

On Enhancing Shareholder Control: A (Dodd-) Frank Assessment of Proxy Access

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ABSTRACT

We use events related to a proxy access rule passed by the Securities and Exchange Commission in 2010 as natural experiments to study the valuation effects of changes in shareholder control. We find that valuations increase (decrease) following increases (decreases) in perceived control, especially for firms that are poorly performing, have shareholders likely to exercise control, and where acquiring a stake is relatively inexpensive. These results suggest that an increase in shareholder control from its current level would generally benefit shareholders. However, we find that the benefits of increased control are muted for firms with shareholders whose interests may deviate from value maximization.

A CENTRAL ISSUE IN CORPORATE finance is the optimal division of control between shareholders and management. In the ongoing debate over the need for better protection of shareholder rights, a key question is whether an increase in shareholder control would benefit shareholders. Theory offers little guidance, suggesting that more shareholder control could have positive or negative effects on shareholder wealth (e.g., Harris and Raviv (2010)). Thus, whether more shareholder control would benefit shareholders is ultimately an empirical question.

This is a challenging question to answer, as exogenous variation in shareholder control is difficult to identify. We attempt to answer this question by studying the market's response to events related to the evolution of the Securities and Exchange Commission's (SEC's) "proxy access" rule, which was passed in August 2010 but invalidated by a court ruling before being implemented. The proxy access rule would have increased shareholder control

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by giving dissident shareholders the right to nominate candidates for a company's board of directors directly on the company's proxy ballot. As we discuss in more detail below, this rule was not without controversy. While some argued that proxy access would provide unclear benefits and/or minimal cost savings over the current rules regarding proxy contests (e.g., Kahan and Rock (2011)), perhaps the clearest indication that market participants believe proxy access to be important is the extent to which the proposed rules generated vigorous and expensive debate and actions by parties on both sides of the issue. Given the apparent importance of proxy access, the events we study have two key features: they represent plausibly unanticipated shocks with clear implications for expected shareholder control, and they have predictably different implications for different types of firms. The latter feature leads to sharp tests and allows us to conduct rich cross-sectional analysis.

Overall, our results support the view that more shareholder control tends to benefit shareholders. Moreover, these benefits appear to be especially large in firms that are poorly performing, have shareholders in place that are likely to exercise control, or have relatively liquid stock (which would allow such shareholders to obtain shares at a low cost). We find some evidence, however, that the benefits are smaller for firms that are more likely to be targeted by investors that may have a preference for labor-friendly policies, such as union and pension funds. The study's results have important implications for regulators, corporate governance experts, and boards of directors attempting to design governance structures, as well as for researchers studying the role of shareholders in corporate governance.

We are careful in choosing which events to study. While the SEC made a number of announcements when considering the proxy access rule, discussions with current and former SEC staff indicate that, throughout its rule-making processes, there is substantial consultation and discussion with affected parties. This makes it difficult to determine whether an official announcement by the SEC about the proxy access rule would have caused investors to raise or lower their expectations as to the degree of shareholder control the rule would ultimately grant. Thus, rather than study such announcements, we focus on two events related to the evolution of the Dodd-Frank Wall Street Reform and Consumer Protection Act that affected expectations about characteristics of the proxy access rule that the SEC ultimately passed but are not likely to have been anticipated by either investors or the SEC itself. In addition, we study two other SEC events that appear to have contained surprising details about the proxy access rule.

Our first event is the June 16, 2010 announcement of a proposal by Senator Christopher Dodd to amend the bill that would become the Dodd-Frank Act. This proposal mandated that the SEC require an investor or group of investors to own at least 5% of a firm's shares before gaining access to the firm's proxy. At the time, the SEC had proposed a tiered system, with minimum holdings of 1%, 3%, and 5% for firms with market capitalization greater than \$700 million, between \$75 and \$700 million, and less than \$75 million, respectively. We refer to these as large, medium, and small firms for

simplicity. Compared to the SEC's proposed rule, Dodd's proposal would have substantially raised the hurdle to gaining proxy access for medium and large firms, but not for small firms. The second event we study is the withdrawal of this proposal on June 24, 2010 in last-minute negotiations over the final bill, which presumably led to a restoration of the SEC's proposed thresholds as the likely outcome regarding proxy access. Based on an extensive search of news articles, neither of these events appears to have been anticipated.¹

Our third event (which occurred last, chronologically) offers similar predictions in terms of cross-sectional reactions that differ across firm performance and size. On October 4, 2010, the SEC delayed implementation of the proxy access rule in response to a petition filed by the Business Roundtable (BRT) with the D.C. Circuit Court of Appeals challenging the legality of the rule. As the final rule exempted firms with market capitalization below \$75 million, this delay would have had a much smaller effect on the anticipated level of shareholder control in these firms. While this event was important, as argued by Becker, Bergstresser, and Subramanian (2013) in a contemporaneous paper, it is possible that it may have been partially anticipated, as the BRT filed its petition just five days earlier. Nonetheless, our results hold both with and without this event.

We find negative (positive) stock returns associated with the first and third (second) events for medium and large firms, which would have been most affected by these events, but not for small firms, which would have been less affected. Comparing the event returns of medium/large firms and those of small firms allows us to filter out the effects of aggregate market movements on the event dates. We find that the differences in event returns between medium/large and small firms are large and statistically significant. In multivariate analysis, we find that the market response to the events is stronger for firms that have low recent return on assets, sales growth, and stock returns. As one would expect, this suggests that giving shareholders more control is more beneficial in poorly performing firms, where shareholder intervention is likely to be more valuable. These differences in response across performance measures hold only for medium and large firms, and not for small firms.

We next examine how the presence of shareholders likely to utilize proxy access affects firms' stock price responses by focusing on the presence of such investors at the time of the events (as every version of the proxy access rule had a minimum holding-period requirement for gaining proxy access). We first focus on the presence of known activist investors, both because they already have exhibited a willingness to intervene and because, unlike other investors, they already have access to networks of qualified director candidates through

¹Regarding the Dodd proposal, one observer noted, "The sucker was like a bolt from the heavens. It came out of nowhere" ("Frank Battling White House On Proxy Access," <http://www.huffingtonpost.com/2010/06/17/white-house-guts-reform-t.n.615952.html>). The move resulted in outrage on the part of investor groups, with suggestions that the revised threshold would "render this important shareowner right useless," and lobbying of White House representatives in an attempt to move away from the 5% constraint ("Group Targets Obama Adviser Jarrett On Proxy Access," Dow Jones Newswires, 06-17-101815ET).

their past activism. To identify activist investors, we use sharkrepellent.net's "SharkWatch50" list of known activists. We are able to identify the firms owned by 41 of these 50 investors using the SEC's 13(f) institutional investor quarterly ownership data.² We also use alternative measures of the presence of investors likely to use proxy access, including the presence of an activist hedge fund (as classified by Brav et al. (2008)) and the number of institutional shareholders that own large blocks (greater than 1% of outstanding shares).³

We find that the market response to these three events is stronger for firms that have a known activist as a shareholder, controlling for a number of firm characteristics. The magnitude of the response also increases with the number of large blockholders. These results further support the view that enhanced shareholder control tends to benefit shareholders. Moreover, the presence of known activists has a bigger effect on poorly performing large (though not medium) firms. This suggests that, at least for larger firms, the additional control that proxy access would provide is especially valuable where there is a combination of poor performance and the presence of a shareholder likely to use proxy access. We also find that returns increase with stock liquidity, consistent with the view that shareholder control is more valuable for firms in which an activist investor can accumulate a large stake at lower cost. This result supports the argument of Fos (2011) that the threat of future activism has a disciplining effect on management. It does not, however, support the argument that liquidity makes governance through exit of large shareholders more effective by ensuring that such exit has a large negative price impact (Admati and Pfleiderer (2009), Edmans (2009), Edmans and Manso (2011), Bharath, Jayaraman, and Nagar (2013)), though we do not test this "Wall Street Walk" hypothesis directly. All of these results hold for medium and large firms, but not for small firms.

In contrast to the view that enhanced shareholder control is beneficial, it has been suggested that activism by investors that might pressure firms to adopt labor-friendly policies, such as unions and public pension funds, could be associated with a decrease in shareholder value. We explore this possibility and find that firms with greater ownership by such investors, or that were previously targeted by union and public pension funds, experienced weaker stock price

² These 41 investors collectively undertook 75% of all proxy contest activity involving institutional investors between 1999 and 2010.

³ For examples of previous work on the role of institutional investors as monitors, see Hartzell and Starks (2003), Almazan, Hartzell, and Starks (2005), Gaspar, Massa, and Matos (2005), and Chen, Harford, and Li (2007). Many other papers examine the value implications of ownership structure including large shareholders or blocks—see Bhagat and Jeffries (1991), Huddart (1993), Bethel, Liebeskind, and Opler (1998), Song and Szewczyk (2003), Bhagat, Black, and Blair (2004), Brav et al. (2008), Klein and Zur (2009), and Becht et al. (2009). Several related papers analyze a variety of tradeoffs associated with exerting control and monitoring. These include Coffee (1991), Holmström and Tirole (1993), Bhide (1993, 1994), Admati, Pfleiderer, and Zechner (1994), Burkart, Gromb, and Panunzi (1997), Bolton and von Thadden (1998), Kahn and Winton (1998), Maug (1998), and Noe (2002). Cohn and Rajan (2013) examine the effect of potential activist investors on managerial incentives. More recently, Matsusaka and Ozbas (2012) model related issues and consider implications for proxy access.

responses to the first three events. This finding suggests that allowing certain types of shareholders greater control might actually detract from shareholder value.

We conclude our empirical analysis by considering a fourth event, the SEC's passage of the final proxy access rule on August 24, 2010. While passage of the rule was expected on this date, news reports on August 24 suggested either that the minimum holding period for proxy access would be two years or that there was uncertainty about whether it would be two or three years.⁴ In either case, uncertainty was resolved in favor of a longer holding period. The implications of this decision should have been greatest for firms in which known activist investors would have held shares for more than two but less than three years as of the relevant date for submitting proxy nominations. Consistent with greater shareholder control being valuable, we find that the increased holding period had a negative effect for these firms relative to others.

Our paper contributes to the discussion about the virtues of enhanced shareholder control and the role of regulation in increasing this control. Jensen (1993) and Bebchuk (2003, 2005), among others, argue that many managers are entrenched and therefore regulation increasing direct shareholder control would benefit shareholders. Others argue, however, that regulating shareholder control is unnecessary because such control can be codified in corporate charters if desirable, and because regulation may harm shareholders if existing charters already implement the optimal allocation of control (e.g., Lipton (2002), Bainbridge (2006), Strine (2006), Stout (2007)). Theory also suggests that less managerial discretion can weaken managers' incentives to exert effort (e.g., Burkart, Gromb, and Panunzi (1997), Almazan and Suarez (2003)) and distort other managerial decisions (Adams and Ferreira (2007), Cohn and Rajan (2013)).

A small number of recent and contemporaneous papers also examine announcement returns associated with events relating to proxy access. Larcker, Ormazabal, and Taylor (2011) find significantly positive market returns around four events in 2007 and 2009 that they interpret as decreasing the likelihood of binding proxy access.⁵ However, one of these events involved an SEC ruling, and, as discussed, the tendency of the SEC to discuss policy with affected parties prior to implementation makes interpreting these types of events difficult.⁶ The other three events they consider relate to the passage of a Delaware state law codifying existing case law that allowed companies to voluntarily adopt proxy access. Larcker, Ormazabal, and Taylor (2011) argue that this represented an effort to preempt federal law and therefore decreased (rather than increased) the likelihood of a binding proxy access rule. However, even if one accepts the preemptive-action interpretation, these events could have

⁴ See, for example, Joann S. Lublin, "Firms lose clout on board picks under new U.S. rule on proxies," *Wall Street Journal (Asia Edition)*, August 24, 2010 and Rachele Younglai, "US SEC hashes out shareholder board nomination rules," Reuters News Service, August 23, 2010.

⁵ They examine 10 events that they interpret as either increasing or decreasing the likelihood of proxy access. They find statistically insignificant market returns around the other six events.

⁶ This particular ruling merely clarified existing rules, making its implications even less clear.

signaled that federal action on proxy access was on the horizon, and therefore increased rather than decreased expectations about the likelihood of binding proxy access.⁷ We argue that our events allow for clearer interpretation, and that the size thresholds (for three events) and holding-period change (for the fourth event) yield sharper tests.⁸

In a contemporaneous study, Becker, Bergstresser, and Subramanian (2013) examine returns on October 4, 2010, when the SEC announced that it was delaying implementation of proxy access. They find that announcement returns surrounding this event are negatively related to the fraction of a firm's shares held by institutional investors and to the presence of investors identified as "activist" using the measure of Greenwood and Schor (2009).⁹ Thus, their results are directionally consistent with ours. In addition to examining more and (we argue) cleaner events, our study also presents previously undocumented facts about activist investor ownership, and we show that the value of proxy access depends on recent firm performance, stock liquidity, and the presence of labor-friendly shareholders.¹⁰

The remainder of the study is organized as follows. Section I discusses the SEC's proxy access rule. In Section II, we describe our data. Section III presents our results, and Section IV concludes.

I. Proxy Access

The process by which shareholders vote on a firm's directors (and other issues) at annual meetings is known as proxy voting. Most shareholders do not attend meetings to vote in person, but rather fill out proxy cards, which function as ballots containing the names of director candidates. The rules governing proxy voting have long imposed substantial barriers to activist (or dissident) shareholders seeking board representation (see Jensen (1993) and Pound (1988)). The greatest of these impediments is access to the firm's proxy ballot. Under current rules, management has the sole right to place director nominees on a company's own proxy ballot, which is distributed at the company's expense. A dissident shareholder wishing to nominate alternative directors must

⁷ Akyol, Lim, and Verwijmeren (2012) also examine events related to proxy access, including some of the same events examined by Larcker, Ormazabal, and Taylor (2011), and reach similar conclusions. The same questions surrounding interpretation of these events apply to their paper as well.

⁸ We cannot reject the possibility that the differences between our results and those of Larcker, Ormazabal, and Taylor (2011) are driven by changes over time in the market's beliefs about the value of shareholder control. One possible trigger of such a change is the financial crisis. However, we exclude from our analysis financial firms, where concerns about mismanagement were likely to have been strongest after the crisis. Moreover, our events take place in 2010, after the worst part of the crisis period, and complementary results regarding subsequent events in contemporaneous working papers (Becker, Bergstresser, and Subramanian (2013) and Jochem (2012)) suggest that our characterization of the perceived value of proxy access persisted at least until mid-2011.

⁹ Cai and Walking (2010) use a similar approach to assess the effects of "say on pay."

¹⁰ Jochem (2012) focuses on the U.S. Court of Appeals decision to overturn proxy access and finds results consistent with ours and those of Becker, Bergstresser, and Subramanian (2013).

typically produce and distribute a separate proxy ballot to shareholders at his own expense. A dissident shareholder distributing such a ballot initiates what is known as a proxy contest, with management and the dissident each soliciting shareholder votes for their candidates.¹¹

The SEC proposed proxy access rules in 2003 and again in 2007 that would require firms to allow dissident shareholders to place nominees directly on company proxy ballots. These efforts were shelved on both occasions in response to vocal opposition from business groups. The SEC again proposed a proxy access rule in February 2009. With a three-to-two Democratic majority of SEC commissioners, and an environment conducive to regulatory reform in the wake of the financial crisis, the SEC appeared much more intent on adopting a proxy access rule than on previous occasions.

The SEC ultimately passed its proxy access rule on August 24, 2010. The rule required that a shareholder, or group of shareholders collectively, have held at least 3% of a firm's stock for at least three years before being able to gain access to the firm's proxy ballot. It would have allowed a firm's shareholders to nominate up to 25% of the directors up for election in a given year (or one director if fewer than four seats were up for election) directly on the firm's proxy ballot.

Shareholder groups including the Council of Institutional Investors hailed the SEC's proxy access rule as "a crucial mechanism that gives shareowners a meaningful voice in corporate board elections." The Council further suggested that proxy access would "invigorate board elections, enhance board oversight, and ensure that boards are responsive to shareholders." In contrast, business groups including the BRT and U.S. Chamber of Commerce (USCOC) decried the rule. Larry Burton, Executive Director of the BRT, contended that, "This unprecedented intrusion into areas historically reserved for the states would handcuff directors and boards, shut out the vast majority of retail shareholders and exacerbate the short-term focus that is now seen as one of the root causes of the financial crisis" (U.S. Chamber of Commerce press release, September 29, 2010).¹²

¹¹ Dissidents may also wage a proxy contest and solicit votes for issues unrelated to director elections. For research on proxy contests, see Pound (1988), DeAngelo and DeAngelo (1989), Ikenberry and Lakonishok (1993), Mulherin and Poulsen (1998), Faleye (2004), Gillan and Starks (2007), and Fos (2011). For studies on voting, see Karpoff, Malatesta, and Walkling (1996), Gillan and Starks (2000), Del Guercio, Seery, and Woidtke (2008), Cai, Garner, and Walkling (2009), Fischer et al. (2009), Bradley et al. (2010), and Ertimur, Ferri, and Stubben (2010).

¹² *Directors' and Boards* magazine concludes in a discussion with Edward A. Kangas, nonexecutive chairman of Tenet Healthcare and board member at United Technologies and Intuit, that

If a board is doing a good job and CEO compensation is truly aligned with the interests of shareholders there is little to worry about, even with the new rule. On the other hand, if a company is doing a poor job and is being unresponsive to shareholders, and proxy advisors such as Institutional Shareholder Services (ISS) start to recommend withhold votes, there will be some shareholders who will say, "We're not happy with that and they'll want to make a change. I'm okay with that, too," Kangas says, "and think sometimes it will improve governance" (*Directors and Boards*, October 10, 2010).

The BRT and USCOC responded to the passage of the SEC's proxy access rule by filing a lawsuit challenging its legality on September 29, 2010. In response, the SEC delayed implementation of the rule on October 4, 2010. In July 2011, the U.S. Court of Appeals invalidated the SEC's proxy access rule. Despite the rule being overturned, the events we examine still provide a unique experimental setting in which to study the value effects of shareholder control.

It is worth noting that proxy access as specified in the rule differs from a traditional proxy contest. Shareholders would have been limited in the number of directors that they could seek to replace in a given year using proxy access. Moreover, the rule would have explicitly prohibited shareholders from using proxy access to attempt a change in control. Thus, proxy access probably would not have been a useful alternative to a traditional proxy contest for a potential acquirer attempting to complete a hostile takeover by replacing the board.

These limitations would not have been an impediment for many activist shareholders, however, as being able to replace just one or two directors with dissident nominees can have a substantial impact on firm policies. For example, H.J. Heinz Co. restructured dramatically after Nelson Peltz's Trian Group succeeded in winning two board seats (out of five sought) in a highly publicized proxy contest in 2006.¹³

One limitation of proxy access that might have hindered its use by activists in some cases was the requirement that they have held a sufficiently large number of shares for a minimum holding period before using it. An activist not currently holding shares would not be able to purchase shares and quickly intervene using proxy access, for example, if a company experienced a sudden decline in performance or change in policies. However, as we show in Section III, activist investors tend to hold stakes in many companies at any point in time. Indeed, a majority of companies have some form of activist as a shareholder. We argue that these are the cases in which proxy access would induce the biggest change. Activists already holding a firm's stock would be able to seek to replace directors—or at least use the threat of this action to induce change—without needing to launch a full proxy contest. In this sense, we would expect campaigns based on proxy access to differ from traditional proxy contests, where the initiating activist typically acquires a stake only shortly before launching the contest (see Section III.B.1).

The ability to use a company's own proxy ballot rather than sending out a separate ballot would have eliminated at least some of the costs associated with a proxy contest, though the magnitude of these savings is unclear. Gantchev (2013) estimates the average total cost of a full proxy contest campaign to be \$10.71 million, with \$5.94 million of this representing expenditures in the proxy contest itself. Kahan and Rock (2011), however, argue that the savings from proxy access would be small, noting that dissidents may still need to campaign and the costs of distributing proxy ballots has declined over time. However, in a letter to the SEC supporting adoption of proxy access, Ralph Whitworth

¹³ See <http://www.marketwatch.com/story/trians-peltz-weinstein-win-seats-on-heinzs-board>.

of Relational Investors LLC, an activist hedge fund, states that “Although the credible ability to initiate a proxy contest under the existing rules has been effective for Relational in many cases, in others costs and procedural burdens resulted in our electing not to use the process even though we were convinced that improved board composition would create value for all shareholders. In the latter set of cases, the projects are often abandoned or not taken in the first instance” (see <http://www.sec.gov/comments/s7-10-09/s71009-185.pdf>).

In addition to whatever cost savings it would have afforded, proxy access might have been more appealing to activist shareholders than traditional proxy contests because of the imprimatur of having the dissidents’ nominees directly on the company’s own proxy ballot. In particular, retail investors and mutual funds may be more inclined to vote in favor of dissident nominees than they would be if doing so required filling out separate proxy ballots. Moreover, as Fos (2011) argues, even the threat of more shareholder activism can potentially create substantial value by pressuring firms to make policy changes.

Ultimately, the value of proxy access as a means of giving shareholders more direct control is an empirical question. However, the money and effort that institutional investor groups and business groups expended fighting for or against the proposed rule suggests that proxy access would have substantively changed the way that firms elect directors, for better or for worse. In turn, these changes would have altered how activist investors communicate with management, with the threat of proxy access in the background as a new tool at their disposal. The uproar over the proxy access rule is inconsistent with the argument that proxy access is unlikely to be important (e.g., because the costs of proxy contests are already low or the benefits of electing a small number of directors are small).

II. Data

We begin by collecting stock return data from CRSP for all stocks of nonfinancial firms with share codes 10, 11, 12, 30, and 31 for each of our events. The first event—Senator Dodd’s proposal of a 5% threshold in the Dodd-Frank bill—occurred late in the afternoon on June 16, 2010. Because this was close to the end of the trading day on June 16, to be conservative and to account for the possibility of information leakage we calculate event returns as the combined two-day return on June 16 and 17. The second event—the withdrawal of Senator Dodd’s proposal—came late in the evening on June 24, 2010. We therefore use returns on June 25 as the second event’s returns. The third event is the October 4, 2010 decision by the SEC to delay the proxy access rule due to the BRT lawsuit. The last event that we consider is the SEC’s passage of the proxy access rule on the evening of August 24, 2010 (for which we use returns for August 25, 2010). We focus on this event separately as the unexpected inclusion of a three-year holding requirement would have primarily affected a specific subset of firms, namely, those with the presence of an activist investor willing to use proxy access in the coming proxy season but that would have just missed the three-year threshold. While we refer to this as the fourth event because we

study it last, we note that it occurred prior to the third event chronologically. We also use CRSP return data to compute the six-month buy-and-hold returns ending at various points in 2010. We Winsorize all returns at the 1st and 99th percentiles to reduce the influence of possible outliers.

Next, we compute a number of firm-level financial variables as of fiscal year-end 2009 (unless otherwise noted) from Compustat for subsequent analysis. We define *ROA* as earnings before interest, taxes, and depreciation (EBITDA) divided by lagged total assets; *SalesGrowth* as the percent change in sales from 2008 to 2009; *MarketCap* as the product of stock price and shares outstanding; *Tobin'sQ* as the sum of *MarketCap* and long-term and current debt, divided by the sum of book value of equity and long-term and current debt; *BookLeverage* as long-term and current debt, divided by the sum of book equity and long-term and current debt; *DividendYield* as total common and preferred dividends, divided by the lagged sum of *MarketCap* and preferred stock outstanding; *R&D* as research and development expense (set to zero if missing), divided by lagged assets; *SegmentHHI* as the Herfindahl–Hirschman Index for sales by operating segment within the firm as calculated from the Compustat Segments data; and *FirmTurnover* as the mean daily trading volume divided by shares outstanding for June 1, 2009 through May 31, 2010. We Winsorize all of these variables at the 1st and 99th percentiles. We also capture a firm's industry as measured by its three-digit SIC code.

We obtain quarterly information about the holdings of each institutional investor in every U.S.-traded firm from filings as reported by the LionShares 13(f) holdings database. For each stock-quarter, we compute the percentage of shares held by institutional investors (*InstHolding%*). Our primary measure of the likelihood that existing shareholders would exploit proxy access if passed is the presence of a known activist investor. We therefore identify all investors that are members of sharkrepellent.net's SharkWatch50 list of known activist investors. According to sharkrepellent.net, "The SharkWatch50 is a compilation of 50 significant activist investors. SharkWatch50 is based upon a number of factors, including the number of publicly disclosed activism campaigns and the ability to effect change at targeted companies." We are able to identify 41 members of the SharkWatch50 in the holdings data.¹⁴ Table A.I lists these 41 institutions, and also reports the number of proxy contests in which each of these institutions has been involved since 1999. Of the 41 members of the SharkWatch50 in our sample, 32 have been involved in at least two proxy contests since 1999, and nine have been involved in at least 10 contests. We construct an indicator variable *SharkWatch50Firm* that is equal to one if a firm has a SharkWatch50 investor as a shareholder at quarter end and is subject to the proxy access rule (share codes 10 and 11), and zero otherwise.¹⁵

¹⁴ Not every SharkWatch50 member is in our data because some of these investors do not file a 13(f).

¹⁵ One issue with this measure is that the vast majority of large firms have a SharkWatch50 investor as a shareholder. To gain more variation in the likelihood that an investor would exploit proxy access for these large firms, we combine firms incorporated outside of the United States

We merge these various data together and remove all observations with missing data. This leaves us with a base sample of 3,102 firms. Table I presents summary statistics for the firms in our sample (Panel A) as well as for those held by SharkWatch50 members (Panel B). As a comparison of the two panels shows, activist investors in our sample tend to hold the stocks of firms that differ from firms in our full sample on many dimensions. Specifically, they hold larger, more profitable firms with higher Tobin's Q, higher book leverage, more R&D spending, fewer segments, and more analyst coverage than the average firm in the sample. We control for each of these differences in our regression analyses.

Panel C of Table I reports mean and median values of several variables for all institutional investors in our sample and for those in the SharkWatch50. On average, activist investors hold more concentrated positions as compared to other institutions, based on the number of stocks held or a Herfindahl index of the concentration of their holdings. While the mean portfolio size is smaller for the activists compared with all institutions as a whole, the median portfolio size is somewhat larger. The SharkWatch50 investors also appear to have more turnover in their positions relative to institutions as a whole. The sharkrepellent.net data also include a count of the number of proxy contests each institutional investor has initiated. As the last row of Panel C shows, there are striking differences in the number of proxy contests initiated by the small number of investors that we identify as tending toward activism compared to all institutional investors. As one can see from the means and the sample size, the 41 institutions in our sample identified as part of the SharkWatch50 account for about three-quarters of the proxy contests in our sample, with the remaining one-quarter coming from the other 3,109 institutions.

We also use two alternative measures of the presence of investors likely to use proxy access if it were to become available. The first, *ActivistHFBlock*, takes a value of one if the firm has activist hedge funds present, as classified by Brav et al. (2008), that collectively own at least 1% of the firm's stock.¹⁶ The second alternative measure is the log of the number of shareholders holding at least 1% of the firm's stock, $\ln(\#blocks)$, as used by Larcker, Ormazabal, and Taylor (2011). The three measures of likely proxy access use, *SharkWatch50Firm*, *ActivistHFBlock*, and $\ln(\#blocks)$, represent a tradeoff of precision versus breadth. On the one hand, *SharkWatch50Firm* captures the presence of investors known to be currently engaging in aggressive activism and is therefore very precise but not very broad. On the other hand, $\ln(\#blocks)$ captures the presence of all potentially active blockholders but also potentially passive blockholders that are unlikely to engage in activism, and it is very broad but not very precise. The measure *ActivismHFBlock* represents an intermediate case, reflecting the presence of an investor that has demonstrated at least

(share code 12) and firms with ADRs (share codes 30 and 31) with firms that lack a SharkWatch50 investor in the *SharkWatch50Firm* = 0 category. These firms would not have been subject to proxy access, and therefore represent extreme cases in which a shareholder would not be able to exploit proxy access at all.

¹⁶ We thank Alon Brav for sharing the data on activist hedge funds with us.

Table I
Summary Statistics

This table presents sample summary statistics. Panel A presents summary statistics for all firms in our sample. All variables are calculated as of fiscal year-end 2009 unless otherwise noted. *ROA* is EBITDA divided by lagged total assets. *SalesGrowth* is the percent change in sales from 2008 to 2009. *Lag6moReturn* is the six-month buy-and-hold stock return ending June 15, 2010. *MarketCap* is the product of stock price and shares outstanding. *Tobin'sQ* is the sum of *MarketCap* and long-term and current debt, divided by the sum of book value of equity and long-term and current debt. *BookLeverage* is long-term and current debt, divided by the sum of book equity and long-term and current debt. *DividendYield* is total common and preferred dividends, divided by the lagged sum of *MarketCap* and preferred stock outstanding. *R&D* is research and development expense, divided by lagged assets; *R&D* is set to zero if it is missing. *SegmentHHI* is the Herfindahl–Hirschman index for sales by operating segment within the firm. *InstHolding%* is the percent of shares outstanding held by institutional investors. *AnalystCoverage* is the number of stock analysts issuing earnings forecasts for a firm in 2009. *FirmTurnover* is the mean of daily trading volume divided by shares outstanding for June 1, 2009 through May 31, 2010. Panel B presents the same statistics for the subset of firms for which *SharkWatch50Firm* = 1 (the firm has an institutional SharkWatch50 investor as a shareholder as of March 31, 2010 and is incorporated in the United States). Statistical significance of differences in means between firms held by SharkWatch50 investors and firms not held by SharkWatch50 investors is indicated by ***, **, and *, which represent significance (two-tailed *t*-test) at 1%, 5%, and 10% levels, respectively. Panel C presents means [medians] of variables related to the holdings of all institutions (first column) and SharkWatch50 institutions (second column) in our sample.

Panel A: Summary Statistics for All Firms					
	Mean	Std. Dev.	25 th Percentile	Median	75 th Percentile
ROA	0.072	0.203	0.026	0.099	0.161
SalesGrowth	-0.014	0.428	-0.203	-0.059	0.068
Lag6moReturn	11.945	38.240	-8.198	6.469	24.319
MarketCap (\$Billions)	3.905	11.691	0.114	0.455	1.918
Tobin'sQ	5.772	8.429	1.040	2.762	6.796
BookLeverage	0.250	0.254	0.003	0.196	0.413
DividendYield	0.011	0.044	0.000	0.000	0.003
R&D	0.053	0.108	0.000	0.003	0.060
SegmentHHI	0.320	0.176	0.210	0.333	0.333
InstHolding%	0.555	0.325	0.253	0.611	0.850
AnalystCoverage	3.478	5.849	0.000	0.000	5.000
FirmTurnover	0.010	0.010	0.004	0.007	0.013
Panel B: Summary Statistics for Firms Owned by SharkWatch50 Investors					
	Mean	Std. Dev.	25 th Percentile	Median	75 th Percentile
ROA	0.101***	0.171	0.057	0.114	0.172
SalesGrowth	-0.027*	0.391	-0.192	-0.058	0.049
Lag6moReturn	12.315	32.710	-5.051	8.445	24.091
MarketCap (\$Billions)	5.631***	13.887	0.345	1.016	3.500
Tobin'sQ	6.888***	9.079	1.482	3.737	8.726
BookLeverage	0.279***	0.258	0.017	0.248	0.438
DividendYield	0.011	0.042	0.000	0.000	0.004
R&D	0.049**	0.098	0.000	0.005	0.056
SegmentHHI	0.301***	0.166	0.187	0.333	0.333
InstHolding%	0.733***	0.235	0.610	0.802	0.914
AnalystCoverage	4.880***	6.819	0.000	1.000	8.000
FirmTurnover	0.011	0.013	0.003	0.007	0.015

(Continued)

Table I—Continued

Panel C: Summary Statistics for All Institutions and SharkWatch50 Investors		
Number	All Institutions (3,150)	SharkWatch50 (41)
# Stocks held	252 [93]	150 [41]
Herfindahl (holdings)	0.067 [0.031]	0.126 [0.079]
Portfolio size	\$4.37B [\$0.39B]	\$3.31B [\$0.74B]
Avg. holding value	\$23.72M [\$4.63M]	\$72.83M [\$20.10M]
Avg. fraction shares outstanding	0.0049 [0.0002]	0.0128 [0.0038]
Turnover (quarterly) %	0.21 [0.12]	0.27 [0.19]
# Proxy contests since 1999	0.13 [0.00]	7.44 [5.00]

some activism in the past. Our objective is to identify cases in which investors that are likely to use proxy access are present. We therefore place more weight on precision than breadth in our analysis. As a result, we primarily focus on the *SharkWatch50Firm* measure, and to a lesser degree on *ActivistHFBlock*.

III. Results

We begin by analyzing the event returns of firms of different size, and their relation to firm characteristics. We then document patterns of ownership and other characteristics of firms with activist investors. Next, we examine cross-sectional variation in firms' stock price reactions to the events discussed above to assess the market's perception of whether putting more power in the hands of activist institutional investors increases the value of the firms in which they invest.

Before turning to this analysis, we briefly discuss how we test the statistical significance of event returns and coefficients from cross-sectional event returns regressions. Our analysis generally consists of examining the cross-sectional variation in event returns. Because returns are likely to be correlated cross-sectionally, we use the time series to compute t -statistics and assess statistical significance, rather than rely on conventional t -statistics. In doing so, we are effectively asking whether a particular estimate is "large" relative to its distribution over nonevent days.

More specifically, we use daily returns from CRSP over the period April 1, 2009 through March 31, 2010 as our "nonevent period." To test the statistical significance of a given function of event returns for a particular group of stocks, we calculate the time-series mean and standard deviation of the same measure for the same group over the nonevent period. We then calculate a t -statistic by subtracting the mean return measure over the nonevent period from the event return measure, and dividing the resulting difference by the standard deviation of the return over the nonevent period. In cases where we combine returns over various event dates for a group, we use combined returns constructed for nonevent dates with the same distance between dates to compute t -statistics. Similarly, for our regression-based results, we estimate the same regressions

over comparable time windows during nonevent periods. We then calculate a particular t -statistic by subtracting the time-series mean of the coefficient over the nonevent period from the event-date coefficient, and dividing the resulting difference by the time-series standard deviation of the coefficient over the nonevent period. In most cases, the t -statistics we compute from the time series are smaller than conventional t -statistics.

A. Firm Characteristics and Stock Price Responses to Proxy Access Events

A potential concern with our empirical strategy is that stock prices may have changed for reasons unrelated to the proxy access-related news. Given this concern, and because we have only four events, we cannot learn much about the impact of increased shareholder control by simply examining average returns on these dates. Instead, our identification strategy is to use a wide range of cross-sectional variation, including features of the proposals, firm performance, and ownership.

First, we exploit the firm-size thresholds that dictate which firms may have been impacted by our three main events. Recall that our first event is Senator Dodd's proposal mandating the SEC to require that an investor own 5% of a firm for at least two years before being eligible for proxy access, compared to the standing proposal by the SEC that had smaller ownership requirements for large and medium firms (1% and 3%, respectively).¹⁷ Thus, while Senator Dodd's proposal may have negatively affected investors' beliefs about the degree of shareholder control that proxy access would provide for all firms, this effect should be stronger for medium and large firms than for small firms. By the same reasoning, if the withdrawal of Senator Dodd's proposal—our second event—returned beliefs to the natural default of the SEC's most recent proposal, then its positive impact on expectations about shareholder control should also be stronger for medium and large firms than for small firms. Similarly, the SEC's announcement that it was delaying implementation of proxy access as a result of the BRT's lawsuit should be more informative for large and medium firms than for small firms.

We exploit these natural size thresholds by estimating kernel regressions of returns for each of these three events on market capitalization. Figures 1 through 4 present the results of these kernel regressions. To focus on the variation in returns for market capitalization around the \$75 million threshold, in this analysis we focus on firms with market capitalization less than \$500 million. The kernel regressions are estimated using the Epanechnikov kernel and (somewhat arbitrarily) a bandwidth of \$100 million. The shaded areas represent 95% confidence intervals.

It is worth noting that we should not expect to see a "bright line" or discontinuity around the \$75 million size threshold for two reasons. First, we

¹⁷ As discussed earlier, large and medium firms are defined by the proposal as those with market capitalization greater than \$700 million, and those with market capitalization between \$75 million and \$700 million, respectively.

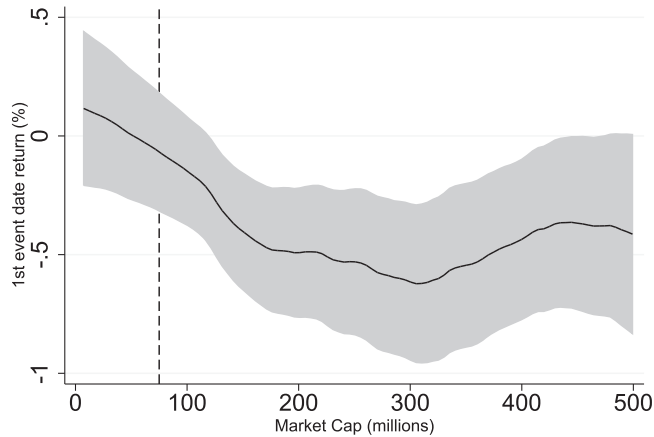


Figure 1. Kernel regression of first event date returns on market capitalization. This figure shows the results of a kernel regression using firm-level data in which the dependent variable (y-axis) is the June 16, 2010 event return and the explanatory variable (x-axis) is market capitalization in \$millions as of fiscal year-end 2009. This kernel regression is estimated using the Epanechnikov kernel with a bandwidth of \$100 million. The shaded area shows 95% confidence intervals around the regression line.

are examining firm size as of the event date rather than the eventual date of rule implementation (the date that was unknown, but on which firm size would immediately matter), and a firm close to the cutoff might have moved from one side to the other by growing or shrinking during this window. Second, presumably proxy access would have applied for the foreseeable future had it been implemented, and its effects on value would have reflected expected usage not only in the first year, but also in subsequent years. Many firms would have moved from one group to another by growing or shrinking over time after implementation.

Figure 1 shows that returns for the first event decrease with market capitalization around the \$75 million threshold, before more or less leveling off at a market capitalization of around \$200 million. This is consistent with stock returns decreasing in the likelihood that a firm's market capitalization will be above the \$75 million threshold in the foreseeable future for firms that are near the threshold. Figure 2 shows the opposite pattern. Returns on the second event increase with market capitalization around the \$75 million threshold, before more or less leveling off at a market capitalization of around \$250 million. Taken together, these figures suggest that the higher hurdles to proxy access imposed by Senator Dodd's proposal had a negative impact on perceived firm value, and that the withdrawal of this proposal reversed this effect. Figure 3 shows a pattern for the third event similar to that in Figure 1, suggesting that the delay and potential loss of proxy access resulting from the SEC's response to the BRT lawsuit had a negative impact on perceived firm value.

To incorporate these returns into a single measure, we calculate a "combined" return, defined as the return associated with the second event (which was

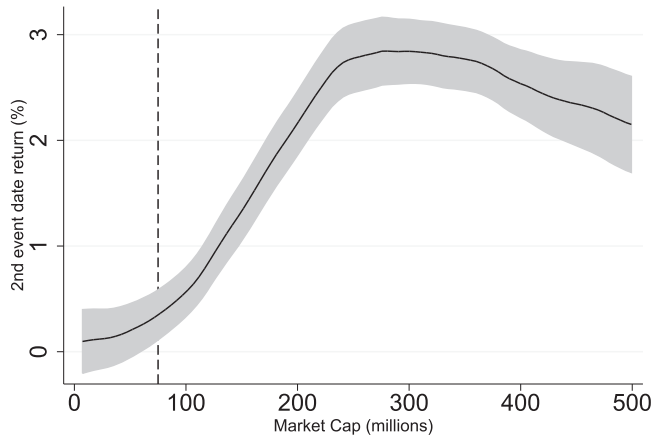


Figure 2. Kernel regression of second event date returns on market capitalization. This figure shows the results of a kernel regression using firm-level data in which the dependent variable (y-axis) is the June 24, 2010 event return and the explanatory variable (x-axis) is market capitalization in \$millions as of fiscal year-end 2009. This kernel regression is estimated using the Epanechnikov kernel with a bandwidth of \$100 million. The shaded area shows 95% confidence intervals around the regression line.

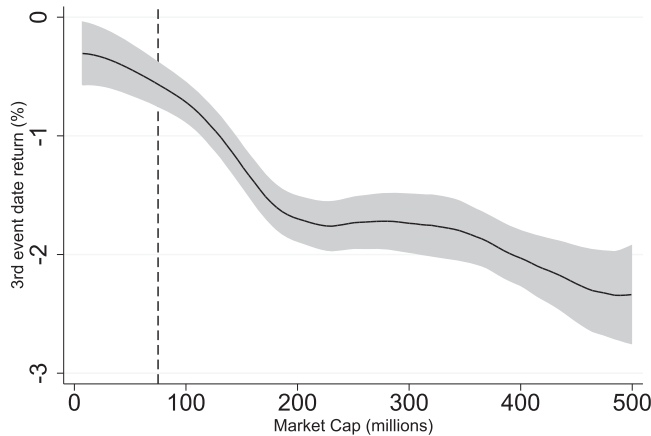


Figure 3. Kernel regression of fourth event date returns on market capitalization. This figure shows the results of a kernel regression using firm-level data in which the dependent variable (y-axis) is the October 4, 2010 event return and the explanatory variable (x-axis) is market capitalization in \$millions as of fiscal year-end 2009. This kernel regression is estimated using the Epanechnikov kernel with a bandwidth of \$100 million. The shaded area shows 95% confidence intervals around the regression line.

positive news regarding shareholder control) less the sum of the returns over the first and third events (which were negative news regarding shareholder control). A positive (negative) combined return would indicate a positive market response to an increase (decrease) in expected shareholder control. Figure 4

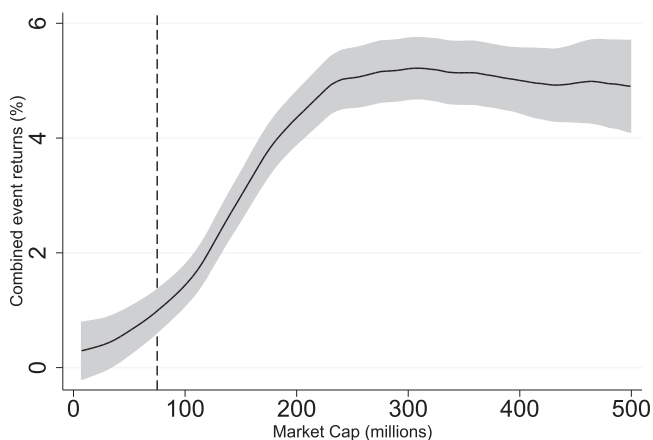


Figure 4. Kernel regression of combined event date returns on market capitalization. This figure shows the results of a kernel regression using firm-level data in which the dependent variable (y-axis) is the return associated with the June 24, 2010 event less the sum of the returns over the June 16, 2010 and October 4, 2010 events, and the explanatory variable (x-axis) is market capitalization in \$millions as of fiscal year-end 2009. This kernel regression is estimated using the Epanechnikov kernel with a bandwidth of \$100 million. The shaded area shows 95% confidence intervals around the regression line.

presents results of the same kernel regression using the combined return as the dependent variable. Confirming the earlier patterns, the combined return increases with market capitalization around the \$75 million threshold, before more or less leveling off somewhere between \$200 million and \$250 million.

Next, we formally test the difference in returns between the more affected medium/large firms and the less affected small firms for all three events, as shown in Table II. Consistent with the kernel regressions, the first and third rows show moderately large negative returns for medium and large firms, but returns close to zero for small firms. Similarly, the second row shows even larger positive returns for medium and large firms on the second event date, but returns very close to zero for small firms. The fourth row shows the combined returns across the different size buckets, which provide more power and are useful for aggregating information about the market's response to news about shareholder control over the three events. The mean combined returns for the medium and large firms are economically and statistically different from the small-firm mean, at 4.14% and 2.58%, respectively, versus 0.16%. These results are consistent with the market responding negatively (positively) to news negatively (positively) impacting expected shareholder control.

Because other events may have occurred on our event dates, aggregate event date returns in a given firm-size bucket should be interpreted with caution. To filter out the effect of other events affecting aggregate returns, we test for differences between the event returns of medium/large firms and those of small firms. We report these differences in the last two columns of the table. Three of the six reported differences for individual event dates are significant at the

Table II
Event Returns for June 16, June 24, and October 4, 2010
Events by Firm Size

This table presents event returns for the June 16, 2010 June 24, 2010, and October 4, 2010 events, as well as for the June 24, 2010 return minus the sum of the June 16, 2010, and October 4, 2010 returns (the “combined” return). Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. The last two columns show differences in returns between medium and small firms and between large and small firms. *t*-statistics calculated from the empirical time-series distribution of returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

MarketCap	Small	Medium	Large	(Medium – Small)	(Large – Small)
June 16 event	0.16 (0.08)	-0.46 (-0.88)	-0.42 (-0.82)	-0.63 (-1.35)	-0.59 (-1.27)
June 24 event	0.06 (0.31)	2.01* (1.87)	0.98 (0.80)	1.94** (2.28)	0.91 (1.40)
October 4 event	-0.25 (-0.19)	-1.68* (-1.75)	-1.18 (-0.98)	-1.43** (2.05)	-0.94* (-1.75)
Combined	0.16 (0.05)	4.14*** (3.45)	2.58*** (3.33)	3.98*** (3.57)	2.42*** (2.90)
Observations	612	1,232	1,260		

10% level or better, and both of the differences in combined returns (i.e., small versus medium and small versus large firms) are statistically significant at the 1% level.

Overall, the results in this table confirm the impressions conveyed by the kernel regressions and support the argument that, on average, more shareholder control would benefit shareholders. While this could reflect an overall increase in firm value, it is also possible that creditors are harmed by an increase in shareholder control (if, for example, this is likely to lead to an increased payout of cash). In this case, the increase in shareholder value would represent a transfer from creditors to shareholders rather than an increase in total firm value. In an untabulated test, we use data from the Financial Industry Regulatory Authority’s (FIRA) Trade Reporting and Compliance Engine (TRACE) database to examine bond returns around the three events for the limited sample of firms for which we are able to observe bond prices in both the week before and the week after an event. While we find point estimates that suggest bond returns may move in the opposite direction from stock returns around these events, the sample size is small (411 observations) and the results are not statistically significant. Thus, it is difficult to draw conclusions regarding the degree to which our estimates of shareholder wealth changes stem from changes in firm values versus transfers from creditors.¹⁸

¹⁸ In our regression analysis, we include leverage as a control variable. If most of the increase in shareholder value were the result of transfers from creditors, then one would expect announcement returns to be related to the amount of leverage a firm has. We do not find that this is the case.

Any increase in shareholder control as a result of proxy access should have the largest impact on firms in which the additional capacity to intervene would be most valuable, for example, for firms that are performing poorly rather than the top-performing firms. To test this prediction, we estimate regressions of the combined event returns on three measures of performance—return on assets (*ROA*), sales growth, and the firm's stock return over the prior six months—along with a number of other firm characteristics included as control variables. We use combined returns as the dependent variable here and in later tests, both for brevity and to increase the power of our tests.

Table III presents the results of these regressions. Overall, the evidence is consistent with proxy access adding more value for poorly performing firms. For large firms, the combined returns are significantly negatively related to all three performance variables, implying a stronger positive (negative) response to an increase (decrease) in shareholder control for worse-performing firms. For medium firms, combined returns are negatively related to lagged stock returns, but not related to the other two performance variables at standard levels of statistical significance.¹⁹ We find no relation between combined returns and any of the performance measures for small firms. We can also reject the null hypothesis that the coefficients on at least some of the performance variables for the medium and large firms equal those for the small firms (i.e., the coefficients on lagged stock returns for medium and large firms and the coefficient on *ROA* for large firms).

B. Activist Ownership and Stock Price Responses to Proxy Access Events

Above, we show that the returns around the first three events are consistent with proxy access adding value for shareholders. This conclusion is based on variation in returns across firm size (combined with the features of the proposed proxy access rules) and recent firm performance. Firms that stood to gain the most from activism experienced the strongest returns surrounding events that changed the expected ability of activists to access firms' proxy statements. Now, we assess the variation in returns across firms with and without investors that are expected to be active. We use three measures of potentially active investors—the presence of a SharkWatch50 investor, the presence of activist hedge funds owning at least 1% of shares outstanding, and the natural logarithm of (one plus) the number of institutional investors that hold at least 1% of shares outstanding. In many of our tests, we focus on the first two measures, both for brevity and because we believe that they provide the sharpest measures of the presence of investors likely to exploit proxy access.

¹⁹ One plausible explanation for the lack of a relation between event returns and these other two variables is that accounting measures may convey less information about performance for our growth-oriented, medium-sized firms (keeping in mind that even the largest medium firms have a market capitalization less than \$700 million). The ability of accounting measures of performance to explain event returns for large but not medium firms also explains why the adjusted R^2 is so much higher for large firms (18.16%) than medium firms (4.32%).

Table III
Determinants of Event Returns for June 16, June 24, and October 4, 2010 Events

This table presents results from cross-sectional regressions in which the dependent variable is the event return for the June 24, 2010 event minus the sum of the event returns for the June 16, 2010 and October 4, 2010 events (the “combined” return). Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. See Table I for a description of the explanatory variables. Differences between selected coefficients for medium and small firms and for large and small firms are reported at the bottom of the table. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using “combined” returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

MarketCap	Small	Medium	Large
ROA	-0.61 (-0.37)	1.09 (0.97)	-3.42*** (-3.66)
SalesGrowth	-0.20 (-0.32)	-0.02 (-0.05)	-0.76** (-2.12)
Lag6moReturn	0.01 (1.04)	-0.01** (-2.13)	-0.02*** (-4.36)
MarketCap	0.24 (0.06)	-0.13 (-1.08)	-0.01*** (-5.51)
Tobin'sQ	0.18 (0.89)	-0.00 (-0.01)	0.02* (1.76)
BookLeverage	1.13 (0.80)	0.76 (0.96)	1.18* (1.73)
DividendYield	-4.39 (-0.64)	3.83 (0.90)	-1.43 (-0.51)
R&D	-1.12 (-0.30)	0.37 (0.16)	0.33 (0.17)
SegmentHHI	-0.07 (-0.04)	-1.24 (-1.24)	-0.35 (-0.54)
InstHolding%	-0.67 (-0.35)	2.19*** (3.19)	0.11 (0.27)
AnalystCoverage	0.09 (0.62)	0.07 (1.57)	-0.00 (-0.28)
<i>Vs. small</i>			
ROA		1.70 (0.47)	-2.82** (-2.14)
SalesGrowth		0.18 (0.07)	-0.57 (-1.25)
Lag6moReturn		-0.01* (-1.91)	-0.03*** (-3.99)
Observations	612	1,232	1,260
Adjusted <i>R</i> ²	0.0133	0.0432	0.1816

B.1. Patterns in Ownership by Active Institutional Investors

Before analyzing our event returns and activist ownership, we examine the size and holding horizons of institutional holdings both as of June 30, 2010 (the quarter-end closest to our first event date) and at the time of recent proxy

contests. For the latter, we collect data on 127 proxy contests between 1999 and June 30, 2010 for which we can match the initiator with an institution in the institutional ownership data.²⁰

First, we tabulate the total fraction of shares outstanding owned by the N institutions with the largest positions in the firm, where $N=1, 3, 5,$ and 10 . Given the proxy access requirement of a minimum ownership threshold, if an activist does not own a large enough stake, he or she could work with like-minded investors to assemble a large enough position, provided the positions had been held long enough to qualify (e.g., two or three years). We are interested in understanding how many institutions might be required to cooperate to meet the minimum threshold to gain access (e.g., 3% or 5% of shares outstanding).

Table IV presents the results of these calculations. In Panel A, we present the data as of June 30, 2010, separately for all firms with at least one institutional investor and for firms with at least one SharkWatch50 owner, first unconditionally and then conditional upon a minimum holding period of three years as of that date. Without conditioning on the length of ownership, one can see that the largest few institutions would easily have an ownership stake sufficient to gain proxy access under the 3% threshold that was ultimately adopted. The largest institutional owner owns on average nearly 9% of the firm, with the top five accounting for 23%, and the top 10 for 31%. For firms with SharkWatch50 owners, the positions are even larger on average, with almost 10% owned by the largest institution, 27% by the top five, and 38% by the top 10. However, when one only includes positions that have been held at least three years (the eventual SEC requirement to gain access), it would take the four or five largest institutional owners to cooperate to meet the 3% ownership threshold, on average. Even for the firms with SharkWatch50 owners, the two largest three-year positions account for only 2.3% of shares outstanding, with 3.8% owned by the five largest and 7.7% by the 10 largest long-term institutional investors. In Panel B, we show that this degree of ownership concentration with and without the turnover constraints is similar for quarters immediately preceding proxy contests since 1999 (with the caveat that full-fledged proxy contests may ultimately differ from proxy access). In sum, the high degree of turnover in institutional ownership—among all institutional investors and the SharkWatch50 activists—suggests that the three-year holding period requirement would make it more difficult to find a group of institutions that owned at least 3% of the firm. This is true for the recent cross section of ownership data, and for prior proxy contest events if the rule had been in place then.

To better understand the impact of the proposed minimum length of ownership on the activist institutions themselves, in Table V we present the cumulative percentage of all positions owned by activist investors across a range of numbers of quarters, from zero (where the position was initiated in the

²⁰ Some contests are initiated by individuals or institutions exempt from 13(f) filing requirements, and matching the names of investor initiating contests to the names of institutions in the 13(f) holdings is difficult. We therefore have a much smaller sample of proxy contests than, for example, Fos (2011).

Table IV
Institutional Holdings: June 30, 2010 and Earlier Quarters with Proxy Contests

This table presents information about the largest holdings of institutions in the stocks in our sample. Panel A presents the mean of the N largest holdings of institutions as of June 30, 2010, for different values of N . *SharkWatch50Firms* are all firms with at least one investor that is a member of the SharkWatch50. The holdings reported for *All institutions* include all institutional holdings. The holdings reported for *Minimum 3-year holders* include only holdings of institutions that have held the stock for a minimum of three consecutive years as of June 30, 2010. Panel B presents the mean of the N largest holdings of institutions over the sample period, and separately in quarters immediately preceding proxy contests, for different values of N .

Panel A: Fraction of Shares Held by Largest Institutions as of 6/30/2010		
Top N institutional holdings	All Firms	SharkWatch50Firms
<i>All institutions</i>		
$N=1$	0.088	0.096
$N=3$	0.177	0.202
$N=5$	0.231	0.271
$N=10$	0.310	0.377
<i>Minimum 3-year holders</i>		
$N=1$	0.008	0.007
$N=3$	0.026	0.023
$N=5$	0.043	0.038
$N=10$	0.087	0.077
Panel B: Fraction of Shares Held by Largest Institutions in Proxy Contest Quarters		
Top N institutional holdings	All Firms	Proxy Contest Firms
<i>All institutions</i>		
$N=1$	0.078	0.096
$N=3$	0.157	0.198
$N=5$	0.204	0.259
$N=10$	0.271	0.342
<i>Minimum 3-year holders</i>		
$N=1$	0.007	0.009
$N=3$	0.022	0.027
$N=5$	0.037	0.046
$N=10$	0.074	0.089

current quarter) to 16 (where the position was initiated four years ago). In Panel A we present these calculations for all positions owned by SharkWatch50 investors as of June 30, 2010, while in Panel B we present the data for the institutional investor that initiated one of the 127 proxy contests in our sample. As the data show, many of the activist institutions' positions are short-lived. As of June 30, 2010, more than 40% of activist positions had been held for a year or less, and about 60% had been held for less than three years. This suggests that the eventual three-year requirement served as an immediate boost in control rights for about 40% of their positions. For the remainder, the activists would need to hold the position longer in order to gain access under the new

Table V
**Quarters a Stock Has Been Held by Investor Involved in Proxy
 Contest at the Time Proxy Contest Is Initiated**

This table presents information on how long investors in our sample have held a stock. Panel A shows the frequency distribution of different holding periods as of June 30, 2010 for SharkWatch50 investors in all of the stocks that they own. Panel B shows the frequency distribution of different holding periods for institutions initiating proxy contests as of the quarter immediately preceding the proxy contest.

Panel A: SharkWatch50 Investor Holding Period as of 6/30/2010			
Number of Quarters	Frequency	Percent	Cumulative Percent
0	714	14.23	14.23
1	482	9.61	23.83
2	381	7.59	31.43
3	324	6.46	37.88
4	261	5.20	43.08
5	168	3.35	46.43
6	176	3.51	49.94
7	99	1.97	51.91
8	89	1.77	53.69
9	95	1.89	55.58
10	86	1.71	57.29
11	67	1.34	58.63
12	80	1.59	60.22
13	82	1.63	61.86
14	55	1.10	62.95
15	70	1.39	64.35
≥16	1,789	35.65	100.00

Panel B: Proxy Contest Initiator's Holding Period as of Proxy Contest Quarter			
Number of Quarters	Frequency	Percent	Cumulative Percent
0	8	6.30	6.30
1	24	18.90	25.20
2	20	15.75	40.94
3	12	9.45	50.39
4	11	8.66	59.06
5	9	7.09	66.14
6	2	1.57	67.72
7	5	3.94	71.65
8	2	1.57	73.23
9	7	5.51	78.74
10	5	3.94	82.68
11	5	3.94	86.61
12	2	1.57	88.19
13	3	2.36	90.55
15	2	1.57	92.13
≥ 16	10	7.87	100.00

rules. Panel B suggests that, for firms that went through a proxy contest, the initiating activists' ownership stakes were typically established soon before the contests. Specifically, about 88% of the positions of the institutions that initiated the proxy contest were formed less than three years ahead of time. In

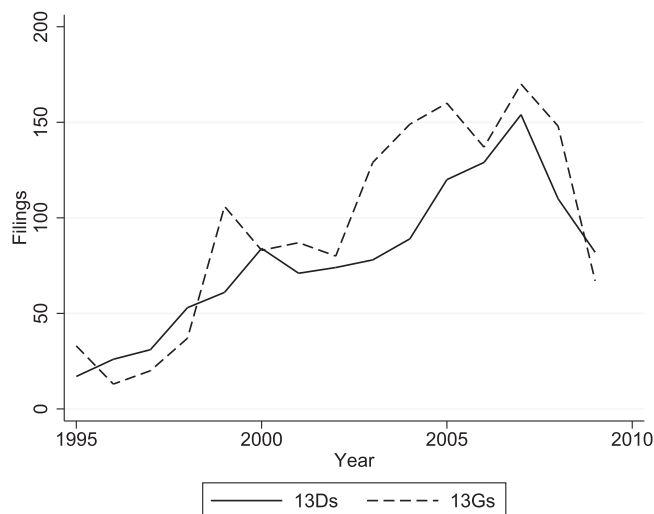


Figure 5. 13Ds and 13Gs filed by SharkWatch50. This figure shows the number of 13Ds and 13Gs filed by SharkWatch50 members in our sample by year.

other words, had the three-year threshold been in effect, the activists' stakes would have met this requirement in only 12% of the observed contests.

Taken together, Tables IV and V suggest that the 3%/three-year requirements would have imposed a high hurdle for those proxy contests that came to fruition without proxy access in place. To appreciate the implications of this finding, consider the fact that some activist institutions assemble buy-and-hold positions and take an activist stance only in the event of a shock to firm performance, while other activists assemble positions around such shocks with the intent of becoming active in the near future. The data on historical proxy contests suggest that those contests were typically initiated by institutions acting under the latter model. Thus, absent a change in behavior, the 3%/three-year requirement would impose a binding constraint on many institutions that were historically active—at least for many of their positions. Of course, in the face of a three-year holding period requirement, activists might adjust their behavior and initiate positions sooner to increase their control rights under a proxy access rule change, or they might partner with longer-term holders. Either way, the events of 2010 represented shocks to the control rights of the longer-term positions owned by activist investors as of the middle of that year.

The fact that activist institutions appear to hold stakes in many firms for long periods of time without engaging in activism is intriguing, and does not appear to have been documented previously. To shed further light on the importance of these “passive” stakes in activist investors' portfolios, we examine the frequency with which they file 13D and 13G filings with the SEC. An investor acquiring a 5% or larger stake in a publicly traded firm must file form 13D with the SEC if it anticipates taking an active role in the firm or form 13G

otherwise. Figure 5 shows the number of 13D and 13G filings by the SharkWatch50 institutions in our data by year from 1995 through 2009. While the number of 13D and 13G filings increases over time (perhaps because these institutions are classified in 2010 and may not all have existed or been activist in earlier years), their proportions remain stable over this period. The fact that SharkWatch50 members file as many 13G filings as they do 13D filings is further evidence that these investors hold many passive stakes, some of which are large.

B.2. Determinants of Ownership and Activism by Institutional Investors

Next, we test for relations between the presence of an activist institutional investor and firm characteristics, both to better understand the drivers of ownership by activist institutions and to help guide our choice of control variables in later tests. These tests also facilitate a comparison with existing evidence on the determinants of institutional investors' holdings (e.g., Gompers and Metrick (2001), Bennett, Sias, and Starks (2003)).

Table VI presents probit models for the presence of a SharkWatch50 investor and for the initiation of a proxy contest as functions of firm characteristics. In the first and second columns, the dependent variable is an indicator for the presence of a SharkWatch50 investor (*Sharkwatch50Firm*) and an indicator for activist hedge funds collectively owning at least 1% of a firm's stock (*ActivistHFBlock*), respectively, for all firm-quarters over the 2004 to 2009 period. The third column repeats the test in the first column using only observations as of June 30, 2010 (the closest quarter-end to our first event). In the fourth through sixth columns, the dependent variable is an indicator for a proxy contest, conditioning on the presence of a SharkWatch50 investor. The full sample is used in the fourth column, while the samples in the fifth and sixth columns are limited to medium and large firms, respectively. In all six columns, our explanatory variables include our firm characteristics, and we present conventional *t*-statistics based on standard errors clustered at the firm level.

In the first two columns, the results are broadly consistent with the literature on the determinants of institutional ownership more generally. SharkWatch50 investors and activist hedge funds are more likely to be present in larger, more growth-oriented firms, with lower dividend yields and more liquid stock. In addition, they are more likely to be present in firms that have recently exhibited strong performance, using any of our three measures, suggesting that the typical investment by an activist is made not with the intent of turning around a troubled firm, but rather is an investment in a successful, growing firm.²¹ In the third column, the results for the recent cross section are broadly

²¹ The tendency of activist hedge funds to be present in firms with high institutional ownership confirms results in previous papers. The opposite relation for the presence of SharkWatch50 investors is interesting, though we do not explore it further. We note that this relation holds across all three size buckets in our sample.

Table VI

Prediction Models for Activist Holdings and Proxy Contests Conditional on Activist Holdings

This table presents probit model results. The first column uses firm-year data from 2004 to 2009 and predicts the probability that a firm has a SharkWatch50 investor as a shareholder during the year as a function of firm characteristics. The second column uses firm-year data from 2004 to 2009 and predicts the probability that activist hedge funds hold at least 1% of a firm's stock during the year as a function of firm characteristics. The third column predicts the probability that a firm has a SharkWatch50 investor as a shareholder as of March 31, 2010 as a function of firm characteristics. The fourth uses firm-year data from 2004 to 2009 and includes only observations for which a SharkWatch50 investor was a shareholder at the end of the prior year. It predicts the probability that a firm experiences a proxy contest in a year as a function of firm characteristics. The fifth and sixth columns repeat the test in the fourth column for medium and large firms, respectively. Conventional *t*-statistics are shown in parentheses. The *t*-statistics in the first, third, fourth, and fifth columns are based on standard errors clustered at the firm level. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

	Pr (SW 50 Holding) (2004-2009)	Pr (Activist HF Block)(2004-2009)	Pr(SW 50 Holding)(2010Q1)	Pr (contest SW 50 Holding)		
				All	Medium	Large
Lag6moReturn	0.23*** (9.05)	0.12*** (4.64)	0.00 (0.67)	-0.50*** (-5.27)	-0.45*** (-2.69)	-0.55*** (-3.64)
ROA	0.74*** (7.80)	0.26*** (2.21)	0.42** (2.26)	-0.29 (-1.49)	-0.18 (-0.55)	-0.71** (-2.06)
SalesGrowth	0.03 (1.56)	0.05** (2.10)	0.09 (1.40)	-0.27*** (-3.07)	-0.24* (-1.74)	-0.34*** (-2.88)
MarketCap	0.00*** (4.65)	-0.00*** (9.16)	0.00 (0.83)	-0.00 (-1.22)	-0.00 (-0.26)	-0.00 (-1.38)
Tobin'sQ	-0.00 (3.87)	0.00 (1.56)	0.01*** (-0.95)	0.00 (0.16)	-0.01 (-0.75)	0.00 (0.71)
BookLeverage	0.20*** (4.32)	0.20*** (4.30)	0.59*** (4.85)	0.09 (0.78)	0.32* (1.81)	0.08 (0.40)
DividendYield	-0.05 (-0.76)	-0.18* (1.86)	0.15* (1.82)	-1.38* (-1.39)	1.15* (-1.76)	-5.11* (-1.75)
R&D	0.38** (2.43)	0.48*** (2.84)	1.22*** (3.44)	-0.29 (-0.65)	-0.02 (-0.03)	-1.09 (-1.40)
SegmentHHI	-0.96*** (-16.04)	-0.26*** (4.60)	-0.37** (-2.23)	-0.13 (-1.13)	-0.16 (-0.83)	-0.15 (-1.00)
InstHolding%	-4.48*** (-8.46)	1.83*** (3.48)	2.74*** (25.58)	1.06 (1.11)	1.69 (1.19)	-3.36 (-1.07)
AnalystCoverage	0.09*** (17.05)	0.03*** (8.34)	0.02*** (3.09)	-0.00 (-0.71)	-0.01 (-0.67)	-0.00 (-0.29)
FirmTurnover	39.52*** (11.41)	9.54*** (3.51)	10.41*** (3.26)	8.06*** (2.75)	11.87*** (2.79)	8.56*** (3.03)
Observations	30,081	30,081	2,735	22,820	5,765	13,703
Pseudo <i>R</i> ²	0.1675	0.0338	0.3208	0.0364	0.0480	0.0496

consistent with the fuller panel, albeit somewhat weaker statistically (which is not surprising given the lower power). We find conflicting results on the relation between the presence of SharkWatch50 investors and overall institutional ownership, suggesting that the differences or similarities between these activists and other institutions are time-varying.

In the fourth column, we find evidence that proxy contest activism by SharkWatch50 investors (conditional upon their ownership) is associated with poor past performance. Thus, even though SharkWatch50 investors disproportionately hold stakes in firms with good recent performance, they are more likely to be activist in poorly performing firms, consistent with the findings of Brav et al. (2008). In line with our interpretation of the different associations between event returns and firm performance measures across medium and large firms (Table III), the final two columns show that the likelihood of a proxy contest, conditional on SharkWatch50 ownership, decreases with recent stock price performance for both medium and large firms, but only decreases with accounting performance at a statistically significant level for large firms. We also find that activism, conditional on the presence of a SharkWatch50 investor, is more likely when the firm's stock is more liquid. One possible explanation for this is that a liquid stock allows an activist or investors friendly to an activist to acquire shares without substantial price impact, making success in an activism campaign more likely.

The results of Tables IV–VI have implications for the proposed proxy access rules. Table IV shows that a three-year holding period requirement might be a significant obstacle to proxy access given the much lower concentration of institutional ownership that meets that hurdle, a fact that is further supported by the distribution of holding period lengths in Table V. Table V also presents evidence that many of the SharkWatch50 investors' positions would have experienced shocks to their expected control rights as a result of the proposed legislation, specifically the 40% of their positions that had been held for more than three years. This is in contrast to ownership patterns around previous proxy contests, where we find evidence that the investor initiating the contest tended to amass the position a short time prior to the contest. Table VI presents further evidence that proxy contests are atypical investments, even for SharkWatch50 investors. These activists tend to hold successful, growing firms, but launch contests at poor-performing firms.

B.3. Event Returns and Ownership by Potentially Active Institutional Investors

We now analyze the degree to which differences in firms' returns are associated with the presence of potentially active investors. We focus primarily on the presence of SharkWatch50 members as shareholders, but we also consider the presence of activist hedge funds that collectively own at least 1% of a firm's shares and institutional investors with large blocks. We begin by comparing the event returns of firms that have activist institutional investors and those that do not, using variation in both ownership and firm size.

If known activists are among investors more likely to use proxy access to intervene, and if intervention adds value on average, then stock price reactions around negative shocks to shareholder control (e.g., our first and third events) should be more negative for firms with these shareholders. In contrast, if putting more power in the hands of activist shareholders is expected to distract management and reduce value, then we would expect to see more positive responses for those firms around such events. The opposite should hold for the second event, which increased expected shareholder control. As discussed earlier, the magnitude of any stock price responses should be stronger for medium and large firms than for small firms.

Table VII presents the results of these comparisons using *t*-tests for differences in the mean returns. For the combined event returns, the return patterns exhibit significant variation that is consistent with proxy access adding value. Medium and large firms with SharkWatch50 investors experience significantly larger combined returns than those without these activists, while we find no such difference among the smaller firms, for which these events are expected to be less material. Moreover, in difference-in-difference tests presented in the two columns on the right of Table VII, we find that the difference in combined returns between firms that have SharkWatch50 investors and those that do not is statistically significantly larger for medium or large firms than for small firms. Results for the individual event dates indicate that these findings are broadly consistent across events, rather than driven by one particular date.

To control for differences across firms other than the presence of an activist investor, we next estimate regressions of combined event returns on our three measures of activist investors, plus firm performance measures and the controls from Table VI. Table VIII presents the results of these regressions, where the presence of potential activist investors is measured by *SharkWatch50Firm* (first three columns), an indicator for activist hedge fund ownership exceeding 1% of outstanding shares (second three columns), or the number of large institutionally held blocks (final three columns). As the results show, consistent with the comparisons from Table II, the coefficient on *SharkWatch50Firm* is significantly positive for the medium and large firm groups, but is negative (and statistically insignificant) for small firms, which again should have been relatively unaffected by these events. Furthermore, as the tests at the bottom of the table indicate, we can reject the null hypothesis that the coefficients on *SharkWatch50Firm* for medium and large firms equal that for small firms.

In the final six columns, we see that our other measures of the presence of potential activists—the presence of activist hedge funds holding 1% or more of a firm's stock and the number of institutional blocks—lead to similar inferences. Again, we see significantly positive coefficients on these variables for medium and large firms, and we can reject the null that the presence of potential activists is associated with a similar price reaction in small firms. It is also worth noting that these results hold even while controlling for overall institutional ownership. Finally, as in Table III, we find that firms with weaker recent performance react more favorably to events associated with increased proxy access, and that this is especially true for large firms.

Table VII
Event Returns for June 16, June 24, and October 4, 2010 Events and the Presence of Activist Investors

This table presents a comparison of event returns for the June 16, 2010, June 24, 2010, and October 4, 2010 events, as well as for the “combined” return (the event return for the June 24, 2010 event minus the sum of the event returns for the June 16, 2010 and the October 4, 2010 events) for firms with and without activist investors. Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. Below the returns are the differences in returns for firms with and without SharkWatch50 investors. The last two columns show comparisons of these differences between medium and small firms and between large and small firms. *t*-statistics calculated from the empirical time-series distribution of returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses.

MarketCap	Small	Medium	Large	(Medium – Small)	(Large – Small)
June 16 event					
SW50Firm	0.19 (<i>N</i> = 114)	-0.69 (<i>N</i> = 681)	-0.53 (<i>N</i> = 934)		
Non-SW50Firm	0.15 (<i>N</i> = 498)	-0.18 (<i>N</i> = 551)	-0.12 (<i>N</i> = 326)		
Difference	0.04 (0.07)	-0.51*** (-2.63)	-0.41** (-1.97)	-0.55 (-1.25)	-0.45 (-1.18)
June 24 event					
SW50Firm	-0.23 (<i>N</i> = 114)	2.32 (<i>N</i> = 681)	0.96 (<i>N</i> = 934)		
Non-SW50Firm	0.14 (<i>N</i> = 498)	1.62 (<i>N</i> = 551)	1.04 (<i>N</i> = 326)		
Difference	-0.37 (-1.11)	0.70*** (3.01)	-0.07 (-0.38)	1.07** (2.17)	0.30 (0.80)
October 4 event					
SW50Firm	0.17 (<i>N</i> = 114)	-1.83 (<i>N</i> = 681)	-1.24 (<i>N</i> = 934)		
Non-SW50Firm	-0.34 (<i>N</i> = 498)	-1.48 (<i>N</i> = 551)	-1.01 (<i>N</i> = 326)		
Difference	0.51 (1.17)	-0.35 (-1.54)	-0.23 (-0.99)	-0.87* (-1.79)	-0.74* (-1.77)
Combined					
SW50Firm	-0.59 (<i>N</i> = 114)	4.84 (<i>N</i> = 681)	2.73 (<i>N</i> = 934)		
Non-SW50Firm	0.32 (<i>N</i> = 498)	3.28 (<i>N</i> = 551)	2.16 (<i>N</i> = 326)		
Difference	-0.90 (-1.20)	1.56*** (3.55)	0.57* (1.85)	2.47*** (3.43)	1.48** (2.67)

Our evidence suggests that additional shareholder control resulting from proxy access would have created the most value in firms that already had shareholders likely to use it. One might expect the presence of such investors to be especially important in poorly performing firms. To test this conjecture, we regress the combined returns on our activist shareholder measures, our three performance measures, and interactions between the activist measures and each performance measure, plus controls. For the sake of brevity, and to

Table VIII
Event Returns for June 16, June 24, and October 4, 2010 Events and the Presence of Activist Investors:
Multivariate Analysis

This table presents results from cross-sectional regressions in which the dependent variable is the “combined” return (the event return for the June 24, 2010 event minus the sum of the event returns for the June 16, 2010 and October 4, 2010 events), with measures of potential activism included as explanatory variables. Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. *SharkWatch50Firm* is an indicator variable taking a value of one if the firm has at least one institutional investor in sharkrepellent.net’s SharkWatch50 as of March 31, 2010 and is incorporated in the United States, and zero otherwise. *ln(#blocks)* is the log of the number of large blocks held by institutional investors as of March 31, 2010. A block is defined as large if it represents at least 1% of the firm’s outstanding stock. See Table I for a description of the other explanatory variables. Differences between selected coefficients for medium and small firms and for large and small firms are reported at the bottom of the table. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using “combined” returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

MarketCap	Small	Medium	Large	Small	Medium	Large	Small	Medium	Large
SharkWatch50Firm	-0.64 (-0.72)	1.01*** (2.66)	0.57** (2.00)						
ActivistHFBBlock				-1.72** (-2.03)	0.55* (1.71)	0.49* (1.81)			
ln(#blocks)							-0.53 (-0.54)	0.57** (2.14)	1.03*** (3.59)
ROA	-0.52 (-0.31)	0.90 (0.81)	-3.39*** (-3.61)	-0.36 (-0.22)	1.11 (0.99)	-3.32*** (-3.52)	-0.14 (-0.08)	1.20 (1.07)	-3.57*** (-3.84)
SalesGrowth	-0.17 (-0.28)	-0.04 (-0.10)	-0.75** (-2.10)	-0.16 (-0.25)	-0.02 (-0.06)	-0.76** (-2.11)	-0.16 (-0.26)	0.05 (0.12)	-0.79** (-2.22)
Lag6moReturn	0.01 (1.08)	-0.01 (-1.57)	-0.02*** (-4.36)	0.01 (1.15)	-0.01 (-1.75)	-0.02*** (-4.28)	0.01 (1.15)	-0.01 (-1.76)	-0.02*** (-4.59)
MarketCap	0.49 (0.12)	-0.12 (-1.00)	-0.01*** (-5.54)	0.45 (0.11)	-0.13 (-1.10)	-0.01*** (-5.42)	-0.31 (-0.07)	-0.12 (-1.01)	-0.01*** (-4.79)
Tobin’sQ	0.17 (0.83)	-0.00 (-0.11)	0.02* (1.81)	0.20 (0.97)	0.00 (0.06)	0.02* (1.76)	0.21 (1.00)	-0.00 (-0.01)	0.02* (1.82)

(Continued)

Table VIII—Continued

MarketCap	Small	Medium	Large	Small	Medium	Large	Small	Medium	Large	Small	Medium	Large
BookLeverage	1.24 (0.88)	0.58 (0.73)	1.17** (2.40)	1.33 (0.95)	0.69 (0.87)	1.13** (2.31)	1.09 (0.77)	0.93 (1.16)	1.13** (2.31)	1.09 (0.77)	0.93 (1.16)	1.25*** (2.58)
DividendYield	-4.23 (-0.61)	3.43 (0.81)	-1.52 (-0.54)	-3.43 (-0.50)	3.94 (0.93)	-1.34 (-0.48)	-4.32 (-0.62)	3.71 (0.87)	-1.34 (-0.48)	-4.32 (-0.62)	3.71 (0.87)	-2.12 (-0.76)
R&D	-0.85 (-0.23)	-0.07 (-0.03)	0.31 (0.16)	-0.60 (-0.16)	0.25 (0.11)	0.35 (0.18)	-0.59 (-0.16)	0.43 (0.19)	0.35 (0.18)	-0.59 (-0.16)	0.43 (0.19)	0.45 (0.24)
SegmentHHI	-0.01 (-0.01)	-1.11 (-1.11)	-0.32 (-0.50)	0.03 (0.02)	-1.25 (-1.25)	-0.35 (-0.55)	-0.16 (-0.09)	-1.25 (-1.25)	-0.35 (-0.55)	-0.16 (-0.09)	-1.25 (-1.25)	-0.48 (-0.76)
InstHolding%	-0.27 (-0.13)	1.47 (2.00)	-0.11 (-0.23)	0.90 (0.44)	1.85 (2.57)	-0.03 (-0.08)	1.05 (0.29)	0.96 (0.70)	-0.03 (-0.08)	1.05 (0.29)	0.96 (0.70)	-2.48*** (-3.04)
AnalystCoverage	0.11 (0.71)	0.07 (1.58)	-0.00 (-0.34)	0.10 (0.66)	0.07 (1.61)	-0.00 (-0.28)	0.10 (0.66)	0.07 (1.57)	-0.00 (-0.28)	0.10 (0.66)	0.07 (1.57)	-0.01 (-0.39)
<i>Vs. Small</i>												
SharkWatch50Firm		1.65** (2.30)	1.22** (2.01)									
ActivistHFFBlock					2.27** (2.36)	2.22** (2.41)						
ln(#blocks)								1.09* (1.79)			1.09* (1.79)	1.56** (2.40)
Observations	612	1,232	1,260	612	1,232	1,260	612	1,232	1,260	612	1,232	1,260
Adjusted R ²	0.0122	0.0498	0.1812	0.0239	0.0446	0.1813	0.0062	0.0433	0.1813	0.0062	0.0433	0.1926

focus on measures most indicative of likely activism, we use the *SharkWatch50* indicator and the activist hedge fund indicator here and in the remaining tests in the paper. The results are reported in Table IX.

For large firms, the coefficients on the interactions between *SharkWatch50Firm* and two of the three performance measures (*ROA* and *SalesGrowth*) are negative and statistically significant. As the bottom of the table shows, these interaction coefficients are significantly different from those for small firms. We do not find similar relations for medium firms, consistent with the argument that accounting measures capture more information about the performance of larger firms than smaller firms. The results are similar though slightly weaker for the activist hedge fund measure. Thus, for large firms, we find evidence that proxy access would have been especially valuable in poorly performing firms with an active investor present that might use proxy access.

The presence of an investor likely to use proxy access at the time of the events is our strongest indicator that proxy access might be used. However, the ease with which potentially activist investors could accumulate a stake and use proxy access in the future is also informative about the likelihood that proxy access could be useful. For instance, the importance of having an activist already in place is likely to be reduced if acquiring a stake is relatively easy. To examine these questions, we regress the combined return on a firm's average percentage daily stock turnover for the year ending May 31, 2010 (computed from CRSP daily data) and interactions between this turnover measure and the activism measures, plus controls. Table X reports the results.²² Consistent with proxy access being more valuable in firms in which acquiring a stake is easier, the combined returns are increasing with turnover for both medium and large firms, but not for small firms. For medium firms (but not large firms), the coefficient on the interaction between turnover and the *SharkWatch50Firm* indicator is negative and statistically significant at the 5% level. For both medium and large firms, the coefficient on the interaction between turnover and the *ActivistHFBlock* indicator is negative and statistically significant at the 1% level. Thus, we find some evidence that the presence of an activist shareholder is less important when acquiring a stake in the future is likely to be easier.

C. Labor-Friendly Shareholders and Stock Price Responses to Proxy Access

We conclude our analysis of the first three events by testing whether price reactions vary with the presence of shareholders that might have objectives other than simple shareholder value maximization. The potential for using proxy access to pursue other agendas was part of the BRT's objection to the proposed rule change. Even if such investors are unlikely to be successful in

²² We obtain similar results if we instead use the price impact measure of Amihud (2002) to measure liquidity or if we measure turnover over the six months or two years ending on May 31, 2010 instead of one year.

Table IX
Event Returns for June 16, June 24, and October 4, 2010 Events,
Recent Performance, and the Presence of Activist Investors

This table presents results from cross-sectional regressions in which the dependent variable is the “combined” return (the event return for the June 24, 2010 event minus the sum of the event returns for the June 16, 2010 and October 4, 2010 events), with interactions between performance measures and potential activism included as explanatory variables. Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. *SharkWatch50Firm* is an indicator variable taking a value of one if the firm has at least one institutional investor in sharkrepellent.net’s SharkWatch50 as of March 31, 2010 and is incorporated in the United States, and zero otherwise. See Table I for a description of the other explanatory variables. Differences between selected coefficients for medium and small firms and for large and small firms are reported at the bottom of the table. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using “combined” returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

MarketCap	Small	Medium	Large	Small	Medium	Large
SharkWatch50Firm	-0.62 (-0.68)	0.98** (2.38)	0.94** (2.05)			
ActivistHFBlock				-1.41* (-1.86)	0.69** (2.04)	0.60* (1.88)
ROA	-1.49 (-0.84)	0.78 (0.56)	-2.59* (-1.91)	-1.03 (-0.56)	1.74 (1.30)	-4.48*** (-3.23)
SalesGrowth	-0.36 (-0.49)	-0.31 (-0.62)	0.06 (0.08)	0.03 (0.04)	-0.74 (-1.49)	0.40 (0.57)
Lag6moReturn	0.01 (0.91)	-0.01 (-1.11)	-0.02* (-1.77)	0.01* (1.86)	-0.01 (-0.92)	-0.03*** (-3.63)
SW50Firm * ROA	5.02 (1.45)	0.53 (0.31)	-1.71* (-1.79)			
SW50Firm * SalesGrowth	0.84 (0.65)	0.54 (0.83)	-1.60** (-2.24)			
SW50Firm * Lag6moReturn	0.00 (0.22)	-0.00 (-0.16)	-0.01 (-0.61)			
ActivistHFBlock * ROA				3.54 (1.09)	-1.91 (-1.00)	0.73 (0.42)
ActivistHFBlock * SalesGrowth				0.77 (0.64)	0.48 (0.26)	-1.40** (-1.96)
ActivistHFBlock * Lag6moReturn				-0.00 (-0.85)	-0.00 (-0.46)	0.01 (1.34)
Tobin’sQ	0.15 (0.69)	-0.00 (-0.15)	0.02* (1.84)	0.25 (1.18)	0.00 (0.04)	0.02* (1.78)
MarketCap	0.77 (0.18)	-0.12 (-1.01)	-0.01*** (-5.42)	-0.77 (-0.18)	-0.14 (-1.15)	-0.01*** (-5.39)
BookLeverage	1.36 (0.95)	0.62 (0.78)	1.18** (2.42)	1.50 (1.06)	0.76 (0.97)	1.15** (2.35)
DividendYield	-2.07 (-0.29)	3.37 (0.79)	-1.57 (-0.56)	-3.94 (-0.58)	4.22 (1.00)	-1.38 (-0.50)
R&D	-1.04 (-0.27)	0.12 (0.05)	0.36 (0.19)	-0.68 (-0.18)	0.16 (0.07)	0.30 (0.16)
SegmentHHI	0.18 (0.10)	-1.09 (-1.09)	-0.33 (-0.52)	-0.10 (-0.05)	-1.08 (-1.08)	-0.44 (-0.69)

(Continued)

Table IX—Continued

MarketCap	Small	Medium	Large	Small	Medium	Large
InstHolding%	-0.45 (-0.22)	1.44* (1.96)	-0.17 (-0.35)	1.27 (0.62)	1.73** (2.40)	0.13 (0.31)
AnalystCoverage	0.12 (0.82)	0.07 (1.59)	-0.01 (-0.39)	0.09 (0.61)	0.07 (1.59)	-0.00 (-0.38)
ActivistHFBlock				-1.41* (-1.86)	0.69* (1.74)	-0.23 (-0.64)
<i>Vs. Small</i>						
SW50Firm * ROA		-4.50 (-0.94)	-6.73* (-1.93)			
SW50Firm * SalesGrowth		-0.30 (-0.20)	-2.43** (-2.11)			
SW50Firm * Lag6moReturn		-0.01 (-0.64)	-0.01 (-0.75)			
ActivistHFBlock * ROA					-5.45 (-1.43)	-2.80 (-0.59)
ActivistHFBlock * SalesGrowth					-0.30 (0.25)	-2.18** (1.97)
ActivistHFBlock * Lag6moReturn					0.00 (0.03)	0.01 (1.35)
Observations	612	1,232	1,260	612	1,232	1,260
Adjusted R^2	0.0107	0.0475	0.1818	0.0277	0.0482	0.1838

using proxy access to elect directors sympathetic to their objectives, an attempt to do so might distract a firm's management from otherwise value-maximizing activities. To the extent this is the case, we should observe underperformance (outperformance) by firms with such investors in response to events that increase (decrease) the ease of proxy access.

We focus on the possibility that certain shareholders may favor labor-friendly policies at the expense of shareholder value maximization (see Agrawal (2012)). We create four measures of the presence of such shareholders in a firm for each medium and large firm in our sample. Our first two measures are based on share ownership as of March 31, 2010. The first measure, *#AFLCIOFriendly*, equals the number of 13(f) investors in place for each firm as of March 31, 2010 that voted according to AFL-CIO proxy guidelines 100% of the time per the AFL-CIO Key Votes Survey as reported on the AFL-CIO's website.²³ This variable ranges from 0 to 11, with a mean of 1.4, a median of 1.0, and a standard deviation of 2.0. The second measure, *#CNShareholders*, equals the number of potentially activist public pension funds as reported in Cremers and Nair (2005) that own a particular firm. We are able to identify 13(f) holdings data for 16 out of the 18 public pension funds that Cremers and Nair view as having a propensity for activist behavior (including CalPERS, CalSTRS, and the State

²³ See <http://www.aflcio.org/Corporate-Watch/Capital-Stewardship/Proxy-Voting>. This report identifies the extent to which a number of investment managers, mutual funds, and proxy voting consultants cast their votes on selected firm issues in a manner consistent with AFL-CIO voting policies.

Table X
Event Returns for June 16, June 24, and October 4, 2010 Events,
Stock Turnover, and the Presence of Activist Investors

This table presents results from cross-sectional regressions in which the dependent variable is the “combined” return (the event return for the June 24, 2010 event minus the sum of the event returns for the June 16, 2010 and October 4, 2010 events), with additional explanatory variables. Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. *SharkWatch50Firm* is an indicator variable taking a value of one if the firm has at least one institutional investor in sharkrepellent.net’s SharkWatch50 as of March 31, 2010 and is incorporated in the United States, and zero otherwise. See Table I for a description of the explanatory variables. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using “combined” returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

MarketCap	Small	Medium	Large	Small	Medium	Large
SharkWatch50Firm	-0.47 (-0.45)	1.50*** (2.96)	0.57** (1.98)	-1.67 (-0.74)	0.91** (2.39)	0.89** (0.68)
FirmTurnover	85.95 (1.64)	54.60* (1.93)	35.26** (2.14)	129.54** (2.49)	11.32 (0.38)	16.80 (1.11)
SW50Firm * FirmTurnover	-59.54 (-0.68)	-64.09* (-1.78)	-1.11 (-0.05)			
ActivistHFBlock * FirmTurnover				-29.95 (-0.25)	-57.21* (-1.81)	-24.01* (1.68)
ROA	0.03 (0.02)	0.91 (0.81)	-3.24*** (-3.44)	0.62 (0.37)	1.01 (0.89)	-2.98*** (-3.14)
SalesGrowth	-0.35 (-0.56)	-0.07 (-0.19)	-0.82** (-2.29)	-0.47 (-0.76)	-0.05 (-0.14)	-0.78** (-2.17)
Lag6moReturn	0.00 (0.67)	-0.01 (-1.54)	-0.02*** (-4.11)	0.00 (0.39)	-0.01 (-1.58)	-0.02*** (-4.04)
MarketCap	-0.36 (-0.09)	-0.17 (-1.30)	-0.01*** (-5.04)	-0.54 (-0.13)	-0.19 (-1.43)	-0.01*** (-4.93)
Tobin’sQ	0.20 (0.98)	0.00 (0.12)	0.02 (1.31)	0.23 (1.10)	0.01 (0.21)	0.02 (1.33)
BookLeverage	1.32 (0.93)	0.49 (0.62)	1.00** (2.04)	1.31 (0.92)	0.34 (0.43)	0.92* (1.87)
DividendYield	-4.91 (-0.71)	3.64 (0.86)	-1.21 (-0.43)	-4.54 (-0.66)	3.42 (0.81)	-1.05 (-0.38)
R&D	1.50 (0.38)	-0.40 (-0.17)	0.22 (0.12)	1.62 (0.42)	-0.45 (-0.20)	0.26 (0.14)
SegmentHHI	-0.38 (-0.21)	-1.09 (-1.09)	-0.45 (-0.70)	-0.19 (-0.10)	-1.05 (-1.05)	-0.47 (-0.74)
InstHolding%	-0.44 (-0.21)	1.45** (1.97)	-0.11 (-0.23)	0.45 (0.22)	1.21 (1.63)	-0.32 (-0.65)
AnalystCoverage	0.08 (0.53)	0.07 (1.52)	-0.01 (-0.93)	0.10 (0.66)	0.07 (1.48)	-0.01 (-0.94)
Observations	612	1,232	1,260	612	1,232	1,260
Adjusted R ²	0.0200	0.0522	0.1884	0.0311	0.0531	0.1911

of Wisconsin Investment Board. This variable ranges from 0 to 13, with a mean of 5.9, median of 5.0, and standard deviation of 4.0.

Our third and fourth measures are based on targeted firms (rather than each firm's shareholders). In particular, *AFLCIOFund* takes a value of one for firms in which either the AFL-CIO's Reserve or Staff Retirement funds voted shares in 2011 annual meetings (implying ownership of shares), which represent 13% of the medium and large firms in our sample, and *Union/PensionFund* takes a value of one if a firm faced a shareholder proposal from a union or pension fund between January 1, 2006 and April 30, 2010 and zero otherwise. The latter measure is based on data from sharkrepellent.net on shareholder proposals (which include the name of the proposal sponsor). We find that 11% of the medium and large firms in our sample have been the target of such a proposal.

We regress combined returns from our three primary events on the four labor-friendly shareholder presence measures separately, plus the *SharkWatch50Firm* indicator and controls.²⁴ Results of these tests are presented in Table XI. We combine the medium and large firms in these regressions, as the relatively small number of shareholders of the type described above limits the power of our tests for medium firms. The coefficients on each of the labor-friendly shareholder variables are negative and statistically significant at the 1% level. This finding is consistent with the presence of shareholders that might have objectives other than shareholder value maximization reducing the benefits of greater shareholder control. Unfortunately, we cannot compare the coefficients from these regressions to similar regressions for small firms, as very few small firms have shareholders of any of the types described above.²⁵

D. Holding Periods and Stock Price Responses to SEC Approval

Ultimately, the SEC passed the proxy access rule the evening of August 24, 2010. The SEC rule specified an ownership requirement of at least 3%, and a holding period requirement of at least three years. The timing of the announcement was expected, as were most of the features of the final rule. However, the three-year holding period requirement appears to have resolved uncertainty toward a longer holding requirement than expected. This "surprise" feature of the final rule yields a particularly sharp prediction: if more shareholder control is more valuable in firms with investors likely to exercise this control, then this specific feature of the rule should have been especially negative news for firms

²⁴ We find similar results if we control for the *ActivistHFBlock* indicator or $\ln(\#blocks)$ instead.

²⁵ The presence of labor-friendly shareholders could conceivably alter the impact of activists in a positive or negative manner. For example, activists could be more valuable if they are expected to check the influence of labor-friendly shareholders. Alternatively, labor-friendly shareholders might reduce the power of activists, rendering them less valuable. Table A.II shows results from regressions with interactions between *SharkWatch50Firm* and the labor-friendliness measures. The coefficients on these interactions are generally small and statistically insignificant, suggesting that the effect of having an activist as a shareholder and the effect of having labor-friendly shareholders are independent.

Table XI
Event Returns for June 16, June 24, and October 4, 2010 Events and Labor-Friendly Shareholders

This table presents results from cross-sectional regressions in which the dependent variable is the “combined” return (the event return for the June 24, 2010 event minus the event returns for the June 16, 2010 and October 4, 2010 events), with additional explanatory variables. Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. *SharkWatch50Firm* is an indicator variable taking a value of one if the firm has at least one institutional investor in sharkrepellent.net’s SharkWatch50 as of March 31, 2010 and is incorporated in the United States, and zero otherwise. *#AFLCIOFriendly* is the number of a firm’s 13(f) shareholders as of March 31, 2010 that consistently voted according to AFL-CIO proxy guidelines according to the AFL-CIO Key Votes Survey. *#CNShareholders* is the number of potentially activist public pension funds identified by Cremers and Nair (2005). *AFLCIOFund* is an indicator variable taking a value of one if either the AFL-CIO’s general or staff fund voted shares in the firm’s 2011 annual meeting, and zero otherwise. *Union/PensionFund* is an indicator variable taking a value of one if a union or pension fund submitted a shareholder proposal for vote at the firm’s annual meeting between January 2006 and May 2010, and zero otherwise. See Table I for a description of the other explanatory variables. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using “combined” returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

	(1)	(2)	(3)	(4)
SharkWatch50Firm	0.71*** (2.60)	1.04*** (3.26)	0.76*** (2.64)	0.67*** (2.34)
#AFLCIOFriendly	-0.25*** (-3.03)			
#CNShareholders		-0.21*** (-3.24)		
AFL-CIO Fund			-1.78*** (-4.10)	
Union/Pension Fund				-1.33*** (-3.00)
ROA	-0.39 (-0.54)	-0.37 (-0.51)	-0.45 (-0.62)	-0.69 (-0.95)
SalesGrowth	-0.17 (-0.66)	-0.30 (-1.17)	-0.23 (-0.91)	-0.22 (-0.85)
Lag6moReturn	-0.01*** (-3.17)	-0.01*** (-3.61)	-0.01*** (-3.36)	-0.01*** (-3.06)
MarketCap	-0.00** (-2.08)	-0.00*** (-3.19)	-0.00*** (-3.26)	-0.01*** (-3.79)
Tobin’sQ	-0.02 (-1.40)	-0.01 (-0.94)	-0.01 (-1.04)	-0.02 (-1.32)
BookLeverage	0.22 (0.50)	0.35 (0.78)	0.39 (0.88)	0.29 (0.65)
DividendYield	1.60 (0.64)	2.12 (0.85)	1.76 (0.71)	1.61 (0.65)
R&D	1.04 (0.70)	0.87 (0.59)	1.00 (0.67)	0.89 (0.60)
SegmentHHI	-0.38 (-0.65)	-0.57 (-0.96)	-0.46 (-0.79)	-0.38 (-0.65)

(Continued)

Table XI—Continued

	(1)	(2)	(3)	(4)
InstHolding%	0.56 (1.32)	1.57*** (3.21)	0.44 (1.06)	0.37 (0.87)
AnalystCoverage	-0.01 (-0.49)	-0.00 (-0.02)	0.00 (0.12)	-0.01 (-0.46)
Observations	2,492	2,492	2,492	2,492
Adjusted R^2	0.0872	0.0928	0.0941	0.0867

with investors that would have held the stock for more than two but less than three years as of the first opportunity to use proxy access.

In our analysis of stock returns on this fourth event date, we use the details of the rules as they became known. Per the final rules, investors would have access to proxy statements in 2011 if the filing date for the firm's most recent annual meeting proxy statement was on or after March 15, 2010. For firms with earlier filing dates, investors would have to wait until the 2012 proxy season to gain access. Thus, in this analysis we limit attention to firms whose most recent annual meeting proxy statement was on or after March 15, 2010.

To test whether the delay in gaining proxy access had a negative effect on firm value, we construct two new indicator variables. The first is *SharkWatch50Firm_2yrs*, which takes a value of one if the firm has at least one institutional investor in sharkrepellent.net's SharkWatch50 that has held the stock every quarter through the quarter ending June 30, 2010, such that it would have held its position for at least two years as of the next proxy date (assuming they do not sell), and zero otherwise.²⁶ The second is *SharkWatch50Firm_3yrs*, which is defined analogously for a continuous holding period of three years. Thus, the values of *SharkWatch50Firm_2yrs* and *SharkWatch50Firm_3yrs* are zero if a firm lacks a SharkWatch50 investor that has held the firm's stock for at least two years; they are one and zero, respectively, if a SharkWatch50 investor has owned the firm's stock for at least two but less than three years; and they are both one if a SharkWatch50 investor has held the firm's stock for more than three years. If a one-year delay in an activist's ability to use proxy access is negative news, then the coefficient on *SharkWatch50Firm_2yrs* should be negative while that on *SharkWatch50Firm_3yrs* should be positive.

We regress the August 25, 2010 returns on *SharkWatch50Firm*, *SharkWatch50Firm_2yrs*, and *SharkWatch50Firm_3yrs*, plus our standard controls,

²⁶ Specifically, we define *WindowClose* as the firm's most recent proxy filing date, plus 365 days, minus 120 days (the cutoff for measuring ownership relative to the next annual meeting proxy date). Next, *BeginHoldDate_2yrs* is defined as *WindowClose* minus two years, and *BeginHoldQuarter_2yrs* is the end of the quarter in which *BeginHoldDate_2yrs* falls if *BeginHoldDate_2yrs* is after the midpoint of the quarter, and the end of the prior quarter otherwise. Finally, we construct *SharkWatch50Firm_2yrs* to take a value of one if the firm has at least one SharkWatch50 investor who has held the stock every quarter from *BeginHoldQuarter_2yrs* through the quarter ending June 30, 2010, and zero otherwise.

Table XII

Cross-Sectional Returns Regressions for August 25, 2010 SEC Release of Final Rule Containing Three-Year Holding Period

This table presents results from cross-sectional regressions in which the dependent variable is the firm's stock return for August 25, 2010. Small firms have a market capitalization less than \$75 million and medium/large firms greater than \$75 million. *SharkWatch50Firm* is an indicator variable taking a value of one if the firm has at least one institutional investor that is in sharkrepellent.net's SharkWatch50 as of June 30, 2010 and zero otherwise. The variable *SharkWatch50Firm_2yrs* is defined as follows: The proposal window closing date (*WindowClose*) is set to the firm's most recent proxy filing date, plus 365 days, minus 120 days. The continuous two-year holding period requirement beginning date (*BeginHoldDate_2yrs*) is set to *WindowClose* minus two years. The continuous two-year holding period beginning quarter (*BeginHoldQuarter_2yrs*) is the end of the quarter in which *BeginHoldDate_2yrs* falls if *BeginHoldDate_2yrs* is after the midpoint of the quarter and the end of the prior quarter otherwise. *SharkWatch50_2yrs* takes a value of one if the firm has at least one institutional investor in sharkrepellent.net's SharkWatch50 that has held the stock every quarter from *BeginHoldQuarter_2yrs* through the quarter ending June 30, 2010, and zero otherwise. *SharkWatch50Firm_3yrs* is defined analogously for a continuous holding period of three years. Only firms subject to proxy access in 2011 according to the SEC's rules—those whose most recent annual meeting proxy statement is on or after March 15, 2010—are included in the sample. See Table I for a description of the other explanatory variables. Differences in coefficients for small and medium/large firms are shown at the bottom. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using one-day returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size group are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

Market Cap	Small	Medium/Large	Small	Medium/Large
SharkWatch50Firm	0.53 (0.58)	0.04 (0.28)		
SharkWatch50Firm_2yrs	-0.02 (0.03)	-0.68*** (-2.82)		
SharkWatch50Firm_3yrs	-0.17 (-0.08)	0.55** (2.52)		
ActivistHFBlock			0.24 (0.32)	0.03 (0.20)
ActivistHFBlock_2yrs			-0.01 (-0.03)	-0.45* (-1.91)
ActivistHFBlock_3yrs			0.10 (0.28)	0.49** (2.05)
ROA	-1.21 (-1.06)	-0.84* (-1.90)	-1.13 (-1.08)	-0.80* (-1.79)
SalesGrowth	-0.37 (-0.80)	-0.35 (-1.32)	-0.41 (-1.04)	-0.33 (-2.18)
Lag6moReturn	-0.00 (-0.09)	-0.00 (-1.19)	0.00 (0.01)	-0.00 (-1.83)
MarketCap	1.75 (0.52)	-0.00** (-2.09)	2.34 (0.90)	-0.00 (-2.46)
Tobin'sQ	0.03 (0.05)	-0.01 (-0.45)	0.01 (0.07)	-0.01 (-0.69)
BookLeverage	0.20 (0.38)	-0.21 (-0.61)	0.40 (0.42)	-0.29 (-1.04)
DividendYield	3.53 (0.66)	-2.57 (-1.37)	2.79 (0.67)	-2.62 (-1.68)

(Continued)

Table XII—Continued

Market Cap	Small	Medium/Large	Small	Medium/Large
R&D	0.35 (0.11)	0.66 (0.67)	1.14 (0.47)	0.68 (0.79)
SegmentHHI	-0.24 (-0.23)	-0.12 (-0.35)	-0.09 (-0.07)	-0.07 (-0.19)
InstHolding%	0.08 (-0.06)	0.70** (2.37)	-0.67 (-0.48)	0.58 (2.05)
AnalystCoverage	0.01 (0.14)	-0.02* (-1.75)	0.03 (0.32)	-0.02* (-1.80)
<i>Vs. Small</i>				
SharkWatch50Firm		-0.49 (-0.27)		
SharkWatch50Firm_2yrs		-0.67*** (-2.69)		
SharkWatch50Firm_3yrs		0.72** (2.40)		
ActivistHFBlock				-0.21 (-0.11)
ActivistHFBlock_2yrs				-0.45* (1.94)
ActivistHFBlock_3yrs				0.40* (1.84)
Observations	380	1,435	380	1,435
Adjusted R^2	-0.0402	0.1004	-0.0178	0.0950

with separate regressions for small and medium/large firms. As before, the small firms group represents a useful control sample because firms with market capitalization below \$75 million were temporarily exempt from the final proxy access rule. The first two columns of Table XII present the results. As the table shows, firms that were large enough to have been subject to proxy access in 2011 and that had SharkWatch50 investors present for at least two but less than three years experienced significantly negative stock price reactions to the August 25 event. The associated magnitude of this drop, as reflected in the sum of the coefficients on *SharkWatch50Firm* and *SharkWatch50Firm_2yrs*, is 64 basis points. In contrast, the sum of the coefficients on *SharkWatch50Firm_2yrs* and *SharkWatch50Firm_3yrs* is small and statistically indistinguishable from zero (not shown directly in the table), indicating that event returns are unaffected by having a SharkWatch50 investor present for three or more years. We do not find analogous results for firms with market capitalization below \$75 million.²⁷

We repeat this exercise using the holding durations of activist hedge funds with blocks exceeding 1% of shares outstanding in place of SharkWatch50

²⁷ In principle, we could conduct the same tests for firms whose most recent annual meeting proxy statement was before March 15, 2010 as a falsification test, because the results should not hold for these firms. However, the sample of such firms not eligible in 2011 is so small (86 small firms and 294 medium and large firms) that such a test would be effectively meaningless.

ownership. The final two columns of Table XII show that the results are similar, albeit slightly weaker. Overall, both the sign and magnitude of the activist ownership indicators are consistent with our earlier results. These results, based on cross-sectional variation in responses—here, driven by the timing of proxy dates and ownership initiation—continue to suggest that information associated with granting more control to previously active institutional investors is associated with an improvement in shareholder value, while news limiting that access is associated with a decline in shareholder value.

IV. Conclusion

A central question in corporate governance is the optimal amount of shareholder control, but this question is notoriously difficult to examine due to the scarcity of exogenous shocks to control rights. Recent work using event study analysis suggests that the current balance of power in corporate America is the outcome of optimal contracting, and that government intervention enhancing shareholder control would destroy, rather than enhance, shareholder value (e.g., Larcker, Ormazabal, and Taylor (2011)). We contribute to this debate by using cross-sectional variation in stock market responses to four key events during 2010 related to proxy access as legislated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Although the rule was ultimately struck down, the events that we study contain information about changes to shareholders' control rights that were likely a surprise to the market. We use details about the proposed changes, along with variation in stock ownership by known activist institutional investors, to identify the impact of shocks to control rights on shareholder value.

Our evidence suggests that reforms allowing greater shareholder control (via increased proxy access) are associated with increases in firm value for those firms in which intervention is needed and shareholders are more likely to seek board access. Variation in market responses based on firm size and the timing of ownership positions provides additional evidence that these associations are causal in nature. Using ownership by investors viewed as sympathetic to labor or union interests, we further find that additional shareholder control may hurt (or add less) value in some cases. Overall, the results imply that, for many firms, a shift toward greater shareholder control moves the firm closer to the optimum from a shareholder-value-maximization perspective. Our results stand in contrast to the conclusions that Larcker, Ormazabal, and Taylor (2011) reach using earlier dates, but are consistent with contemporaneous studies of related events (e.g., Jochem (2012) and Becker, Bergstresser, and Subramanian (2013)).

Appendix**Table A.I****Shark Watch 50 Investors**

This table lists the 41 members of sharkrepellent.net's SharkWatch50 that are included in our sample of institutional investors. Nine members of the SharkWatch50 are not present in our sample because they do not hold the stock of any firm in our sample. The table also shows the number of proxy contests initiated by each investor since 1999 as reported by FactSet (note that not all of the proxy contests reached the voting stage).

Institution	Proxy Fights (1999–2010)
Appaloosa Management L.P.	1
Barington Capital Group, L.P.	17
Breeden Capital Management LLC	2
Cannell Capital, LLC	0
Clinton Group, Inc.	2
Crescendo Advisors LLC	9
Discovery Group I LLC	3
Dolphin Limited Partnership I, L.P.	2
Elliott Management Corporation	3
Franklin Mutual Advisers, LLC	6
GAMCO Investors	9
Greenlight Capital, Inc.	2
Harbinger Capital Partners	6
Highfields Capital Management LP	0
Highland Capital Management, L.P.	2
Icahn Associates Corp.	22
JANA Partners LLC	5
Karpus Investment Management	20
Loeb Partners Corp.	1
MCM Management, LLC	8
Mercury Real Estate Advisors LLC	0
Millennium Management LLC	3
Newcastle Partners L.P.	15
Oliver Press Partners LLC	3
Pershing Square Capital Management LP	3
Private Capital Management, Inc.	0
Ramius LLC	28
Relational Investors, LLC	5
Riley Investment Management LLC	13
Roark, Rearden & Hamot LLC	5
Sandell Asset Management Corp.	7
Shamrock Partners Activist Value Fund LLC	7
Southeastern Asset Management, Inc.	0
Steel Partners, L.L.C.	25
Stilwell Value LLC	10
TCI Fund Management (UK) LLP	1
Third Point Management Co. LLC	5
Triam Fund Management, L.P.	2
ValueAct Capital Management LP	1
Western Investment LLC	43
Wynnefield Capital Management, LLC	9

Table A.II

Event Returns for June 16, June 24, and October 4, 2010 Events and Labor-Friendly Shareholders: Interactions with *SharkWatch50Firm*

This table presents results from cross-sectional regressions in which the dependent variable is the “combined” return (the event return for the June 24, 2010 event minus the sum of the event returns for the June 16, 2010 and October 9, 2010 events), with additional explanatory variables. Small firms have a market capitalization less than \$75 million, medium firms between \$75 million and \$700 million, and large firms greater than \$700 million. *SharkWatch50Firm* is an indicator variable taking a value of one if the firm has at least one institutional investor in sharkrepellent.net’s SharkWatch50 as of March 31, 2010 and is incorporated in the United States, and zero otherwise. *#AFLCIOFriendly* is the number of a firm’s 13(f) shareholders as of March 31, 2010 that consistently voted according to AFL-CIO proxy guidelines according to the AFL-CIO Key Votes Survey. *#CNShareholders* is the number of potentially activist public pension funds identified by Cremers and Nair (2005). *AFLCIOFund* is an indicator variable taking a value of one if either the AFL-CIO’s general or staff fund voted shares in the firm’s 2011 annual meeting, and zero otherwise. *Union/PensionFund* is an indicator variable taking a value of one if a union or pension fund submitted a shareholder proposal for vote at the firm’s annual meeting between January 2006 and May 2010, and zero otherwise. See Table I for a description of the other explanatory variables. *t*-statistics calculated from the empirical time-series distribution of coefficients obtained from running the same regression using “combined” returns on trading days between April 1, 2009 and March 31, 2010 for firms in each size bucket are shown in parentheses. ***, **, and * indicate significance at 1%, 5%, and 10% levels, respectively.

	(1)	(2)	(3)	(4)
SharkWatch50Firm	0.88*** (2.78)	1.24*** (3.50)	0.76*** (2.59)	0.69** (2.39)
#AFLCIOFriendly	-0.06 (-0.36)			
#CNShareholders		-0.15* (-1.80)		
AFL-CIO Fund			-2.05 (-1.13)	
Union/Pension Fund				-0.67 (-0.48)
SharkWatch50Firm * #AFLCIOFriendly	-0.20 (-1.16)			
SharkWatch50Firm * #CNShareholders		-0.08 (-0.99)		
SharkWatch50Firm * AFL-CIO Fund			0.27 (0.15)	
SharkWatch50Firm * Union/Pension Fund				-0.70 (-0.49)
Lag6moReturn	-0.01*** (-3.14)	-0.01*** (-3.63)	-0.01*** (-3.37)	-0.01*** (-3.08)
ROA	-0.44 (-0.60)	-0.30 (-0.41)	-0.45 (-0.62)	-0.69 (-0.96)
MarketCap	-0.00** (-2.20)	-0.00*** (-3.16)	-0.00*** (-3.27)	-0.01*** (-3.73)
SalesGrowth	-0.17 (-0.68)	-0.30 (-1.20)	-0.23 (-0.91)	-0.22 (-0.85)
BookLeverage	0.24 (0.54)	0.51 (1.14)	0.39 (0.88)	0.28 (0.64)

(Continued)

Table A.II—Continued

	(1)	(2)	(3)	(4)
Tobin'sQ	-0.02 (-1.35)	-0.01 (-0.79)	-0.01 (-1.04)	-0.02 (-1.33)
DividendYield	1.67 (0.67)	1.89 (0.77)	1.75 (0.70)	1.62 (0.65)
R&D	0.97 (0.66)	0.54 (0.36)	0.99 (0.67)	0.90 (0.61)
SegmentHHI	-0.38 (-0.65)	-0.71 (-1.22)	-0.46 (-0.79)	-0.38 (-0.64)
InstHolding%	0.50 (1.16)	0.81 (1.60)	0.45 (1.07)	0.36 (0.85)
AnalystCoverage	-0.01 (-0.43)	0.01 (0.50)	0.00 (0.11)	-0.01 (-0.44)
Observations	2,492	2,492	2,492	2,492
Adjusted R^2	0.0873	0.1040	0.0937	0.0863

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