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Towards the Declassification of S&P 500 Boards

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TOWARDS THE DECLASSIFICATION OF S&P 500 BOARDS

LUCIAN BEBCHUK,* SCOTT HIRST,** AND JUNE RHEE***

This Article provides an overview and analysis of the work that the Shareholder Rights Project (SRP) undertook on behalf of a number of institutional investors during 2012, the SRP's first full year of operations. During 2012, the SRP worked on behalf of SRP-represented investors on board declassification proposals submitted for a vote at the 2012 annual meetings of 89 S&P 500 companies, and this work has produced substantial results.

First, negotiated outcomes involving a commitment to board declassification were reached with 48 S&P 500 companies—slightly over half of the companies receiving proposals. Following the agreements into which these 48 companies entered, 37 of the companies brought management proposals to declassify for a vote at 2012 annual meetings, and 11 companies will do so in their future annual meetings.

Second, declassification proposals brought by SRP-represented investors received majority support at the 2012 annual meetings of 38 S&P 500 companies (all but 2 of the annual meetings in which such proposals went to a vote), with average support of 82% of votes cast.

Third, a total of 42 S&P 500 companies declassified their boards during 2012 as a result of the work of the SRP and SRP-represented investors (including declassifications following 2012 agreements, 2011 agreements with SRP-represented investors, and successful 2012 precatory proposals). The 42 companies whose boards were declassified during 2012 represent one-third of the 126 S&P 500 companies that had classified boards as of the beginning of 2012.

The work of the SRP and SRP-represented investors is expected to produce a significant number of additional board declassifications during 2013 as a result of (i) management declassification proposals that will go to a vote pursuant to 2012 agreements, (ii) companies agreeing to follow the preferences of shareholders expressed in 38 successful precatory declassification proposals, and (iii) ongoing engagement by the SRP and SRP-represented investors. We estimate that, by the end of 2013, this work will have contributed to movements towards board declassification by a majority of the 126 S&P 500 companies that had classified boards at the beginning of 2012.

Finally, beyond board declassification, the SRP's 2012 work also facilitated a substantial increase in successful engagement by public pension funds and in their ability to obtain governance changes favored by shareholders. The proposals that the SRP worked on represented over 60% of the shareholder proposals by public pension funds that received majority support in 2012, and over 30% of all precatory shareholder proposals (by all proponents) that received majority support in 2012.

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The authors serve as Director, Associate Director, and Counsel, respectively, of the Shareholder Rights Project (SRP), and the Article is based on the 2012 report of the SRP, available at <http://srp.law.harvard.edu/>. The SRP is a clinical program at Harvard Law School that works on behalf of public pension funds and charitable organizations seeking to improve corporate governance at publicly traded companies, as well as on research and policy projects related to corporate governance. Any views expressed and positions taken by the SRP and its representatives should be attributed solely to the SRP and not to Harvard Law School or Harvard University.

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INTRODUCTION

This Article reviews and analyzes the activities of the Shareholder Rights Project (SRP) in 2012, the SRP’s first full year of operations. In 2012, the SRP worked on behalf of SRP-represented investors in connection with 89 declassification proposals submitted to S&P 500 companies with classified boards for a vote at the companies’ 2012 annual meetings.¹ The SRP provides SRP-represented investors with a wide range of services in connection with the submission of shareholder proposals, including submitting proposals on behalf of such investors, assisting such investors in connection with designing proposals, selecting companies for proposal submission, engaging with companies, negotiating and executing agreements with companies to bring management declassification proposals, and presenting proposals at annual meetings.

We are particularly pleased about three significant features of the outcomes produced by the 2012 work of the SRP and SRP-represented inves-

¹ The SRP also worked on 2 additional proposals that were withdrawn for technical reasons without any agreement being reached with the companies.

tors on board declassification proposals. First, companies receiving proposals were responsive to the engagement efforts of the SRP and SRP-represented investors, with over half of such companies agreeing to enter into agreements to bring management declassification proposals. Second, the overwhelming majority of the 40 precatory proposals that went to a vote passed, generally by large margins, and these precatory proposals are expected to lead to a significant number of additional declassifications. Third, the SRP's work has already contributed to bringing about a major reduction in the number of classified boards among S&P 500 companies, and is expected to contribute to a further significant decrease in the number of classified boards in 2013.

Beyond its impact on board declassification, the 2012 work of the SRP contributed to a substantial increase in the number of successful engagements by public pension funds and enhanced the ability of such investors to bring about changes supported by shareholders. Proposals that the SRP worked on represented more than 60% of the shareholder proposals by public pension funds that received majority support in 2012, and more than 30% of all precatory shareholder proposals (by all proponents) that received majority support in 2012.

This Article is organized as follows. Part I provides information on each of the eight institutional investors with which the SRP is working. The SRP-represented investors include seven public pension funds and one foundation. These investors serve more than 3 million members, and the aggregate value of assets that they manage exceeds \$400 billion.

Part II discusses the value of board declassification and the widespread support for declassification among investors.² SRP-represented investors have proxy-voting guidelines opposing classified boards, as do most other institutional investors. The widespread investor opposition to classified boards is consistent with empirical studies documenting an association between classified boards and undesirable outcomes for shareholders. Over the last fifteen years, issuer responsiveness to investor preferences has produced a continuing decline of the number of S&P 500 companies with classified boards. The 2012 work of the SRP and SRP-represented investors has accelerated this trend significantly.

Part III describes the negotiated outcomes and the board declassifications resulting from work by the SRP and SRP-represented investors. Engagement with companies receiving board declassification proposals resulted in negotiated outcomes with 48 S&P 500 companies—slightly over 50% of the S&P 500 companies receiving declassification proposals from SRP-represented investors. Following the agreements these 48 companies

² The value of board declassification and the work by the SRP and SRP-represented investors to enable shareholders to register their support for declassification are described in Lucian A. Bebchuk, *Giving Shareholders a Voice*, N.Y. TIMES DEALBOOK (Apr. 19, 2012), <http://dealbook.nytimes.com/2012/04/19/giving-shareholders-a-voice/>.

entered into with SRP-represented investors, 37 of these companies brought management proposals to declassify for shareholder approval at 2012 annual meetings, and 11 committed to doing so at subsequent annual meetings.

Part III also discusses the scale of board declassifications taking place during 2012 among S&P 500 companies as a result of work by the SRP and SRP-represented investors. This work resulted in 42 declassifications during 2012: 32 declassifications following the approval at 2012 annual meetings of management proposals to declassify resulting from 2012 engagement by the SRP and SRP-represented investors,³ 7 declassifications resulting from the passage at 2012 annual meetings of management proposals to declassify brought following 2011 agreements with SRP-represented investors, and 3 declassifications resulting from bylaw amendments adopted by S&P 500 companies where declassification proposals by SRP-represented investors passed at 2012 annual meetings. Altogether, the 42 S&P 500 companies whose boards were declassified during 2012 as a result of work by the SRP and SRP-represented investors represent one-third of the 126 S&P companies that had classified boards as of the beginning of 2012.⁴

Part IV discusses the 40 precatory proposals that went to a vote at S&P 500 companies where the SRP and SRP-represented investors were not able to obtain negotiated outcomes. Out of these 40 proposals, 38 passed (95%). Moreover, the proposals that passed did so by large margins, with average support exceeding 80% of the votes cast.

Finally, Part V concludes by discussing the impact that the work of the SRP and SRP-represented investors is expected to have on the number of classified boards among S&P 500 companies by the end of 2013. We expect to see further movement towards annual elections during 2013 as a result of the management declassification proposals that will go to a vote during that year pursuant to 2012 agreements. We also expect a significant number of board declassifications to result from companies agreeing to follow the preferences of shareholders expressed in the 38 successful precatory declassification proposals in 2012, as well as from the ongoing engagement by the SRP and SRP-represented investors. We estimate that, by the end of 2013, this work will have contributed to movements toward board declassification by a majority of the 126 S&P 500 companies that had classified boards at the beginning of 2012.

The Appendix of this Article provides a full list of the outcomes and current status of all companies where SRP-represented investors submitted shareholder proposals for 2012 annual meetings.

³ As will be explained in Part III, Section B, *infra*, out of the 37 management proposals brought to a vote following 2012 agreements, 6 received majority support but failed to be approved due to the presence of 80% supermajority requirements.

⁴ The number of classified boards among S&P 500 companies at the beginning of 2012 is taken from Factset Research Systems, Inc., *Classified Boards Year Over Year*, SHARKREPELL-LENT. <http://sharkrepellent.net> (last visited Feb. 1, 2013).

I. SRP-REPRESENTED INVESTORS

The SRP is working on behalf of eight institutional investors—the Florida State Board of Administration (SBA), the Illinois State Board of Investment (ISBI), the Los Angeles County Employees Retirement Association (LACERA), the Massachusetts Pension Reserves Investment Management Board (PRIM), the Nathan Cummings Foundation (NCF), the North Carolina Department of State Treasurer (NCDST), the Ohio Public Employees Retirement System (OPERS), and the School Employees Retirement System of Ohio (SERS). As explained below, the SRP worked with six of these SRP-represented investors in connection with shareholder declassification proposals for the 2012 annual meetings, and is working with all eight SRP-represented investors in connection with such proposals for 2013 meetings. Detailed information about these institutional investors is provided below.

ISBI is a non-appropriated state agency that is responsible for managing and investing the pension assets of the Illinois General Assembly Retirement System, the Judges' Retirement System of Illinois and the State Employees' Retirement System of Illinois.⁵ ISBI managed assets with a value exceeding \$12 billion as of December 31, 2012.⁶

LACERA, the largest county retirement system in the United States, administers and manages the retirement fund for employees and retirees of Los Angeles County and its outside districts, and their beneficiaries. LACERA managed assets with a value exceeding \$38 billion and provided retirement benefits and savings for more than 148,000 members as of June 30, 2012.

The NCF is a charitable foundation and an institutional shareholder, and submits shareholder resolutions on issues that lie at the intersection of its programmatic interests and long-term shareholder value.⁷

The NCDST is the fiduciary for the North Carolina Retirement Systems (NCRS). NCRS managed assets with a value exceeding \$77 billion, and provided retirement benefits and savings for more than 875,000 North Carolinians, including teachers, state employees, firefighters, police officers, and other public workers, as of September 30, 2012.⁸

OPERS, the largest public pension fund in Ohio and the 11th largest public pension fund in the U.S., managed assets with a value exceeding \$80

⁵ ILL. STATE BD. OF INV., 2011 ANNUAL REPORT 3 (2011), available at http://www2.illinois.gov/isbi/Documents/ISBI_Annual_Report_2011.pdf.

⁶ *Id.*

⁷ NATHAN CUMMINGS FOUNDATION, CHANGING CORPORATE BEHAVIOR THROUGH SHAREHOLDER ACTIVISM: THE NATHAN CUMMINGS FOUNDATION'S EXPERIENCE 2, 4–6, 17–18, 20–26 (2010), available at <http://www.nathancummings.org/sites/default/files/Changing%20Corporate%20Behavior%20thru%20Shareholder%20Activism.pdf>.

⁸ Joint Press Release with the North Carolina Department of State Treasurer (Feb. 13, 2013), available at <http://srp.law.harvard.edu/news.shtml>.

billion, and provided retirement benefits and savings for more than a million members.⁹

PRIM is charged with the general supervision of the Pension Reserves Investment Trust (PRIT) Fund, with pension assets exceeding \$50 billion and serving more than 280,000 members.¹⁰ The PRIT Fund is a pooled investment fund that invests the assets of the Massachusetts Teachers' and State Employees' Systems, and the assets of county, authority, district, and municipal retirement systems that choose to invest in the PRIT Fund.¹¹

The SBA is an agency of Florida state government that provides a variety of investment services to various governmental entities. These include managing the assets of the Florida Retirement System Trust Fund (FRS), the Lawton Chiles Endowment Fund, the Local Government Surplus Funds Trust Fund, the Hurricane Catastrophe Fund, and a variety of other mandates.¹² The SBA manages assets with a total value exceeding \$155 billion and the FRS provides pension benefits to almost one million beneficiaries and retirees.¹³

SERS is a statewide public pension fund that provides pension benefits and access to post-retirement health care for non-teaching public school employees in Ohio. SERS provides retirement security for administrative assistants, bus drivers, food service workers, librarians, maintenance personnel, teacher aides, and treasurers. SERS' mission is to provide its 190,000+ members, retirees, and beneficiaries with pension benefit programs and services that are soundly financed, prudently administered, and delivered with understanding and responsiveness. On September 30, 2012, SERS managed assets exceeding \$10.7 billion.¹⁴

Overall, the eight SRP-represented investors hold assets with an aggregate value exceeding \$400 billion and serve over three million members.¹⁵

II. SHAREHOLDER SUPPORT FOR DECLASSIFICATION

Declassification of boards of directors enables shareholders to register their views on the performance of all directors at each annual meeting. Hav-

⁹ Press Release, Ohio Public Employees Retirement System, Governor Signs Pension Legislation 2 (Sept. 26, 2012), <https://www.opers.org/News/2012/Governor%20Signs%20Pension%20legislation%20press%20release.pdf>.

¹⁰ MASS. PENSION RESERVES INV. MGMT. BD., PERFORMANCE SUMMARY: OCTOBER 2012 7 (2012), available at <http://www.mapension.com/publications/>.

¹¹ *About PRIM*, MASS. PENSION RESERVES INV. MGMT. BD., <http://www.mapension.com/about-prim/> (last visited Dec. 12, 2012).

¹² *See The Funds We Manage*, FL. STATE BD. ADMIN., <http://www.sbafla.com/fsb/TheFundsWeManage/tabid/731/Default.aspx>.

¹³ *See FL. ST. BD. ADMIN., QUARTERLY PERFORMANCE REPORT TO TRUSTEES 1* (Sept. 30, 2012), available at http://www.sbafla.com/fsb/portals/internet/funds/reports/quarterly/201209_QuarterlyTrusteesReport.pdf.

¹⁴ *Ohio SERS Investment Report*, SCH. EMPLOYEES RET. SYS. OF OHIO, (Sept. 30, 2012), <http://www.ohsers.org/Document/Get/7316>.

¹⁵ These calculations have been made by the authors from the sources cited *supra*.

ing directors stand for elections annually makes directors more accountable to shareholders, and could thereby contribute to improving performance and increasing firm value. Annual election of the boards of directors is widely viewed as a corporate governance best practice.

Section A of this Part describes the support among SRP-represented investors, as well as institutional investors more broadly, for declassification. Section B explains how the strong investor opposition to classified boards is consistent with empirical studies. Finally, Section C discusses the trend towards declassification.

A. Investor Support for Declassification

There is a clear and widespread opposition to classified boards among institutional investors. In particular, SRP-represented investors have proxy voting policies that express their preference for annual elections and their support for declassification proposals. This is the case for each of the SBA, LACERA, PRIM, the NCF, the NCDST and OPERS.¹⁶

In this respect, SRP-represented investors have similar views to those of other institutional investors. For example, the American Funds, BlackRock, CalPERS, TIAA-CREF and Vanguard, all have policies that support annual election of all directors and voting in favor of board declassification proposals.¹⁷ In addition, the Council of Institutional Investors has a similar

¹⁶ See FL. ST. BD. ADMIN., PROXY VOTING POLICY 10 (2012), available at <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=SUVuCurROcI%3D&tabid=997&mid=2799> (“The SBA opposes classified boards and their provisions . . . alternatively, the SBA supports changing from a staggered board structure to annual elections for all directors.”); L.A. CNTY EMP. RET. ASS’N, DOMESTIC PROXY VOTING GUIDELINES 19 (2009), available at <http://www.lacera.com/BoardResourcesWebSite/BoardOrientationPdf/DomProxyGuidelines.pdf> (“LACERA votes for proposals to repeal classified boards and to elect all directors annually.”); PENSION RES. INV. MGMT. BD., PROXY VOTING GUIDELINES 15 (2012), available at http://www.mapension.com/index.php/download_file/view/137/84/ (“Vote FOR shareholder proposals to repeal classified (staggered) boards, and to elect all directors annually.”); NATHAN CUMMINGS FOUND., PROXY VOTING PRACTICES 3 (2012), available at <http://www.nathancummings.org/sites/default/files/Voting%20GLs%202012.pdf> (“The Foundation will vote FOR proposals requesting the declassification of the board.”); N.C. DEPT OF STATE TREASURER, PROXY VOTING GUIDELINES 2 (2012), available at [https://www.nctreasurer.com/ret/Board%20of%20Trustees/Supplemental%20Board%20Mtg%20-%20Proxy%20Policy%20-%20Supplemental%20Retirement%20Board%20\(Final\).pdf](https://www.nctreasurer.com/ret/Board%20of%20Trustees/Supplemental%20Board%20Mtg%20-%20Proxy%20Policy%20-%20Supplemental%20Retirement%20Board%20(Final).pdf) (“All directors should be elected on an annual basis. The NCSRP will vote FOR shareholder resolutions that ask companies to declassify their boards.”); OHIO PUBLIC EMP. RET. SYS., PROXY VOTING GUIDELINES 7 (2012), available at <https://www.opers.org/pdf/governance/proxy-voting-guidelines.pdf> (“It is considered a best practice to have all directors elected on an annual basis to enhance accountability and to better align the board’s interests with those of long-term shareowners.”).

¹⁷ AM. FUNDS, PROXY VOTING PROCEDURES AND PRINCIPLES 3 (2012), available at https://www.americanfunds.com/pdf/proxy_voting_guidelines.pdf (“Generally, we support proposals declassifying boards.”); BLACKROCK, INC., PROXY VOTING GUIDELINES FOR U.S. SECURITIES 5 (2012), available at http://us.ishares.com/content/en_us/repository/resource/proxy_voting_guidelines.pdf (“Therefore, we typically vote . . . for proposals to eliminate board classification.”); CAL. PUBLIC EMP. RET. SYS., GLOBAL PRINCIPLES OF ACCOUNTABLE CORPORATE GOVERNANCE 37 (2011), available at <https://www.calpers.ca.gov/eip-docs/about/board-cal-agenda/agendas/invest/201111/item03b.pdf> (“All directors should be elected annually.”); TIAA-

policy.¹⁸ ISS and Glass Lewis, the two leading proxy advisors, also have policies of recommending voting in favor of proposals to dismantle classified boards.¹⁹

The widespread shareholder support for declassification is reflected in the results of the large number of precatory declassification proposals submitted by SRP-represented investors that went to a vote during 2012. As will be discussed in detail in Part IV, these proposals overwhelmingly passed, generally by large majorities.

B. Empirical Evidence

The significant shareholder support for declassification proposals is consistent with empirical studies reporting that classified boards are associated with lower firm value and inferior outcomes for shareholders. The first empirical study of classified boards, by Lucian Bebchuk, John Coates and Guhan Subramanian, focused on the effects of classified boards on the shareholders of takeover targets.²⁰ The study concluded that classified boards were associated with lower gains for the shareholders of such targets.

A subsequent 2005 study by Lucian Bebchuk and Alma Cohen went beyond takeover targets to examine the effects of classified boards on the value of public companies in general.²¹ This study found that classified boards are associated with an economically meaningful reduction in firm value (as measured by Tobin's Q).²² It also provided suggestive evidence that classified boards bring about (rather than merely reflect) an economically significant reduction in firm value.²³ The study's evidence of an association between classified boards and lower firm valuation has been subsequently

CREF, POLICY STATEMENT ON CORPORATE GOVERNANCE 18 (6th ed. 2011), available at https://www.tiaa-cref.org/public/pdf/pubs/pdf/governance_policy.pdf ("TIAA-CREF will generally support shareholder resolutions asking that each member of the board stand for reelection annually.").

¹⁸ See COUNCIL OF INST. INVESTORS, CORPORATE GOVERNANCE POLICIES 3 (2012), available at [http://www.cii.org/UserFiles/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2010-5-12%20FINAL\(1\).pdf](http://www.cii.org/UserFiles/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%2010-5-12%20FINAL(1).pdf) (stating that "[a]ll directors should be elected annually. Boards should not be classified (staggered).").

¹⁹ INST. S'HOLDER SERV., INC., 2012 U.S. PROXY VOTING SUMMARY GUIDELINES 17 (2012), available at <http://www.issproxy.com/files/2012USSummaryGuidelines1312012.pdf> ("Vote FOR shareholder proposals to repeal classified boards and to elect all directors annually."); GLASS LEWIS & CO., LLC, PROXY PAPER GUIDELINES: 2012 PROXY SEASON 5 (2012), available at http://www.glasslewis.com/assets/uploads/2012/03/2012_Guidelines_US_Summary.pdf ("Glass Lewis favors the repeal of [classified] boards in favor of the annual election of directors.").

²⁰ Lucian A. Bebchuk, John C. Coates IV & Guhan Subramanian, *The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy*, 54 STAN. L. REV. 887 (2002); see also Lucian A. Bebchuk, John Coates IV & Guhan Subramanian, *The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants*, 55 STAN. L. REV. 885 (2002).

²¹ Lucian A. Bebchuk and Alma Cohen, *The Costs of Entrenched Boards*, 78 J. FIN. ECON. 409 (2005).

²² *Id.* at 410, 428–31.

²³ See *id.* at 429–31.

confirmed by a study by Olubunmi Faleye,²⁴ as well as by another study by Michael Frakes.²⁵

More recent empirical work has identified particular dimensions of undesirable decisions-making that are associated with classified boards. A study by Ronald Masulis, Cong Wang, and Fei Xie demonstrated that firms with classified boards are more likely to be associated with undesirable acquisition decisions.²⁶ The study examined stock market reactions to acquisition decisions and concluded that companies with classified boards are more likely to make acquisition announcements that are judged by the market to be value-reducing.²⁷

In addition, a study by Olubunmi Faleye found that classified boards are associated with worse compensation and executive retention decisions.²⁸ The study showed that companies with classified boards provide executives with compensation that is less sensitive to performance, and exhibit lower sensitivity of CEO turnover to firm performance.²⁹

It is worth noting a study by David Bates, Thomas Becher, and Michael Lemmon that has often been mentioned in statements of several companies opposing declassification proposals.³⁰ The study found that classified boards are associated with higher takeover premiums. However, the study also reported that classified boards are associated with a lower likelihood of an acquisition and, most importantly, confirmed that, overall, classified boards are associated with lower firm valuation.

C. The Trend Towards Declassification

According to data from FactSet Research Systems, there were 303 S&P 500 companies with classified boards at the beginning of 1999, and that number declined to 126 at the beginning of 2012.³¹ That is, during this

²⁴ See Olubunmi Faleye, *Classified Boards, Firm Value, and Managerial Entrenchment*, 83 J. FIN. ECON. 501, 509 (2007).

²⁵ Michael Frakes, *Classified Boards and Firm Value*, 32 DEL. J. CORP. LAW 113, 117, 136 (2007).

²⁶ Ronald W. Masulis, Cong Wang and Fei Xie, *Corporate Governance and Acquirer Returns*, 62 J. FIN. 1851, 1882–84 (2007).

²⁷ See *id.*

²⁸ See Faleye, *supra* note 24, at 525–26.

²⁹ See *id.*

³⁰ David Becher, Thomas W. Bates, & Michael L. Lemmon, *Board Classification and Managerial Entrenchment: Evidence from the Market for Corporate Control*, 87 J. FIN. ECON. 656 (2007). For examples of opposition statements relying on this study, see *Board's Statement in Opposition to Proposal 4*, contained in the Definitive Proxy Statement of United States Steel Corporation, filed on Schedule 14A (March 9, 2012), available at <http://www.sec.gov/Archives/edgar/data/1163302/000119312512106628/d293423ddef14a.htm> (last visited Nov. 12, 2012); and Urban Outfitters, Inc., Proxy Statement (Schedule 14A) 14–17 (Apr. 2, 2012), available at <http://www.sec.gov/Archives/edgar/data/912615/000119312512145959/d317811ddef14a.htm> (last visited Nov. 6, 2012).

³¹ See SHARKREPELLENT, *supra* note 4.

twelve-year period, the fraction of S&P 500 companies with classified boards declined by about 60%.

As explained in Parts III and IV, the work of the SRP and SRP-represented investors in 2012 has contributed to a substantial reduction in the number of classified boards among S&P 500 companies, and the continuing work of the SRP and SRP-represented investors is expected to produce a further significant decline in the number of classified boards. As a result, the 2012 and 2013 work of the SRP and SRP-represented investors can be expected to contribute significantly to this trend.

III. NEGOTIATED OUTCOMES AND BOARD DECLASSIFICATIONS

This Part discusses the negotiated outcomes resulting from the work of the SRP and SRP-represented investors, as well as the board declassifications that have already resulted, or are expected to result, from these negotiated agreements. Section A provides an overview of the successful engagements with the 48 companies that entered into agreements with SRP-represented investors in 2012. Section B discusses the 32 successful management declassification proposals that have already resulted in companies declassifying their boards of directors. Section C focuses on the 11 management proposals that have yet to be voted on. Section D discusses 7 additional declassifications that took place during 2012 following 2011 agreements with SRP-represented investors. Part V provides more detailed information, and Section E discusses the 3 companies that declassified following successful 2012 precatory proposals submitted by SRP-represented investors. Finally, Section F provides a summary of the 42 declassifications that took place during 2012 due to the work of the SRP and SRP-represented investors.

A. *Agreements Reached in 2012*

Through active engagements with companies receiving declassification proposals, the SRP and SRP-represented investors were able to reach negotiated outcomes with 48 companies receiving declassification proposals. These 48 companies, which represent over half of the companies receiving proposals, entered into agreements committing the companies to bring management proposals to declassify their boards.

Overall, the 48 companies that entered into such agreements represent almost 40% of the 126 S&P 500 companies that had classified boards as of the beginning of 2012. The aggregate market capitalization of these 48 companies (as of December 31, 2012) exceeded half a trillion dollars.³² All of these companies should be commended for their responsiveness to shareholder concerns, and for their willingness to move to annual elections.

³² See SHARKREPELLENT, <http://sharkrepellent.net> (last visited January 30, 2013).

Of the 48 agreed-upon management proposals, 37 management proposals have already been voted on by shareholder, resulting in the declassification of 32 companies, and 11 management proposals will be vote on in the future. Sections B and C discuss, respectively, the companies that have declassified, and the companies where management proposals will go to a vote in the future.

B. Companies Declassified in 2012 Following 2012 Agreements

Agreed-upon management proposals to declassify have been voted on at 37 companies. Of these 37 proposals, 31 have passed, resulting in the declassification of those companies' boards of directors. These 31 proposals received average support of 99.2% of votes cast and 80.7% of shares outstanding.

In addition to these 31 declassifications, at one company (CIGNA Corporation), where the classified boards structure was established in the company's bylaws, after the agreed-upon management declassification proposal received a substantial majority but failed to obtain the 80% supermajority requirement for a shareholder-approved bylaw amendment, and following subsequent engagement with the company, the board agreed to a declassification through a board-adopted amendment to the company's by-laws.

Table 1 below lists each of the 32 companies where boards were declassified following 2012 agreements and the SRP-represented investors that submitted each declassification proposal.

Of the 37 management declassification proposals that have been voted on, 6 proposals won a substantial majority (receiving average support of 95.5% of votes cast and 67.2% of shares outstanding) but did not pass due to the supermajority provisions requiring approval by 80% of shares outstanding. Table 2 below lists each of the companies at which proposals did not pass due to such supermajority requirements and the SRP-represented investor that submitted each proposal.

TABLE 1: COMPANIES DECLASSIFIED FOLLOWING 2012 AGREEMENTS WITH SRP-REPRESENTED INVESTORS

| | |
|---|--|
| Amphenol Corporation (NCF) | Janus Capital Group Inc. (NCDST) |
| BlackRock, Inc. (ISBI) | JDS Uniphase Corporation (PRIM) |
| C.H. Robinson Worldwide, Inc. (NCF) | Juniper Networks, Inc. (ISBI) |
| C.R. Bard, Inc. (OPERS) | KLA-Tencor Corporation (PRIM) |
| Cabot Oil & Gas Corporation (NCDST) | McDonald's Corporation (LACERA) |
| Cameron International Corporation (NCDST) | Newell Rubbermaid Inc. (ISBI) |
| CenturyLink, Inc. (ISBI) | NRG Energy, Inc. (NCDST) |
| CIGNA Corporation (OPERS) | Owens-Illinois, Inc. (ISBI) |
| Coventry Health Care, Inc. (ISBI) | Patterson Companies, Inc. (PRIM) |
| DeVRY, Inc. (PRIM) | Pioneer Natural Resources Company (LACERA) |
| Fidelity National Information Services, Inc. (ISBI) | TECO Energy, Inc. (NCF) |
| Flowserve Corporation (NCDST) | The Progressive Corporation (ISBI) |
| FMC Technologies, Inc. (NCDST) | The Western Union Company (NCF) |
| Helmerich & Payne (NCDST) | Rowan Companies, Inc. (NCDST) |
| Hudson City Bancorp, Inc. (NCF) | Stanley Black & Decker, Inc. (NCDST) |
| Intuitive Surgical, Inc. (NCDST) | Wyndham Worldwide Corporation (NCF) |

TABLE 2: AGREED-UPON MANAGEMENT DECLASSIFICATION PROPOSALS THAT DID NOT PASS DUE TO 80% SUPERMAJORITY REQUIREMENTS

| | |
|-----------------------------|-------------------------------|
| Alcoa Inc. (NCDST) | PPG Industries, Inc. (NCDST) |
| CIGNA Corporation (OPERS) | St. Jude Medical, Inc. (ISBI) |
| Eli Lilly and Company (NCF) | Teradata Corporation (NCDST) |

C. Additional Management Proposals to be Brought Pursuant to 2012 Agreements

As noted above, 11 agreed-upon management proposals have yet to go to a vote. Of these proposals, 10 proposals will go to a vote in 2013 and one proposal will go to a vote in 2014. Table 3 below lists companies at which these proposals will go to a vote and the SRP-represented investors that engaged with each company.

TABLE 3: ADDITIONAL MANAGEMENT PROPOSALS TO BE BROUGHT

| | |
|---|--|
| Akamai Technologies, Inc. (ISBI) | O'Reilly Automotive, Inc. (NCF) |
| Allegheny Technologies Incorporated (OPERS) | Principal Financial Group, Inc. (ISBI) |
| Citrix Systems, Inc. (LACERA) | Roper Industries, Inc. (LACERA) |
| GameStop Corp. (NCF) | Tellabs, Inc. (OPERS) |
| L-3 Communications Holdings, Inc. (NCDST) | Unum Group (LACERA) |
| MetroPCS Communications, Inc. (LACERA) | |

D. Companies Declassified in 2012 Following 2011 Agreements with SRP-Represented Investors

In addition to the companies that declassified in 2012 as a result of the 2012 work of the SRP and SRP-represented investors, 7 companies declassified during 2012 following 2011 agreements with the SBA and the NCF, which worked with the American Corporate Governance Institute (ACGI) to submit shareholder proposals in 2011.³³ In 6 of these cases, companies entered into agreements to bring agreed-upon management declassification proposals for approval at their 2012 annual meetings. In one case, the agreement required the company (eBay Inc.) to complete a full review of declassifying its board of directors within four months. Following this review, the company decided to bring a management proposal to declassify its board.

Table 4 below lists the companies that declassified in 2012 following the 2011 agreements. For each company, Table 4 lists the SRP-represented investor that submitted the proposal to the company.

TABLE 4: COMPANIES DECLASSIFIED IN 2012 FOLLOWING 2011 AGREEMENTS WITH SRP-REPRESENTED INVESTORS

| | |
|-------------------------------------|--------------------|
| CME Group Inc. (NCF) | eBay Inc. (NCF) |
| Dean Foods Co (SBA) | Fiserv, Inc. (SBA) |
| Dr Pepper Snapple Group, Inc. (NCF) | Hospira (NCF) |
| E*Trade Financial Corporation (SBA) | |

³³ For a description of this 2011 work, see Lucian A. Bebchuk & Scott Hirst, *Contributing to the Declassification of 21 S&P 500 Companies: Final Tally of the Results of the ACGI's 2011 Work*, HARV. L. SCH. FORUM ON CORP. GOV. & FIN. REG. (Oct. 23, 2012), <http://blogs.law.harvard.edu/corpgov/2012/10/23/contributing-to-the-declassification-of-21-sp-500-companies-final-tally-of-the-results-of-the-acgis-2011-work/>.

E. Companies Declassified in 2012 Following Successful 2012 Precatory Proposals

In Part V, we discuss in detail the consequences of the many precatory proposals by SRP-represented investors that passed during 2012. However, at this stage, to provide a complete picture of the scale of board declassification among S&P 500 companies during 2012, we should note the declassifications that took place in 2012 as a result of such successful precatory proposals. In particular, following the passage of such proposals, 3 companies heeded the expressed preferences of their shareholders by declassifying their boards through bylaw amendments. In these companies, the classified board’s structure was established in the company’s bylaws (rather than the company’s charter), which made it possible for the board to declassify without having to bring a management proposal for shareholder approval at the next annual meeting.

Table 5 below lists the companies that declassified in 2012 through by-law amendments following successful precatory proposals by SRP-represented investors at 2012 meetings. For each company, Table 5 lists the SRP-represented investor that submitted the proposal to the company.

TABLE 5: COMPANIES DECLASSIFIED IN 2012 THROUGH BYLAW AMENDMENTS FOLLOWING SUCCESSFUL PRECATORY PROPOSALS BY SRP-REPRESENTED INVESTORS

| | |
|------------------------|-------------------------------|
| Bemis Company (NCDST) | Urban Outfitters, Inc. (ISBI) |
| V.F. Corporation (NCF) | |

F. Summary of 2012 Declassifications

Sections C, D, and E discussed board declassification taking place at S&P 500 companies during 2012 from three sources—following 2012 engagement with the SRP and SRP-represented investors and resulting agreements by companies to bring management proposals, following 2011 agreements with SRP-represented investors, and following 2012 successful precatory proposals by SRP-represented investors. Table 6 below puts together the numbers for 2012 declassifications due to the work of the SRP and SRP-represented investors.

TABLE 6: TOTAL 2012 DECLASSIFICATIONS

| Source of Declassification | Number of Declassification |
|--|----------------------------|
| Following 2012 Agreements with SRP-represented Investors | 32 |
| Following 2011 Agreements with SRP-represented Investors | 7 |
| Following Successful 2012 Precatory Proposals | 3 |
| Total | 42 |

As Table 6 indicates, the total number of board declassifications at S&P 500 companies that took place in 2012 as a result of work by SRP and SRP-represented investors was 42. This represents one-third of the S&P 500 companies that had classified boards at the beginning of 2012. Thus, the 2012 board declassifications resulting from work by the SRP and SRP-represented investors has already brought about a major reduction in the incidence of board declassifications among S&P 500 companies.

Furthermore, as Parts V and VI discuss below, the 2012 work by the SRP and SRP-represented investors, and their ongoing work, is expected to contribute substantially to a further decrease in the number of classified boards among S&P 500 companies during 2013. This decrease is expected to result from the many successful precatory proposals discussed in Part V, as well as from the ongoing work of the SRP and SRP-represented investors discussed in Part VI.

IV. SUCCESSFUL PRECATORY PROPOSALS

Although the SRP and SRP-represented institutional investors were able to reach negotiated outcomes with 48 of the S&P 500 companies receiving proposals, in many other cases they were not able to obtain such outcomes. As a result, shareholder proposals urging board declassification have gone to a vote at the 2012 annual meetings of 40 companies. Section A describes the high level of success enjoyed by these proposals, which overwhelmingly passed with strong majority support. Section B discusses the expected consequences of these successful proposals.

A. *Successful Precatory Proposals*

Altogether, SRP-represented investors submitted shareholder proposals to 41 companies where the SRP and SRP-represented investors were not able to reach negotiated outcomes. In 40 of these 41 companies, shareholder proposals went to a vote in 2012; at one company, the 2012 annual meeting

has been postponed to 2013 and the shareholder proposal is expected to go to a vote when this annual meeting takes place.³⁴

Of the 40 proposals that have gone to a vote, 38 proposals passed (95% of the proposals that went to a vote). 2 proposals narrowly failed to pass, at Kellogg Company and PACCAR Inc., receiving support of 47.3% and 49.7% of votes cast, respectively. The 38 successful proposals represent over one-third of all precatory shareholder proposals (on any topic) that achieved majority support in 2012. The 38 successful proposals that passed also received large majorities, with average support of 82% of votes cast.

The work of the SRP and SRP-represented investors contributed substantially to the incidence of proposals that were successful in obtaining majority support. Proposals receiving majority support on which the SRP worked represented 61% of the precatory shareholder proposals by public pension funds that received majority support in 2012, and 33% of the precatory shareholder proposals by all proponents that received majority support during 2012.³⁵

Table 7 below provides a list of the companies at which the 38 shareholder proposals were successful, together with the SRP-represented investor that submitted each shareholder proposal.

³⁴ The 2012 annual meeting of CareFusion Corporation was postponed until 2013 due to a delay in the filing of the company's annual report for the fiscal year ended June 30, 2012 caused by issues relating to the company's accounting policy.

³⁵ During 2012, a total of 117 precatory shareholder proposals received majority support, including 49 proposals from public pension funds; 38 proposals from institutional investors working with the SRP (30 from public pension funds, 8 from the Nathan Cummings Foundation) received majority support.). See *SHARKREPELLENT*, <http://sharkrepellent.net> (last visited Jan. 1, 2013).

TABLE 7: SUCCESSFUL DECLASSIFICATION SHAREHOLDER PROPOSALS

| | |
|---|---|
| Airgas, Inc. (LACERA) | Lorillard, Inc. (ISBI) |
| Apache Corporation (ISBI) | Masco Corporation (ISBI) |
| Baxter International Inc. (NCF) | MEMC Electronic Materials, Inc. (NCDST) |
| Bemis Company (NCDST) | Moody's Corporation (NCF) |
| Best Buy Co, Inc. (NCF) | Netflix, Inc. (LACERA) |
| CarMax, Inc. (NCF) | People's United Financial, Inc. (NCDST) |
| Cerner Corporation (ISBI) | QEP Resources, Inc. (ISBI) |
| CF Industries Holdings, Inc. (LACERA) | Quest Diagnostics Incorporated (ISBI) |
| Chipotle Mexican Grill, Inc. (ISBI) | Red Hat, Inc. (LACERA) |
| Cognizant Technology Solutions Corporation (LACERA) | Ryder System, Inc. (NCDST) |
| DENTSPLY International Inc. (LACERA) | salesforce.com, inc. (NCF) |
| Edwards Lifesciences Corporation (ISBI) | SCANA Corporation (NCDST) |
| EQT Corporation (OPERS) | Snap-On Incorporated (NCDST) |
| F5 Networks, Inc. (ISBI) | The J. M. Smucker Company (LACERA) |
| FLIR Systems, Inc. (NCF) | US Steel Corporation (NCDST) |
| FMC Corporation (NCF) | Urban Outfitters, Inc. (ISBI) |
| Hess Corporation (NCDST) | V.F. Corporation (NCF) |
| Lexmark International, Inc. (NCDST) | Vornado Realty Trust (ISBI) |
| Limited Brands, Inc. (ISBI) | Vulcan Materials Company (ISBI) |

B. Expected Consequences

The substantial shareholder support for the 38 successful proposals at 2012 annual meetings is expected to produce significant additional movement towards annual elections. The SRP and SRP-represented investors have continued to engage with these companies since the success of the proposals at 2012 annual meetings, and, based on this engagement, we expect a substantial proportion of the companies to move towards annual elections.

At the time this Article was finalized, the boards of 17 of the companies where proposals passed had already publicly announced moves in the direction recommended by the shareholders. In 3 of these companies, where the classified board structure was established in the bylaws (which, unlike the charter, the board could have amended without shareholder approval), boards implemented the preferences expressed in the shareholder votes by amending the bylaws to eliminate the classified board.³⁶ In addition, following agreements with SRP-represented investors, 14 companies have publicly

³⁶ The 3 companies that have declassified by bylaw amendment are Bemis Company, Inc., Urban Outfitters, Inc., and V.F. Corporation.

announced that they will bring management declassification proposals at their 2013 annual meetings.³⁷

We also expect significant movement towards board declassification among the 21 companies where precatory declassification proposals passed at 2012 annual meetings but which have not yet publicly announced moves towards annual elections. Based on the subsequent engagement by the SRP and SRP-represented investors and resulting agreements entered into with a number of these companies, we expect that a substantial proportion of these 21 companies will bring management proposals to declassify pursuant to such agreements.

V. TOWARDS THE 2013 PROXY SEASON

Overall, as explained in Part IV, work by the SRP and SRP-represented investors contributed to the declassification of 42 S&P 500 companies during 2012: 32 declassifications resulting from the passage of management proposals brought pursuant to 2012 agreements, 7 additional declassifications resulting from 2011 agreements with SRP-represented investors, and 3 companies declassifying following successful precatory proposals at 2012 annual meetings. Combined, the 42 companies that declassified during 2012 represent one-third of the companies that had classified boards at the start of 2012.

In this Part, we comment on the overall impact that the work by the SRP and SRP-represented investors is expected to have on the number of classified boards among S&P 500 companies by the end of 2013. We expect to see further movement towards annual elections during 2013. First, pursuant to agreements entered into during 2012 following the submission of declassification proposals, 11 companies are expected to bring management proposals to declassify. Based on our experience with the passage of agreed-upon management proposals in the course of the 2012 proxy season, we expect a significant number of additional declassifications to result from these 11 agreed-upon management proposals.

Second, we expect additional declassifications to take place at the 38 S&P 500 companies where precatory proposals were successfully approved by shareholders in 2012. 14 of these companies have already publicly announced their plans to bring management proposals to declassify to a vote at their 2013 annual meetings, and, based on the continued engagement of the SRP and SRP-represented investors, we expect that many of the other companies will follow the expressed preference of a large majority of their

³⁷ The 14 companies that have publicly announced management declassification proposals at their 2013 annual meetings are Apache Corporation, Baxter International Inc., CF Industries Holdings, Inc., EQT Corporation, F5 Networks, Inc., FLIR Systems, Inc., FMC Corporation, Lexmark International, Inc., MEMC Electronic Materials, Inc., Moody's Corporation, People's United Financial, Inc., Quest Diagnostics Incorporated, Ryder System, Inc., and Snap-On Incorporated.

shareholders and bring management proposals to declassify for a vote during the 2013 proxy season.

Third, the SRP has submitted declassification proposals on behalf of SRP-represented investors to 13 additional S&P 500 companies (which did not receive shareholder proposals from SRP-represented investors in 2012) for a vote at their 2013 annual meetings. We expect that many of these companies will agree to bring management proposals to move towards annual elections.

Altogether, the 2012 and 2013 work of the SRP and SRP-represented investors can be expected to produce considerable further movement towards annual elections beyond the declassifications that took place during 2012. Overall, we expect that, as a result of work by the SRP and SRP-represented investors, a majority of the 126 S&P 500 companies that had classified boards at the beginning of 2012 will have declassified or agreed to move toward declassification by the end of 2013.

The declassifications that have been produced by the work of the SRP and SRP-investors, and the additional declassifications that are expected to take place, involve governance reforms that are widely supported by institutional investors as corporate governance best practice. The work of the SRP and SRP-represented investors is therefore contributing to moving a substantial number of S&P 500 companies towards arrangements that are more consistent with the preferences of institutional investors.

CONCLUSION

This Article provides an overview and analysis of the work that the Shareholder Rights Project (SRP) undertook on behalf of a number of institutional investors during 2012, the SRP's first full year of operations. During 2012, the SRP worked on behalf of SRP-represented investors on board declassification proposals submitted for a vote at the 2012 annual meetings of 89 S&P 500 companies, and this work produced substantial results.

In particular, this work produced negotiated outcomes with 48 S&P 500 companies. Following the agreements entered into by these 48 companies, 37 of the companies brought management proposals to declassify for a vote at their 2012 annual meetings, and 11 companies will do so at future annual meetings. In addition, at companies where negotiated outcomes were not reached, declassification proposals brought by SRP-represented investors received majority support at the 2012 annual meetings of 38 S&P 500 companies, with average support of 82% of votes cast.

The work by the SRP and by SRP-represented investors has already contributed to a substantial reduction in the number of board declassification among S&P 500 companies. A total of 42 S&P 500 companies declassified their boards during 2012 as a result of this work. These 42 companies represent one-third of the 126 S&P 500 companies that had classified boards at the beginning of 2012.

Furthermore, the work of the SRP and SRP-represented investors is expected to produce significant further movement toward board declassification among S&P 500 companies during 2013. We estimate that, by the end of 2013, this work will contribute to movement toward board declassification by a majority of the 126 S&P 500 companies that had classified boards at the beginning of 2012.

Beyond this contribution, the SRP's 2012 work facilitated a substantial increase in successful engagement by public pension funds and enhanced their ability to obtain governance changes favored by investors. The proposals that the SRP worked on represented over 60% of the shareholder proposals by public pension funds that received majority support in 2012, and over 30% of all precatory shareholder proposals (by all proponents) that received majority support in 2012.

APPENDIX: OUTCOMES OF ALL 2012 PROPOSALS BY COMPANIES

The table below shows the outcome or current status of the 89 S&P 500 companies where SRP-represented investors submitted shareholder proposals for a vote at annual meetings during 2012. The percentages of support shown below are of votes cast.

| | Company | Proponent | Outcome/Current Status |
|-----|--|-----------|--|
| 1. | Airgas, Inc. (ARG) | LACERA | PRECATORY PROPOSAL PASSED (64% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 2. | Akamai Technologies, Inc. (AKAM) | ISBI | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 3. | Alcoa Inc. (AA) | NCDST | Agreed-upon management declassification proposal received majority support but did not pass due to 80% supermajority requirement. |
| 4. | Allegheny Technologies Incorporated (ATI) | OPERS | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2014. |
| 5. | Amphenol Corporation (APH) | NCF | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 6. | Apache Corporation (APA) | ISBI | PRECATORY PROPOSAL PASSED (89% support); company subsequently announced MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 7. | Baxter International Inc. (BAX) | NCF | PRECATORY PROPOSAL PASSED (98% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 8. | Bemis Company, Inc. (BMS) | NCDST | Precatory proposal passed (75% support); BOARD DECLASSIFIED by subsequent board-adopted bylaw amendment. |
| 9. | Best Buy Co., Inc. (BBY) | NCF | PRECATORY PROPOSAL PASSED (97% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 10. | BlackRock, Inc. (BLK) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |

| | | | |
|-----|---|--------|---|
| 11. | C.H. Robinson Worldwide, Inc. (CHRW) | NCF | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 12. | C.R. Bard, Inc. (BCR) | OPERS | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 13. | Cabot Oil & Gas Corporation (COG) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 14. | Cameron International Corporation (CAM) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 15. | CareFusion Corporation (CFN) | LACERA | Precatory proposal to be voted on at upcoming annual meeting (which was postponed until 2013). |
| 16. | CarMax, Inc. (KMX) | NCF | PRECATORY PROPOSAL PASSED (87% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 17. | CenturyLink, Inc. (CTL) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 18. | Cerner Corporation (CERN) | ISBI | PRECATORY PROPOSAL PASSED (65% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 19. | CF Industries Holdings, Inc. (CF) | LACERA | PRECATORY PROPOSAL PASSED (93% support); company subsequently announced MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 20. | Chipotle Mexican Grill, Inc. (CMG) | ISBI | PRECATORY PROPOSAL PASSED (89% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 21. | CIGNA Corporation (CI) | OPERS | Agreed-upon management declassification proposal received majority support but did not pass due to 80% supermajority requirement; BOARD DECLASSIFIED by subsequent board-adopted bylaw amendment. |
| 22. | Citrix Systems, Inc. (CTXS) | LACERA | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |

| | | | |
|-----|--|--------|---|
| 23. | Cognizant Technology Solutions Corporation (CTSH) | LACERA | PRECATORY PROPOSAL PASSED (91% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 24. | Coventry Health Care, Inc. (CVH) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 25. | DENTSPLY International Inc. (XRAY) | LACERA | PRECATORY PROPOSAL PASSED (78% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 26. | DeVRY, Inc. (DV) | PRIM | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 27. | Edwards Lifesciences Corporation (EW) | ISBI | PRECATORY PROPOSAL PASSED (98% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 28. | Eli Lilly and Company (LLY) | NCF | Agreed-upon management declassification proposal received majority support but did not pass due to 80% supermajority requirement. |
| 29. | EQT Corporation (EQT) | OPERS | PRECATORY PROPOSAL PASSED (81% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 30. | F5 Networks, Inc. (FFIV) | ISBI | PRECATORY PROPOSAL PASSED (77% support); company subsequently announced MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 31. | Fidelity National Information Services, Inc. (FIS) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 32. | FLIR Systems, Inc. (FLIR) | NCF | PRECATORY PROPOSAL PASSED (82% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 33. | Flowserve Corporation (FLS) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 34. | FMC Corporation (FMC) | NCF | PRECATORY PROPOSAL PASSED (83% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 35. | FMC Technologies, Inc. (FTI) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |

| | | | |
|-----|--|-------|--|
| 36. | GameStop Corp. (GME) | NCF | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 37. | Helmerich & Payne (HP) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 38. | Hess Corporation (HES) | NCDST | PRECATORY PROPOSAL PASSED (78% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 39. | Hudson City Bancorp, Inc. (HCBK) | NCF | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 40. | Intuitive Surgical, Inc. (ISRG) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 41. | JDS Uniphase Corporation (JDSU) | PRIM | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 42. | Janus Capital Group Inc. (JNS) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 43. | Juniper Networks, Inc. (JNPR) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 44. | Kellogg Company (K) | NCDST | Precatory proposal did not pass; a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 45. | KLA-Tencor Corporation (KLAC) | PRIM | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 46. | L-3 Communications Holdings, Inc. (LLL) | NCDST | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 47. | Lexmark International, Inc. (LXK) | NCDST | PRECATORY PROPOSAL PASSED (93% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 48. | Limited Brands, Inc. (LTD) | ISBI | PRECATORY PROPOSAL PASSED (65% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |

| | | | |
|-----|---------------------------------------|--------|---|
| 49. | Lorillard, Inc. (LO) | ISBI | PRECATORY PROPOSAL PASSED (96% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 50. | Masco Corporation (MAS) | ISBI | PRECATORY PROPOSAL PASSED (85% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 51. | McDonald's Corporation (MCD) | LACERA | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 52. | MEMC Electronic Materials, Inc. (WFR) | NCDST | PRECATORY PROPOSAL PASSED (96% support); company subsequently announced MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 53. | MetroPCS Communications, Inc. (PCS) | LACERA | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 54. | Moody's Corporation (MCO) | NCF | PRECATORY PROPOSAL PASSED (77% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 55. | Netflix, Inc. (NFLX) | LACERA | PRECATORY PROPOSAL PASSED (75% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 56. | Newell Rubbermaid Inc. (NWL) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 57. | NRG Energy, Inc. (NRG) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 58. | O'Reilly Automotive, Inc. (ORLY) | NCF | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 59. | Owens-Illinois, Inc. (OI) | ISBI | BOARD DECLASSIFIED after agreed upon management declassification proposal passed in 2012. |
| 60. | PACCAR Inc. (PCAR) | NCDST | Precatory proposal did not pass; a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 61. | Patterson Companies, Inc. (PDCO) | PRIM | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |

| | | | |
|-----|---|--------|--|
| 62. | People’s United Financial, Inc. (PBCT) | NCDST | PRECATORY PROPOSAL PASSED (91% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 63. | Pioneer Natural Resources Company (PXD) | LACERA | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 64. | PPG Industries, Inc. (PPG) | NCDST | Agreed-upon management declassification proposal received majority support but did not pass due to 80% supermajority requirement; a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 65. | Principal Financial Group, Inc. (PFG) | ISBI | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 66. | QEP Resources, Inc. (QEP) | ISBI | PRECATORY PROPOSAL PASSED (88% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 67. | Quest Diagnostics Incorporated (DGX) | ISBI | PRECATORY PROPOSAL PASSED (94% support); company subsequently announced MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 68. | Red Hat, Inc. (RHT) | LACERA | PRECATORY PROPOSAL PASSED (95% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 69. | Roper Industries, Inc. (ROP) | LACERA | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 70. | Rowan Companies, Inc. (RDC) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 71. | Ryder System, Inc. (R) | NCDST | PRECATORY PROPOSAL PASSED (88% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 72. | salesforce.com, inc. (CRM) | NCF | PRECATORY PROPOSAL PASSED (81% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 73. | SCANA Corporation (SCG) | NCDST | PRECATORY PROPOSAL PASSED (60% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |

| | | | |
|-----|-------------------------------------|--------|--|
| 74. | Snap-On Incorporated (SNA) | NCDST | PRECATORY PROPOSAL PASSED (85% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 75. | St. Jude Medical, Inc. (STJ) | ISBI | Agreed-upon management declassification proposal received majority support but did not pass due to 80% supermajority requirement; a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 76. | Stanley Black & Decker, Inc. (SWK) | NCDST | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 77. | TECO Energy, Inc. (TE) | NCF | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 78. | Tellabs, Inc. (TLAB) | OPERS | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 79. | Teradata Corporation (TDC) | NCDST | Agreed-upon management declassification proposal received majority support but did not pass due to 80% supermajority requirement; a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 80. | The J. M. Smucker Company (SJM) | LACERA | PRECATORY PROPOSAL PASSED (77% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 81. | The Progressive Corporation (PGR) | ISBI | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 82. | The Western Union Company (WU) | NCF | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |
| 83. | United States Steel Corporation (X) | NCDST | PRECATORY PROPOSAL PASSED (82% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 84. | Unum Group (UNM) | LACERA | Agreement reached; agreed-upon MANAGEMENT DECLASSIFICATION PROPOSAL going to a vote in 2013. |
| 85. | Urban Outfitters, Inc. (URBN) | ISBI | Precatory proposal passed (60% support); BOARD DECLASSIFIED by subsequent board-adopted bylaw amendment. |

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| 86. | V. F. Corporation (VFC) | NCF | Precatory proposal passed (63% support); BOARD DECLASSIFIED by subsequent board-adopted bylaw amendment. |
| 87. | Vornado Realty Trust (VNO) | ISBI | PRECATORY PROPOSAL PASSED (86% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 88. | Vulcan Materials Company (VMC) | ISBI | PRECATORY PROPOSAL PASSED (73% support); a precatory proposal was submitted for the 2013 annual meeting and dialog continued. |
| 89. | Wyndham Worldwide Corporation (WYN) | NCF | BOARD DECLASSIFIED after agreed-upon management declassification proposal passed in 2012. |