the SEC should change its proxy rules. 

41. Do you believe that in the next decade institutional investors will become more active with respect to corporate governance? 
   ___ Yes ___ No ___ Not sure

42. Your answers will remain anonymous unless you waive anonymity by providing the following optional information:

   Name of Corporation: ________________________________

   Your Name: ________________________________

   Your phone number: ________________________________
APPENDIX B

SURVEY OF INVESTMENT MANAGERS ON PROXY VOTING AND CORPORATE GOVERNANCE

This survey is funded by grants from the Fund for Labor Relations Studies and Texas Tech University School of Law. The purpose of the survey is to obtain information from investment managers as to how they vote proxies on behalf of pension fund clients. In particular, I am seeking information as to whether pension fund clients direct your firm to vote proxies in a particular manner, and the extent of your firm's ability to respond to increasing involvement by pension funds in the proxy process. Your responses to this survey will remain anonymous, unless you choose to waive anonymity. The results of the survey will be published in a scholarly legal article. If you wish to receive a copy of the article when it is published, please attach your business card to the completed survey. (You will remain anonymous even if you attach your business card unless you waive anonymity, in writing, at the end of the survey).

Thank you for participating in this survey. Please return the survey as soon as possible. A self-addressed envelope is provided for your convenience.

Send to:

Professor Jayne Zanglein
Texas Tech University
School of Law
Lubbock, Texas 79409-0004

If you have any questions, please call me at 806-742-3997. My FAX number is 806-742-1629.

NOTE: IF YOUR FIRM DOES NOT HAVE ANY PENSION FUND CLIENTS, CHECK HERE _____ AND RETURN SURVEY. PLEASE ANSWER SURVEY IF YOUR FIRM HAS ANY PENSION FUND CLIENTS, EVEN IF YOU DO NOT VOTE PROXIES FOR THOSE CLIENTS.

Control Number __________ (Anonymity is guaranteed. The control number will be used solely to monitor response rates.)
SURVEY OF INVESTMENT MANAGERS ON PROXY VOTING AND CORPORATE GOVERNANCE

1. Approximate total market value of equity portfolios managed for pension fund clients as of December 31, 1991: $ __________

2. Specify approximate size of equity portfolios managed for each type of pension fund and percentage of shares for which you have proxy voting authority:
   - corporate $__________ % _________
   - government $__________ % _________
   - union $__________ % _________
   - foundations $__________ % _________
   - other (specify) $__________ % _________

3. Does your firm have standard proxy voting guidelines? ___Yes ___No

4. Does your firm match proxies to all record holders as of the record date? ___Yes ___No, we cannot match ___No, we do not attempt to match

5. Does your firm subscribe to a proxy research service or do you research proxy issues in-house? ___We research proxy issues in-house ___We subscribe to proxy research service(s) ___Both ___Neither

6. How many pension fund clients does your firm have? ______

7. How many pension fund clients have delegated proxy voting authority to your firm? ______

8. Does your firm vote proxies on behalf of pension fund clients? ___Yes ___No
   If no, explain__________________________________________
   (IF NO, PROCEED TO QUESTION 19)

9. Does your firm have sufficient staff and resources to vote proxies according to proxy voting guidelines of individual pension fund clients? ___Yes ___No ___Only for certain funds (Describe conditions)_____

10. Of the pension fund clients which have delegated proxy voting authority to your firm:
   a. how many have their own proxy voting guidelines? ____
   b. how many have granted discretionary authority to your firm to vote proxies? ____
11. Have you ever been asked by a pension fund client which has delegated proxy voting authority to your firm, to vote a proxy contrary to the proxy voting guidelines? ___Yes ___No ___Not sure

12. If yes, how often has this occurred?
   ___Frequently ___Occasionally ___Rarely ___Never

   Describe types of proxy issues on which trustees have directed your firm to vote contrary to the proxy voting guidelines

13. How does your firm report to pension fund clients on proxy voting?
   (check all applicable)
   ___Through written reports
   ___Through oral reports at fund meetings
   ___Through discussions outside of fund meetings
   ___We do not provide proxy voting reports

14. How often does your firm report to pension fund clients on proxy voting?
   ___Monthly
   ___Quarterly
   ___Every six months
   ___Annually
   ___On request

15. Within the last two years, have any of your pension fund clients voiced disagreement with a proxy voting decision made by your firm?
   ___Yes ___No ___Not sure

16. If yes, how often within the last two years?
   ___Once or twice
   ___Between 3 - 5 times
   ___Between 5 - 10 times
   ___More than 10 times

   Describe the types of issues on which disagreement occurred and what action, if any, your firm took as a result.

17. Have any of your pension fund clients ever asked your firm to return proxies to the trustees to vote? ___Yes ___No ___Not sure

   If so, explain

18. Has your firm ever lost a pension fund client because your firm refused to vote proxies as directed by the client? ___Yes ___No ___Not sure

   If so, explain
19. Do you believe pension fund investors should monitor corporate performance? ____Yes ____No ____Not sure

20. Do you believe pension investors should meet with management to discuss corporate performance? ____Yes ____No ____Not sure

21. How often does your firm meet with management on behalf of pension fund clients to discuss corporate performance? ____Frequently ____Occasionally ____Rarely ____Never

22. Does your firm monitor executive compensation? ____Yes ____No ____Not sure

23. Do you believe that executive compensation should be tied to corporate performance? ____Yes ____No ____Depends on corporation

Comment ________________________________________________________________

24. Does corporate performance affect how your firm votes on director nominees? ____Yes ____No ____Not sure

25. Do you believe corporate directors should be required to own corporate stock? ____Yes, shares should be awarded to directors as part of compensation ____Yes, directors should be required to buy shares ____No ____Not sure

26. Do representatives of your firm serve on any shareholder advisory committees? ____Yes ____No ____Not sure

If so, how many committees? ______

27. Do representatives of your firm serve on any boards of directors? ____Yes ____No ____Not sure

If so, how many boards? ______

28. Listed below are a number of common proxy issues. Which of these issues do you believe usually have an impact on the economic value of stock?

<table>
<thead>
<tr>
<th>Has Impact</th>
<th>No Impact</th>
<th>Not Sure</th>
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<tbody>
<tr>
<td>a. Contested election of directors</td>
<td>____</td>
<td>____</td>
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<tr>
<td>b. Uncontested election of directors</td>
<td>____</td>
<td>____</td>
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<tr>
<td>c. Provisions limiting director liability and providing indemnification</td>
<td>____</td>
<td>____</td>
</tr>
<tr>
<td>d. Approval of executive stock option plans</td>
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</tbody>
</table>
e. Recapitalization (increase in authorized common stock, blank check preferred stock, or increase in corporate debt)_______  ____  __________
f. Reincorporation_________  ____  __________
g. Redemption of or vote on poison pills_________  ____  __________
h. Board size_________  ____  __________
i. Independent directors_________  ____  __________
j. Supermajority voting requirements_________  ____  __________
k. Dual class voting_________  ____  __________
l. Confidential voting_________  ____  __________
m. Independent tabulation of proxies_________  ____  __________
n. Classified boards_________  ____  __________
o. Cumulative voting_________  ____  __________
p. Shareholders' right to call special meetings_________  ____  __________
q. Golden parachutes_________  ____  __________
r. Shareholder advisory committees_________  ____  __________
s. Minimum director stock ownership_________  ____  __________
t. Provisions which opt out of Delaware takeover laws_________  ____  __________
u. Preemptive rights_________  ____  __________
v. Disclosure of executive compensation_________  ____  __________
w. Restrictions on executive compensation_________  ____  __________
x. Director compensation_________  ____  __________
y. Targeted share placement_________  ____  __________
z. Independent compensation committee_________  ____  __________
aa. Independent nominating committee_________  ____  __________
bb. Provisions which limit terms of directors_________  ____  __________

29. What is the average portfolio turnover rate of all of your clients? ____%  
30. What is the average portfolio turnover rate of your pension fund clients? _________%  
31. How many of your pension fund clients invest in index funds? _________  
32. What percentage of equity portfolios managed by your firm on behalf of pension fund clients was indexed as of December 31, 1991? _________%  
33. Do you believe that investing in an index fund affects an investor's ability to influence corporate governance? __Yes ___No ___Not sure

Comment ____________________________________________________________
34. Do you believe the interests of pension fund investors differ from the interests of the board of directors?
   ____ Yes, they differ significantly
   ____ Yes, they differ slightly
   ____ No, they do not differ

Comment __________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

35. Do you believe that corporations would perform better or worse if a representative of pension fund investors served on the board of directors?
   ____ Better ____ Worse ____ Same ____ Not sure

Comment __________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

36. Do you believe that pension fund investors should be long term investors?
   ____ Yes ____ No ____ Not sure.

37. Do you believe that pension fund investors are long term investors?
   ____ Yes ____ No ____ Not sure

Comment __________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

38. If one of your pension fund clients were offered a takeover premium with respect to a tender offer, how would you advise your client?
   ____ I would advise my client to take the premium only if it was substantial
   ____ I would advise my client to take the premium only if it was adequate
   ____ I would advise my client not to take the premium
   ____ I would advise my client not to take the premium unless it was in the long-term economic best interests of the pension plan participants
   ____ Other ________________________________

(If your firm does not vote proxies on behalf of pension fund clients, proceed to question 46)

39. Has your firm ever simultaneously represented a corporation and a pension fund client which intended to vote its proxies against that corporation's management?
   ____ Frequently ____ Occasionally ____ Rarely ____ Never

40. If so, do you feel this placed your firm in a conflict of interest?
   ____ Yes ____ No ____ Not sure

Comment __________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

41. Do you have any suggestions for ways to avoid this type of conflict of interest?
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________

 http://scholarlycommons.law.hofstra.edu/hlelj/vol10/iss1/2 122
42. Does corporate management solicit your firm with respect to proxies which are voted on behalf of pension fund clients?
   ____Frequently ____Occasionally ____Rarely ____Never
   If so, on what types of issues? ________________________________

43. Has your firm ever been resolicited to change a proxy vote that already had been cast on behalf of a pension fund client?
   ____Frequently ____Occasionally ____Rarely ____Never
   If so, on what types of issues? ________________________________

44. Do you believe that any management solicitation has been improper?
   ____Yes ____No
   Comment ________________________________

45. Does your firm ever abstain on proxy issues on behalf of pension fund clients? (You may check more than one answer)
   ____Frequently
   ____Occasionally
   ____Rarely
   ____Yes, with respect to controversial or social issues
   ____Yes, with respect to de minimis issues
   ____Never
   ____Other (explain)______________________________

46. Which of the following changes to the proxy rules do you think the SEC should make?

   Change No Change Not Sure
   a. mandate confidential voting
   b. require independent tabulation of proxies
   c. ease restrictions on shareholder communications
   d. require shareholder access to shareholder lists
   e. require cumulative voting
   f. allow large shareholders to submit more than one proposal
   g. lift the 500 word limit on shareholder proposals
   h. require proxy materials to be distributed sooner so that investors have more time for review
   i. allow shareholders to nominate directors
j. require management to include representative shareholder comments on director nominees in the proxy statement

k. require management to include representative shareholder comments on management proposals in the proxy statement

l. regulate the counting of shareholder votes (i.e. whether abstentions should count)

m. prohibit management proposals that bundle unrelated proxy issues

Describe any other ways the SEC should change its proxy rules _______

47. On which of the following issues do you believe that pension fund investors should have a right to vote? (Check all applicable)

Poison pills
Golden parachutes
Greenmail
Recapitalization plans
Mergers and acquisitions
Executive compensation
ESOPs created as defensive tactic

48. Do you believe that in the next decade pension funds will become more active with respect to corporate governance? ___Yes ___No ___Not sure

49. Do you believe that pension funds should have the right to sponsor shareholder proposals in an effort to influence corporate governance? ___Yes ___No ___Not sure

50. What role, if any, do you believe pension fund investors should have with respect to corporate governance? ____________________________________________

51. Your answers will remain anonymous unless you waive anonymity by providing the following optional information:

Name of Firm: ____________________________________________
Your Name: ____________________________________________
Your Title: ____________________________________________
Your Phone Number: __________________________________
APPENDIX C

PROXY VOTING SURVEY FOR PENSION TRUSTEES

This survey is funded by grants from the Fund for Labor Relations Studies and Texas Tech University School of Law. The purpose of the survey is to obtain information from trustees of public and union pension funds as to proxy voting. In particular, I am seeking information as to your fund's proxy voting policies, and interest, if any, in monitoring corporate performance or influencing corporate governance. Your responses to this survey will remain anonymous, unless you choose to waive anonymity. The results of the survey will be published in a scholarly legal article. If you wish to receive a copy of the article when it is published, please attach your business card to the completed survey. (You will remain anonymous even if you attach your business card unless you waive anonymity, in writing, at the end of the survey).

Thank you for participating in this survey. Please return the survey as soon as possible. A self-addressed envelope is provided for your convenience.

Send to:

Professor Jayne Zanglein
Texas Tech University
School of Law
Lubbock, Texas 79409-0004

If you have any questions, please call me at 806-742-3997. My FAX number is 806-742-1629.

NOTE: IF YOUR FUND DOES NOT INVEST IN STOCKS, PLEASE CHECK HERE AND RETURN SURVEY. PLEASE ANSWER THE SURVEY IF YOUR FUND VOTES PROXIES OR IF YOUR FUND HAS DELEGATED PROXY VOTING AUTHORITY.

Control Number ___________ (Anonymity is guaranteed. The control number will be used solely to monitor response rates.)
PROXY VOTING SURVEY FOR PENSION TRUSTEES

1. Type of Fund:
   _____Public
   _____International Union
   _____Local Union
   _____Other (specify) __________________________

2. Type of Plan: _____Defined Benefit _____Defined Contribution

3. Estimated market value of assets as of December 31, 1991: $_________

4. Estimated percentage of assets invested in stock as of December 31, 1991:
   __________%

5. Estimated annual turnover rate of stock portfolio: __________%

6. How often do the trustees usually meet?
   ____Monthly ____Quarterly
   ____Every other month ____Annually
   ____Once every six months ____Other (Explain)_________
   ____As needed

7. How often do equity managers make presentations before the board of trustees?
   ____The fund does not employ equity managers
   ____All equity managers report at every meeting
   ____One or more equity managers report at every meeting
   ____Equity managers only give written reports outside fund meetings
   ____Other (explain)_________________________________________

8. Who has responsibility for voting proxies with respect to the fund's stock portfolio? (Check all applicable answers and indicate the approximate percentage of the fund's total stock holdings for which the fiduciary votes proxies) Note: These people will be referred as the "proxy voter" in subsequent questions.
   ____Board of Trustees (_______%)
   ____Investment committee (_______%)
   ____External equity managers or investment advisors (_______%)
   ____In-house equity manager(s) (_______%)
   ____Custodian bank (_______%)
   ____Master trustee (_______%)
   ____Other (specify) (_______%)

9. Have the trustees adopted proxy voting guidelines?
   ____Yes ____No ____Not sure

10. If your fund employs external equity managers, do they have proxy voting guidelines? ____Yes ____No ____Not sure
11. If the trustees have delegated proxy voting authority, have they ever instructed the proxy voter to vote contrary to the proxy voting guidelines?
   ___Yes ___No ___Not sure

12. If so, how often has this occurred? ___Frequently ___Occasionally ___Rarely

Describe the types of issues on which the trustees have directed a proxy voter to vote contrary to the proxy voting guidelines

13. How do proxy voters report to the trustees on proxy voting? (Check all applicable)
   ___Through written reports
   ___Through oral reports at fund meetings
   ___Through discussions outside of fund meetings
   ___Our proxy voters do not provide proxy voting reports
   ___Not sure

14. How often do proxy voters report to the trustees on proxy voting?
   ___Monthly  ___Annually
   ___Quarterly  ___On request
   ___Every six months  ___Not sure

15. Within the last two years, have the trustees formally disagreed with a vote made by a proxy voter? ___Yes ___No ___Not sure

16. If yes, how often within the last two years?
   ___Once or twice
   ___Between 3 - 5 times
   ___Between 5 - 10 times
   ___More than 10 times

Describe the types of issues on which disagreement occurred and what action, if any, the trustees took as a result

17. Have the fund's trustees ever asked a proxy voter to return proxies to the trustees to vote? ___Yes ___No ___Not sure

If so, explain

18. Has a proxy voter ever refused to vote proxies according to the fund's proxy voting guidelines? ___Yes ___No ___Not sure

19. Have the fund's trustees ever fired a proxy voter who refused to vote proxies according to the trustees' directions? ___Yes ___No ___Not sure

If so, explain

20. How often does corporate management solicit your fund's proxy votes?
   ___Frequently ___Occasionally ___Rarely ___Never ___Not sure
If so, on what types of issues? ________________________________________________

21. How often has your fund been resolicited to change a proxy vote that already was cast? ___Frequently ___Occasionally ___Rarely ___Never ___Not sure

If so, on what types of issues? ________________________________________________

22. Do you believe that any management solicitation has been improper? ___Yes ___No

If so, explain ________________________________________________________________

23. Do the trustees (or their fiduciaries) ever abstain on proxy issues? (Check all applicable)
   ___I don't know
   ___Frequently
   ___Occasionally
   ___Rarely
   ___Yes, with respect to controversial or social issues
   ___Yes, with respect to de minimis issues
   ___Never
   ___Other (Explain) ____________________________________________________________

24. Are you in favor of confidential proxy voting? ___Yes ___No ___Not sure

25. Are you in favor of a majority of independent directors? ___Yes ___No ___Not sure

26. Do you support corporate constituency statutes which allow directors to consider the impact of a corporate decision on constituencies such as employees, consumers and the community? ___Yes ___No ___Not sure

27. On which of the following issues do you believe that pension fund investors should have a right to vote?

   Poison pills
   Golden parachutes
   Greenmail
   Recapitalization plans
   Mergers and acquisitions
   Executive compensation
   ESOPs created as defensive tactic

28. Does your fund subscribe to any proxy research services? ___Yes ___No ___Don't know

If so, specify ________________________________________________________________
29. Listed below are a number of common proxy issues. Which of these issues do you believe usually have an impact on the economic value of stock held by the plan?

<table>
<thead>
<tr>
<th>Issue</th>
<th>Has Impact</th>
<th>No Impact</th>
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<tr>
<td>a. Contested election of directors</td>
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<td>g. Redemption of or vote on poison pills</td>
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<td>h. Board size</td>
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<td>j. Supermajority voting requirements</td>
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<td>l. Confidential voting</td>
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<td>m. Independent tabulation of proxies</td>
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<td>n. Classified boards</td>
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<td>o. Cumulative voting</td>
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<td>p. Shareholders' right to call special meetings</td>
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<td>q. Golden parachutes</td>
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<td>r. Shareholder advisory committees</td>
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<tr>
<td>s. Minimum director stock ownership</td>
<td></td>
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<tr>
<td>t. Provisions which opt out of Delaware takeover laws</td>
<td></td>
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<tr>
<td>u. Preemptive rights</td>
<td></td>
<td></td>
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<tr>
<td>v. Disclosure of executive compensation</td>
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<td></td>
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</tr>
<tr>
<td>w. Restrictions on executive compensation</td>
<td></td>
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<tr>
<td>x. Director compensation</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>y. Targeted share placement</td>
<td></td>
<td></td>
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<tr>
<td>z. Independent compensation committee</td>
<td></td>
<td></td>
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<tr>
<td>aa. Independent nominating committee</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>bb. Provisions which limit terms of directors</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

30. Do you believe pension fund trustees, in their capacity as investors, should monitor corporate performance? ___Yes ___No ___Not sure

31. Do you believe pension fund trustees (or their representatives) should meet with management to discuss corporate performance? ___Yes ___No ___Not sure
32. How often within the last twelve months have the trustees (or their representatives) met with management to discuss corporate performance?  
   ___ Frequently ___ Occasionally ___ Rarely ___ Never

33. Does your fund (or representatives) monitor executive compensation?  
   ___ Yes ___ No ___ Not sure

34. Do you believe that executive compensation should be tied to corporate performance?  
   ___ Yes ___ No ___ Depends on corporation

   Comment ____________________________________________________________

35. Does corporate performance affect how your fund's fiduciaries vote on director nominees?  
   ___ Yes ___ Not ___ Not sure

36. Do you believe corporate directors should be required to own corporate stock?  
   ___ Yes shares should be awarded to directors as part of compensation  
   ___ Yes, directors should be required to buy shares  
   ___ No  
   ___ Not sure

   If so, what should be the minimum amount of stock ownership?________

   Comment ____________________________________________________________

37. Do representatives of your fund serve on any shareholder advisory committees?  
   ___ Yes ___ No ___ Not sure

   If so, how many committees?________

38. Do representatives of your fund serve on any board of directors?  
   ___ Yes ___ No ___ Not sure

   If so, how many boards?________

39. Has your fund ever sponsored a shareholder proposal?  
   ___ Yes ___ No ___ Not sure

40. If so, how often?  
   ___ More than ten shareholder proposals per proxy season  
   ___ Between 5 - 10 proposals per proxy season  
   ___ Between 3 - 5 proposals per proxy season  
   ___ One or two proposals per proxy season  
   ___ Occasionally

41. Does your fund belong to any shareholder advisory groups?  
   ___ Yes ___ No (If yes, specify) ________________________________
42. Does your fund invest in index funds? ___Yes ___No ___Not sure

43. If your fund invests in index funds, as of December 31, 1991, approximately what percent of your fund's stock portfolio was indexed? ____%

44. Do you believe that ERISA requires trustees to vote proxies? ___Yes ___No ___Not sure

45. If you index, do you believe that indexing affects your fund's ability to influence corporate governance? ___Yes ___No ___Not sure

Comment ____________________________________________________________

46. Do you believe the interests of institutional investors differ from the interests of the board of directors? ___Yes, they differ significantly ___Yes, they differ slightly ___No, they do not differ

Comment ____________________________________________________________

47. Do you believe that corporations would perform better or worse if a representative of pension fund investors served on the board of directors? ___Better ___Worse ___Same ___Not sure

48. Do you believe that pension funds should be long-term investors? ___Yes ___No ___Not sure

49. Do you believe that pension funds are long-term investors? ___Yes ___No ___Not sure

50. If your fund owned stock of a company which was the target of a takeover attempt, would you tender your shares to the acquirer? ___Yes, only if we were offered a substantial premium ___Yes, only if we believed the premium was adequate ___No ___No, if it was in the long-term economic best interests of the plan participants not to tender our shares ___Other (specify) _______________________

51. Do you believe that in the next decade pension funds will become more active with respect to corporate governance? ___Yes ___No ___Not sure

52. Do you believe that pension funds should have the right to sponsor shareholder proposals in an effort to influence corporate governance? ___Yes ___No ___Not sure

53. What role, if any, do you believe pension funds should have with respect to corporate governance? ____________________________________________

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54. Which of the following changes to the proxy rules do you think the SEC should make?

<table>
<thead>
<tr>
<th>Change</th>
<th>No Change</th>
<th>Not Sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. mandate confidential voting</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>b. require independent tabulation of proxies</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>c. ease restrictions on shareholder communications</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>d. require shareholder access to shareholder lists</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>e. require cumulative voting</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>f. allow large shareholders to submit more than one proposal</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>g. lift the 500 word limit on shareholder proposals</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>h. require proxy materials to be distributed sooner so that investors have more time for review</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>i. allow shareholders to nominate directors</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>j. require management to include representative shareholder comments on director nominees in the proxy statement</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>k. require management to include representative shareholder comments on management proposals in the proxy statement</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>l. regulate the counting of shareholder votes (i.e. whether abstentions should count)</td>
<td>___</td>
<td>___</td>
</tr>
<tr>
<td>m. prohibit management proposals that bundle unrelated proxy issues</td>
<td>___</td>
<td>___</td>
</tr>
</tbody>
</table>

Describe any other ways the SEC should change its proxy rules.

55. Your answers will remain anonymous unless you waive anonymity by providing the following optional information:

Name of Fund: ______________________________
Your Name: ________________________________
Your Title: ________________________________
Your phone number: _________________________
Dear F2:

I am conducting a survey of proxy voting policies of union and public pension funds. The survey is funded through a grant from the Fund for Labor Relations Studies and is designed to collect empirical data for an article on pension investment activity.

As part of the survey, I am collecting proxy voting guidelines from pension funds. I would greatly appreciate a copy of your fund’s voting guidelines. If your fund has not adopted proxy voting guidelines, please complete the enclosed questionnaire. A self-addressed envelope is enclosed for your convenience.

If you would like a copy of the survey results, please enclose your business card and I will send you a copy of the article when it is published.

Thank you for your assistance.

Sincerely,

Jayne Zanglein
Associate Professor of Law

^F1^
ANSWER ONLY IF YOU DO NOT HAVE ANY PROXY VOTING GUIDELINES

Name of Fund: ________________________________

Indicate the reason your fund has not developed proxy voting guidelines:

___ We do not invest in stock

___ We have delegated proxy voting authority to an investment manager who follows its own guidelines

___ We do not believe that trustees are required to adopt proxy voting guidelines

___ We believe that trustees are required to adopt proxy voting guidelines but we have not yet adopted any guidelines

___ Other (Explain) __________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Please return in the enclosed self-addressed envelope. If the envelope is missing, return to Professor Jayne Zanglein, Texas Tech University School of Law, Lubbock, TX 79409.
April 2, 1992

^F1^  

Dear ^F2^:  

I am conducting a survey of proxy voting policies of investment managers and advisers who vote proxies on behalf of pension fund clients. The survey is funded by a grant from the Fund for Labor Relations Studies and is designed to collect empirical data for an article on pension investment activity.  

As part of the survey, I am collecting proxy voting guidelines from investment managers who represent pension fund clients. I would greatly appreciate a copy of your firm's proxy voting guidelines. If your firm does not have any pension fund clients, does not vote proxies, or does not have standard proxy voting guidelines, please complete and return the enclosed questionnaire. I have enclosed a self-addressed envelope for your convenience.  

If you would like a copy of the survey results, please enclose your business card and I will send you a copy of my article when it is published.  

Thank you for your assistance.  

Sincerely,  

Jayne Zanglein  
Associate Professor of Law
PLEASE COMPLETE IF YOUR FIRM DOES NOT HAVE ANY PENSION FUND CLIENTS, DOES NOT VOTE PROXIES, OR DOES NOT HAVE STANDARD PROXY VOTING GUIDELINES:

Name of Firm: ________________________________________________________________

(Check all applicable)

___ We do not have any pension fund clients.

___ We do not vote proxies on behalf of our clients.

___ We do not have any standard proxy voting guidelines.

___ Other (Explain) __________________________________________________________

__________________________________________________________________________

Please return in the enclosed envelope. If the envelope is missing, return to Professor Jayne Zanglein, Texas Tech University School of Law, Lubbock, TX 79409.
## APPENDIX F

### Fortune 250 (Publicly Held) Arranged in Order of Institutional Holdings with Turnover Rates

<table>
<thead>
<tr>
<th>Corporation</th>
<th>Institutional Holdings %</th>
<th>Institutional Holders</th>
<th>Turnover Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chiquita Brands</td>
<td>83</td>
<td>121</td>
<td>97.1</td>
</tr>
<tr>
<td>Storage Technology</td>
<td>82</td>
<td>106</td>
<td>211.0</td>
</tr>
<tr>
<td>Owens-Corning Fiberglas</td>
<td>80</td>
<td>112</td>
<td>172.5</td>
</tr>
<tr>
<td>Imcoa Corp</td>
<td>79</td>
<td>198</td>
<td>94.3</td>
</tr>
<tr>
<td>Inland Steel</td>
<td>79</td>
<td>96</td>
<td>69.7</td>
</tr>
<tr>
<td>James River Corp.</td>
<td>79</td>
<td>179</td>
<td>68.3</td>
</tr>
<tr>
<td>MAPCO</td>
<td>79</td>
<td>153</td>
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<tr>
<td>VF</td>
<td>79</td>
<td>207</td>
<td>53.3</td>
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<tr>
<td>Deere</td>
<td>78</td>
<td>293</td>
<td>96.3</td>
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<tr>
<td>Gannett</td>
<td>78</td>
<td>377</td>
<td>44.4</td>
</tr>
<tr>
<td>Hercules</td>
<td>78</td>
<td>189</td>
<td>81.0</td>
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<tr>
<td>Whirlpool</td>
<td>78</td>
<td>232</td>
<td>74.8</td>
</tr>
<tr>
<td>Amp</td>
<td>77</td>
<td>368</td>
<td>45.4</td>
</tr>
<tr>
<td>Rohm &amp; Haas</td>
<td>77</td>
<td>161</td>
<td>26.5</td>
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<tr>
<td>Sundstrand</td>
<td>77</td>
<td>116</td>
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<tr>
<td>Xerox</td>
<td>77</td>
<td>342</td>
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<tr>
<td>Armstrong World Ind.</td>
<td>76</td>
<td>188</td>
<td>81.8</td>
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<tr>
<td>Harnischfeger Ind.</td>
<td>76</td>
<td>132</td>
<td>73.4</td>
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<tr>
<td>Pitney Bowes</td>
<td>76</td>
<td>344</td>
<td>45.1</td>
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<tr>
<td>Williamette Ind.</td>
<td>76</td>
<td>121</td>
<td>82.2</td>
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<tr>
<td>Echlin</td>
<td>75</td>
<td>157</td>
<td>67.3</td>
</tr>
<tr>
<td>Fruit of the Loom</td>
<td>75</td>
<td>125</td>
<td>102.4</td>
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<tr>
<td>Harris</td>
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<td>176</td>
<td>71.1</td>
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<tr>
<td>Parker Hannifin</td>
<td>75</td>
<td>163</td>
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<tr>
<td>Polaroid</td>
<td>75</td>
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<tr>
<td>Reynold Metals</td>
<td>75</td>
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<td>74</td>
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<td>Intel</td>
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<td>Loral</td>
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<td>Kellogg</td>
<td>73</td>
<td>366</td>
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<tr>
<td>Liz Claiborne</td>
<td>73</td>
<td>280</td>
<td>109.8</td>
</tr>
<tr>
<td>Litton Industries</td>
<td>73</td>
<td>120</td>
<td>67.3</td>
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<tr>
<td>Tandem Computers</td>
<td>73</td>
<td>167</td>
<td>106.1</td>
</tr>
<tr>
<td>Air Products &amp; Chemical</td>
<td>72</td>
<td>307</td>
<td>53.5</td>
</tr>
<tr>
<td>Baker Hughes</td>
<td>72</td>
<td>272</td>
<td>100.3</td>
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</tbody>
</table>

1. The 1992 Business Week 1000, BUS. WK., 1992 Special Bonus Issue; CDA Spectrum 3. This list does not include publicly held corporations such as Royal Dutch Petroleum, Unilever U.S., LTV, J.E. Seagram, Total Petroleum, Sequa, Manville, Crown Central Petroleum, and Gencorp, as we were unable to obtain information as to the percentage of institutional holdings and the turnover rates.
<table>
<thead>
<tr>
<th>Corporation</th>
<th>Institutional Holdings</th>
<th>Institutional Holders</th>
<th>Turnover Rate</th>
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<tr>
<td>Honeywell</td>
<td>72</td>
<td>292</td>
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<tr>
<td>Motorola</td>
<td>72</td>
<td>411</td>
<td>87.9</td>
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<tr>
<td>Phelps Dodge</td>
<td>72</td>
<td>229</td>
<td>141.3</td>
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<tr>
<td>Scott Paper</td>
<td>72</td>
<td>262</td>
<td>67.8</td>
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<tr>
<td>United Technologies</td>
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<td>357</td>
<td>74.1</td>
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<tr>
<td>Witco</td>
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<td>111</td>
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<td>Raytheon</td>
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<tr>
<td>Sun Microsystems</td>
<td>71</td>
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<td>Temple-Inland</td>
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<td>Union Camp</td>
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<td>Apple Computer</td>
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<td>Corporation</td>
<td>Institutional Holdings</td>
<td># of Institutional Holders</td>
<td>Turnover Rate</td>
</tr>
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Zanglein: Who's Minding Your Business? Preliminary Observations on Data and*

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**APPENDIX G**

Proxy Voting Guidelines
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1 Policies for some issues do not always total 100% because the language in the guidelines was vague and fell under two or more categories.
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### APPENDIX H

Proxy Voting Guidelines
Union Funds

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**Corporate Governance**

**Shareholder Proposals**

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APPENDIX I

Proxy Voting Guidelines
Investment Managers

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1 Policies for some issues do not always total 100% because the language in the guidelines was vague and fell under two or more categories.
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