

SHAREHOLDER PROPOSAL RULES AND PRACTICE: EVIDENCE FROM A COMPARISON OF THE US AND UK*

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Abstract

We provide an in-depth comparison of US and UK shareholder proposal rules and relate the differences in rules to differences in proposing activities and performance, using comprehensive shareholder proposal data from both countries for 2000 through 2006. UK proposal rules are more onerous on proposal sponsors but UK proposals seem to be a more powerful governance device than US counterparts since they are binding and UK shareholders have the statutory right to call special meetings and elect directors. We observe most UK proposals are presented at special meetings and target board election. Institutions are the most active sponsor of UK proposals. As US proxy rules emphasize shareholder participation and protection rather than empowerment, there are a significantly greater number of shareholder proposals initiated in the US during the sample period, and small shareholders and social proposals dominate the proposing scene of the US. Our results suggest that shareholders can impact the corporate governance and firm performance but that the methods through which shareholders are empowered are important. We also argue that our results suggest that it may be appropriate to consider whether activist shareholders have additional responsibilities to the firm and other shareholders, including a duty to disclose their agendas or a fiduciary duty to other shareholders.

Keywords: Corporate Governance, Shareholder Proposals, Shareholder Activism, Proxy Voting, Proxy Access, Proxy Reform

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Shareholder-initiated proposals occupy a unique place in corporate law, as they provide the shareholder with a mechanism by which to initiate corporate action, as opposed to merely reacting to the actions of management (Aaron A. Dhir¹).

Introduction

Shareholder empowerment is one of the most important issues in corporate governance today.² Shareholder proposals and board nominations are a part of this empowerment and have become part of the policy debate and reform.³ For example, the US Securities and Exchange Commission (SEC) adopted Exchange Act Rule 14a-11, also known as the proxy access rule, on August 25, 2010, with the goal to foster corporate accountability by increasing shareholder power. The proxy access rule provided shareholders who satisfy certain conditions with an alternative means through which to nominate and elect directors by requiring public companies to provide shareholders with information about shareholder-nominated candidates for the board of directors and eliminating the need for a separate solicitation of votes in a proxy contest at their own expense.

We provide an in-depth comparison of US and UK shareholder proposal rules and relate the differences in rules to differences in proposing activities, using comprehensive shareholder proposal data from both countries from 2000 through 2006. UK proposing rules are more onerous on sponsors but UK proposals are a potentially more powerful governance device than US counterparts, partly because they are binding and partly because UK shareholders have a statutory right to call special meetings and elect directors. Consequently, we observe that most UK proposals are presented at special meetings and they target election of board members. We find that institutions and former management are the most active sponsors of UK proposals. Since US proxy rules emphasize shareholder participation and protection rather than empowerment, we find that there are a significantly greater number of shareholder proposals initiated in the US (after controlling for the number of firms in the countries) during the sample period, and that small shareholders and social proposals dominate the proposing scene of the U.S. Further there is some evidence that while firm performance generally improves after a proposal in the US, in the UK performance does not do so.

This paper provides findings from qualitative study on the key competencies that are essential for Malaysian companies' directors. The remainder of this paper is organized as follows. The next section discusses relevant literature on issues pertaining to directors' competencies. The third section explains the research methodology followed by a results and discussion in section four. This paper ends with conclusion of the research.

A. Motivation for Our Analysis

Access to the proxy system has long been debated. The SEC first considered shareholder access to a company's proxy materials in 1942 and has revisited the issue numerous times since then. The most recent proxy access rule proposal was published for public comment on June 10, 2009 and the SEC

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- 1 Aaron A. Dhir, *Realigning the Corporate Building Blocks: Shareholder Proposals as a Vehicle for Achieving Corporate Social and Human Rights Accountability*, 43 *Am. Bus. L.J.* 365, 365-412 (2006).
 - 2 To gain historical perspective of US shareholder activism, see Stuart L. Gillan & Laura Starks, *The Evolution of Shareholder Activism in the United States*, 19 *J. Applied Corp. Fin.* 55 (2007) [hereinafter Gillan & Starks, *Evolution of Shareholder Activism*]; Stewart J. Schwab & Randall S. Thomas, *Realigning Corporate Governance: Shareholder Activism by Labor Unions*, 96 *Mich. L. Rev.* 1018 (1998) [hereinafter Schwab & Thomas, *Activism by Labor Unions*] (describing early history of US shareholder proposal history). See also Institutional S'holders Servs., Inc., 25 for 25: *Observations on the Past, Present, and Future of Corporate Governance* (2011), http://www.rhsmith.umd.edu/cfp/pdfs_docs/commentary/ISS.pdf.
 - 3 For arguments in favor of shareholder empowerment, see, e.g., Lucian A. Bebchuk, *The Case for Increasing Shareholder Power*, 118 *Harv. L. Rev.* 833 (2005) [hereinafter Bebchuk, *Shareholder Power*]; Lucian A. Bebchuk, *The Myth of the Shareholder Franchise*, 93 *Va. L. Rev.* 675 (2007) [hereinafter Bebchuk, *Shareholder Franchise*]. For arguments against shareholder empowerment, see, e.g., Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 *Nw. U. L. Rev.* 547 (2003) [hereinafter Bainbridge, *Director Primacy*]; Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 *Harv. L. Rev.* 1735 (2006) [hereinafter Bainbridge, *Shareholder Disempowerment*]; Lynn A. Stout, *The Mythical Benefits of Shareholder Control*, 93 *Va. L. Rev.* 789 (2007); Leo E. Strine, Jr., *Toward a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America*, 119 *Harv. L. Rev.* 1759 (2006).

received more than 600 letters on the proposal.⁴ Immediately after the rule's adoption, Kathleen Casey, one of the two dissenting SEC commissioners, called the rule "fundamentally and fatally flawed" on several grounds including that proxy access rules are based on rights granted under state corporate law and are not a 'fundamental shareholder right guaranteed by Federal security laws,' because of the empowerment the Rule provided to institutional investors relative to individual shareholders and because of the absence of significant empirical analysis on the need for and impact of the rule.⁵

On September 29, 2010, the US Chamber of Commerce and the Business Roundtable filed a legal challenge to the proxy access rule in the Court of Appeals for the District of Columbia Circuit and on July 22, 2011, the Court rejected the SEC proxy access rule holding that "the Commission acted arbitrarily and capriciously for having failed once again ... adequately to assess the economic effects of a new rule."⁶ The SEC has since announced that it will not appeal the court decision but has left open the possibility that it might rewrite the regulation.⁷

Consistent with the decision of the Court of Appeals, there is interest in additional analysis of the role of shareholder activism to better understand the impact of shareholder access to the proxy system in the overall scheme of corporate governance. In this paper, we provide a comparative analysis of US and UK shareholder proposal rules and practices to inform decisions and aid debate on shareholder proposal reform and shareholder empowerment. A comparison of shareholder proposals in the US and the UK is a natural experiment to study the uses and effects of shareholder proposals. This is because, while the US and UK have advanced capital markets with very similar governance systems, the proxy solicitation rules differ in important ways. Further, the two countries are currently among the most active markets for shareholder activism⁸ and have recently experienced significant reforms aimed at promoting shareholder empowerment and engagement (e.g., the 2002 Sarbanes-Oxley Act and its implementation by the SEC and the exchanges, the 2010 Dodd-Frank Act and the 2010 proxy access rule in the US and the series of best governance codes in the UK).

⁴ For background on SEC action regarding the proxy access rule prior to 2003, see <http://www.sec.gov/news/studies/proxyreport.pdf>. On April 14, 2003, the SEC announced its decision (Press Release No. 2003-46) to examine proxy regulations and develop possible changes to those regulations, including proxy access. On July 25, 2007, the SEC issued two conflicting alternative proposals regarding shareholder access to a company's proxy materials. The first proposal would codify the SEC's existing position, denying shareholder proxy access, while the second would permit certain shareholders to include in company proxy materials proposals for amendments to bylaws that would allow shareholder proxy access. On June 10, 2009, the SEC published a proxy access rule proposal for public comment. The SEC received over 520 letters during the original comment period, which ended on August 17, 2009. In response to extensive comments, the SEC re-opened the comment process on December 14, 2009.

⁵ Kathleen L. Casey, SEC Comm'r, Statement at Open Meeting to Adopt Amendments Regarding Facilitating Shareholder Director Nominations (Aug. 28, 2010), available at <http://www.sec.gov/news/speech/2010/spch082510klc.htm>. See also Jessica Holzer & Dennis Berman, Investors Gain New Clout – SEC Votes to Boost Power over Boards; GOP Member Calls Move 'Fatally Flawed,' Wall St. J., Aug. 26, 2010, <http://online.wsj.com/article/SB10001424052748703632304575451572616571774.html>.

⁶ Business Roundtable and Chamber of Commerce v. SEC, 647 F.3d 1144, 1148 (D.C. Cir. 2011); See also In re Bus. Roundtable and the Chamber of Commerce, File No. S7-10-09, 2010 SEC Lexis 3275 (Oct. 4, 2010), available at <http://www.sec.gov/rules/other/2010/33-9149.pdf> (Commission Order Granting Stay); Jessica Holzer, Court Deals Blow to SEC, Activists, Wall St. J., July 23, 2011, http://online.wsj.com/article/SB10001424053111903554904576461932431478332.html?mod=rss_whats_new_s_us.

⁷ Mary L. Shapiro, Chairman, SEC, Statement on Proxy Access Litigation (Sept. 6, 2011), available at <http://www.sec.gov/news/press/2011/2011-179.htm>.

⁸ See William Q. Judge, Ajai Gaur & Maureen I. Muller-Kahle, Antecedents of Shareholder Activism in Target Firms: Evidence from a Multi-Country Study, 18 Corp. Governance: An Int'l Rev. 258 (2010) (studying the antecedents of shareholder activism of targeted firms located in three common law countries (i.e., USA, UK, and Australia) and three civil law countries (Japan, Germany, and South Korea) from 2003 to 2007); Peter Cziraki, Luc Renneboog & Peter G. Szilagyi, Shareholder Activism through Proxy Proposals: The European Perspective, 16 Eur. Fin. Mgmt. 738 (2010) (studying shareholder proposals in Europe) [hereinafter Cziraki et al., Shareholder Activism in Europe].

B. Data for Analysis

For our analysis, we collect 3,793 ordinary shareholder proposals submitted to 757 US firms, 521 contested shareholder proposals submitted to 221 US firms, and 496 shareholder proposals submitted to 85 UK firms from 2000 to 2006. We believe our method of data collection provides identification of almost every shareholder proposal in the two countries. Thus, we present strong evidence on when and what type of proposals occurred and what occurred after the proposals for all proposals made in our time period of analysis.

The difference between an ordinary shareholder proposal and a contested shareholder proposal in the US is that in the ordinary shareholder proposal (or simply known as shareholder proposal), a shareholder can submit a single proposal to be included in a company's proxy materials for shareholder vote at the company's expense. The result of the vote is usually non-binding, and the proposal cannot be related to matters like board election or the company's ordinary business operations. In a contested shareholder proposal (also known as proxy contest or proxy fight), a shareholder can submit multiple proposals on matters including board election and ordinary business by separately distributing proxy materials at his or her own expense. In addition, in a contested shareholder proposal, the result of the vote is binding. In contrast, there is no such distinction between ordinary and contested proposals in the UK. The ability of shareholders to submit proposals in the UK is more constrained than in the US but all proposals are included in the proxy voting material at the company's expense.

C. Caveats to Policy Recommendations from this Study of Governance and Regulation

We suggest several caveats to our analysis. Our analysis is based on close to the "universe" of proposals in the US and the UK and thus our evidence reflects "what is" in these two countries. However, to draw inferences about the causes and effects of existing regulation (in this case, proxy rules) or to make definitive recommendations about changes to existing regulation is much more problematic if not tied to theory. We have tied our analysis when possible to theoretical predictions about the causes and most importantly the effects of shareholder proposals and the restrictions on proposals. Though we identify the changes associated with the proposals, we cannot prove causation. Thus, what we cannot do, nor can anyone else, is definitively predict the outcome of changes in proxy rules.

In addition, any study of corporate governance has potential for measurement and methodological issues including problems from confounding events and from endogeneity concerns. The confounding event problem is exacerbated in studies of regulation because of the length of time from the proposal of a regulatory change to its actual application. A longer time period increases the number of confounding events and makes it more difficult to isolate the relations among variables of interest. All governance studies have endogeneity issues. There are two main sources of endogeneity – simultaneity and unobserved heterogeneity. Simultaneity would occur in our study of post-proposal performance if while a proposal affects performance, performance also affects whether there is a proposal. Unobservable heterogeneity occurs if the same exogenous factor that impacts whether a firm has a proposal also determines post-proposal performance. In either case, it becomes difficult to attribute the effect of one variable (e.g., a proposal) on another (e.g., post-proposal performance). There is no perfect way to deal with these issues and we limit ourselves here to noting a caveat due to their potential existence

D. Findings

We find systematically different proposing patterns between the US and the UK. We find that a substantially larger number of proposals are submitted in the US than in the UK and that most ordinary proposals in the US are submitted by small investors. In contrast, large institutions and former management are by far the most active sponsors in the UK. Thirty percent of US ordinary proposals target social and environmental issues and fewer than 20% of US ordinary proposals pass. More than 90% of UK proposals target board election or business strategies and the passing rate for UK proposals is 44%. We find, however, that US contested proposals or proxy contests are similar to UK proposals in that they are frequently sponsored by large investors and target board elections or the sale of the company.

The existing evidence on the long-term impact of US ordinary shareholder proposals primarily comes from data prior to 1994 and the consensus is that these proposals, whether approved or not, have minimal

effect on firm performance.⁹ Many have attributed the ineffectiveness of shareholder proposals to their non-binding nature.¹⁰ The perception that shareholders are unable to use shareholder proposals to effectively monitor the managers is an important catalyst that prodded the SEC to review the proxy access rule following the wave of corporate scandals in the early 2000s and the financial crisis of 2007-2010.

We find that recent US shareholder proposals are associated with a more positive impact on long-term firm performance than found for earlier periods. Further, the improvement is greater when shareholder proposals are sponsored by blockholders or are perceived to enhance shareholder power as in proposals to repeal poison pills or declassify the board. In contrast, UK shareholder proposals appear to be associated with neutral at best effects on long-term firm performance. This result is unexpected if one believes that shareholder empowerment is wealth increasing for shareholders since UK proposals have greater legal power to effect changes and have higher passage rates than US proposals. We also find that US and UK firms receiving shareholder proposals experience greater CEO turnover than those firms which do not. Prior studies have found no significant increase in CEO turnover following a shareholder proposal event.¹¹

E. Policy Implications and Contributions to the Literature

As we note in our caveats detailed above, it is difficult to predict the effects of regulatory change or especially the unintended consequences of regulatory revisions. At best all we, or any analyst, can provide is evidence and interpretation of what has occurred as related to existing conditions and regulatory structure. Keeping in mind these caveats, we believe our results are of interest to policymakers.

The current usefulness of ordinary shareholder proposals has been questioned since they are non-binding. Recent regulatory reforms such as the proxy access rule were predicated on the assumption that shareholder proposals, being non binding, were not able to effect wealth-increasing changes and that stronger shareholder actions could mitigate agency problems associated with opportunistic managers. However, our results suggest that US shareholder proposals, even when not adopted by the firm, are correlated with wealth improvements and that shareholder activism may be more successful than previously documented. Further, UK shareholder proposals, which have greater legal power to effect changes than US shareholder proposals, are not associated with a positive impact on firm long-term performance. Thus, our results suggest that the impact of shareholder activism is a complex issue not based on whether shareholder proposals are binding but rather how shareholder activism fits into the larger scheme of corporate governance and management.

Our results also suggest that a greater responsibility be placed on activist shareholders to disclose their private interests in proposed changes. Those arguing against the proxy access rule specifically questioned whether it would allow some investors to seek outcomes that benefited themselves and that were inconsistent with overall shareholder wealth maximization. We offer some evidence of this potential problem. We find that sponsors of UK shareholder proposals are more likely to have a prior relationship with target companies, either as former management or as associated companies or as institutional investors. We also find that UK proposals have a less positive impact on long-run firm performance than do US proposals. Given the complex governance environment in which firms operate, we cannot conclude that private interests explain the less beneficial outcome. However, our evidence does support the value of additional required disclosures by proposing shareholders of any private interests so that all shareholders have full information in deciding whether or not to support a measure.

⁹ See, e.g., surveys in Bernard S. Black, *Shareholder Activism and Corporate Governance in the United States*, in Peter Newman, *The New Palgrave Dictionary of Economics and the Law* (Macmillan Reference, 1998) [hereinafter Black, *Shareholder Activism Survey*]; Jonathan Karpoff, *The Impact of Shareholder Activism on Target Companies: A Survey of Empirical Findings* (Working Paper), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=885365; Gillan & Starks, *Evolution of Shareholder Activism*, *supra* note 2.

¹⁰ See, e.g., Black, *Shareholder Activism Survey*, *supra* note 9; Randall S. Thomas & James F. Cotter, *Shareholder Proposals in the New Millennium: Shareholder Support, Board Response and Market Reaction*, 13 *J. Corp. Fin.* 368 (2007) [hereinafter Thomas & Cotter, *Shareholder Proposals in the New Millennium*].

¹¹ Jonathan M. Karpoff, Paul Malatesta & Ralph Walkling, *Corporate Governance and Shareholder Initiatives: Empirical Evidence*, 42 *J. Fin. Econ.* 365 (1996) [hereinafter Karpoff et al., *Corporate Governance and Shareholder Initiatives*]; Diane Del Guercio & Jennifer Hawkins, *The Motivation and Impact of Pension Fund Activism*, 52 *J. Fin. Econ.* 293 (1999) [hereinafter Del Guercio & Hawkins, *Pension Fund Activism*].

In addition, our paper makes several contributions to existing literature and research on shareholder proposals. First, we contribute to the debate in the law literature on shareholder empowerment and the issue of increasing shareholder power versus the acceptance of "director primacy."¹² For example, Bebchuk argues that shareholders should be given additional powers including the ability to initiate changes to the corporate charter, to replace the incumbent board of directors more readily, and to initiate proposals to merge, sell, restructure or downsize the company. Conversely, Bainbridge argues for the importance of director primacy since shareholders do not have either the information or the incentives to make correct decisions for the firm and thus, the board should be the primary decision maker for the firm in the goal of maximizing shareholder wealth. Commentators suggest that the US is an example of the director primacy model while the UK is an example of the shareholder primacy model.¹³

Our results help inform this debate in that we show that shareholder activism, even when proposals are non-binding, is associated with positive long-run performance of the firm in the US. In contrast, we find non-positive long-run performance following shareholder proposals in the UK. The differing results suggest the need for careful analysis of firms receiving proposals and of those making the proposals, the focus of the proposals, other changes in the firm that are associated with the timing of the proposals, and to what extent the proposals are actually implemented in both the US and the UK

Second, we contribute to the empirical literature on the impact of shareholder proposals on firms with our analysis of a large sample of recent US proposals. By closely following the methodologies of past studies, we make our results comparable to studies of earlier time periods and complement recent studies on US shareholder activism.¹⁴

In addition, our comparison of the use and impact of proposals in the US and UK lends support to recent theoretical work of Levit and Malenko¹⁵ and Harris and Raviv.¹⁶ The model of Levit and Malenko shows that non-binding shareholder proposals can be an effective governing tool in the presence of an activist investor, but they become ineffective absent of such dissidents. One important insight from their model is that, given their non-binding nature, shareholder proposals have impact only when the overall governance environment is conducive to change. We find empirical support for this hypothesis. The main insight from Harris and Raviv's model is that the optimality of shareholder control is a complex function of many factors. Depending on the interaction of these factors, shareholder control may, or may not, be optimal. Our findings that US shareholder proposals are associated with positive post-proposal performance whereas UK shareholder proposals are associated with little post-performance changes support the Harris and Raviv insight.

Lastly, we are the first to collect extensive data on US and UK shareholder proposals and US proxy contests to study and compare in one paper. Our study is the first in-depth analysis of UK shareholder proposals providing important initial evidence relying on extensive hand-collected data. Therefore, our comparative analysis of US and UK shareholder proposals provides empirical results for researchers and regulators and helps inform the current shareholder proxy access debate.

Part II provides the institutional background for our investigation, by reviewing the corporate governance systems and the key elements of proxy rules in the US and UK. Part III describes the sample collection

12 For exemplary work on director primacy, see, e.g., Bainbridge, *Director Primacy*, supra note 3; Bainbridge, *Shareholder Disempowerment*, supra note 3. For exemplary work on shareholder primacy, see, e.g., Bebchuk, *Shareholder Power*, supra note 3; Bebchuk, *Shareholder Franchise*, supra note 3. For an overview of the debate, see Gordon Smith, *The Role of Shareholders in the Modern American Corporation*, in *Research Handbook in the Modern American Corporation* (Claire Hill, Brett McDonnell, eds., 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1909227.

13 John Armour & David A. Skeel, *Who Writes the Rules for Hostile Takeovers, and Why?-The Peculiar Divergence of U.S. and U.K. Takeover Regulation*, 95 *Geo. L.J.* 1727 (2007) [Hereinafter Armour & Skeel, *U.S. and U.K. Takeover Regulation*]. Armour & Skeel state: "The principle of shareholder primacy-and correlative board neutrality-was thus established [in the autumn of 1959]." *Id.* at 1759.

14 See infra Part VII.A.1. Prior Studies for more detail on the prior studies of long-term performance impact of shareholder proposals.

15 Doron Levit & Nadya Malenko, *Non-Binding Voting for Shareholder Proposals* 66 *J. Fin.* 1579 (2011) [hereinafter Levit & Malenko, *Non-Binding Voting*].

16 Milton Harris & Artur Raviv, *Control of Corporate Decisions: Shareholders vs. Management*, 23 *Rev. Fin. Stud.* 4115 (2010).

process and the key operating characteristics of the sample firms. Part IV describes proposal submission frequency from 2000 to 2006, the solicitation venues through which our sample proposals are presented (e.g., annual shareholder meetings, or special meetings.), and voting outcomes. Part V analyzes proposal agenda by classifying proposals into broad categories and tracking them over the sample period. Part VI presents the characteristics of proposal sponsors, including sponsor identity, the type of proposals they sponsor, and their ownership stake in the target firms. Part VII studies the long-term impact of US ordinary shareholder proposals and UK shareholder proposals on firm performance. To help readers better understand our results of US ordinary shareholder proposals, we also review the existing literature and develop hypotheses based on recent development in capital markets and scholarly work. Part VIII studies the impact of US ordinary shareholder proposals and UK shareholder proposals on CEO turnover. Part IX discusses the findings of our paper in the context of the existing literature. Part X discusses the implications of our results in terms of shareholder responsibility. Part XI concludes.

II. Institutional Background

A. An Overview of the Corporate Governance System in the US and UK

US and UK corporate governance systems are similar in many ways. They both exist in a "common law" legal system, characterized by strong protection for minority shareholders, as compared to a "civil law" system.¹⁷ Both countries have a large market capitalization relative to GDP, dispersed ownership, liquid capital markets, and active takeover markets. Another important similarity is the large equity stake of institutions which own more than 50% of publicly listed shares in each country.¹⁸

Institutional investors have traditionally been viewed as passive in both countries, with a policy of selling portfolio companies when dissatisfied with their performance.¹⁹ Warren Buffett describes this as "the 'gin rummy' approach to investing: discard your least promising business at each turn."²⁰ More recently, however, US and UK institutions have taken a more active role in monitoring managers and improving firm value. For example, large US pension funds such as CalPERS and TIAA-CREF started shareholder activism programs in the late 1980s.²¹ The UK Cadbury Report of 1992 reflected this new emphasis on shareholder engagement and the Hermes Focus Fund was established in 1998 as the first experiment of shareholder activism in the UK.²² (Appendix 1 summarizes the timeline of corporate governance developments in the UK.)

17 See Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert W. Vishny, *Legal Determinants of External Finance*, 52 *J. Fin.* 1131 (1997); Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert W. Vishny, *Law and Finance*, 106 *J. Pol. Econ.* 1113 (1998).

18 For statistics on UK institutional ownership, see UK Office of Nat'l Statistics, *Share Ownership: A Report on Ownership of Shares as at 31st December 2004* (2005), available at <http://www.ons.gov.uk/ons/publications/index.html?pageSize=50&newquery=%22share+register+survey+report%22+-+%22share+ownership+2004%22>. For statistics on US institutional ownership, see Carolyn Kay Brancato & Stephan Rabimov, *The 2005 Institutional Investment Report: US and International Trends* (US Conference Board, 2005), and Laura T. Starks, *FMA Doctoral Seminar: The Influence of Institutional Investors on Financial Markets Through Their Trading & Governance Monitoring* (Oct. 17, 2007), PowerPoint available at <http://69.175.2.130/~finman/Publications/FMAOnline.htm>.

19 See Marc Georgen & Luc Renneboog, *Strong Managers and Passive Institutional Investors in the UK*, in *The Control Of Corporate Europe* 259 (Fabrizio Barca & Marco Becht eds., Oxford Univ. Press 2nd ed. 2002), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=137068; see also Julian Franks, Colin Mayer & Luc Renneboog, *Who Disciplines Management in Poorly Performing Companies?* 10 *J. Fin. Intermediation* 209 (2001) [hereinafter Franks et al., *Who Disciplines Management*] (evaluating the role of five parties (i.e., large blockholders, acquirers of new blocks, bidders in takeovers, non-executive directors, and investors) in disciplining management).

20 See Tony Tassell, *Investors Face Pressure from Government*, *Fin. Times*, June 4, 2002, at 20.

21 See Michael P. Smith, *Shareholder Activism by Institutional Investors: Evidence from CalPERS*, 51 *J. Fin.* 227 (1996) [hereinafter Smith, *Activism by CalPERS*]; Willard T. Carleton, James M. Nelson & Michael S. Weisbach, *The Influence of Institutions on Corporate Governance Through Private Negotiations: Evidence from TIAA-CREF*, 53 *J. Fin.* 1335 (1998) [hereinafter Carleton et al., *TIAA-CREF Activism*].

22 See Marco Becht, Julian Franks, Colin Mayer & Stefano Rossi, *Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund*, 22 *Rev. Fin. Stud.* 3093 (2009) [hereinafter Becht et al., *Hermes UK Focus Fund*] (studying activism strategies and returns of the Hermes UK Focus Fund).

The increasingly prominent role of US and UK institutions as governance activists results from the institutionalization of equity markets and the growing pressure exerted by regulators and other investors on institutions to be more active and visible corporate monitors. In 1950, US institutions owned less than 10% of the equity in US markets. This number rose above 50% in the early 1990s. Similarly, UK pension funds and insurance companies owned 16% of UK shares in 1963, but 52% by 1990. With such large positions, it has become difficult and costly for institutions to exercise the "Wall-Street-Walk" of selling shares of poorly performing companies. In addition, the investment objectives of certain institutions such as index funds prohibit selling equities simply because a firm is under-performing. Further, both UK and US policy makers encourage institutions to take a more active governance role, particularly in the area of proxy voting. For example, in 1988 the US Department of Labor required pension funds to vote in accordance with the fiduciary duties of the Employee Retirement Income Security Act (ERISA). In 2003, the SEC mandated that mutual funds disclose proxy votes and voting policies. In the UK, a series of corporate governance reports including Cadbury (1992), Greenbury (1995), Hampel (1998), and Myners (2001) emphasize the governance role of institutions and the importance of voting.²³

A significant difference between the US and UK relates to the role of the board of directors. In the US, the board of directors is the apex of corporate governance, while the counterpart in the UK is corporate law. Deborah DeMott describes the difference using a visual metaphor:²⁴

Imagine a painting with a scenic background dominated in its foreground by a portrait of an individual person. Like the portrait, the independent directors – strengths, weaknesses, constraints, and credibility – dominate the U.S. landscape, figuring prominently in statutes, cases, and academic commentary. The same landscape with the portrait removed is, in contrast, the image of corporate law in the United Kingdom...

This difference in the role of the board likely gives rise to the differing proxy rules in the US and UK, which we review in the next section, with US rules favoring the incumbent board and UK rules paying greater deference to shareholders.²⁵ Another important difference may relate to the probability of shareholder lawsuits against the board of directors. Cheffins and Black and Armour, Black, Cheffins and Nolan show that the probability of a director of a publicly-traded UK company being sued for breach of duty is virtually zero. However, in the United States, while the probability is still low, the possibility must be recognized by the board of directors and will influence its actions.²⁶ Franks, Mayer and Renneboog²⁷ argue that the ineffective implementation of fiduciary responsibilities results in UK non-executive directors regarding their role as being advisory rather than disciplinary.²⁸

B. Proxy Rules in the US and UK

Despite similar governance systems, the US and UK have quite different rules regarding submitting a shareholder proposal or calling a shareholder meeting. For easy comparison, we summarize the differences in Appendix 2 and discuss some of the key differences here.

In the US, corporations are chartered at the state not the federal level. Therefore, state laws govern shareholder rights, and consequently the holding of shareholder meetings and what shareholders are

23 See Chris Mallin, *Financial Institutions and Their Relations with Corporate Boards*, 7 *Corp. Governance: An Int'l Rev.* 248-255 (1999) [hereinafter Mallin, UK institutions] (examining the role of UK institutional investors and their relations with corporate boards).

24 See Deborah DeMott, *The Figure in the Landscape: A Comparative Sketch of Directors' Self-Interested Transactions*, 62 *LAW & CONTEMP. PROBS.* 243, 246 (1999) (identifying significant divergences between US and UK corporate law in the resolution of basic issues in corporate governance).

25 See Jennifer Hill, *The Rising Tension Between Shareholder and Director Power in the Common Law World*, 18 *Corp. Governance: An Int'l Rev.* 344 (2010) [hereinafter Hill, *Rising Tension in Common Law World*] (exploring the rising tension between shareholder and director power in the common law world) [fix 110].

26 Cheffins & Black, *Outside Director Liability*; John Armour, Bernard S. Black, Brian Cheffins & Richard Nolan, *Private Enforcement of Corporate Law: An Empirical Comparison of the UK and US*, 6 *J. Empirical L. Stud.* 687 (2009).

27 Franks et al., *Who Disciplines Management*, *supra* note 19.

28 A movement towards greater director responsibility has started in the UK. For example, the *Companies Law Reform Bill (2005)* codifies directors' duties, which include promoting the success of the company, exercising independent judgment, exercising reasonable care, skill and diligence, and avoiding conflicts of interest.

allowed to vote on at these meetings. However, Congress places responsibility with the SEC, pursuant to the Securities Exchange Act of 1934, to regulate the solicitation and issuance of proxies. SEC Rule 14A-8 (the Shareholder Proposal Rule) requires that a company must include a shareholder proposal of no more than 500 words in corporate proxy materials for presentation to a vote at shareholder meetings, if the shareholder owns at least 1% (or \$2,000 in market value) of the voting shares for at least a year and if the proposal does not fall within one of the 13 substantive bases for exclusion (e.g., matters relating to board election, the company's ordinary business operation, or personal grievance).²⁹ To submit proposals regarding substantive matters, shareholders must distribute their own proxy materials and solicit votes at their own expense. This cost can be prohibitive as illustrated by the \$15 million failed proxy solicitation of Walter B. Hewlett opposing Hewlett-Packard's merger with Compaq.³⁰

US shareholder proposals solicited using corporate proxy materials at corporate expense are precatory, i.e., firms are not obligated to adopt the proposal, even if passed by shareholders. However, shareholder proposals solicited using shareholders' proxy materials at shareholders' expense are binding. Thus, these two US proxy practices are distinct; the former are generally referred to as ordinary shareholder proposals or simply shareholder proposals, while the latter are referred to as proxy contests, proxy fights, or contested proxy solicitations. Historically, financial economists have studied them separately.

In the UK, the 2006 Companies Act governs proxy rules and specifies the rules by which shareholders may propose resolutions for shareholder vote at the next annual general meeting (see especially, Part 13 of the Companies Act 2006). Though the earlier 1985 Companies Act covered much of our sample, the Acts are very similar. A special meeting can be called by shareholders with a 10% voting stake. A resolution sponsor must own at least 5% of the voting shares, or be a group of at least 100 shareholders owning no less than £100 worth of shares per holder. Special resolutions, generally required to amend the articles of association, require a 75% supermajority vote for approval. In addition, UK investors may use ordinary shareholder resolutions to elect and remove directors, requiring a simple majority vote. Importantly, UK shareholder resolutions, once passed, are binding

In contrast with UK's simple majority, plurality voting is the default for board election under most US state laws. Under this standard, a director receiving the highest number of votes is elected. In uncontested elections (when firms solicit votes for director election), shareholders are typically given the option to only cast "for" or "withhold" and the number of nominees is the same as the number of positions. Accordingly, a director can receive one single affirmative vote, while all other voters withhold their support, and still be elected. Though proposed Rule 14a-11 would have altered this procedure, the only way for US shareholders to nominate or remove directors through voting is to initiate a proxy contest.

In the UK, a shareholder with 10% of the voting rights may force the firm to hold an Extraordinary General Meeting (EGM, the equivalent of special meeting in the US) before the next Annual General Meeting (AGM). Further, the corporate articles cannot deprive shareholders of this right.³¹ In the US, state laws generally permit shareholders with ownership between 5% and 10% to call a special meeting or use written consent to propose their actions.³² However, corporations frequently use charter and bylaw provisions to limit this ability of shareholders. For example, on October 20, 1999, the board of directors of Quality Dining Inc., whose assets include Burger King and Chili's, amended the bylaws to increase from 25% to 80% the number of shares required to call a special shareholder meeting. According to the Company's preliminary proxy statement filed on January 24, 2000, Daniel Fitzpatrick (the CEO and Chairman of the Board) and Gerald Fitzpatrick (Senior Vice President) together owned just over 20% of the Company's outstanding stock - enough to veto any such special meeting.

Appendix 2 provides details on other significant differences in shareholder proposals. For example, US

²⁹ Details on substantive bases for exclusion are available at <http://www.sec.gov/interps/legal/cfs14.htm>.

³⁰ Hewlett-Packard Co., Definitive Proxy Statement (Form DEF 14A) (Feb. 5, 2002), available at <http://www.sec.gov/Archives/edgar/data/47217/000089161802000417/f78079dedefc14a.htm#004>.

³¹ See Becht et al., Hermes UK Focus Fund, supra note 22.

³² A written consent allows shareholders to take an action that has the same effect as a shareholder vote, but without holding an annual or special shareholder meeting. For example, Section 228 of the Delaware General Corporation Law provides that, absent a contrary provision in the certificate of incorporation, any action that may be taken at a shareholder meeting may be taken by a written consent of at least the minimum number of votes that would be necessary to take such action at the meeting in which all shares entitled to vote were present and voting. See Del Code Ann. Tit. 8, § 228.

laws specify a minimum of shares that must be presented in person or by proxy at a shareholder meeting to constitute a quorum while UK statutes set no prescribed minimum. UK shareholder meetings historically have low voter turnout, averaging about 20% of eligible shareholders in 1990.³³ A 1990 survey found that 23% of the members of the National Association of Pension Funds, one of the most influential pension organizations in the UK, did not know whose responsibility it was to make voting decisions.³⁴ However, the 1998 Hampel Report explicitly notes that institutional shareholders have a responsibility to vote and recent evidence indicates that the UK voting level has increased to 50%.³⁵ We compute voter turnout for 50 UK shareholder meetings in our sample and find a mean of 60% (median 63%). For comparison, in the US where institutional voting is compulsory, voter turnout can easily reach 70-80%.³⁶

To summarize, although UK proposal rules are more onerous on sponsors in terms of ownership requirements and solicitation costs, they confer UK shareholders with greater power since proposals are binding and shareholders have the statutory right to call special meetings and to remove and elect directors using a simple majority vote. In this light, Mark Anson, chief executive of Hermes, remarks: "The US prides itself on its great democracy but democratic rights do not exist in corporate America."³⁷

III. Sample Collection and Description

Our analysis considers three types of shareholder actions: US ordinary shareholder proposals, US proxy contests, and UK shareholder resolutions. Our sample is summarized in Table 1.

A. The Sample of US Ordinary Shareholder Proposals

We identify US ordinary shareholder proposals from the Investor Responsibility Research Center (IRRC, now RiskMetrics),³⁸ which reports 6,732 shareholder proposals for 1,067 firms from 2000 through 2006. Of these proposals, 2,939 do not come to a vote because they were withdrawn (59%), omitted (38%), or not presented (3%). The reasons for not coming to a vote could result from various considerations including that the proposal was challenged at the SEC, the proposal failed to meet procedural requirements, or the sponsor reached an agreement with the management before the shareholder meeting.³⁹ Since no disclosure requirements exist to document the reason for withdrawal, we exclude withdrawn proposals from our study. The remaining sample of US ordinary shareholder proposals consists of 3,793 proposals voted on at 757 firms. Since some firms received proposals in more than one year, we report the number of "firm-years" which represents the sum of the number of firms in each year receiving at least one proposal. Accordingly, a firm would be associated with one firm-year observation if it received two proposals in one year but would be associated with two firm-year observations if it received two proposals in two different years. There are 2,023 firm-years in our sample.

We obtain the proposal description, vote result, and sponsor identity primarily from IRRC, and collect sponsor ownership from proxy statements. We also verify the information gathered from IRRC through

33 See Chris Mallin, *Institutional Investors and Voting Practices: An International Comparison*, 9 *Corp. Governance: An Int'l Rev.* 118 (2001) (comparing the voting systems in several countries, including the UK, US, Australia, and Germany).

34 Norma Cohen, *Survey of Pension Fund Investment (16): Investors Urged to Behave Like Owners—Corporate Governance is Taking Hold in the Consciousness of UK Pension Funds*, *Fin. Times*, May 7, 1992, at 8.

35 See *supra* note 33.

36 Jennifer E. Bethel & Stuart L. Gillan, *The Impact of the Institutional and Regulatory Environment on Shareholder Voting*, 31 *Fin. Mgmt.* 29 (2002) (analyzing the institutional and regulatory environment governing shareholder voting).

37 Steve Johnson, *Plea for Democracy in Corporate US European Funds are Lobbying for the Rights of Shareholders in American Companies*, *Fin. Times*, Jan. 22, 2007, at 1.

38 IRRC was founded in 1972 as a non-for-profit organization to provide research on social and corporate responsibility issues. It started tracking shareholder proposals in 1986. To the best of our knowledge, IRRC provides the longest and most comprehensive coverage of shareholder proposals in the US. Institutional Shareholder Services (ISS) bought IRRC in 2005. RiskMetrics bought ISS in 2006.

39 For studies on withdrawn shareholder proposals in the US, see, e.g., Cynthia Campbell, Stuart L. Gillan & Cathy M. Niden, *Current Perspectives on Shareholder Proposals: Lessons from the 1997 Proxy Season*, 28 *Fin. Mgmt.* 89 (1999).

examination of 10-Q, 8-K and proxy statements and are able to collect voting results for about 300 additional proposals.

B. The Sample of US Proxy Contests

We collect US shareholder proposals submitted through proxy contests from the online SEC database, EDGAR (<http://www.sec.gov/>). We search EDGAR for contested proxy filings (DEF1 and DEFN) by all firms listed on the COMPUSTAT Merged Fundamental Annual File. We identify an additional nine contested solicitations (or eight firms) where the target firms are not in COMPUSTAT. After we exclude mutual funds, the sample of US proxy contests consists of 521 shareholder proposals submitted to 221 firms (249 firm-years) from 2000 to 2006.

C. The Sample of UK Shareholder Proposals

We collect UK shareholder proposals from Institutional Shareholder Services (ISS, now RiskMetrics). ISS reports 418 shareholder proposals targeting 70 UK firms (84 firm-years) for the period 2000 through 2006.⁴⁰ We also search Factiva for additional cases, using variations of the terms “requisition,” “shareholder resolution,” and “shareholder proposal.” “Requisition” is the term commonly used in the UK to describe the formal request to a company from a shareholder or group of shareholders to put a resolution on the firm’s annual general meeting. We find an additional 78 proposals for 15 firms (16 firm-years). Therefore, the UK sample consists of 496 shareholder proposals requisitioned at 85 firms (100 firm-years). Unlike the sample of US ordinary shareholder proposals, the UK sample includes withdrawn proposals (133 proposals or 25 firms), because we are able to determine the cause for withdrawal. The withdrawals usually result from negotiations between the shareholder and the firm. ISS provides meeting date, proposal description, and recommendations by management and ISS. We collect remaining data such as meeting type, vote result, sponsor identity, and sponsor ownership by searching Factiva, Lexis-Nexis, or the internet.

Table 1 reports information on the sample of shareholder proposals received by firms in our analysis from 2000 through 2006 for each of our three categories: US ordinary proposals, US proxy contests and UK shareholder proposals. The observations are collected from IRRC, ISS, SEC Edgar, and Factiva. The number of firms represents the number of unique firms receiving a proposal at any time from 2000 to 2006 while the number of firm-years is the sum of the number of firms per year receiving a proposal.

Table 1. Sample Collection

	#Shareholder proposals	#Firm years	#Firms
#Observations from the IRRC	6,732	2,991	1,067
Less: observations missing vote results	2,939	968	310
The sample of US ordinary shareholder proposals	3,793	2,023	757
The sample of US proxy contests (from the SEC Edgar)	521	249	221
#Observations from the ISS	418	84	70
Add: observations manually collected from Factiva	78	16	15
The sample of UK shareholder proposals	496	100	85

Table 2 provides summary statistics of key accounting variables for the three samples. US financial data are from COMPUSTAT; UK financial data are from Bloomberg. In addition, UK data in British pounds are converted to US dollars at year-end exchange rates. Consistent with the notion that soliciting costs associated with proxy contests are high for large firms, average total assets for the sample of US ordinary shareholder proposals is significantly larger than that for the US proxy contest sample. US firms receiving ordinary shareholder proposals are also much larger than those in the UK sample. Of the 2,023 firm years in the US ordinary shareholder proposal sample, 87% (69%) are S&P 1500 (S&P 500) firms. For

⁴⁰ The ISS database also contains 109 shareholder proposals requisitioned at 26 closed-end funds or unit trusts from 2000 to 2006. We exclude those observations from our study to make the UK sample consistent with the US sample. (IRRC does not have shareholder proposals submitted to mutual funds.) Further, the business nature of mutual funds is fundamentally different from the rest of the sample firms.

comparison, of the 100 firm years in the UK sample, only 20% (12%) are large firms in the FTSE350 (FTSE100) firms.⁴¹ Existing literature has historically found that US investors target large firms, poorly performing firms, slow-growth firms, firms with low insider ownership, and firms with high institutional ownership for submitting shareholder proposals,⁴² and target small firms and poorly performing firms to mount proxy fights.⁴³

Table 2 reports summary statistics of key accounting variables for firms that receive shareholder proposals from 2000 through 2006. The number of observations is determined by the number of firm years and by whether the relevant data are available. Observations denominated in British pounds have been converted to U.S. dollars at year-end exchange rates.

Table 2. Summary Statistics of Key Accounting Variables

	N	Mean	Median	Std. Dev.
<i>US ordinary shareholder proposals</i>				
Total assets (\$MM)	1,878	50,410	10,616	153,475
Return on assets (ROA)	1,878	12.4%	11.6%	10.3%
Long-term debt over total assets	1,878	21.3%	19.1%	16.2%
<i>US proxy contests</i>				
Total assets (\$MM)	224	2,861	238	14,337
Return on assets (ROA)	215	-0.2%	3.3%	24.1%
Long-term debt over total assets	222	21.4%	10.3%	39.3%
<i>UK shareholder proposals</i>				
Total assets (\$MM)	88	10,029	80	37,225
Return on assets (ROA)	85	0.1%	5.4%	21.1%
Long-term debt over total assets	88	15.2%	7.6%	18.7%

IV. Submission Frequency, Meetings, and Vote Outcome

We first report characteristics of sample in terms of proposal submission frequency, submission venues, and vote outcome for the US and UK shareholder proposals from 2000 to 2006.

A. US Ordinary Shareholder Proposals

Table 3 shows the characteristics of US ordinary shareholder proposals from 2000 to 2006. US investors submit more proposals and win more affirmative votes during the later sample period of 2003 to 2006 as compared to the earlier period of 2000 to 2002. The first three years of our sample average 442 proposals per year with an affirmative voting rate of 24.6%. The latter four years average 616 proposals per year with an affirmative voting rate of 30.4%. A rush of corporate scandals in 2001 and 2002, exemplified in Enron and WorldCom, brought corporate governance into the limelight and prodded activists and policy regulators into action. The US Congress passed the Sarbanes-Oxley Act in 2002, introducing the most significant changes to business laws since the Great Depression. The spike in proposal submission and vote support after 2002 may be a reflection of the investors' mood at the time regarding the promotion of

⁴¹ S&P1500 is a market-capitalization weighted index representing the performance of the 1,500 largest companies in the US or approximately 85% US equity market. FTSE100 is a market-cap weighted index representing the performance of the 100 largest companies in the UK or approximately 82% UK equity market. FTSE250 is an index of medium size companies that hosts the largest 250 companies in the UK outside of the FTSE100 index, representing approximately 14% UK equity market. FTSE350 includes firms in the FTSE100 and FTSE250 indices.

⁴² See, e.g., Karpoff et al., *Corporate Governance and Shareholder Initiatives*, supra note 11; Smith, *Activism by CalPERS*, supra note 21; Luc Renneboog & Peter G. Szilagyi, *The Role of Shareholder Proposals in Corporate Governance*, 17 J. Corp. Fin. 167 (2011) [hereinafter Renneboog & Szilagyi, *Shareholder Proposals*].

⁴³ See, e.g., Harold J. Mulherin & Annette B. Poulsen, *Proxy Contests and Corporate Change: Implications for Shareholder Wealth*, 47 J. Fin. Econ. 279 (1998) (studying the wealth effect of proxy contests from 1979 to 1994) [hereinafter Mulherin & Poulsen, *Proxy Contests*]; Lucian A. Bebchuk, *The Case for Shareholder Access to the Ballot*, 59 Bus. L. 43 (2003) [hereinafter Bebchuk, *Shareholder Access to the Ballot*] (describing the occurrence of proxy contests, including closed-end funds, from 1996 to 2002).

stricter monitoring and greater corporate accountability. Overall, the trend we observe is consistent with the growing significance of shareholder proposals as a governance control tool. To provide some historical perspective, 275 shareholder proposals were submitted in the 1984-1985 proxy season averaging 5.74% shareholder support. The number rises to 487 and 24.06%, respectively, in the 1991-1992 proxy season.

Table 3 describes the voting results of US ordinary shareholder proposals from 2000 through 2006. *%Affirm. votes* denotes the mean percent of affirmative votes over votes cast. *%Pass* denotes the percent of shareholder proposals that receive the necessary votes to pass.

Table 3. Voting Results of US Ordinary Shareholder Proposals, 2000 through 2006

	#Proposals	#Firm	#Annual meetings	#Special meetings	%Affirm. votes	%Pass
2000	433	258	258	0	22.8%	12.9%
2001	430	244	244	0	22.9%	14.7%
2002	464	254	254	0	28.2%	19.0%
2003	616	317	317	0	32.1%	25.3%
2004	637	332	332	0	27.1%	19.5%
2005	582	293	293	0	29.2%	23.3%
2006	631	325	325	0	33.1%	21.2%
Overall	3,793	2,023	2,023	0	28.4%	19.4%

B. US Proxy Contests

Table 4 summarizes US shareholder proposals submitted as proxy contests. Note that a firm may have more than one proxy fight in a given year. For example, North Fork Bancorporation mounted a proxy fight for a special shareholder meeting of Dime Bancorp on May 17, 2000 to oppose a merger proposal. North Fork mounted another proxy fight at Dime Bancorp regarding the board election at the annual meeting on July 14, 2000. Thus, the sum of firms experiencing at least one proxy contest in a year is 249 while the total number of proxy contests is 254, with 205 annual meetings, 10 special meetings called by management, 18 special meetings called by dissidents and 21 written consents.

Dissidents submitted somewhat fewer contested proposals starting in 2002 though the number increased again in 2006. The percent passing increased from 30.7% for the first three years of the sample period to an average of 40.2% in the last four years. Even in the case of proxy contests, dissidents rarely used special meetings or written consents, indicative of the institutional barriers that shareholders face in using these venues to present proposals as opposed to targeting their proposals to regular shareholder meetings.

Scholars argue that proxy contests are the least efficient way to discipline managers since they require high solicitation costs.⁴⁴ Solicitation expenses were one of the main factors that the SEC considered during its review before the adoption of Rule 14a-11. We report solicitation costs for US proxy contests in Table 4 Panel B. We are able to collect this data for 239 of the 254 contested events. The average solicitation cost for a contested event is \$525,070 with special meetings being associated with the highest average solicitation expenses (\$750,517). However, the median expense of \$250,000 for annual meetings is greater than the median expense of \$100,000 for special meetings.

Since the majority of contested proposals relate to proxy fights for board seats, we also report outcomes for the sample of contested proposals that relate to election of a non-majority of the board (election-related) or aim to replace the majority of the board (control-related). Control-related proposals have a higher settlement rate and a slightly lower passing rate, on average, than election-related proposals. Overall, contested proposals that target board election have a success rate (either passed or settled) of about 50%. Mulherin and Poulsen⁴⁵ find a similar success rate for their sample of 270 proxy contests for board seats from 1979 to 1994.

⁴⁴ John Pound, Proxy Contests and the Efficiency of Shareholder Oversight, 20 J. Fin. Econ. 237 (1988) [hereinafter Pound, Proxy Contest] (examining the restrictions that discourage the use of proxy contests to challenge management and transfer corporate control).

⁴⁵ Mulherin & Poulsen, Proxy Contests, supra note 43 (finding that the success rate is similar across three subsample

Table 4 describes the characteristics of US shareholder proposals submitted as proxy contests. *%pass* denotes the proportion of shareholder proposals that receive the necessary votes to pass. *%Settled* denotes the percent of proposals on which the dissident and the firm reached a settlement. Solicitation costs are the total estimated expenses as reported in the proxy statements by the dissident. *Control-related* denotes a proposal, which is submitted by a dissident with the objective to replace the majority of the board.

Table 4. Characteristics of US Proxy Contests, 2000 through 2006

Panel A: Time line of US proxy contests

	#Proposals	#Firm	#Annual meetings	#Special meetings called by management	#Special meetings called by dissidents	#Written consents	%Pass	%Settled
2000	80	41	35	3	2	2	31%	8%
2001	80	43	38	0	4	2	33%	9%
2002	61	38	31	2	1	4	28%	18%
2003	69	36	32	0	2	2	32%	6%
2004	66	27	20	2	3	3	45%	15%
2005	67	22	17	1	3	3	51%	6%
2006	98	42	32	2	3	5	33%	12%
Overall	521	249	205	10	18	21	36%	10%

Panel B: Solicitation costs

	N	Mean	Median	Minimum	Maximum
Annual meetings	195	652,105	250,000	15,000	7,500,000
Special meetings	25	750,517	100,000	5,000	15,000,000
Written consents	19	483,789	175,000	500	10,000,000
Overall	239	\$ 525,070	\$ 175,000	\$ 500	\$ 15,000,000

C. UK Shareholder Proposals

Table 5 shows the characteristics of UK shareholder proposals by year from 2000 to 2006. To better compare with the US samples, we partition the UK sample by whether a proposal is withdrawn or comes to a vote and by whether a proposal is a non-control or a control-related proposal. Table 5 reports 490 proposals instead of the full sample of 496, because three UK firms (or six proposals) dissolved before the corresponding meeting convened. The 490 proposals include 132 non-control proposals that come to a vote, 225 control-related proposals that come to a vote, 47 non-control proposals that are withdrawn and 86 control proposals that are withdrawn. The number of meetings (112, the sum of the number of Annual General Meetings (AGM) and Extraordinary General Meetings (EGM, similar to US special meetings) in each quadrant) exceeds the number of firm years (97, excluding the three delisted firms), because UK shareholders can requisition multiple meetings in a year.

The number of UK shareholder proposals peaked in 2004, probably reflecting the impact of the 2001 Myners Report, which recommended that the Government require shareholder engagement. To preempt legislation, the Institutional Shareholders Committee, the UK's trade group of institutional investors, published a code of best practice on shareholder activism in 2002, compelling its members to intervene in poorly governed and poorly performing firms.⁴⁶

Of the 490 proposals, 64% relate to displacing the majority of the board. However, only 37% of the 112 requisition events are control-related, indicating that multiple control proposals are generally clustered at the same shareholder meeting. Although dwarfed by the number of US submissions, the level of UK proposal activities has increased substantially compared to the 1990s. In 1996, only three resolutions were put to vote at AGMs, compared to 390 proposals in the same year in the US. A third of these US proposals were related to social and environmental issues.⁴⁷ In 1997, four shareholder proposals were

periods and resembles that reported in prior studies).

⁴⁶ See Tony Tassell, *Investors Face Pressure from Government*, *Fin. Times*, June 4, 2002, at 20; Tony Tassell, *Big Investors Pledge to Step Up Activism: Institutional Shareholders in Bid to Avoid Legislation*, *Fin. Times*, Oct. 22, 2002, at 1.

⁴⁷ *Call on Labour to Change Shareholder Rules*, May 6, 1997, Factiva Press Release Service.

filed in the UK, among which was the first ever shareholder resolution relating to environment and human rights.⁴⁸

Of the 112 requisition events for the UK sample, 71% are conducted through special meetings. When considering only control-related events, all but two are conducted through special meetings. We are able to find vote results for all 357 UK proposals that come to a vote and negotiation outcome for 116 of the 133 withdrawn proposals. UK non-control proposals that come to a vote seem to garner greater support in the later sample period than in the earlier period, ranging from 0% to 26% early in the sample and rising to 44% in 2005 and 2006. This pattern is similar to the trend we observe for US ordinary proposals. UK proposals that aim at taking control of the board, whether voted on or withdrawn, have a significantly higher success rate, with a greater than a 50% passing or adoption rate, similar to the US success rate in proxy contests.

Previous researchers have found that shareholder proposals are less common in the UK than in the US.⁴⁹ One potential explanation is that UK investors prefer behind-the-scenes negotiation to open confrontation.⁵⁰ It is also possible that the potential threat of calling a special meeting to remove directors in the UK allows dissidents to be more successful in those negotiations.⁵¹ When shareholder proposals are used in the UK, more than 60% of the proposals relate to board election. Although US shareholders can use proxy contests to change board members, they rarely occur. From 2000 to 2006, US shareholders initiated 2,023 ordinary proposal events, but only 213 proxy fights are for board seats and 82 proxy fights are for board control.⁵² More than 70% of UK proposals, including 56% of the non-control proposals, are presented at special meetings. The prevalence of special meetings as the venue of choice for UK shareholders to submit proposals contrasts with what we find for the US samples, where none of the ordinary proposals are presented at special meetings and only 19% of the contested solicitations are conducted through special meeting or written consent. Therefore, it seems that it is considerably easier for UK investors to use shareholder proposals to effect board and corporate changes than for US investors.

Table 5 describes the characteristics of UK shareholder proposals from 2000 through 2006. Total number of proposals is 490 instead of the full sample of 496 proposals, because three UK firms (or six proposals) dissolved before the corresponding meeting convened. The number of shareholder meetings (112) exceeds the number of firm years (97, excluding the three delisted firms), because UK shareholders can requisition multiple meetings in a year. We are able to classify all meeting types for the UK sample. We manually collect vote results for all 357 UK proposals that come to a vote, and negotiation outcome for 116 of the 133 withdrawn proposals. A proposal is classified as control-related, if a shareholder submits multiple proposals to one shareholder meeting that, if passed, have the effect of replacing the majority of the board. *AGM* denotes Annual General Meeting, equivalent of annual shareholder meeting in the US; *EGM* denotes Extraordinary General Meetings, equivalent of special meeting in the US. *%pass* denotes the proportion of shareholder proposals that receive the necessary votes to pass. A withdrawn proposal is deemed as *passed* if the firm adopts the action that the sponsor requests.

48 See Mallin, UK institutions, *supra* note 23; Roger Cowe, Revolt Forces to Buckle, *The Guardian*, May 15, 1997, at 22.

49 Cziraki et al. obtained 290 shareholder proposals from the Manifest database, which include 192 submitted in the UK for the period of 1998-2008 and 95 submitted in Continental Europe for the period of 2005-2008. They also conclude that shareholder proposals are submitted less frequently in the UK and Continental Europe than in the US. Cziraki et al., *Shareholder Activism in Europe*, *supra* note 8.

50 See, e.g., Bernard S. Black & John C. Coffee, Hail Britannia? Institutional Investor Behavior under Limited Regulation, 92 *Mich. L. Rev.* 1997 (1994) [hereinafter Black & Coffee, Hail Britannia]; see also Becht et al. Hermes UK Focus Fund, *supra* note 22 (finding that Hermes, the first UK activist institutional investor, rarely submits shareholder proposals, but instead negotiates quietly with the management behind the scene).

51 Becht et al. Hermes UK Focus Fund, *supra* note 22 (observing that Hermes activism rarely took a public form and attributing this in part to the potential threat of Hermes calling special meetings).

52 Bebchuk, *Shareholder Access to the Ballot*, *supra* note 43 (documenting proxy contest activities, including closed-end funds, from 1996 to 2002 and reporting 215 contested events with 162 related to director election).

Table 5. Characteristics of UK Shareholder Proposals, 2000 through 2006

	Non-control proposals					Control-related proposals				
	#Proposals	#Firm	#AGM	#EGM	%Pass	#Proposals	#Firm	#AGM	#EGM	%Pass
<i>Proposals that come to a vote</i>										
2000	10	3	2	1	0%	17	2	0	2	100%
2001	24	10	7	4	0%	4	1	0	1	100%
2002	27	10	3	7	26%	38	4	1	4	18%
2003	15	6	4	3	7%	33	5	0	5	24%
2004	22	6	3	4	0%	88	8	1	9	66%
2005	9	2	0	3	44%	37	5	0	5	35%
2006	25	9	3	7	44%	8	2	0	2	100%
Overall	132	46	22	29	17%	225	27	2	28	51%
<i>Proposals that are withdrawn</i>										
2000	5	2	1	1	80%	0	0	0	0	-
2001	3	3	3	0	0%	9	2	0	2	56%
2002	5	4	1	4	40%	19	2	0	2	47%
2003	14	3	1	2	36%	28	4	0	4	100%
2004	2	1	1	0	0%	13	1	0	1	0%
2005	10	4	2	2	40%	0	0	0	0	-
2006	8	2	0	2	100%	17	2	0	2	100%
Overall	47	19	9	11	51%	86	11	0	11	69%

V. Proposal Agenda

In this section, we study the agenda of US and UK shareholder proposals. To facilitate illustration, we classify proposals into broad categories: board, compensation, governance, social, environmental or health, and business proposals. Board proposals include provisions to declassify the board, separate CEO and chairman positions, and require majority vote to elect directors and similar provisions that change the way in which the board is elected or operates. Examples of compensation proposals are provisions for expensing stock options, submitting executive severance pay to shareholder vote, and adopting performance-based compensation. Examples of governance proposals are requirements to submit shareholder rights plans (poison pills) to shareholder vote, restore the right to call a special meeting, and prohibit auditors from providing non-audit services. Examples of social proposals are requiring reporting of political contributions, preparing sustainability reports and implementing international labor standards. Examples of environmental proposals are requiring reporting on genetically engineered products, reporting on greenhouse gas emissions, and making AIDS drugs affordable in poor countries. Business proposals require changes to the firm's operations or strategies.

Table 6 reports proposals by proposal type for US ordinary shareholder proposals (Panel A) and UK shareholder proposals (Panel B). Board proposals (30%) are the most popular type of proposal for US ordinary proposals, followed by compensation (20%), social (18%) and governance (16%) proposals. In addition, board, compensation and social proposals are the main drivers behind the recent increase in submission frequency that we documented earlier. Panel C further breaks down board proposals into various categories for both US and UK shareholder proposals.

The issue of a majority vote to elect directors fuels the growth in board proposals in the US. The first majority-vote proposal in our sample was submitted in 2004 and became the most popular board proposal by 2005. The growth of majority-vote proposals reflects the progression of shareholder activism. The just-vote-no campaign was first proposed by Joseph Grundfest in 1990 and became a popular activism tool among institutional investors by the earlier 2000s.⁵³ The growing usage of just-vote-no campaigns shone a light on the flaws in electing and removing directors, leading shareholders to focus on

53 An example of a just-vote-no campaign is when Disney's CEO and Chairman Michael Eisner had more than 40% votes withheld against him in 2004. See, Diane Del Guercio & Laura Seery & Tracie Woidtke, Do Boards Pay Attention When Institutional Investor Activists "Just Say No?", 90 J. Fin. Econ. 84 (2008); Jeffrey Gordon, Proxy Contests in an Era of Increasing Shareholder Power: Forget Issuer Proxy Access and Focus on E-Proxy, 61 Vand. L. Rev. 475 (2008).

encouraging firms to replace the plurality-vote standard with a majority-vote standard requiring that directors receive support from holders of a majority of shares voted to be considered legally elected.⁵⁴ Proposals to separate the CEO and Chairman positions also increased in prominence in the later period. In contrast, compensation and governance proposals exhibit a declining trend since their peak in 2003, suggestive of the changing focus of governance activists and constraints that US investors can submit only one proposal per meeting.

A comparison between Panel A and B of Table 6 reveals several differences between US and UK proposal practices. First, board proposals constitute 85% of all UK proposals for 2000-2006, compared to 30% for the US proposals. Further, Panel C shows that US and UK board proposals have dramatically different agendas. In the UK, 98% board proposals target electing or removing specific directors. Even when a board proposal is not about electing or removing specific directors, it is frequently about the general scheme of director election or removal. In contrast, none of the US ordinary shareholder proposals carry such an objective due to legal constraints. Thus, for UK board proposals, the better comparison is probably to US contested proposals or proxy contests.

Second, business proposals are requisitioned with significantly higher frequency in the UK than in the US. Business proposals are proposals to change firm's operation or strategies. Some examples include urging the board to consider selling off company assets or the company itself, increasing dividends, and initiating stock buyback programs. Among the six proposal types, business proposals have the second highest submission rate in the UK (10%), but the lowest rate in the US (4%). Such a difference likely results again from different proxy rules. Because of the precatory nature of ordinary proposals, US shareholders may choose to exercise the "Wall Street Walk" instead of submitting business proposals when they lose faith in management. By contrast, UK shareholders have a greater incentive to submit business proposals because, once passed, firms are forced to take corresponding actions.

Different submission frequencies of other proposal types also reflect institutional differences between the two countries. For example, a large number of US governance proposals focus on repealing antitakeover provisions. UK firms rarely have such defense mechanisms due to opposition from institutional investors.⁵⁵ We see fewer UK compensation proposals since UK shareholders have an advisory vote on executive pay and they are more satisfied with pay policy than US investors.⁵⁶ Conyon and Sadler conduct a large-scale study of say-on-pay in the UK from 2002 to 2007 and find shareholder dissent on the Directors' Remuneration Report is very low.⁵⁷ Lastly, solicitation costs and ownership requirements imposed on UK shareholders have likely deterred the submission of social and environmental proposals.

54 Jie Cai, Jacqueline Garner & Ralph Walkling, *Democracy or Disruption: Majority versus Plurality Voting* (Drexel University Working Paper, 2009) [hereinafter Cai et al., *Democracy or Disruption*], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491627 (studying the antecedents and adoption of majority-vote proposals as well as market reaction to those proposals from 2004 to 2007). Also see our discussion about majority-vote and plurality-vote standards in Section II.B.

55 See Black & Coffee, *Hail Britannia*, supra note 50; Armour & Skeel, *U.S. and U.K. Takeover Regulation*, supra note 13.

56 UK introduced the Directors' Remuneration Report Regulations in 2002, becoming the first country to mandate shareholder advisory votes on pay. US first considered the issue in 2007. The Dodd-Frank Act of 2010 mandates say-on-pay for US public companies effective for shareholder meetings held on or after January 21, 2011. See also Jeremy R. Delman, *Structuring Say-on-Pay: A Comparative Look at Global Variations in Shareholder Voting on Executive Compensation*, 2 *Colum. Bus. L. Rev.* 583 (2010) [hereinafter Delman, *Structuring Say-on-Pay*].

57 Martin Conyon & Graham Sadler, *Shareholder Voting and Directors' Remuneration Report Legislation: Say on Pay in the UK*, 18 *Corp. Governance: An Int'l Rev.* 296 (2010) (studying the determinants of shareholder voting and its relation to CEO pay in the UK).

Table 6. Proposal Agenda - US Ordinary Shareholder Proposals and UK Shareholder Proposals

Panel A: US ordinary shareholder proposals

	Board	COMP	Social	GOV	ENV/Health	BUS	Total
2000	139	45	77	61	58	53	433
2001	131	51	93	70	55	30	430
2002	138	51	93	107	61	14	464
2003	136	203	79	134	57	7	616
2004	161	178	125	96	67	10	637
2005	189	135	111	68	68	11	582
2006	260	107	121	61	72	10	631
Total	1,154 (30%)	770 (20%)	699 (18%)	597 (16%)	438 (12%)	135 (4%)	3,793 (100%)

Panel B: UK shareholder proposals

	Board	BUS	GOV	ENV/Health	Social	COMP	Total
2000	26	3	1	1	1		32
2001	20	16	2	2	1		41
2002	83	8		1		1	93
2003	81	5	4				90
2004	100	16	7	1		1	125
2005	55				1		56
2006	56		1	1	1		59
Total	421 (85%)	48 (10%)	15 (3%)	6 (1%)	4 (1%)	2 (0%)	496 (100%)

Panel C: Breakdown of board proposals for the US ordinary shareholder proposals and UK proposals

	2000	2001	2002	2003	2004	2005	2006	Overall
The US sample								
Declassification	58	50	49	49	42	48	61	31%
Separate CEO and Chairman positions	3	5	3	30	40	30	55	14%
Require majority vote to elect directors	0	0	0	0	11	62	94	14%
Adopt cumulative voting	24	19	19	20	23	20	23	13%
Board independence	19	13	29	10	18	6	4	9%
Director nomination/election	12	21	14	10	8	6	5	7%
Miscellaneous	23	23	24	17	19	17	18	12%
<i>As percentage of the total 1,154 US board proposals</i>								100%
The UK sample								
Elect/remove specific directors	25	17	83	80	97	54	56	98%
Approve scheme for supporter board appointment		1		1	1	1		1%
No confidence vote in the Chairman					1			0%
Charge non-executive Directors with fiduciary duty					1			0%
Change the time/location of general meetings		1						0%
Require indep. of Deputy Chairman and disclosure of indep. status of non-executive directors	1							0%
Leave vacancy arising from retirement by rotation unfilled		1						0%
<i>As percentage of the total 421 UK board proposals</i>								100%

Note: *Board*, *COMP*, *Social*, *GOV*, *ENV/Health*, and *BUS* denote proposals regarding board issues, compensation issues, social issues, non-board governance issues, environmental/health issues, and business issues, respectively.

Table 7 describes the proposal agenda for US proxy contests. Note, a shareholder can submit only one ordinary proposal per meeting. However, a shareholder who solicits contested proxies using his or her own money is not subject to this restriction. Therefore, to give an accurate depiction of the popularity and priority of proposed issues, we report frequency distribution for all dissident proposals (Panel A) and for proposals that are the only one submitted by the dissident in a solicitation event (Panel B). Compared to

UK proposals, US contested solicitations target a wider range of issues. However, when a dissident sponsors only one proposal, 86% of the time the proposed issue is about electing directors (117 occurrences), removing directors (1) and withholding votes against directors (3), while 10% relate to a sale of the company. Our data confirm that director election is still the primary focus of dissidents in proxy contest in recent years⁵⁸

Table 7. Proposal Agenda - US Proxy Contests

<i>Panel A: All contested proposals</i>		
Proposal description	Freq	(%)
Elect, remove or withhold votes against directors	252	(48%)
Sale of the Company	27	(5%)
Board	82	(16%)
Fix or change board size	25	
Declassify the board	23	
Increase board independence	9	
Other board issues	25	
Governance	70	(13%)
Repeal or subject poison pill to shareholder votes	19	
Adopt a simple majority voting policy	15	
Provide for (or lower threshold to call) special meetings	9	
Amend governance documents regarding removal of directors	8	
Other governance issues	19	
Compensation	31	(6%)
Reject management pay plan	17	
Say on pay	5	
Limit pay	3	
Other pay issues	6	
Other proposals	59	(11%)
Repeal new Bylaws amendment adopted to thwart the contest	25	
Business strategies or financing policies	11	
Social issues	2	
Other miscellaneous proposals	21	
Total	521	(100%)
<i>Panel B: When a shareholder submits only one proposal in a contested event</i>		
Proposal description	Freq	(%)
Elect, remove or withhold votes against directors	121	(86%)
Sale of the Company	14	(10%)
Solicit written consent to call special meetings	2	(1%)
Vote against the Company's liquidation plan	1	(1%)
Declassify the board	1	(1%)
Say on pay	1	(1%)
Total	140	(100%)

⁵⁸ For earlier time periods, see, e.g., Mulherin & Poulsen, Proxy Contests, *supra* note 43; Peter Dodd & Jerold B. Warner, On Corporate Governance: A Study of Proxy Contests, 11 J. Fin. Econ. 401 (1983) (studying the outcome and market reaction to 96 proxy contests for board seats for the period of 1962-1977); Harry DeAngelo & Linda DeAngelo, Proxy Contests and the Governance of Publicly Held Corporations, 23 J. Fin. Econ. 29 (1989) (studying the outcome and market reaction to 60 proxy contests for board seats for the period of 1978-1985); David Ikenberry & Josef Lakonishok, Corporate Governance through the Proxy Contest: Evidence and Implication, 66 J. Bus. 405 (1993) (studying the determinants and long-term performance impact of 97 proxy contests for board seats for the period of 1968-1987); John Pound, Shareholder Activism and Share Values: The Causes and Consequences of Countersolicitations against Management Antitakeover Proposals, 32 J. Law Econ. 357 (1989).

VI. Proposal Sponsor

In this section, we study sponsor characteristics for US and UK shareholder proposals. We study who the sponsors are, what issues they target, and how much equity they own in the firm.⁵⁹

A. US Ordinary Shareholder Proposals

Table 8 reports sponsor characteristics for US ordinary shareholder proposals. We have sufficient information to determine sponsor identity for 3,749 of the 3,793 proposals and classify US sponsors into seven categories: institutions, unions, social groups, individual activists, individual occasional, coalition and other sponsors. While some categories are self-explanatory (e.g., institutions and unions), others are more diverse. For example, social groups include organizations such as human-rights, environmental and religious groups. Individual activists are investors such as Evelyn Y. Davis, who submit proposals to multiple firms in one year and own negligible shares in each firm. (Ms. Davis sponsored 279 of the 3,793 proposals and on average owned 478 shares in the target firm.)⁶⁰ A proposal is classified as sponsored by a coalition, if it is sponsored by a mixed group, e.g., a social group teamed up with a pension fund.

Table 8 Panel A reports the frequency distribution of sponsors. Individual investors, whether activists or occasional, and social groups sponsor 61% of all US ordinary proposals, which reflects the formalism of US proxy rules to encourage broad shareholder participation. While institutions have the highest share ownership, they account for only 16% of all proposals. Gordon and Pound⁶¹ study shareholder-sponsored governance proposals in 1990 using the IRRC database. In their study, institutions sponsored about one-sixth of all proposals. Therefore, the proposing activities of institutions seem to be stable during the past two decades. In contrast, unions sponsored 6% of all proposals in 2000, but 24% in 2005 and 2006, thereby becoming the most prolific sponsor of US ordinary proposals. Unions sponsored 3% of the governance proposals in the Gordon and Pound study.⁶² Unions sponsor the largest number of compensation proposals during the latter part of our sample period, with a high of 59% of all compensation proposals in 2003. Thomas and Martin⁶³ study 168 shareholder-sponsored compensation proposals from 1993 to 1997 and find that unions sponsored 5% of such proposals. The growth in union activism reflects the growing efforts and willingness of unions to use shareholder proposals to organize workers and obtain union benefits they couldn't get through bargaining.⁶⁴

Table 8 Panel B shows systematic variation in issue agendas across sponsor types. For example, 84% of the ordinary proposals sponsored by social groups relate to social or environmental issues. The most

⁵⁹ See, e.g., Angela Morgan, Annette B. Poulsen, Tina Yang & Jack Wolf, *Mutual Funds as Monitors: Evidence from Mutual Fund Voting*, 17 *J. Corp. Fin.* 914 (2011) [hereinafter Morgan et al., *Mutual Fund Voting*] (studying mutual fund voting behaviors and how they are impacted by proposal and sponsor type).

⁶⁰ We classify any shareholder, who sponsors more than 20 proposals, as individual activist, otherwise as individual occasional. Twenty is the cutoff that we choose based on the frequency distribution of the number of proposals sponsored by individual shareholders in our sample of 3,793 proposals. We make three exceptions to this 20-rule based on the proposing history of a shareholder. They are John Gilbert, John Jennings Crapo and Charles Miller, who sponsored 17, 11, and 9 proposals in our sample, respectively. As an example, John Gilbert (1914-2002), together with his brother Lewis Gilbert, sponsored more than 2,000 proposals starting 1930s. Based on our classification, we have 12 individual activists. The average proposals sponsored by these individual activists are 75, compared to 1.83 by individual occasionals.

⁶¹ Lilli A. Gordon & John Pound, *Information, Ownership Structure, and Shareholder Voting: Evidence for Shareholder-Sponsored Corporate Governance Proposals*, 48 *J. Fin.* 697 (1993) [hereinafter Gordon & Pound, *Shareholder-Sponsored Governance Proposals*] (studying the impact of information and ownership structure on voting outcome of shareholder-sponsored governance proposals).

⁶² For discussion of the development of union activism, including activism through shareholder proposal and proxy voting, see Randall S. Thomas & Kenneth Martin, *Should Labor be Allowed to Make Shareholder Proposals?*, 73 *Wash. L. Rev.* 41 (1998) [hereinafter Thomas & Martin, *Shareholder Proposals by Labor*]; Schwab & Thomas, *Activism by Labor Unions*, *supra* note 2.

⁶³ Randall S. Thomas & Kenneth J. Martin, *The Effect of Shareholder Proposals on Executive Compensation*, 67 *U. Cin. L. Rev.* 1021 (1999).

⁶⁴ Joan S. Lublin, 'Poison Pills' Are Giving Shareholders A Big Headache, *Union Proposals Assert*, *Wall St. J.*, May 23, 1997, at C1; Stephen M. Bainbridge, *Flanigan on Union Pension Fund Activism*, <http://www.professorbainbridge.com/professorbainbridge.com/2004/04/flanigan-on-union-pension-fund-activism.html> (last visited October 4, 2011).

popular issue that unions target is compensation, in line with their labor agenda. Table 8 Panel C confirms that sponsors of US ordinary proposals own negligible shares of the firm with a mean and median of 0.2% and 0%, respectively. Panel D reports the passing vote percent for proposals based on the identity of the sponsor. While the overall passage rate is only 19.4%, those proposals sponsored by activists (34.4%), unions (25.5%) and institutions (21.3%) have the highest passage rate reflecting the greater popularity of the agendas they promote. In contrast, proposals sponsored by social groups have a passage rate of 1.6%.

Table 8. Proposal Sponsor - US Ordinary Shareholder Proposals

Panel A: Identities of US ordinary proposal sponsors

	Activist	Social	Union	Institution	Occasional	Coalition	Other	Unknown	Total
2000	112	110	25	64	100	10	4	8	433
2001	130	111	40	56	78	11	3	1	430
2002	126	97	70	67	73	23	8	-	464
2003	144	98	157	99	88	19	8	3	616
2004	134	128	138	116	98	5	4	14	637
2005	114	136	139	105	66	5	6	11	582
2006	147	138	150	108	73	3	5	7	631
Total	907 (24%)	818 (22%)	719 (19%)	615 (16%)	576 (15%)	76 (2%)	38 (1%)	44 (1%)	3,793 (100%)

Panel B: Linking sponsor identity to proposal agenda

	Activist	Social	Union	Institution	Occasional	Coalition
Board	46%	8%	36%	28%	34%	20%
COMP	12%	5%	43%	24%	24%	13%
Social	7%	41%	5%	27%	11%	43%
GOV	31%	0%	15%	15%	17%	0%
ENV/Health	1%	43%	1%	3%	6%	24%
BUS	4%	2%	-	4%	9%	-
Total	100%	100%	100%	100%	100%	100%

Panel C: Stock ownership of US proposal sponsors

	Activist	Social	Union	Institution	Occasional	Coalition	Other	Overall
#obs	618	460	490	401	343	57	21	2,390
%Shares held, mean	0.001%	0.010%	0.005%	1.023%	0.027%	0.160%	1.831%	0.199%
(median)	(0.000%)	(0.001%)	(0.002%)	(0.040%)	(0.000%)	(0.044%)	(1.024%)	(0.001%)

Note : Panel A reports the frequency distribution of sponsor types for the US ordinary shareholder proposals. We classify US sponsors into seven categories: individual activists (*Activists*), social groups (*Social*), unions, institutional investors (*Institution*), individual occasional (*Occasional*), coalition, and other sponsors (*Other*). Social groups include organizations such as human-rights groups, environmental groups, and religious groups. We classify any individual shareholder who sponsors more than 20 ordinary shareholder proposals from 2000 to 2006 as an individual activist, otherwise as individual occasional. A proposal is classified as sponsored by a coalition, if it is sponsored by a mixed group, e.g., a social group teams up with a pension fund. The group 'Other' includes other sponsors who do not fall into the previous six categories. We are unable to determine sponsor identities for 44 of the 3,793 total proposals, hence the sponsor group *Unknown*. Panel B reports stock ownership of the sponsors. We are able to collect ownership information from proxy statement for 2,390 of the 3,793 total proposals. %Shares held equals the number of shares held by a proposal sponsor over the number of shares outstanding.

B. Uk Shareholder Proposals

We are able to determine sponsor identity for 492 of the 496 UK proposals. We classify UK sponsors into six categories: institutions, former management, associated companies, private investors, coalition of small shareholders and other sponsors. Former management includes founders, former CEOs or former directors of the firm. Associated companies are companies that have a business interest in a sample firm, such as a supplier or a competitor. The group 'other' includes sponsors like unions, human-rights groups, and environmental groups. Ten proposals are sponsored by the group of 'other,' including one sponsored by an employee group, one by a human-rights group, two by a union, and six by environmental groups.

Table 9 Panel A reports a very different distribution pattern of proposal sponsors for the UK sample than for the US ordinary proposal sample. Institutions sponsor 42% of the UK proposals, compared to 16% for the US ordinary proposal sample. In addition, former members of management, including founders, former CEOs and former directors of the firm sponsor 24% of UK proposals, while the same group is not important for US ordinary proposals and sponsor only 11% of US proxy contests.

Because of the higher solicitation costs and ownership requirements, we do not see the sponsor groups of individual activists or occasionals for the UK sample. These two groups collectively sponsor 39% of the US ordinary proposals. In the UK, if small investors (holding less than 5% of voting shares) want to include a proposal on the shareholder meeting agenda, they must form a coalition of at least 100 shareholders. Our sample includes only five requisitioning events by a coalition of small investors. In all cases, they consist of soccer club investors who targeted two sports companies (Aston Villa and Celtic). All of their proposals are submitted to AGMs and only one of 39 succeeds. Probably for similar reasons, we do not see many UK proposals sponsored by social groups. Indeed, of all UK proposals, only six are sponsored by environmental groups and one by a human-rights group. Further, all of these seven proposals are submitted to an AGM where the ownership requirement is lower than an EGM.

Compared to the prominent presence of unions in the US activism scene, only two UK proposals are sponsored by a union -- the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). AFL-CIO submitted two proposals in 2000 to AGMs and both proposals failed. Additionally, former management sponsors the second highest number of UK proposals (24%), whereas this class of sponsors is minimal in the US sample.

Similar to the findings on the US ordinary proposals, Table 9 Panel B shows that different types of UK sponsors also systematically target different issues. For example, none of the sponsor types classified as institutions, former management teams, associated companies, and private investors sponsored a social, environmental or compensation proposal. These groups focused their efforts on board-related resolutions.

As Table 9 Panel C reports, UK sponsors own significantly more shares than their US peers, with mean and median of 18.8% and 3.3%, respectively. Institutions and former management groups have the highest mean and median holdings while shareholder coalitions have the lowest. Table 9 Panel D reports that proposals sponsored by institutions and private investors win the highest number of affirmative votes in the UK. This result is interesting since they target similar issues and own similar amount of equity as former management and associate companies. Compared to institutions and private investors, former management and associate companies receive much lower vote support, 26% and 18% vs. 62% and 83%, respectively, suggestive of the potential divergent interests that they have from other shareholders.

Table 9. Proposal Sponsors - UK Shareholder Proposals

Panel A: Identities of UK proposal sponsors

	Institution	Former MGT	Ass. Company	Private investor	Shareholder	Other	Unknown	Total
2000	18	-	-	10	1	3	-	32
2001	18	3	11	-	5	3	1	41
2002	21	43	17	2	8	1	1	93
2003	44	26	18	-	1	-	1	90
2004	48	29	7	20	20	1	-	125
2005	30	9	8	7	2	-	-	56
2006	30	7	4	13	2	2	1	59
Total	209 (42%)	117 (24%)	65 (13%)	52 (10%)	39 (8%)	10 (2%)	4 (1%)	496 (100%)

Panel B: Linking sponsor identity to proposal agenda

	Institution	Former MGT	Ass. Company	Private investor	Shareholder	Other
BOARD	84%	95%	98%	94%	54%	10%
BUS	13%	3%	2%	2%	33%	-
GOV	2%	3%	-	4%	8%	-
ENV/Health	-	-	-	-	-	60%
Social	-	-	-	-	3%	30%
COMP	-	-	-	-	3%	0%
Total	100%	100%	100%	100%	100%	100%

Panel C: Stock ownership of UK proposal sponsors

	Institution	Former MGT	Ass. Company	Private investor	Shareholder	Other	Overall
#proposals	202	106	65	42	15	1	431
%Shares held, mean	21.0%	19.4%	22.5%	22.5%	18.8%	0.0%	18.8%
(median)	(10.1%)	(8.5%)	(7.2%)	(8.1%)	(3.3%)	-	(3.3%)

Panel D: Linking sponsor identity to vote support

	Institution	Former MGT	Ass. Company	Private investor	Shareholder	Other&Unknown	Overall
#proposals	209	117	61	52	39	12	490
%pass	62%	26%	18%	83%	3%	9%	44%

Note: Panel A reports the frequency distribution of sponsor types for UK shareholder proposals. We classify UK sponsors into six categories: institutional investors (*Institution*), members of former management team (*Former MGT*), associated companies (*Ass. Company*), private investors, shareholders, and other sponsors (*Other*). *Former MGT* include founders, former CEOs, or former directors of the firm. *Ass. Company* are companies that have a business interest in the sample firm, such as a supplier or a competitor. *Shareholder* denotes coalition of small investors. The group ‘Other’ includes other sponsors who do not fall into the previous five categories. We are able to collect ownership information from Factiva search for 431 proposals of the 496 total UK proposals. %Shares held equals the number of shares held by a proposal sponsor over the number of shares outstanding. %pass denotes the proportion of shareholder proposals that receive the necessary votes to pass. A withdrawn proposal is deemed as passed if the firm adopts the action that the sponsor requests.

US PROXY CONTESTS

Table 10 reports the characteristics of proposal sponsors for US proxy contests. Sponsors of US contested solicitations resemble UK proposal sponsors, likely due to similar expenses and ownership requirements. For example, hedge funds and private equity firms sponsored 45% of US contested events, while activists sponsored none. As expected, dissidents are generally large investors, owning on average 9.9% of the company stock (median 7.6%), although the level of ownership is still lower than the UK sample. There is also evidence that, when the dissidents own a large portion of the firm, they are more willing to fund the proxy fight. Former management and associated companies are the sponsor types with highest equity ownership and are associated with highest solicitation costs.

Table 10 reports the characteristics of proposal sponsors for US proxy contests. Member of former management team (*Former MGT*) include founders, former CEOs, or former directors of the firm. Associated companies (*Ass. Company*) are companies that have a business interest in the sample firm, such as a supplier or a competitor.

Table 10. Proposal Sponsors - US Proxy Contests

Sponsor type	Freq (%)	Median total assets (\$MM)	%Ownership		Solicitation costs (\$)	
			Mean	Median	Mean	Median
Hedge fund/private equity	115 (45%)	218	8.9%	8.4%	414,521	150,000
Ass. Company	46 (18%)	238	13.3%	9.1%	817,031	362,500
Private investor	36 (14%)	150	8.1%	6.0%	668,636	200,000
Former MGT	29 (11%)	67	14.7%	13.5%	1,076,667	212,500
Other	28 (11%)	417	5.7%	0.2%	54,307	5,000
Overall	254 (100%)	214	9.9%	7.6%	543,753	150,000

VII. Impact On Long-Term Firm Performance

In this section, we examine the long-term impact of shareholder proposals on firm performance.⁶⁵ Shareholder proposals have a longer history in the US than in the UK. Consequently, the literature on US shareholder proposals is much larger than that for UK.⁶⁶ We believe that our study is the first broad-based systematic analysis of the characteristics and impact of UK shareholder proposals. In the next section, we review the shareholder proposal and proxy contest literature.⁶⁷

A. US Ordinary Shareholder Proposals

The existing evidence on the long-term performance impact of US shareholder proposals primarily comes from studies using data prior to 1994, and the bulk of evidence suggests that the proposals have minimal effect on firm performance. Karpoff, Malatesta and Walkling, for example, study 522 shareholder-sponsored governance proposals from 1986 to 1990 and find little evidence that those proposals, even majority-supported proposals, engender share price increases or operating performance improvement.⁶⁸ Similarly, several studies look at proposals by pension funds and other activists, who we might expect would have the greatest ability to target companies where proposals would be most beneficial, and also fail to find consistent evidence of long-run performance improvements whether measured through stock price changes or operating performance.⁶⁹

Many reasons potentially explain the insignificant impact that earlier studies have typically found for US shareholder proposals. To the extent that studies combine all shareholder proposals into one analysis, the fact that a large portion of US shareholder proposals target social and environmental issues, which win little shareholder support, probably diminishes any performance impact.⁷⁰ Although a large number of proposals target governance and compensation policies, which are likely to have a greater impact, the board is not required to adopt them even if passed since US shareholder proposals are not binding. Further, Romano argues that the value content of many of those governance policies (e.g., independent boards and capping executive pay) is questionable.⁷¹ There is also empirical evidence that, when the

⁶⁵ We do not study short-term market reaction because confounding effects make the results from using this event-study approach difficult to interpret. For discussion about this issue, see, e.g., Diane Del Guercio & Jennifer Hawkins, *The Motivation and Impact of Pension Fund Activism*, 52 *J. Fin. Econ.* 293 (1999) [hereinafter *Del Guercio & Hawkins, Pension Fund Activism*]; Stuart L. Gillan & Laura Starks, *Corporate Governance Proposals and Shareholder Activism: The Role of Institutional Investors*, 57 *J. Fin. Econ.* 275 (2007).

⁶⁶ In 1932, Lewis Gilbert filed the first US shareholder proposal with New York City's Consolidated Gas Co. In mid-1980s, several key events launched US shareholder proposal into a new era. In 1985, Council of Institutional Investors was founded to advocate the interests of institutional investors. Also in 1985, Robert Monks founded ISS. A year later, shareholder activist, T. Boone Pickens, found the United Shareholders Association to organize individual shareholders to promote shareholder rights. In 1988, the Labor Department issued the "Avon Letter" instructing ERISA fund managers to vote proxies with the same diligence as making other fiduciary decisions, giving rise to institutional shareholder activism by US public pension funds. IRRRC started tracking shareholder proposals in 1986 and reports 135 shareholder proposals for that year. In contrast, as we mentioned earlier, only four shareholder proposals were filed in the UK in 1997 and the Hermes Focus Fund was established in 1998 as the first experiment of shareholder activism in the UK.

⁶⁷ See, e.g., Mulherin & Poulsen, *Proxy Contests*, supra note 43; April Klein & Emanuel Zur, *Entrepreneurial Shareholder Activism: Hedge Funds and Other Private Investors*, 64 *J. Fin.* 187 (2009) [hereinafter *Klein & Zur, Entrepreneurial Shareholder Activism*].

⁶⁸ Karpoff et al., *Corporate Governance and Shareholder Initiatives*, supra note 11.

⁶⁹ Del Guercio & Hawkins, *Pension Fund Activism*, supra note 65 (studying 266 proposals submitted by the five largest and most activist pension funds from 1987 to 1993); Andrew K. Prevost & Ramesh P. Rao, *Of What Value are Shareholder Proposals Sponsored by Public Pension Funds?*, 73 *J. Bus.* 177 (2000) [hereinafter *Prevost & Rao, Shareholder Proposals by Public Pension Funds*] (studying the wealth effect of proposals submitted by public pension funds); Smith, *Activism by CalPERS*, supra note 21 (studying activism by CALPERS); Sunil Wahal, *Pension Fund Activism and Firm Performance*, 31 *J. Fin. & Quantitative Analysis* 1 (1996) [hereinafter *Wahal, Pension Fund Activism*] (studying 356 proposals sponsored by nine major pension funds).

⁷⁰ See Morgan et al., *Mutual Fund Voting*, supra note 59. Morgan et al. argue that those proposals may benefit society as a whole if all firms adopt the proposed best practice. However, they are likely detrimental to the target firm, if the proposal will only constrain the actions of the target firm but not its competitors. *Id.* at 919 n.16.

⁷¹ Roberta Romano, *Less is More: Making Institutional Investor Activism a Valuable Mechanism of Corporate Governance*, 18 *Yale J. on Reg.* 174 (2001).

subject matter of a shareholder proposal is value-increasing, investors sometime target the wrong firms.⁷² In addition, even if the board agrees to adopt a shareholder proposal, it is free to modify its decision later. In some cases, proposals that would be value-increasing and would likely win voting support may not actually be placed on the ballot since firms would adopt them on their own.⁷³ Lastly, voting may not be an effective tool to discipline managers when shareholders have conflicting interests and diverging opinions amongst themselves.⁷⁴

In addition to the consideration that shareholder proposals may simply be ineffective, they may actually do harm. Corporations require autonomy to compete effectively. Shareholder proposals can distract management from normal operation and hence be value-decreasing.⁷⁵ Shareholder proposals may also be used to advance the agendas of certain groups of investors instead of the investors at large.⁷⁶ Anecdotal and some empirical evidence show that public pension funds and unions use shareholder proposals to pursue political and labor goals rather than value maximization.⁷⁷ In these cases, shareholder proposals can have a negative wealth impact.

Shareholder proposals have an important role in corporate governance since they are one of the few actions that investors can take to directly influence firms. Even though US shareholder proposals are not binding, the process of putting the proposal to a vote in front of all shareholders can facilitate information aggregation and dissemination. If the proposal wins majority support, it can prompt managers to re-consider the existing governance structure or even business direction of the firm. Further, the existing literature shows that investors use shareholder proposals to target poorly performing firms.⁷⁸ The fact that shareholder proposals shine a light on firm operations may prod management into taking action.

We argue that recent developments in corporate governance play a large role in making shareholder proposals more powerful than before. Levit and Malenko model non-binding voting and predict that it improves information aggregation in the presence of an activist investor, but fails to convey shareholder views absent of such a dissident.⁷⁹ One important insight from their model is that, given their non-binding nature, shareholder proposals are impactful only when the overall governance environment is conducive to change. In other words, since they are only precatory, shareholder proposals alone are not sufficient to prod managers to action, but when coupled with other forces (specifically, as we argue below, a governance-charged environment) they can be a powerful governing tool.⁸⁰

The landscape of corporate governance changed significantly from the 1980s and 1990s to the 2000s. Corporate governance changed in the 1990s from a system driven by the takeover market to one driven by factors such as shareholder activism and greater accountability of the board of directors.⁸¹ Consistent

72 See Jie Cai & Ralph Walkling, Shareholders' Say on Pay: Does it Create Value? 46 *Fin. & Quantitative Analysis* 299 (2011). They find positive market reaction surrounding the passage of Say-on-Pay Bill for firms with high abnormal CEO compensation, low pay-for-performance, and receptivity to shareholder pressure. However, shareholders submit say-on-pay proposals to large firms rather than those with poor pay or governance structures.

73 Carleton et al., TIAA-CREF Activism, *supra* note 21 (studying activism by TIAA-CREF from 1992 to 1996 and finding that TIAA-CREF is able to successfully reach agreement with target firms by private negotiation most of the time without shareholders voting on their proposals).

74 Ernst Maug, How Effective is Proxy Voting? Information Aggregation and Conflict Resolution in Corporate Voting Contests (Working Paper 1999), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=157693.

75 Cai et al., Democracy or Disruption, *supra* note 54.

76 Joseph A. Grundfest, The SEC's Proposed Proxy Access Rules: Politics, Economics, and the Law, 65 *Bus. Law* 361 (2010).

77 See, e.g., Schwab & Thomas, Activism by Labor Unions, *supra* note 2; Thomas & Martin, Shareholder Proposals by Labor, *supra* note 62; see also Karpoff et al., Corporate Governance and Shareholder Initiatives, *supra* note 11.

78 See, e.g., Gordon & Pound, Shareholder-Sponsored Governance Proposals, *supra* note 61; Karpoff et al., Corporate Governance and Shareholder Initiatives, *supra* note 11; Smith, Activism by CalPERS, *supra* note 21.

79 Levit and Malenko, Non-Binding Voting, *supra* note 15.

80 Karpoff et al. argue that shareholder proposals can be effective if they complement broader efforts to affect change. They give the examples of Avon Products, Inc., Gillette Co., Lockheed Corp., and USX, Inc., where shareholder proposals facilitate hostile takeover. Karpoff et al., Corporate Governance and Shareholder Initiatives, *supra* note 11, at 369.

81 See, e.g., Joseph A. Grundfest, Just Vote No: A Minimalist Strategy for Dealing with Barbarians inside the Gates, 45 *Stan. L. Rev.* 857 (1993) [hereinafter Grundfest, Minimalist Strategy]; Bengt Holmstrom & Steven Kaplan, Corporate Governance and Merger Activity in the United States: Making Sense of the 1980s and 1990s, 15 *J. Econ.*

with this view, empirical studies found that certain governance provisions such as classified boards and poison pills have a significant impact on firm value.⁸² As shareholder activism becomes more important, shareholder proposals aimed at improving internal governance should gain more support. Further, if those proposals are passed, investors should be more willing to turn against the board that does not implement them, resulting in more responsive boards.⁸³

Parallel to the growing awareness of corporate governance among investors and firms, US regulators have also implemented a series of initiatives to make proxy voting a more effective governing tool, including the 2004 SEC requirement of mutual funds to disclose voting decisions and policies, the 2010 Dodd-Frank Act giving shareholders the right to a non-binding vote on executive pay and establishing related governance requirements and the recently reversed proxy access rule.⁸⁴ In addition, using recent data, financial economists have found a significant and positive valuation impact for activism by hedge funds.⁸⁵ As part of the growing movement of shareholder activism, US shareholder proposals are likely to play a more important role in recent years than documented for earlier periods. Therefore, we propose our first hypothesis.

H1: US shareholder proposals have a significant impact on firms.

The model of Levit and Malenko⁸⁶ predicts that non-binding shareholder proposals are only effective when the threat of activist investors is meaningful. A logical extension from this prediction is that a shareholder proposal is more impactful if the pressure on firms to act is greater. We expect proposals that increase shareholder power or have greater, positive impact on firm value to put firms under greater pressure to act. We identify those 'key' proposals based on the existing literature. Specifically, a proposal is classified as key, if it targets expensing stock options, cumulative voting, majority voting, anti-takeover provisions (e.g., poison pill, classified board and golden parachute), and separating the CEO and

Persp. 121 (2001); Omesh Kini, William Kracaw & Shehzad Mian, *The Nature of Discipline by Corporate Takeovers*, 59 *J. Fin.* 1511 (2004); Jeffrey M. Netter, Annette B. Poulsen & Mike Stegemoller, *The Rise of Corporate Governance in Corporate Control Research*, 15 *J. Corp. Fin.* 1 (2009).

⁸² See, e.g., Paul Gompers, Joy Ishii & Andrew Metrick, *Corporate Governance and Equity Prices*, 118 *Q. J. Econ.* 107 (2003); Lucian A. Bebchuk, Alma Cohen & Allen Ferrell, *What Matters in Corporate Governance*, 22 *Rev. Fin. Stud.* 783 (2009) [hereinafter Bebchuk et al., *What Matters in Corporate Governance*]; Olubunmi Faleye, *Classified Boards, Firm Value, and Managerial Entrenchment*, 83 *J. Fin. Econ.* 501 (2007) [hereinafter Faleye, *Classified Boards*]; Paul Malatesta & Ralph Walkling, *Poison Pill Securities: Stockholder Wealth, Profitability, and Ownership Structure*, 20 *J. Fin. Econ.* 347 (1988).

⁸³ See, e.g., Thomas & Cotter study shareholder proposals from 2002 to 2004. They find many more proposals received majority support during their sample period than earlier periods. Directors are more inclined to adopt majority-support proposals than before, particularly those related to antitakeover provisions such as classified boards and poison pills. Randall S. Thomas & James F. Cotter, *Shareholder Proposals in the New Millennium: Shareholder Support, Board Response and Market Reaction*, 13 *J. Corp. Fin.* 368 (2007). Ertimur et al. study governance proposals that received majority votes from 1997 to 2004. Their data also indicates that more shareholder proposals are receiving majority support and are implemented. Further, they find that directors who implement majority-vote proposals experience a one-fifth reduction in the likelihood of losing their board seats and other directorships. Yonca Ertimur, Fabrizio Ferri & Stephen R. Stubben, *Board of Directors' Responsiveness to Shareholders: Evidence from Shareholder Proposals*, 16 *J. Corp. Fin.* 53 (2010); Del Guercio et al., *supra* note 53 (finding that investors target just-vote-no-campaigns at directors who ignored majority-support shareholder proposals).

⁸⁴ The Dodd-Frank Act among other things mandates that institutions subject to Section 13(f) of the Securities Exchange Act of 1934 report their votes on shareholder proposals regarding general executive compensation and golden parachutes and that firms include in proxy materials advisory votes on compensation (Say on Pay) and golden parachutes, and also provides for an initial shareholder vote on the frequency of Say on Pay votes. The Dodd-Frank Act also authorized the SEC to issue rules providing for proxy access. In August 2010, the SEC adopted the proxy access rule, although the rule has subsequently been rejected by the District of Columbia Circuit Court and the SEC has decided to not appeal that decision.

⁸⁵ See, e.g., Alon P. Brav, Wei Jiang, Randall S. Thomas & Frank Partnoy, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 *J. Fin.* 1729 (2008); Christopher P. Clifford, *Value Creation or Destruction? Hedge Funds as Shareholder Activists*, 14 *J. Corp. Fin.* 323 (2008); Klein & Zur, *Entrepreneurial Shareholder Activism*, *supra* note 67.

⁸⁶ Levit and Malenko, *Non-Binding Voting*, *supra* note 15.

Chairman positions.⁸⁷ Following similar arguments, we expect proposals sponsored by large investors to have a greater impact than other proposals.⁸⁸ Therefore, we propose our second and third hypotheses.

H2: US shareholder proposals that are classified as key have a greater impact on firms.

H3: US shareholder proposals sponsored by large investors have a greater impact on firms.

3 Impact of US Shareholder Proposals on Long-Term Firm Performance

To test our first hypothesis (H1), we study three dimensions of firm performance -- firm valuation and performance, growth opportunities, and financial constraints -- for the period of two years before and two years after a proposing event. To test our second hypothesis (H2), we separately examine the impact of key proposals. To test our third hypothesis (H3), we separately examine US proposals sponsored by shareholders owning more than 1% and 5% of the firm. This also allows for a better comparison with the UK sample, since UK investors need to own at least 5% to submit to a general meeting and 10% to a special meeting.

To ascertain whether the impact of shareholder proposals is significant, we compare long-term firm performance of our sample firms to control firms, matched on industry-performance-size. Specifically, to qualify as a control firm, 1) the firm cannot be targeted for a shareholder proposal for the period of two years before to two years after the event year, 2) it must come from the same Fama-French industry⁸⁹ as the sample firm, 3) it has the closest ROA to the sample firm at the beginning of the event year, and 4) its market value of equity (MVE) is not 50% greater or smaller than that of the sample firm at the beginning of the event year. In terms of research design, our paper closely follows Karpoff, Malatesta, and Walkling.⁹⁰ However, our matching method is more robust since they match on industry and size and we match on industry, performance and size, thereby controlling for potential mean reversion in performance.

Panel A of Table 11 reports the long-term performance effects of US shareholder proposals, benchmarked against the control firms. We have balanced five-year, control-firm-adjusted financial data for 761 US proposing events. Starting in the event year, the average control-firm-adjusted stock return reverses the declining trend and starts to rise. Though ROA continues to worsen, MTB and assets and sales growth show some improvement after the event year since they are less negative relative to their control group. Compared to the control firms, the sample firms also shrink debt and payout ratios after a proposing event without affecting the level of free cash flow.⁹¹ We obtain similar results regardless of whether we study all proposals or key proposals.

For robustness, we also analyze the long-term performance effects of US shareholder proposals, benchmarked against the industry median.⁹² The sample firms have higher stock returns after a proposing event regardless of whether we benchmark against the control firms or industry median. The improvement is both economically meaningful and statistically significant. For example, the holding period return adjusted for that of the control firms for all proposals is a negative 9.73% for the year preceding a proposing event. But, the return rises to a positive 4.28% in the event year. Further, when only considering key proposals, the numbers are -7.92%, and 6.1%, respectively.

We find some interesting differences when comparing performance benchmarked against industry median versus benchmarked against control firms. Except for firm performance, the two different benchmarking

87 Gerald F. Davis & E. Han Kim, How Do Business Ties Influence Proxy Voting by Mutual Funds, 85 J. Fin. Econ. 552 (2006); Morgan et al., Mutual Fund Voting, *supra* note 59; see also Elisabeth Dedman & Stephen W.-J. Lin, Shareholder Wealth Effects of CEO Departures: Evidence from the UK, 8 J. Corp. Fin. 81 (2002).

88 Examples for proposals that might not increase shareholder value include: "Ensure Tobacco Ads Are Not Youth Friendly" (from the US sample) and "Change the Name of the Doug Ellis Stand (stand of a soccer stadium) to an Alternative as Decided on a Poll of Supporters" (from the UK sample).

89 Eugene F. Fama & Kenneth R. French, Industry Costs of Equity, 43 J. Fin. Econ. 153, 179 (1997).

90 Karpoff et al., Corporate Governance and Shareholder Initiatives, *supra* note 11.

91 We calculate free cash flow following Lehn & Poulsen. Kenneth Lehn & Annette B. Poulsen, Free Cash Flow and Stockholder Gains in Going Private Transactions, 44 J. Fin. 771 (1989). Our free cash flow measure is the same as the undistributed cash in Smith, Activism by CalPERS, *supra* note 21.

92 We calculate industry median by using all firms in the same Fama-French industry as the sample firm. We have balanced five-year, industry-adjusted financial data for 1,362 US proposing events.

methods show somewhat different results regarding firms' growth prospects and financial constraints. When compared to the industry median, the sample firms exhibit deteriorating assets and sales growth in contrast to the results in Panel A. Similarly, when benchmarked against the industry median, the sample firms increase debt and payout ratios after a proposing event; but the reverse is true when benchmarked against the control firms.

Table 11 reports the impact of US ordinary shareholder proposals on firm performance from two years before to two years after the event year (*t*). Panel A reports median values of firm performance, adjusted for control firm performance. We have balanced five-year control-firm-adjusted financial data for 761 proposing events of US ordinary shareholder proposals. Panel B reports median values of firm performance, adjusted for industry median. Industry median is the median performance of all firms in the same Fama-French industry as the sample firm. We have balanced five-year industry-adjusted financial data for 1,362 proposing events of US ordinary shareholder proposals. The number of observations (*n*) is fewer for some variables due to data availability. *MTB* is the market-to-book ratio. *ROA* is return on assets. *Stock return* is the ending fiscal year price over the beginning fiscal year price minus one. *Assets growth* is the ratio of current year total assets over the previous year's. *Sales growth* is the ratio of current year net sales over the previous year's. *Capital expenditure* is the ratio of capital spending over total assets. *Debt* is long-term debt over total assets. *Payout* is the sum of common and preferred stock dividends plus repurchases over EBIT. *FCF* is free cash flow as defined in Lehn and Poulsen (1989). ^{a, b} and ^c denote the significance levels at 1%, 5% and 10%, respectively, based Wilcoxon signed rank test.

Table 11. Impact of US Ordinary Shareholder Proposals on Firm Performance

<i>Panel A: Median value of US firm performance, adjusted for control firm performance</i>						
	n	(t-2)	(t-1)	t	(t+1)	(t+2)
All proposals						
<u>Firm valuation and performance</u>						
MTB	761	-0.13 ^a	-0.18 ^a	-0.14 ^a	-0.13 ^a	-0.10 ^a
ROA	761	-0.02% ^a	-0.10% ^a	-0.44% ^a	-0.65% ^a	-0.64% ^b
Stock return	759	-9.70% ^a	-9.73% ^a	4.28% ^a	2.85% ^c	1.72%
<u>Firm growth opportunities</u>						
Assets growth	758	-6.90% ^a	-6.49% ^a	-3.70% ^a	-3.28% ^a	-3.07% ^a
Sales growth	757	-7.35% ^a	-7.02% ^a	-5.96% ^a	-4.38% ^a	-2.70% ^a
Capital expenditure	659	0.34% ^a	0.03%	-0.08%	-0.04%	-0.13%
<u>Firm financial constraints</u>						
Debt	761	2.43% ^a	2.22% ^a	2.45% ^a	1.88% ^a	1.64% ^a
Payout	524	0.00%	0.07%	-0.55% ^b	0.00% ^b	-1.24% ^b
FCF	461	0.66% ^b	0.32%	0.25%	0.30%	0.21%
Key proposals						
<u>Firm valuation and performance</u>						
MTB	387	-0.16 ^a	-0.21 ^a	-0.15 ^a	-0.14 ^a	-0.16 ^a
ROA	387	-0.18%	-0.15% ^a	-0.71% ^a	-0.82% ^a	-0.96% ^b
Stock return	385	-11.03% ^a	-7.92% ^a	6.10% ^a	3.90% ^c	3.26%
<u>Firm growth opportunities</u>						
Assets growth	384	-8.79% ^a	-5.91% ^a	-4.23% ^a	-3.96% ^a	-3.94% ^a
Sales growth	383	-9.78% ^a	-6.18% ^a	-6.67% ^a	-3.83% ^a	-3.12% ^a
Capital expenditure	341	0.37% ^b	0.14%	0.04%	0.06%	-0.04%
<u>Firm financial constraints</u>						
Debt	387	4.48% ^a	3.68% ^a	3.64% ^a	3.61% ^a	2.88% ^a
Payout	278	0.00% ^b	0.00% ^c	-1.79% ^b	-2.30% ^a	-2.64% ^a
FCF	249	0.71%	0.07%	-0.48%	0.06%	0.00%

Panel B: Median value of US firm performance, adjusted for industry median

	n	(t-2)	(t-1)	t	(t+1)	(t+2)
All proposals						
<u>Firm valuation and performance</u>						
MTB	1,362	0.09 ^a	0.05 ^a	0.03 ^a	0.01 ^a	0.00 ^a
ROA	1,362	2.43% ^a	1.84% ^a	1.59% ^a	1.46% ^a	1.45% ^a
Stock return	1,362	1.86% ^a	0.03%	0.70% ^a	0.79% ^b	1.23% ^a
<u>Firm growth opportunities</u>						
Assets growth	1,359	0.72% ^a	0.06% ^a	-0.23%	-0.35%	-1.11% ^a
Sales growth	1,359	-1.43% ^a	-1.47% ^a	-1.86% ^a	-1.58% ^a	-1.57% ^a
Capital expenditure	1,220	0.40% ^a	0.18% ^a	0.12% ^a	0.09% ^a	0.09% ^a
<u>Firm financial constraints</u>						
Debt	1,362	3.63% ^a	3.54% ^a	3.80% ^a	4.01% ^a	3.95% ^a
Payout	1,112	12.69% ^a	12.08% ^a	13.62% ^a	14.44% ^a	17.49% ^a
FCF	996	1.63% ^a	1.34% ^a	1.20% ^a	1.02% ^a	0.95% ^a
Key proposals						
<u>Firm valuation and performance</u>						
MTB	696	0.08 ^a	0.03 ^a	0.02 ^a	-0.01 ^b	-0.01 ^c
ROA	696	2.07% ^a	1.47% ^a	1.46% ^a	1.39% ^a	1.33% ^a
Stock return	696	0.12% ^c	-0.03%	0.65%	0.61%	3.04% ^a
<u>Firm growth opportunities</u>						
Assets growth	694	0.03% ^b	0.00% ^c	-0.79%	-1.63% ^b	-2.12% ^a
Sales growth	694	-2.27% ^a	-1.45% ^a	-1.96% ^a	-2.16% ^a	-2.45% ^a
Capital expenditure	632	0.40% ^a	0.21% ^a	0.24% ^a	0.13% ^a	0.16% ^a
<u>Firm financial constraints</u>						
Debt	696	5.12% ^a	4.92% ^a	5.21% ^a	5.23% ^a	5.47% ^a
Payout	578	11.97% ^a	12.15% ^a	13.84% ^a	14.25% ^a	16.40% ^a
FCF	513	1.50% ^a	1.16% ^a	0.84% ^a	0.84% ^a	0.72% ^a

Next, we examine the impact of blockholder-sponsored ordinary shareholder proposals. Results are reported in Table 12. Twenty-three (14) proposing events involve a proposal sponsored by a shareholder owning more than 1% (5%) of the firm's equity and have balanced financial data for the sample and control firms from two years before to one year after the event year. (To preserve sample size, we only study performance change up to one year after the proposing event. Imposing a balanced panel for two years after will reduce the sample of 1% (5%) blockholders by seven (six) events.) Given the small sample size, we do not report significance tests. Nevertheless, proposals sponsored by blockholders have a large measured effect on nearly all aspects of firm performance. The positive effect is especially apparent when compared to proposals sponsored by all investors. For example, after a proposal sponsored by a 1% (5%) blockholder, not only does stock return become higher than that for control firms, so do MTB and ROA. The cumulative average stock return rises from -9.1% (-2.9%) one year before to 10.8% (29.7%) in the event year and 11.6% (23.7%) one year after.

To summarize, our results support our three hypotheses. US shareholder proposals are associated with a positive impact on firm performance for 2000-2006, especially when measured through average stock returns. We also find that the impact is larger if the proposal is a key proposal likely to increase shareholder influence or is sponsored by a blockholder.

Table 12 reports the impact of US blockholder-sponsored ordinary shareholder proposals on firm performance from two years before to one year after the event year (*t*). We have balanced four-year control-firm-adjusted financial data for 23 (14) proposing events initiated by shareholders owning 1% (5%) of the firm. The number of observations (*n*) is fewer for some variables due to data availability. Variables are as defined in Table 11.

Table 12. Impact of US Blockholder-Sponsored Ordinary Shareholder Proposals on Firm Performance

	n	(t-2)	(t-1)	t	(t+1)
<i>Sponsor ownership >=1%</i>					
<u>Firm valuation and performance</u>					
MTB	23	-0.08	-0.05	-0.01	0.15
ROA	23	0.62%	-0.48%	-2.42%	1.57%
Stock return	23	-2.77%	-9.06%	10.81%	11.63%
<u>Firm growth opportunities</u>					
Assets growth	23	-14.31%	-5.13%	0.06%	1.42%
Sales growth	23	-4.34%	-8.50%	-0.53%	10.64%
Capital expenditure	19	-1.12%	-0.44%	-0.77%	-0.47%
<u>Firm financial constraints</u>					
Debt	23	-3.58%	-3.68%	-2.86%	-1.26%
Payout	16	3.60%	13.33%	11.15%	13.43%
FCF	14	0.04%	-0.34%	0.00%	-0.33%
<i>Sponsor ownership >=5%</i>					
<u>Firm valuation and performance</u>					
MTB	14	-0.04	-0.28	0.07	0.33
ROA	14	1.46%	-0.43%	-1.43%	2.11%
Stock return	14	-0.01%	-2.93%	29.73%	23.74%
<u>Firm growth opportunities</u>					
Assets growth	14	-10.82%	-6.96%	0.14%	-4.89%
Sales growth	14	-4.23%	-17.06%	-1.87%	10.05%
Capital expenditure	13	-0.34%	-1.42%	-0.77%	-0.47%
<u>Firm financial constraints</u>					
Debt	14	-14.34%	-14.91%	-18.75%	-18.63%
Payout	12	7.74%	24.88%	14.28%	19.34%
FCF	11	-0.90%	0.13%	-0.04%	-0.90%

B. UK Shareholder Proposals

We report the long-term wealth effect of UK shareholder proposals in Table 13. Due to data availability, we only examine wealth effects benchmarked against control firms. We identify UK control firms following the same procedure as for the US sample. We have 33 pairs of UK sample and control firms that have balanced five-year financial data. We classify a UK shareholder proposal as key if it is a board, governance or business proposal.

Likely due to the small sample size, we find little statistical significance in any of our measures for performance changes except for ROA, which continues to decline after a proposing event, especially if the proposal is a key proposal. Stock returns mimic this trend; the stock return is a negative 12.7% one year after the proposing though it is insignificant at an 11% *p*-value. There is also some weak evidence that, after receiving a proposal, UK firms tend to reduce debt level and increase dividend payout. Our results are consistent with Cziraki, Renneboog and Szilagyi,⁹³ who conduct the first study of shareholder proposals in Europe. Their sample includes UK firms. They find strong negative market reaction surrounding the general meeting dates at which shareholder proposals are voted on. Further, they find negative market reactions irrespective of issue agenda, and the market appears to respond least favorably to shareholder proposals that seek to elect or remove directors or make governance improvements. They do not study long-run stock price effects of shareholder proposals.

It is a surprising result that UK proposals seem to have a more negative wealth effect than US ones, or at least do not seem to have a positive effect. This is especially so given that UK proxy rules grant shareholders greater power to make immediate changes to the management team. It is also an interesting

93 Cziraki et al., Shareholder Activism in Europe, supra note 8.

result considering that UK shareholder proposals are similar to US proxy contests and empirical studies have found that US proxy contests have a positive impact on firms.⁹⁴ However, Mulherin and Poulsen emphasize that the effect of a proxy contest should be considered in context of follow-on events. The positive returns they report are generally associated with either restructuring or takeover of the target firm after the proxy contest. Further examination of UK proposals is needed to determine how our results are impacted by differing follow-on events. It may be that UK shareholder proposals become a vehicle of replacing one type of agency problems with another, namely replacing the agency problem of entrenched management with that of special interest groups, as evidenced in deteriorating firm performance but lower debt level and higher payout ratio after a proposing event.

Another possible explanation is that in the UK a shareholder proposal is a governing device of last resort, used only when firms are in dire situations and other mechanisms have failed (such as private negotiation).⁹⁵ Becht et al. find evidence consistent with this argument. They find that Hermes, a UK activist institutional investor, rarely intervenes publicly. Activism is predominantly executed through private engagement such as meetings, phone calls, and communication with other large investors. When prolonged private engagement fails, Hermes may then requisite special meetings and submit proposals to replace the board. Importantly, Hermes substantially outperforms its benchmark, and Becht et al. attribute 90% of the fund's superior return to activism. Thus, the fact that a shareholder proposal is submitted for shareholder vote may signal failed intervention.⁹⁶ Future research is needed to determine with clarity and precision the source of negative effects of UK shareholder proposals.

Table 13 reports the impact of UK shareholder proposals on firm performance from two years before to two years after the event year (t), when the sample firm receives a shareholder proposal. Firm performance measures are median values of sample firm performance minus control firm performance. A total of 33 events have balanced five-year financial data for the sample and their control firms. Since not all proposals are value increasing, for each panel, we report difference in performance for all shareholder proposals and for key proposals. We classify a proposal as a key proposal, if it is a board-, governance-, or business- related proposal. ^a, ^b and ^c denote the significance levels at 1%, 5% and 10%, respectively, based Wilcoxon signed rank test.

⁹⁴ Mulherin & Poulsen, Proxy Contests, supra note 43.

⁹⁵ Becht et al., Hermes UK Focus Fund, supra note 22; see also discussion at supra notes 29, 61, and 62.

⁹⁶ Prevost & Rao test the hypothesis that shareholder proposals sponsored by US public pension funds act as a signaling mechanism in alerting the market that management is unwilling or unable to negotiate with public funds to prevent future submission of the proposal. Consistent with their hypothesis, they find that firms receiving shareholder proposals for the first time experience a transitory decrease in firm performance. Firms targeted repeatedly exhibit negative long-term firm performance. Prevost & Rao, Shareholder Proposals by Public Pension Funds, supra note 69.

Table 13. Impact of UK Shareholder Proposals on Firm Performance

	n	(t-2)	(t-1)	t	(t+1)	(t+2)
All proposals						
<u>Firm valuation and performance</u>						
MTB	30	-0.07	0.00	-0.16	0.00	0.15
ROA	31	-1.44%	-0.34%	-4.66% ^a	-2.79% ^b	-4.73% ^a
Stock return	31	6.89%	-7.57%	-5.19%	-12.73%	-11.35%
<u>Firm growth opportunities</u>						
Assets growth	30	-7.58%	-3.43%	1.17%	4.77%	-3.84%
Sales growth	28	-11.96% ^b	-1.90%	-3.70%	3.71%	-0.22%
Capital expenditure	29	-1.54% ^a	-0.04%	-0.64%	-0.34%	-0.43%
<u>Firm financial constraints</u>						
Debt	33	0.00%	-0.72%	0.00%	-1.53%	-1.90%
Payout	27	0.00%	-1.29%	0.00%	0.00%	0.00%
%Cash	33	0.13%	0.59%	0.11%	-0.30%	-2.13%
Key proposals						
<u>Firm valuation and performance</u>						
MTB	24	-11.80%	-0.04%	-13.66%	-9.58%	10.71%
ROA	25	-1.38%	-0.56%	-5.97% ^b	-2.79% ^c	-6.61% ^a
Stock return	25	6.89%	-7.57%	-19.31%	-12.73%	-10.87%
<u>Firm growth opportunities</u>						
Assets growth	24	-2.54%	-1.61%	-0.63%	4.14%	-3.33%
Sales growth	22	-6.93%	-1.90%	-1.38%	3.71%	0.69%
Capital expenditure	23	-1.30% ^b	-0.04%	-0.64%	-0.34%	-0.69%
<u>Firm financial constraints</u>						
Debt	27	0.00%	-1.77%	0.00%	-3.07%	-3.42% ^c
Payout	20	-2.32%	-6.73% ^b	-1.81%	-0.61%	-3.21% ^c
%Cash	27	0.22%	0.75%	0.04%	0.56%	0.01%

VIII. Impact On CEO Turnover

To assess the impact of shareholder proposals on CEO turnover, we collect CEO data for sample and control firms for the year before, the year of, and the year after a firm receiving a shareholder proposal. We are able to find 937 (55) pairs of US (UK) sample and control firms with complete three-year CEO data. We report the results of our analysis in Table 14.

During the proposing year, 14% of the US sample firms replace their CEOs, compared to 8% of the control firms. (The difference is significant at 1% level based on a one-tailed Chi-square test.) For the post-proposal year, 16% of the US sample firms exhibit CEO turnover, compared to 11% of the control firms (also significant at 1% level). Since US sample firms under-perform the control firms, our finding is consistent with the stylized fact that poorly performing firms are more likely to fire their CEOs.⁹⁷ To provide another yardstick, Kaplan and Minton⁹⁸ report 12.8% CEO turnover rate for Fortune 500 firms from 1998 to 2005.

⁹⁷ See, e.g., Mark R. Huson, Paul Malatesta & Robert Parrino, Managerial Succession and Firm Performance, 74 J. Fin. Econ. 237 (2004).

⁹⁸ Stephen N. Kaplan & Bernadette A. Minton, How Has CEO Turnover Changed? Increasingly Performance Sensitive Boards and Increasingly Uneasy CEOs (NBER Working Paper No. 12465, 2006), available at

During the proposing year, 33% of the UK sample firms replace their CEOs, compared to 26% of the control firms (significant at 5% level). For the year after the proposing year, 29% of the sample firms replace CEOs, compared to 11% of the control firms (significant at 5% level). Dedman and Lin⁹⁹ report 11% CEO turnover rate for firms in the FTSE All Share Index from 1990 to 1995. Therefore, our UK sample exhibit significantly higher CEO turnover rate not only compared to the control firms, but also to UK firms in general.

Table 14 reports CEO turnover rate for the year of and the year after a firm receiving a shareholder proposal. Panel A contains the results for 937 pairs of US sample and control firms that have three years of CEO data surrounding the proposing year; Panel B contains the results for 55 pairs of UK sample and control firms that have three years of CEO data surrounding the proposing year. ^a, ^b and ^c denote the significance levels at 1%, 5% and 10%, respectively, based on Chi-squared test.

Table 14. Impact of Shareholder Proposals on CEO Turnover

Panel A: CEO turnover rate - the US sample

	Sample firms	Control firms	Dif.
Proposal year	14.4%	8.1%	6.3% ^a
One year after the proposing year	15.9%	11.0%	4.9% ^a

Panel B: CEO turnover rate - the UK sample

	Sample firms	Control firms	Dif.
Proposal year	32.7%	25.5%	7.3% ^b
One year after the proposing year	29.1%	10.9%	18.2% ^b

IX. Implications Of US And Regulatory Differences

Our comparisons of US and UK shareholder proposals have implications for the ongoing debate about shareholder activism and the regulation of that activism. Specifically, our results provide insights into the impact of differences in shareholder proposal regulations such as whether the proposal is presented at firm expense, and whether the proposal is advisory or binding. Governance in the US and UK is similar in many ways but there are important differences in the nature of shareholder proposals as we have focused on in this paper. In addition, there are many other differences in the regulatory and legal environment between the two countries including factors such as the nature of the duties of directors in the US (and within states in the US) and UK.¹⁰⁰ We do not tackle these additional complexities here but recognize that these factors make it difficult to directly compare the US and UK. Nevertheless, a comparison of the use and impact of the proposals in the two countries provides some evidence on any potential impact of increasing shareholder access in the US comparable to the access in the UK.

We find that both US and UK shareholder proposals are related to changes in firms. For example, we find that US shareholder proposals are associated with a positive impact on long-term firm performance though UK proposals are not followed by significant long-run share price changes. However, both US and UK proposals are associated with higher CEO turnover rates after a proposal event. Given that UK shareholders have better access to the proxy process and their resolutions are binding, our results with respect to differences in changes in performance suggest that shareholder access is simply one of the many factors that influence governance and firm performance.

Even though we analyze a comprehensive dataset of shareholder proposals,¹⁰¹ the sample does not allow us to determine whether factors such as opportunistic sponsors or differing fiduciary duties lead to

<http://www.nber.org/papers/w12465>.

⁹⁹ Dedman & Lin, *supra* note 87.

¹⁰⁰ See information and accompanying text *supra* notes 14 and 33.

¹⁰¹ For illustration, Cziraki et al. provide the first study of European shareholder proposals. They have 173 UK shareholder proposals with vote outcome from 2000 to 2006, while we have 357 UK shareholder proposals with vote outcome, in addition to 116 withdrawn proposals that we are able to determine the negotiation outcome. We obtain UK shareholder proposals from ISS and supplement the ISS data with manually collected data. Cziraki

observed differences in performance. However, there are some suggestive pieces of evidence. As Table 9 shows, former management and associate companies collectively sponsor 37% of UK shareholder proposals. These groups of shareholders may be more likely to have conflicted interests than non-affiliated shareholders. Evidence supporting this possibility is that these proposals receive very low voting support despite the fact that the sponsors often own a large portion of company shares. Additionally, US laws specify a mandatory minimum quorum that is quite high, usually 50%. UK statute does not prescribe any minimum quorum and UK firms typically specify a very small quorum. The low quorum requirement could also potentially make it easier for UK large investors to use shareholder proposals to extract private rents.

Regardless of the cause for the differing wealth effects of US and UK shareholder proposals, it is clear that the impact of shareholder access to the governance process is related to how shareholders are empowered. We need to understand the full governance environment before we can properly evaluate the factors behind differing wealth effects between US and UK shareholder proposals and what the "best practices" might be.

The question of what goals shareholders would pursue if given more power remains. The usual assumption in the US is that firms operate with a goal of shareholder wealth maximization, although there are limits on that in various states and at various times. Additionally, corporate law has traditionally assumed that professional managers control publicly-traded companies, while shareholders are weak and passive.¹⁰² Therefore, corporate officers and directors have historically had extensive duties to shareholders consistent with wealth maximization, while shareholder rights generally only extended to voting in defined situations and the ability to trade their shares with no legal duty defined to anyone.¹⁰³ Our results, along with other recent studies on shareholder activism, suggest that the perception of limited shareholder involvement is no longer true. US shareholders are increasingly more active and effective in influencing publicly-traded companies. Therefore, we suggest that it should be considered whether increased shareholder power should be coupled with something analogous to the duties of management to pursue wealth maximization. The difficulty, of course, is that wealth maximization for one shareholder is not necessarily overall firm wealth maximization. The goals of activist shareholders may differ from those of other shareholders due to relationships with other firms, self-interest, or political agendas

Greater shareholder responsibility can take the form of imposing greater disclosure requirements and fiduciary duties on activist shareholders. One argument frequently raised in opposition of shareholder empowerment is that shareholders are rationally apathetic, i.e., shareholders lack incentives to become sufficiently informed to proactively participate in corporate governance and make correct decisions.¹⁰⁴ However, recent evidence, including ours, suggests that shareholders care about corporate governance, are willing to actively seek governance changes, and have become more effective at influencing corporations than ever before. Therefore, shareholders today have more incentives to become informed, especially when the benefits of becoming informed is large. Further, researchers have found that shareholders are capable of making sophisticated and correct decisions.¹⁰⁵ If shareholder activists are required to disclose motives and tactics to the public, activists may be less likely to pursue questionable agendas or behave unethically. Disclosure would provide the opportunity for shareholders to make informed decisions about activist proposals and would allow interested observers to more carefully evaluate the motives and probability of success of the activist agenda.

Some commentators take a stronger view in response to the premise that increased shareholder power is potentially detrimental to firm value maximization.¹⁰⁶ These commentators suggest imposing fiduciary

et al. obtain UK shareholder proposals from Manifest. Cziraki et al., *Shareholder Activism in Europe*, supra note 8.

¹⁰² Iman Anabtawi & Lynn A. Stout, *Fiduciary Duties for Activist Shareholders*, 60 *Stan. L. Rev.* 1255 (2008).

¹⁰³ *Id.*

¹⁰⁴ See, e.g., Bainbridge, *Director Primacy*, supra note 3; Bainbridge, *Shareholder Disempowerment*, supra note 3.

¹⁰⁵ See, e.g., Gordon & Pound, *Shareholder-Sponsored Governance Proposals*, supra note 61 (studying how voting outcome vary as a function of publicly-available information and ownership structure); Delman, *Structuring Say-on-Pay*, supra note 56 (performing a comparative analysis of say-on-pay practice in multiple countries); Yonca Ertimur, Fabrizio Ferri & Volkan Muslu, *Shareholder Activism and CEO Pay*, 24 *Rev. Fin. Stud.* 535 (2009) (studying the determinants and consequences of compensation-related shareholder activism on CEO pay).

¹⁰⁶ See, e.g., Anabtawi, *Some Skepticism about Increasing Shareholder Power* (UCLA School of Law, Law-Econ Paper No. 05-16, 2005).

duties on activist shareholders. Imposing fiduciary duties can serve to check against the agency problems of opportunistic activists, ensuring that activism is used to advance the general interests of all shareholders instead of the private interests of the activists. In the US, fiduciary duty has traditionally applied to officers and directors, and has been applied to shareholders in limited cases such as for controlling shareholders and in the context of freeze-outs and closely-held firms.¹⁰⁷ Anabtawi and Stout¹⁰⁸ propose concrete recommendations on how to extend the existing doctrine of fiduciary duties to activist shareholders.

X. Conclusion And Discussion

The ownership structure in the US has changed fundamentally from the dispersed ownership by individual investors in the era of Berle and Means to the concentrated ownership by institutional investors in recent decades.¹⁰⁹ This change coupled with globalization, technology advancement, corporate scandals, and a financial crisis has brought the movement of shareholder activism, particularly shareholder proposals, to the forefront of corporate governance. These interrelated changes have also caused a "seismic shift" in US corporate laws,¹¹⁰ from the viewpoint of shareholder protection to shareholder empowerment. These developments have re-ignited debate on the effectiveness of shareholder proposals or more broadly the efficacy of shareholder empowerment and raised issues such as the relation between shareholder activism and corporate governance and the relation between shareholder activism and financial regulations.

With this backdrop in mind, we compare and contrast shareholder proposal rules and practices in the US and UK using comprehensive proposal data from these countries for 2000 through 2006. Our goal is to provide new evidence on the nature of shareholder proposals, characteristics of proposal sponsors, and the impact of shareholder proposals on long-term firm performance and CEO turnover in the US and UK. Our research allows us to examine in a more recent period the role of shareholder proposals and to compare our work with earlier studies as well as comparing the results between two countries that have very similar governance systems but quite different proxy rules.

We find systematic differences between the two countries. UK proxy rules give shareholders greater power to affect changes than US rules, while placing more responsibility on sponsors (e.g., higher ownership requirement and solicitation costs). Consequently, we observe very different proposing behaviors and proposal outcome. For example, 70% of UK shareholder proposals are presented at special meetings and 80% target electing or removing directors. The majority of UK proposals are sponsored by institutions and former management and only 2% relate to social and environmental issues. In contrast, individual investors sponsor the majority of US proposals, and social and environmental proposals make up 30% of all US proposals. We also find that UK shareholder proposals have higher passing rates than US proposals. Lastly, we find that both US and UK shareholder proposals have a significant impact on CEO turnover while US shareholder proposals have a more positive impact on long-term firm performance than do UK shareholder proposals.

We suggest that our results provide important insights into the ongoing debate about the role of shareholder activism in corporate decision making. While the traditional viewpoint has been that shareholders are relatively ineffective at making changes in corporations, recent activism especially by institutional investors has changed that view. Our results suggest that shareholders can have an impact on firm performance but the methods through which shareholders are empowered are important. In addition, our results suggest that it may be appropriate to consider whether activist shareholders have additional responsibilities to the firm and other shareholders, including a duty to disclose their agendas or a fiduciary duty to other shareholders.

¹⁰⁷ See, e.g., Anabtawi & Stout, *supra* note 102.

¹⁰⁸ *Id.*

¹⁰⁹ Adolf A. Berle, Jr. & Gardiner Means, *The Modern Corporation and Private Property* (Macmillan Co. 1932).

¹¹⁰ See Jennifer Hill, *The Rising Tension Between Shareholder and Director Power in the Common Law World*, 18 *Corp. Governance: An Int'l Rev.* 344, 344 (2010).

Appendix 1. UK Corporate Governance and Shareholder Activism Timeline

- 1948 Companies Act of 1948 was introduced.
- 1992 Cadbury Report
Recommends a Code of Best Practice which effects the boards of all listed companies registered in the UK.
- 1995 Greenbury Report (executive pay)
Emphasizes accountability and performance of directors.
- 1995 CalPERS announces its intention to focus on, and take a more active corporate governance role in the United Kingdom.
- 1997 Sell receives five shareholder proposals regarding its environmental and human rights policies at AGM, thus becoming the first UK firm to receive such proposals.
- 1998 Hampel Report (boards should comprise at least one third outside directors)
Endorses the findings of the Cadbury and Greenbury Reports and emphasizes the important role that institutional investors have to play in their portfolio companies.
- 1998 Combined Code
Synthesize the Cadbury, Greenbury and Hampel reports. It operates on a "comply" or "explain" basis.
- 1998 Hermes Focus Fund is formed to experiment shareholder engagement.
- 1999 Turnbull Report
Provides guidance on the implementation of the internal control requirements of the Combined Code.
- 2001 Myners Report
Review institutional investment and recommends that institutional investors be more proactive especially in the stance that they take with under-performing companies.
- 2001 UK Government introduces the Statement of Investment Principles (SIPs), which required institutional investors to disclose the social, environmental and ethical policies of their occupational pension funds.
- 2003 Higgs Report
Reports on the role and effectiveness of non-executive directors. Other recommendations include separating CEO and Chairman roles and stating the number of meetings of the board and its main committees and the attendance records of individual directors in the annual report.
- 2003 Smith Review
Presents a review of audit committees.
- 2003 Revised Combined Code
This report incorporates the substance of the Higgs and Smith reviews. It also clarifies the Chairman's role and senior independent director role.
- 2006 Companies Act (formerly the Company Law Reform Bill)
Replaces existing companies legislation. It codifies directors' duties and shareholder rights.

Appendix 2. A Comparison of US and UK Proxy Rules and Practices for the Period of 2000 to 2006

	UK	US
Regulations	Section 376 and 368 of the Companies Act 1985 ^a	Securities and Exchange Commission Rule 14a-8
Qualifying sponsor	<ul style="list-style-type: none"> • ≥5% of voting capital, or at least 100 shareholders with no less than GBP100 per holder to call AGM • ≥10% of voting capital to call EGM 	Continuous ownership of 1% of voting capital (or a minimum US \$2,000 in market value) for at least one year before the annual meeting ^b
Length of the proposal	No more than 1,000 words	No more than 500 words
How many proposals may a shareholder submit for a particular meeting?	> One	One
Who bear circulation costs?	Proposal sponsor ^c	Firm
Is resolution binding?	Yes	No
Can shareholders call special meetings to submit resolutions?	Yes	Yes
Minimum quorum	No	Yes
Voting coalition	Easy to form ^d	Difficult to form ^e
Are institutions obligated to vote?	No	Yes
Are institutions required to disclose votes?	No	Pension funds and mutual funds are required to do so since 1988 and 2004, respectively
Voter turnout	Low	High
Are firms obligated to release voting results?	No, the Combined Code only recommends	Yes
Electronic vote	No	Yes
Voting system	Proxy voting/show of hands	Proxy voting

^a Companies Act 2006 replaces Companies Act 1985, which will become effective by October 2008. It makes some material changes to the proxy rules, including making firms not shareholders bearer of the circulation costs. It also provides electronic communication with shareholders. The full text of Companies Act 2006 can be downloaded from www.opsi.gov.uk/ACTS/acts2006/ukpga_20060046_en.pdf (accessed on October 27, 2007)

^b <http://www.sec.gov/rules/proposed/34-39093.htm>

^c Although Companies Act 1985 requires proposal sponsors to provide the firm with funds to cover the circulation costs. Given that the firm will prepare for the circulation of proxy materials in relation to AGM regardless of the requisition, the extra expenses are minimal and are often waived by the firm. CLIFFORD CHANCE LLP, *SHAREHOLDER REQUISITIONED MEETINGS AND RESOLUTIONS 4* (2007), available at <http://www.sec.gov/comments/4-537/4537-15.pdf>). Needless to say, requisitioning shareholders need to bear circulation costs in relation to EGM, which can be substantial.

^d Black & Coffee, *Hail Britannia*, *supra* note 50.

^e Bernard S. Black, *Shareholder Passivity Reexamined*, 89 MICH. L. REV. 520, 551-53 (1990).