



The Boardroom Accountability Project

Office of the New York City Comptroller
SCOTT M. STRINGER

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Introduction

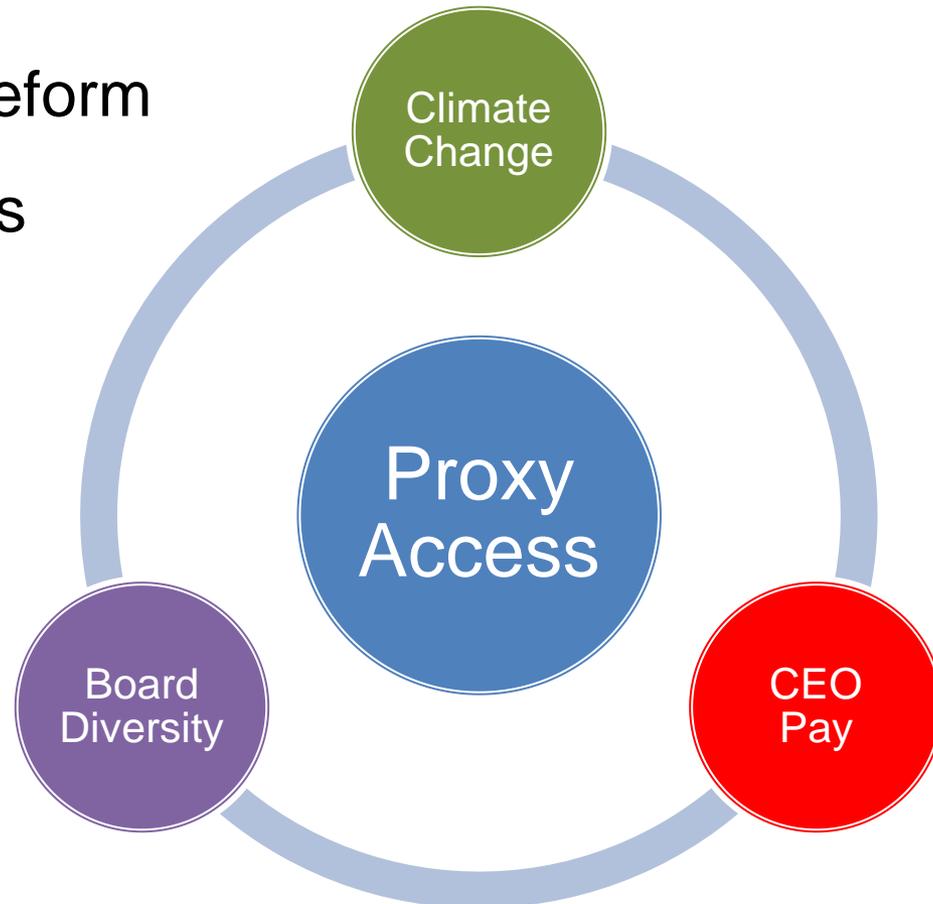
Shareowners deserve a voice on the boards of the companies they own, and that's why New York City Comptroller Scott M. Stringer and New York City's pension funds have initiated a groundbreaking campaign to give shareowners the right to nominate directors at U.S. companies using the corporate ballot.

By submitting proxy access shareowner proposals to 75 companies at once, Comptroller Stringer is taking a major first step to roll out proxy access across the market. The Boardroom Accountability Project is a national movement to transform the dynamic from incremental reform to systemic change to improve the responsiveness of corporate boards to their shareowners.

From Incremental Reform to Systemic Change

Changing the rules of engagement

- One High-Impact Reform
- Three Priority Issues
- 75 Companies



Proxy Access

The “Holy Grail” of meaningful corporate democracy

- “In our view, comprehensive shareholder proxy access is the single tool that provides the greatest chance of meaningful director elections.”
- “Shareholder proxy access achieves the Holy Grail of meaningful corporate democracy by invading the “sacred space” of the company’s own proxy statement.”
- “While ...the number of actual candidates under a shareholder access regime may very well be small, we believe [skeptics] give too little weight to **the potential for more meaningful “constructive engagement” between large shareholders and the company under a proxy access regime.**”

-- Becker, Bo and Guhan Subramanian. “Improving Director Elections.”
Harvard Business Law Review Volume 3, Issue 1 (2013)

“Universal Access” vs. “Private Ordering”

■ **Universal Access**

- Shareowners who meet defined eligibility requirements (e.g. 3% for 3 years) would have the right to include up to a defined number nominees (e.g. 25% of the board) on the ballots of all U.S. companies.
- SEC approved rule was vacated by Court on procedural grounds.

■ **Private Ordering**

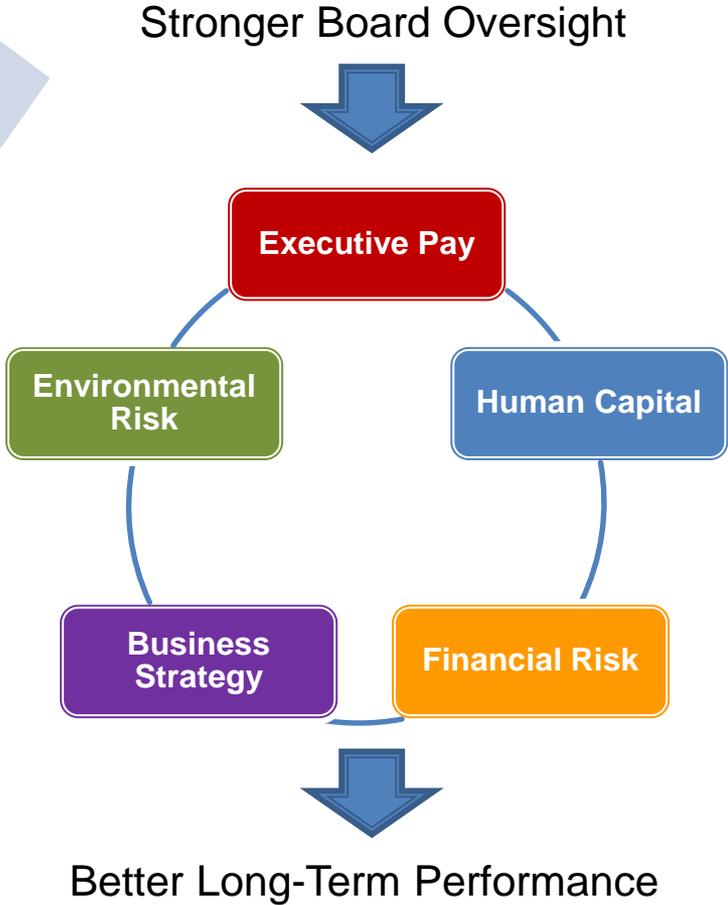
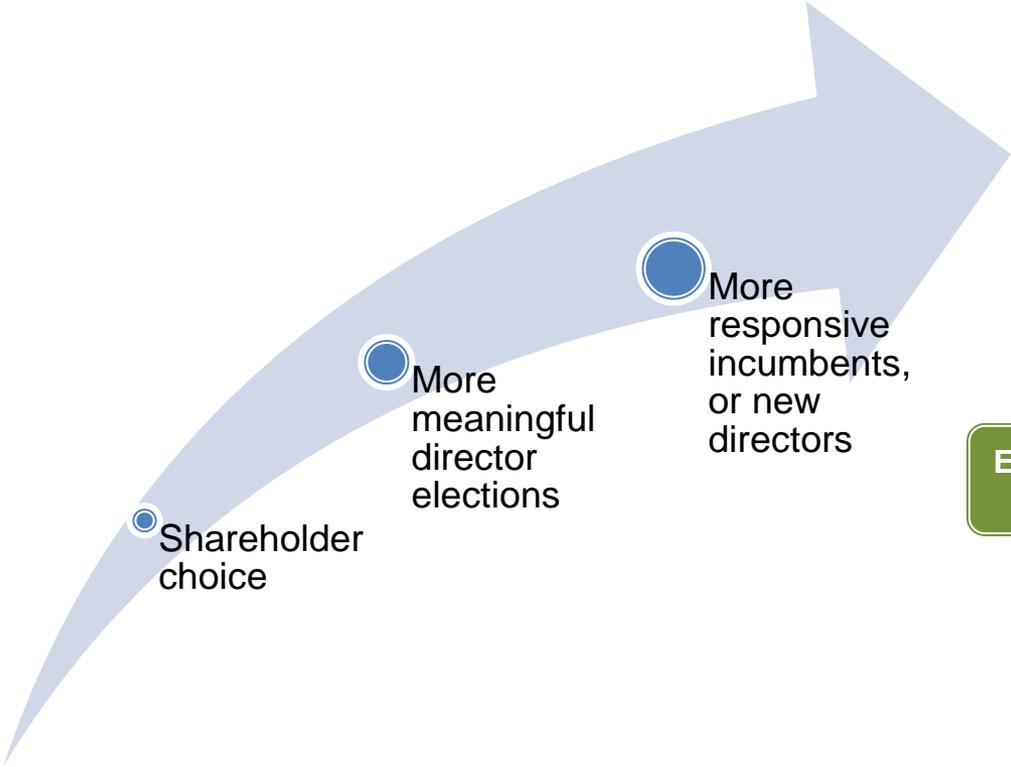
- Shareowners are permitted to file shareowner proposals requesting that the board adopt proxy access using eligibility terms defined in the proposal.
- SEC has permitted proxy access proposals since 2012.

■ **Two approaches are not mutually exclusive**

- Intent of SEC rule was to grant universal access based on 3% for three years and allow shareowners to use private ordering to advance less restrictive thresholds.

Proxy Access

Why it matters



Proxy Access

Potential to raise U.S market cap by up to \$140B



Source: CFA Institute¹

- “The results...suggest that proxy access has the potential to enhance board performance and raise overall U.S. market capitalization by between \$3.5 billion and \$140.3 billion.”
- “These estimates reflect between 0.023% and 1.134% of total US market capitalization.”
- Proxy access “would serve as a useful tool for shareowners in the United States and would ultimately benefit both the markets and corporate boardrooms, with little cost or disruption to companies and the markets as a whole.”

The Fight for Proxy Access

2003-2012

- **2003: SEC proposes proxy access rule – key response to Enron & Worldcom²**
 - SEC Chairman says rule would end “Imperial CEO”³
 - Public fund fiduciaries, including NYC Comptroller, organize in support of rule
 - The Business Roundtable and U.S. Chamber launch an attack on the rule and its public fund backers
- **2009: SEC proposes new proxy access rule – key response to financial crisis⁴**
 - “Universal” access based on 3% ownership for 3 years, up to 25% of board
 - “Private ordering” – rule permits shareholder proposals seeking to lower thresholds
 - Public funds and fiduciaries, including NYC Comptroller, organize in support of rule
- **2010: Dodd Frank Act affirms SEC’s authority to issue proxy access rule⁵**
 - SEC approves rule in September 2010
 - The Business Roundtable and U.S. Chamber sue SEC in Oct. 2010 to overturn rule, despite Dodd Frank
 - Institutional investors -- including all 5 NYC Funds -- submit amicus brief in support of rule
- **2011: DC Circuit Court vacates universal rule on procedural grounds⁶**
 - Private ordering provision allowing for proxy access shareholder proposals survives
 - In 2012, SEC Chairman confirms proxy access not on SEC’s “immediate agenda”

Proxy Access

Companies with meaningful proxy access bylaws

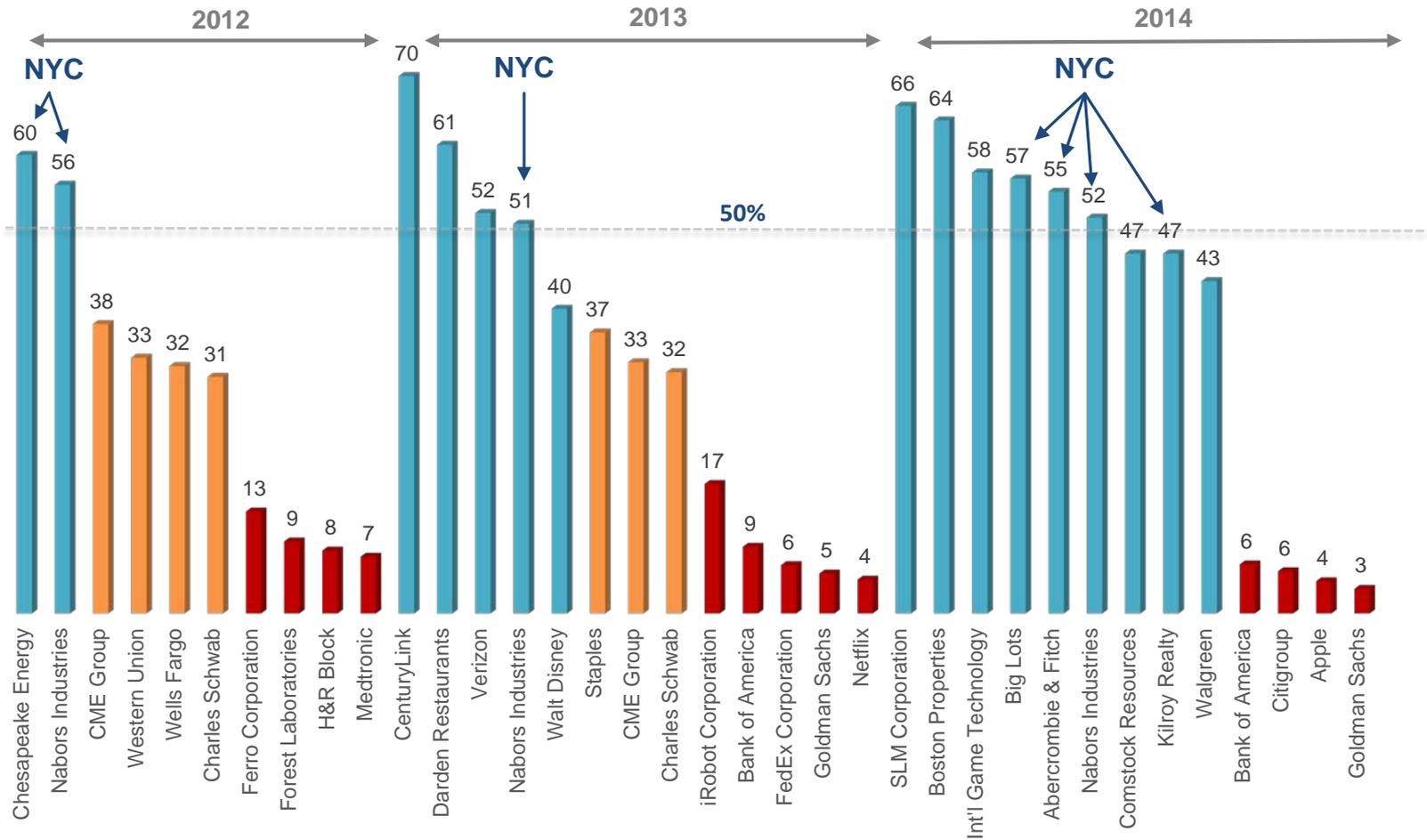
3% ownership; 3 years; 20 – 25% of board
CenturyLink
Chesapeake Energy ⁱ
Hewlett Packard
McKesson ^{i,ii}
Verizon
Western Union

ⁱ Response to NYC Pension Funds' proxy access proposal

ⁱⁱ Pending shareholder approval of management bylaw amendment in 2015

Proxy Access Proposals Have Reached Tipping Point

High votes on proposals based on 3% for 3 years (blue bars)



Focus List Overview

	S&P 500	R3000	Total
Fossil Fuel	28	5	33
Diversity	15	9	24
Pay	16	9	25
Other	3	2	5
Overlap adjustment ⁱ	(7)	(5)	(12)
Total	55	20	75

ⁱAdjustment to prevent double counting of companies flagged for multiple issues.

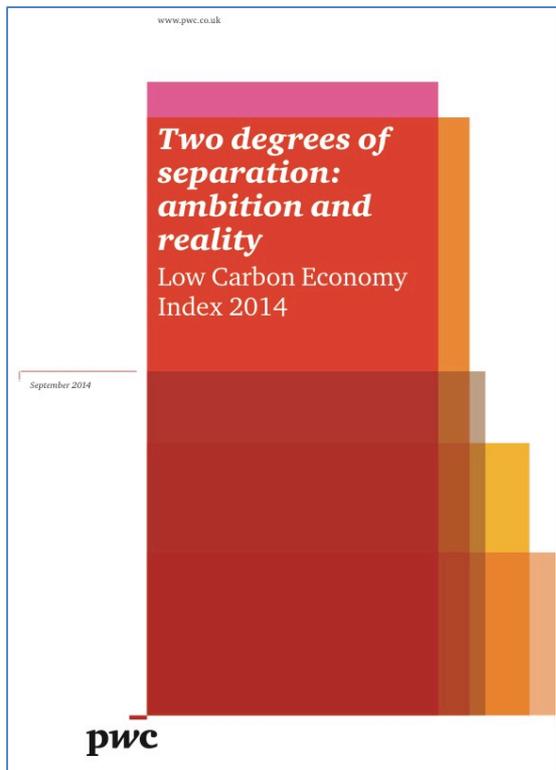
Proxy Access Focus List

Selection Criteria

- **Climate Change**
 - 31 U.S. companies among world's 200 most carbon-intensive energy companies
 - Other large fossil fuel companies on focus list for separate issues
- **Board Diversity**
 - Russell 1000 companies with no women on their boards
 - S&P 500 boards with one woman and little or no racial/ethnic diversity
- **CEO Pay**
 - Russell 3000 companies with failed say-on-pay (SOP) votes in 2014
 - S&P500 companies with at least 30% votes against SOP
- **Other**
 - Re-submit 2014 proxy access proposals
 - File proxy access in place of 2014 independent chair focus companies
- **Exclusions: high inside ownership, dual class stock, early filing deadline**

Issue #1: Climate Change

Business-as-usual by fossil fuel firms raises board concerns



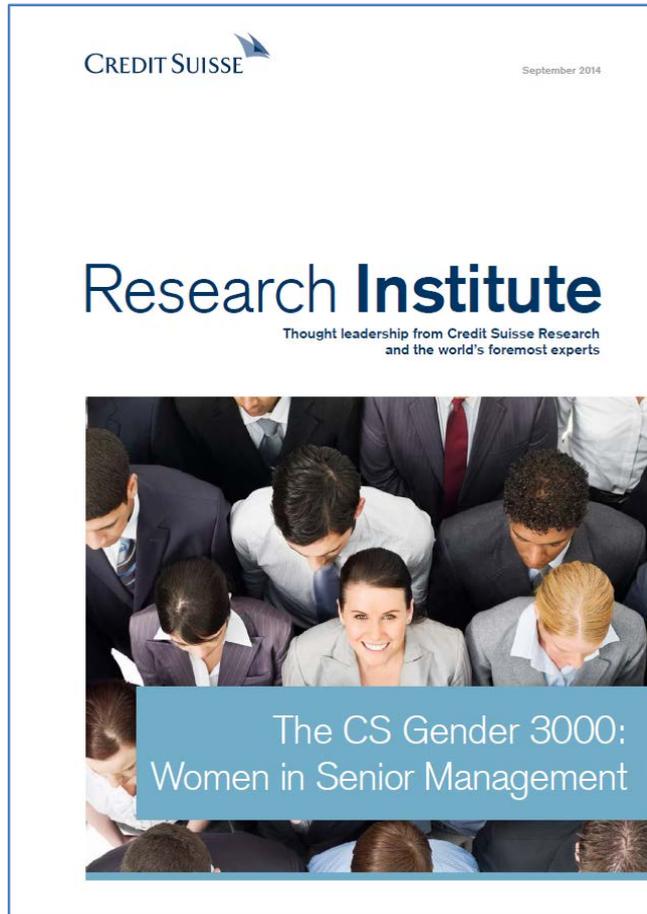
- “PwC’s climate change analysts estimate global economies need to cut their energy related carbon emissions for every \$ of GDP by 6.2% every year from now to 2100. That’s more than five times the rate currently achieved.”
- “Current rates of carbon intensity mean the total amount of carbon the IPCC have advised the world can emit this century to limit climate change to 2°C, will be depleted within 20 years.”
- “The gap between what we are doing and what we need to do has again grown, for the sixth year running.” (PWC Low Carbon Economy Index 2014)⁷

“Investment decisions and emissions today lock-in impact for decades to come.”

--Ian Dunlop, former Shell executive in Australia and nominee to BHP Billiton board

Issue #2: Board Diversity

Modest gains suggest diversity is low priority for boards

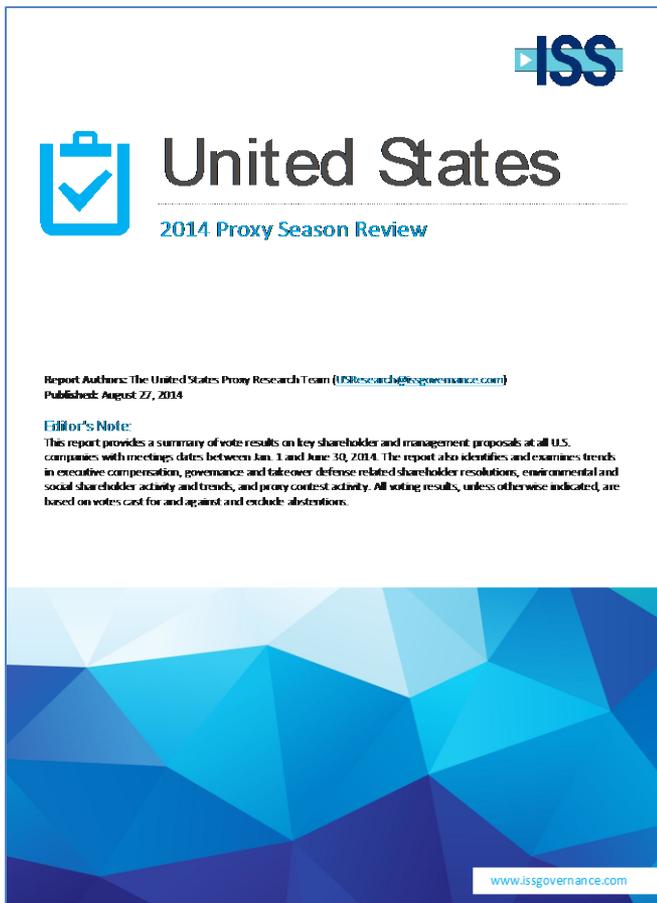


Source: Credit Suisse⁸

- “Greater diversity in boards and management are empirically associated with higher returns on equity, higher price/book valuations and superior stock price performance.”
- Little progress despite compelling value link to performance and shareowner value
 - Female directors represent 13.7% of US boards
 - Limited reliable data on director race and ethnicity, especially at firm level
- BlackRock demonstrates that increasing board diversity is not as difficult as most boards claim
 - No female directors in May 2012
 - Four well-qualified female directors today

Issue #3: CEO Pay

Indicative of board quality and independence



Source: ISS⁹

- “Say-on-pay support of less than 70 percent of shares voted indicates significant shareholder concern.”
- “In all, 7.1 percent of all companies ...received less than 70 percent vote support for the say-on-pay proposal in 2014.”
- “There were 55 say-on-pay failures in the first half of 2014, including five S&P500 companies.”
- “Pay-for-performance issues remained the principal driver of shareholder opposition to pay programs.”

Endnotes

¹ CFA Institute, Proxy Access in the United States: Revisiting the Proposed SEC Rule, August 2014, Vol. 2014, No. 9 , *available at* <http://www.cfainstitute.org/learning/products/publications/ccb/Pages/ccb.v2014.n9.1.aspx>

² Damon A. Silvers and Michael I. Garland, The Origins and Goals of the Fight for Proxy Access, <http://www.sec.gov/spotlight/dir-nominations/silversgarland022004.pdf>

³ Remarks of William H. Donaldson, Mar. 16, 2005, *available at* <http://www.sec.gov/news/speech/spch031605whd.htm>

⁴ Securities Exchange Comm'n., Proposed Rule, Facilitating Shareholder Nominations, *available at* <http://www.sec.gov/rules/proposed/2009/33-9046.pdf>

⁵ U.S. Treasury, Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, *available at* <http://www.treasury.gov/initiatives/wsr/Documents/Fact%20Sheet%20-%20Implementation%20Deadlines%20Created%20by%20the%20Statute%20for%20Select%20Regulatory%20Milestones,%20Oct%202010%20FINAL.pdf>

⁶ See *Bus. Roundtable & Chamber of Com. Of the United States. v. Sec. & Exch. Comm'n*, 647 F.3d 1144 (D.C. Cir. 2011).

⁷ Pricewaterhouse Coopers, Two degrees of separation: ambition and reality, *available at* <http://press.pwc.com/GLOBAL/global-economies-must-lower-carbon-emissions-at-five-times-the-levels-currently-achieved/s/f748001d-e73b-47c0-af8f-18ad9d1023b8>

⁸ Credit Suisse, The CS Gender 3000, Women in Senior Management, *available at* <https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A5B1E4366DF>

⁹ ISS, United States 2014 Proxy Season Review, *available at* www.issgovernance.com