



Elections that Matter: A Review of Director Votes in 2008

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Executive Summary

Despite the number of governance and social proposals that grab headlines every year, most shareholders have only one item of substance on their proxy ballots: a “for” or “withhold”¹ vote with regard to the election of directors. Often this single voting item is the only means by which shareholders have any input into a company’s governance. However, as a practical matter, an uncontested election of directors is often little more than a formality for shareholders, who are expected to rubber-stamp the board’s nominees, and for directors, who routinely receive 90% or higher support.

Because of this, there is a heightened awareness, among both companies and shareholders, of instances where unusually high withhold votes do occur. *PROXY Governance* has reviewed data available from voting results of 2007 and 2008 annual meetings, with an eye toward gauging certain voting patterns and trends in director elections. Our findings include:

- A year-over-year increase in the percentage of directors garnering high (20% or more) withhold votes;
- An even greater year-over-year increase in the percentage of directors receiving majority or near majority (40% or more) withholds. We believe directors who receive this level of withholds will receive increased scrutiny over time, as majority voting in director elections becomes standard practice;
- Directors who received high withhold votes in 2007 generally received even higher withhold votes in 2008;
- Most companies whose directors received majority withhold votes in 2007 took at least some action to ameliorate shareholder concerns within the following year.

¹ At most companies, a vote in opposition to a director’s election is “withheld” from that director. Where companies have a majority vote standard in director elections, the vote is typically characterized as “against” a director, rather than “withheld.” In this paper we will use “withhold” as the general terminology unless speaking specifically in the majority vote context.

The Big Picture

As noted above, high withhold votes (which we characterize as 20% or more) are still relatively rare: approximately 5-6% of nominees received withhold votes at this level in 2007. Of those, only a “lucky few” directors are faced with majority (or near majority) withhold votes each year:

Table 1: Withhold Votes from Directors, 2007-2008²

	2007 ¹	2008 ²	Rate change 2007-2008 ³
20% and over Withholds	760 directors (5.2% of total) 367 companies (14.3% of total)	727 directors (5.7% of total) 318 companies (14.5% of total)	+8.2% +1.5%
40% and over Withholds	126 directors (0.9% of total) 77 companies (3.0% of total)	157 directors (1.2% of total) 80 companies (3.7% of total)	+41.0% +21.6%
50% and over Withholds	35 directors (0.2% of total) 24 companies (0.9% of total)	37 directors (0.3% of total) 16 companies (0.7% of total)	+19.6% -21.9%

¹Based on voting results for 14,498 directors at 2,563 companies

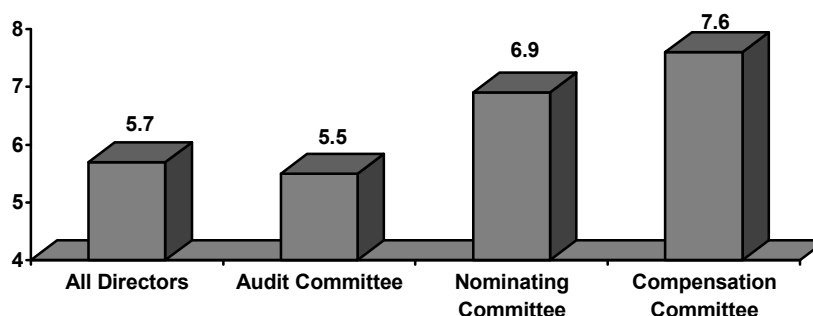
²Based on voting results for 12,814 directors at 2,189 companies reporting through 9/1/08

³Rate at which the percentage of withholds changes from year to year.

In general, a higher percentage of directors in 2008 faced high withhold votes (of 20% or more) than in the previous year, and a significantly greater percentage of directors faced majority or near-majority (40% or more) withhold votes. This is due in part to an increase in shareholder vote “no” campaigns and a broadening of their overall criteria for opposing board members (see Appendix 1).

Who was Targeted?

Figure 1 illustrates the breakdown by committee for directors receiving a withhold vote in excess of 20%.



**Figure 1: High Withhold Rates by Committee – 2008
(Percentage of directors receiving 20% or more withhold votes)**

² Data reflects only companies which reported full voting results; many companies report only partial results (e.g., all director-nominees were re-elected); some fail to report any results at all.

Comparing the average likelihood that a director would be faced with a high withhold vote (5.7% of all directors received withhold rates of 20% or higher) with the rate of high withholds among certain groups of directors provides a picture of where shareholder dissatisfaction was likely to be directed. For example, *compensation committee members* were the most frequent target of all board members, with a 7.6% rate of high withholds. *Nominating / governance committee* members were also frequently targeted, as 6.9% of these directors received high withhold votes. Interestingly, *audit committee members* were generally not targeted more frequently than the general director population; only 5.5% of these directors received high withhold votes.

In other cases, as demonstrated in Figure 2, certain actions by individual directors were likely to invite negative shareholder attention. For example, *poor attendance* was very likely to get a director in hot water; 43.7% of directors who failed to meet the threshold 75% attendance level at required board and committee meetings received high withhold vote totals. Also, *overcommitted directors* (who have served on five or more boards of publicly-traded companies) were another target; 10.1% of this group received high withhold vote totals.

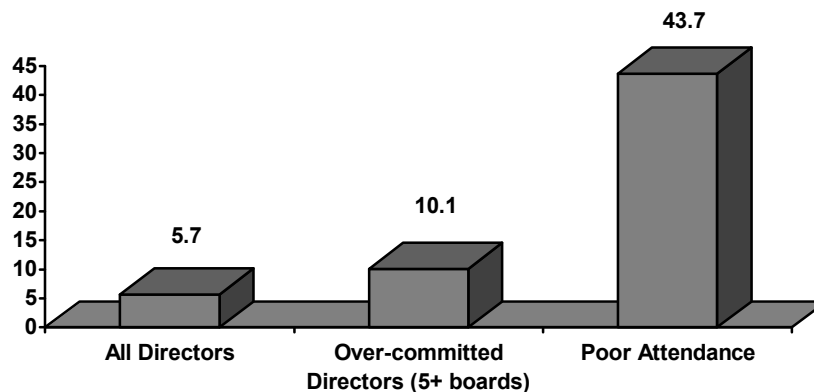


Figure 2: High Withhold Rates – Other Factors – 2008
(Percentage of directors receiving 20% or more withholds)

Raising the Bar: Plurality and Majority Vote Standards

Most companies' director elections operate under a *plurality vote standard*; under a plurality vote, those directors who receive the highest number of votes cast "for" their election are elected to the board. The number of nominees typically equals the number of seats up for re-election. There are no write-in candidates; shareholders may either vote "for" each nominee or choose to "withhold" their vote from certain nominees. Effectively, if you've been nominated to a board that has plurality voting, go ahead and write that next board meeting on your calendar. In pen.

In response to growing shareholder sentiment, an increasing number of companies have adopted a *majority vote standard* in director elections. Before proxy season,

approximately 44% of companies in the S&P 500 had adopted such a standard,³ and companies continue to move in this direction. Under the majority vote standard, directors who receive a greater number of “against” votes than votes cast “for” their election are not elected to the board. If the individual who fails to receive majority support for their election is not already a director, then that board seat remains empty. However, if the nominee is an incumbent director, that director, under the laws of most states, will continue to serve as director until a replacement is appointed. To address this problem, most boards which have majority vote have also adopted a *director resignation policy*, under which each director agrees that if they fail to receive a majority of votes in their favor, they will offer their resignation to the board. The board will then act to accept or reject his resignation within a specified time. Approximately another 22% of S&P 500 companies maintain the old plurality standard for director elections⁴, but have adopted a director resignation policy, which provides its board with some potential flexibility to accept or reject a resignation proffered by the disfavored director.

Currently, there is not sufficient information to determine if the adoption of a majority vote standard will cause shareholders to be more liberal with their votes “against” directors, or if the opposite will occur, and they will use additional caution with their votes in light of the potential consequences. In 2008, no companies with a majority vote standard had a “failed election” where a director did not obtain a majority of “for” votes, notwithstanding the discussion of broker votes below. (One company, Axcelis Technologies, did have a director resignation policy which was triggered when three of its directors failed to receive more “for” votes than withheld votes. More on this below.) In 2007, only one company with a majority vote standard had a director who failed to reach that standard (Mae Jemison at Gen-Probe, Inc; see Appendix 2: “Majority Withhold Votes – 2007”). It might be postulated that the companies that have adopted majority voting tend to be more shareholder-friendly, and therefore have better relations with shareholders. It also might be simply that the early-adopters have tended to be larger companies with a wider shareholder base, so that it is difficult to galvanize a large vote “against” an individual director at these companies. In any case, the sample size is too small to determine with certainty if there is a “majority vote effect.”

Effect of Broker Votes

Under rules promulgated by the major listing exchanges and approved by the SEC, brokers holding shares of beneficial owners who do not provide instructions regarding how to vote those shares may vote the shares themselves with regard to “routine” items. Historically, for those routine items, which include director elections, brokers have cast their votes with management.

The result is that a significant number of shares are automatically voted “for” all of management’s nominees for the board (according to Broadridge Financial Solutions, Inc.,

³ Claudia H. Allen, “Study of Majority Voting in Director Elections,” report by Neal, Gerber & Eisenberg LLP, Nov. 12, 2007. <<http://www.ngelaw.com/files/upload/majoritystudy111207.pdf>>.

⁴ Ibid.

brokers control 20-25% of votes). Elimination of discretionary broker voting, which has been under consideration by the New York Stock Exchange and SEC, could greatly impact voting outcomes and the potential for failed elections when coupled with a majority vote standard. In our review of 2008 voting results, we found at least 18 directors at nine companies who received support of between 50% and 60% of votes cast, but who would not have reached the 50% support level if broker votes had not been included in the tally (assuming that all broker votes were in fact voted in favor of the directors in question).⁵ Only one of these companies, Washington Mutual, Inc., had a majority voting standard at the time of the election. Three directors – Mary Pugh, James Stever and Charles Lillis – would have failed reelection and been required to submit their resignations had broker votes not been included in the count. Only one – Pugh – actually resigned.

Board Responses to High Withhold Votes

A board with a director who has received a high withhold vote faces a difficult decision. The most obvious and direct solution to the problem – pressuring the director to resign or not renominating him for the seat the following year – is a fairly drastic action. Finding a replacement for a director who serves in an important role (such as a financial expert on an audit committee) may be difficult. On the other hand, the sheer embarrassment of receiving a large withheld vote may be enough for the director to resign on his own accord. Rather than asking a director to step down, boards more often may respond to high withhold votes in other ways that would address shareholder concerns. Individual directors may also take actions themselves to cure an issue, such as improving attendance, reducing outside board commitments, or eliminating relationships with a company which would call their independence into question.

So far in 2008, only one of 37 directors who received a majority withhold vote (David Donnini at Syniverse Holdings) is no longer on the board. Another director, Mary Pugh at Washington Mutual, resigned after receiving a 49.96% withhold vote. Three other directors – H. Brian Thompson, R. John Fletcher and Stephen R. Hardis at Axcelis Technologies – submitted their resignations after they garnered 58% withhold votes. The withhold votes were due to (1) a vote “no” campaign led by Sterling Capital Management, holder of approximately 12% of the company’s shares, over the board’s refusal to negotiate with a prospective bidder for the company, and (2) more general shareholder dissatisfaction over the board’s refusal to declassify itself in the face of a previous shareholder majority requesting that it do so. The board refused the resignations and began negotiations with the bidder, although they did not result in a successful bid for the company. At another company, 4Kids Entertainment, Inc., the board reacted to high withhold votes that were directed at its newly-adopted poison pill by amending the pill to increase its trigger from 15% to a more shareholder-friendly 20%.

⁵ These companies were: 4Kids Entertainment, Inc., Art Technology Group, Inc., Celgene Corp., Chicos FAS, Inc., Fisher Communications, Inc., Ness Technologies, Inc., PeopleSupport, Inc., Toreador Resources Corp., and Washington Mutual, Inc.

With the added perspective gained from a year's distance, it becomes easier to see what actions have been taken by boards in response to majority withhold votes (see Appendix 2: "Majority Withhold Votes – 2007"). Most companies do respond to these votes in some fashion. During 2007, 24 directors at 19 companies received a majority of withhold votes, primarily for poor attendance. At only six of these companies were we unable to find some mitigating action taken by the board or the director in question in the following year. At five of the companies, the directors either resigned or did not stand for re-election the following year. Where votes were withheld because of a director's poor attendance, the director in question simply improved his attendance record the following year (although one director, Preston Butcher at Northstar Realty Finance Corp., continued to have attendance issues). At companies where director independence or conflicts were the reasons for the withholds, the directors stepped down from key committees.

When Shareholders Attack! Vote "No" Campaigns

Although any shareholder can withhold his vote from a director, or the entire board, for any number of reasons, the stakes are raised when a large shareholder publicly announces his intention to do so. Many such "vote no" campaigns have little effect; however, there are a few significant ones each year. The influence of these campaigns beyond the ownership interest of the dissident shareholder will vary greatly, depending on the dissident's share ownership history, whether the dissident is perceived as pursuing his own narrow agenda or is truly acting in the best interests of all shareholders, and the extent to which the dissident has made a compelling case to other shareholders.

There have been approximately 26 such campaigns in 2008, about half of which resulted in significant numbers of votes withheld. The California Public Employees Retirement System (CalPERS) led in the number of campaigns (seven), although several of those campaigns had little effect on votes. Another activist investor, Change-to-Win Investment Group (CtW), an affiliation of seven large labor unions, announced in early 2008 that it would investigate board involvement and oversight with regard to the subprime mortgage meltdown at several major financial institutions. Although CtW initially targeted boards at up to six banks, it eventually focused its efforts on two companies (Morgan Stanley and Washington Mutual). At Washington Mutual, CtW's activism resulted in a near-majority of votes withheld from Mary Pugh, who resigned from the board on the date of the meeting. At Morgan Stanley, however, the campaign failed to gather momentum and all directors were elected with at least 90% support.

When a major investor, such as a hedge fund, becomes a vote "no" dissident, it can become very influential, not only because of its large holdings, but because it is often seen as representing wider shareholder interests. On the other hand, vote "no" campaigns led by large public pension funds, such as CalPERS, or union-backed funds, such as CtW, often face a greater challenge as their holdings are not typically as large and they may be seen as representing a narrower interest.

Table 2 reflects some of the more “successful” campaigns in 2008. Bear in mind, however, that for every campaign that resulted in 20% or more withheld votes, there were others where the activist campaign barely registered a blip.

Table 2: Selected “Vote No” Campaigns - 2008

Company	Sponsor	Reason for Campaign	Withhold Vote
Axcelis Technologies Inc.	Sterling Capital Management	Reluctance to negotiate with a potential bidder for the company	58% from all nominees
Chicos FAS, Inc.	Spotlight Capital Partners	Poor performance and excessive compensation; CEO’s son-in-law on compensation committee	45% from targeted director J. Burden
Fisher Communications Inc.	GAMCO Investors, Inc.	Poor performance and excessive compensation	49% - 50% from all nominees
Invacare Corp.	CalPERS	Poor company performance	24% - 39% from all nominees
Sonus Networks Inc.	Legatum Capital	Poor company performance and corporate governance	42% - 44% from all nominees
Telephone & Data Systems Inc.	Southeastern Asset Mgt.	Failure to take action on a takeover bid, or to even disclose it to shareholders	41% - 43% from all nominees
Toll Brothers Inc.	Laborers’ Int’l. Union of N. America	High compensation of CEO R. Toll	32% - 33% from all nominees
Tyson Foods, Inc.	CtW Investment Group	Targeted members of the Tyson family and R. Bond for failure to establish a nominating committee and other poor corporate governance practices	11% - 16% from targeted nominees (Tyson family owns 75% of voting stock)
Washington Mutual Inc.	CtW Investment Group, AFSCME	M. Pugh targeted for her questioned independence on the company’s finance committee, which were potentially related to the company’s write-downs, and HR committee chairman J. Stever for poor compensation practices; AFSCME targeted the entire HR committee	Pugh received 49.96% withhold, resigned from the board; Stever and rest of HR comm. received 30% - 42% votes withheld

Multi-Year Offenders - Recurring High Withhold Votes

Not surprisingly, a high withhold vote in 2007 was a good indicator of a repeat performance in 2008 if the board had not taken satisfactory action to address shareholder concerns. Of the directors for which we have data for both years, 27.9% of directors who received high withhold votes in 2007 received high withholds again this year. Of these “multi-year offenders,” most (65%) received a larger percentage of withholds in 2008 than in the previous year, and the average percentage of withholds from these directors rose from 30.6% to 33.7%.

Directors at several companies, including FirstEnergy Corp., Pulte Homes Inc., McGraw Hill Cos. and Boston Properties Inc., received high withhold votes because they had not implemented shareholder resolutions, supporting declassification of their boards or the elimination of supermajority voting provisions, that had received majority support over multiple years. Other unresolved issues have led to recurring high withhold votes at other companies:

- Kimco Realty Corp. directors Richard Dooley and Frank Lourenso, who sit on key board committees, have faced repeat high withhold votes over questions pertaining to their independence. Because some shareholders characterize these

two directors as non-independent, they do not regard the board as being majority independent, resulting in their withholding votes from the three inside directors as well;

- High executive compensation has resulted in large percentages of withhold votes against members of the Executive Compensation and Human Resource Committee at Occidental Petroleum Corp. for the last three years in a row;
- Ongoing legal and regulatory issues have resulted in shareholders withholding votes from members of the board at American International Group (AIG) for the last four years (perhaps shareholders were onto something here);
- Finally, directors at a number of companies – Joseph Manson at Mesa Air Group, Inc., C. Webb Crockett at Southwest Airlines Co., and Charles Ferris at Cablevision Systems Corp., to name a few – sit on key board committees while maintaining business or other relationships with their companies (in these cases through partnerships at law firms that perform legal services for the company) beyond a board seat. Because some shareholders view this as a conflict, these directors receive high withhold votes at every annual meeting.

Finally - What's a shareholder to do?

Given recent headlines, we believe it is relevant to ask: what were the voting results for certain companies that have captured national attention over the past few months?

Table 3: Companies at the Center of the Storm

Company	Withhold Votes (%) (reason)	Company Developments Since Meeting
Morgan Stanley	2% - 10%	40% share price decline; company has sought regulatory protection
Washington Mutual, Inc.	6% - 42% (for pay, independence and risk management issues)	Company filed for bankruptcy 9/27/08 after its banking operations acquired by JP Morgan Chase
Lehman Bros. Holdings, Inc.	0% - 5%	Filed for bankruptcy 9/15/08 – five months after meeting
American Int'l Group	23% - 32% (for ongoing legal issues)	Took \$85 billion bailout loan after asset devaluation resulted in 90% share price decline
Fannie Mae	2% - 3%	90% share price decline; Feds have assumed control of the company
Freddie Mac	2% - 26% (high withholds were against compensation committee)	See Fannie Mae, above

Of these six companies which have been at the flash point of the subprime loan and credit crisis, only three had significant withhold votes against any of its directors, and only at one company (Washington Mutual) was there any significant withhold vote directly related to the financial turmoil that the companies were then undergoing. At the time of each of these companies' annual meetings, there was already significant evidence, in the form of asset write-downs and significant share price decline over the past year, that poor decisions had been made. Admittedly, the milk had already been spilt at this stage, so taking it out on the board would have had little effect. But where was the shareholder outrage?

If there is a lesson to take from the voting results from these six meetings, it is only that, shareholders, like any other outsiders, could not have known the extent of the problems at these companies. As the camera pulls back from the details of management actions to the oversight level of the board, and finally to the big picture as seen by public shareholders, the ability to assess complicated strategies and implementation becomes difficult. Shareholders often do not have the information necessary to adequately grade the effectiveness of company management or the appropriateness of its decisions, and as a result, they cannot know with certainty how effective is their board's oversight. Shareholders rely heavily on the judgment of the board members they elect, and it is that judgment that shareholders must assess when they cast their vote.

The Proxy Governance Approach – Director Elections

The vast majority of directors that serve on the boards of publicly-traded companies are well-qualified, diligent, and take seriously their duties to the company and to shareholders. However, when the actions of a director (or a committee, or an entire board) call into question the judgment of that director, we believe that shareholders need to send a message that changes, either in the director's behavior or in the composition of the board, need to be made.

But when is sending such a message appropriate? When an otherwise-qualified director fails to attend 75% of his or her board and committee meetings in a given year, should shareholders automatically withhold their vote? What about directors who divide their responsibilities between boards of five other public companies? Six? Seven? How long should directors continue to be given responsibility for oversight of continually underperforming companies? How does excessive executive compensation play into the decision whether or not to withhold?

PROXY *Governance* believes that these questions are best decided on a company-specific basis. We go beyond bright-line tests or checking boxes and ask additional questions. Was the poor attendance a recurring problem for the director or a one-year blip? What are the director's full complement of boardroom and non-boardroom responsibilities and would they allow the director to give proper attention to the company in question? Have recent management changes been an adequate signal of the board's oversight during financial or other difficulties? Has the board been responsive to shareholder concerns? Looking at these and other factors may require digging deeper than simply ticking off a list of characteristics but the result, we believe, is a more thorough analysis of the board's judgment and oversight ability.

Regarding executive compensation, we believe that this may be the issue where shareholders are best equipped to assess the board's judgment, because companies are required to disclose more information regarding this function of the board than almost any other. Where we believe compensation to be excessive, we will recommend withholding votes from incumbent members of the board's compensation committee. However, the analysis should not end there; we also believe that poor compensation practices may be an indicator of a more general imbalance between board and management, and may therefore point to lack of oversight, and potential problems in other areas going forward.

A "check-the-box" approach can generate a lot of "automatic" withhold recommendations that don't necessarily make sense. PROXY *Governance's* thoughtful, company-specific approach results in a more targeted array of withhold recommendations that single out truly outlier directors who are not serving shareholders' best interests. Through August 2008, PROXY Governance recommended withholding votes from at least one director at 10% of the companies for which we issued recommendations. Our most common reason for recommending withhold votes was excessive executive compensation, followed by excessive outside board service, absenteeism and sustained financial underperformance.

Appendix 1

Selected Majority or Near-Majority Withhold Votes in 2008

Company	Director(s) (Withhold %)	Reason for High Withhold Vote
4Kids Entertainment, Inc.	M. Goldstein (42% ¹), J. Emmett (42% ¹), R. Block (42% ¹), S. Newborn (40% ¹)	Company adopted poison pill without shareholder approval ²
Administaff, Inc.	E. Jones (50%), G. Petsch (49%), M. Brown (48%)	Company extended poison pill without shareholder approval
Alico, Inc.	B. Troutman (85% ³)	Similar to a contested meeting – company submitted one nominee more than number of board seats
Allied World Assurance Co. Holdings	M. Patterson (51%), S. Weinhoff (50%)	Poor attendance
Axcelis Technologies, Inc.	H. Thompson ⁴ (58%), R. Fletcher ⁴ (58%), S. Hardis ⁴ (58%)	Shareholder-led “vote no” campaign against directors for reluctance to negotiate with a bidder; board failed to implement a majority shareholder vote requesting board declassification
Boston Properties, Inc.	M. Turchin (60%), Z. Baird (50%), A. Patricof (50%), L. Bacow (50%)	Company has failed to implement shareholder proposals to declassify its board
Celgene Corp.	A. Hayes (49% ¹)	Poor attendance
Chico’s FAS, Inc.	J. Burden III (45% ¹)	Shareholder -led “vote no” campaign protesting company’s characterization of Burden as independent
Coherent, Inc.	J. Hart (48%), G. Rogerson (48%), L. Tomlinson (48%)	Option backdating
Cooper Companies, Inc.	D. Press (56%), M. Marx (56%), M. Kalkstein (56%), S. Zinberg (56%), S. Rosenberg (56%), A. Bender (56%), A. Rubenstein (56%), J. Lindell (56%), R. Weiss (56%)	Company extended poison pill without shareholder approval
Cybersource Corp.	R. Scudellari (50%)	Independence questions
El Paso Electric Co.	K. Heitz (67%)	Independence questions
FirstEnergy Corp.	C. Cartwright (48%), G. Smart (48%), J. Williams (48%), W. Cottle (47%)	Failure to implement multiple shareholder proposals to eliminate supermajority vote requirements
Fisher Communications	W. Warren (50% ¹), R. Hawley (49% ¹), M. Wortsman (49% ¹), G. Warren (49% ¹)	Shareholder-led “vote no” campaign
Interface, Inc.	J. Henton (64%), T. Oliver (64%), C. Kennedy (64%), D. Dillon-Ridgley (64%), K. Kohler (61%)	Shareholder protest against dual-class stock structure

Selected Majority or Near-Majority Withhold Votes in 2008

Company	Director(s) (Withhold %)	Reason for High Withhold Vote
Jarden Corp.	I. Simon (48%)	Compensation issues
McGraw-Hill Cos.	L. Lorimer (44%)	Failure to implement multiple shareholder proposals
Ness Technologies	D. Suesskind (44%) ¹	Poor attendance
Peoplesupport	J. Rose, F. Perna (43%) ¹	Board rejected a proposed acquisition bid ⁵
Plexus Corp.	R. Boer (51%)	Independence questions
Pulte Homes	B. Anderson (42%), W. Smith, P. O’Leary (41%)	Failure to implement multiple shareholder proposals
Quiksilver, Inc.	H. Ueberroth ⁶ (41%), W. Barnum (40%)	Poor attendance
Rogers Corp.	W. Boomer (62%)	Independence questions
Sciele Pharma	P. Zenner (45%)	Over-commitment to multiple boards
Security Capital Assurance	M. Hennessy (51%), C. Ross (51%)	Poor company performance
Sonus Networks, Inc.	P. Severino (44%), J. Cunningham (43%), H. Ahmed (42%)	Shareholder-led “vote no” campaign
Syniverse Holdings, Inc.	D. Donnini ⁶ (56%), J. Lipham (53%), C. Roche (44%)	Poor attendance (Donnini, Lipham); independence questions (Donnini, Roche)
Telephone & Data Systems, Inc.	M. Saranow (44%), H. Wander (43%), G. Josefowicz (41%), C. O’Leary (41%)	Shareholder-led “vote no” campaign over the company’s rejection of a takeover bid; also restatements and SEC investigation
Toreador Resources Corp.	D. Brewer ⁶ (41%) ¹	Independence questioned after a dispute with the company
Ultra Clean Holdings, Inc.	David Ibnale (52%)	Poor attendance
Washington Mutual, Inc. ⁷	M. Pugh ⁶ (50%) ¹ , J. Stever (42%) ¹ , C. Lillis (41%) ¹	“Vote no” campaign led by Change-to-Win, which questioned Pugh’s independence and the company’s compensation practices
Wind River Systems, Inc.	J. Fidler (46%)	Independence questions
Yahoo! Inc.	R. Bostock (40%)	Perceived mishandling of a merger bid from Microsoft

¹Withhold votes might have constituted a majority but for the company’s counting of broker votes, most of which are automatically cast in favor of management.

² Company later amended the pill to add more shareholder-friendly provisions.

³ Troutman had the highest withhold vote percentage for all directors in 2008.

⁴ The company has a director resignation policy; all three directors submitted resignations which were subsequently rejected by the board.

⁵ The company accepted a takeover offer (at a lower price) six months later.

⁶ Resigned from the board shortly after the annual meeting.

⁷ This company has a majority vote standard for director elections and a policy that directors will offer to resign if they do not receive more votes “for” their election than “against.”

Appendix 2

Majority Withhold Votes - 2007

Company	Mtg. Date	Director(s) and Withhold Vote	Reason for Withhold	Company Response
AAR Corp.	10/17/2007	M. Walfish (56%), J. Goodwin (55%), G. Fitzgerald, Jr. (54%)	Adopted poison pill without shareholder approval	No action detected; all three directors remain on the board
Activision, Inc.	9/27/07	B. Isgur (64%), R. Morgado (63%), P. Nolan (60%)	Option backdating	Isgur and Nolan were not renominated to the board in 2008; Morgado still on the board
Analogic Corp.	1/29/2007	J. Tarello (60%), B. Gordon (51%)	Independence issues	Both remain on the board but Gordon no longer an executive, and Tarello no longer serves on compensation committee
Black Box Corp.	10/4/2007	T. Greig (55%), W. Andrews (55%), T. Golonski (55%), R. Crouch (55%)	Option backdating	No action detected; all four directors remain on the board
Commvault Systems, Inc.	8/29/2007	A. Geday (55%)	Poor attendance	Still on the board; no attendance issue in FY2008
Gen-Probe, Inc.	5/31/07	M. Jemison, M.D. (71%)	Poor attendance	Resigned 6 months after the annual meeting ¹
Guitar Center, Inc.	5/10/07	B. Martin (50%)	Poor attendance	Company sold in 2008
Holly Corp.	5/24/2007	M. Hickerson (67%)	Independence issues	Remains on the board but no longer on nominating committee
Insight Enterprises, Inc.	11/12/2007	M. Fisher (52%)	Performance issues	No action detected; Fisher remains on the board
J2 Global Communications, Inc.	5/3/2007	J. Rieley (52%)	Poor attendance	Remains on the board; no attendance issue in 2008
McCormick & Schmicks Seafood	5/29/2007	J. Edmonds (71%)	Poor attendance	Remains on the board; no attendance issue in 2008
Mens Wearhouse, Inc.	6/13/2007	D. Chopra, M.D. (51%)	Poor attendance	Remains on the board; no attendance issue in 2008
Newfield Exploration Co.	5/3/2007	J. Romans (53%)	Poor attendance	Remains on the board; no attendance issue in 2008
Northstar Realty Finance Corp.	5/24/2007	P. Butcher (51%), F. Sica (51%)	Poor attendance	No action detected with respect to Butcher; both remain on the board, and Butcher continued to have attendance issues in 2008
Pediatrix Medical Group, Inc.	11/1/2007	M. Fernandez (51%)	Option backdating	No action detected; Fernandez remains on the board
Penn Virginia Corp.	5/8/2007	G. Wright (50%)	Poison pill w/ "dead hand" provisions	Company allowed pill to expire in 2008
Polycom, Inc.	5/30/2007	J. Brown (68%)	Poor attendance	Resigned 1 month after the annual meeting
Quiksilver, Inc.	3/16/2007	L. Boix-Vives (52%)	Poor attendance	Resigned 1 month after the annual meeting
Semtech Corp.	6/14/2007	J. Schraith (64%), J. Burra (60%), R. Hankin (60%)	Option backdating	No action detected; all three directors remain on the board
Sourceforge, Inc.	12/5/2007	C. Redfield (59%)	Poor attendance	Remains on the board; 2008 meeting is pending
Sunrise Senior Living, Inc.	10/16/07	C. Callen (62%)	Option backdating, shareholders excluded from annual meeting	Resigned 7 months after the annual meeting

Majority Withhold Votes - 2007

Company	Mtg. Date	Director(s) and Withhold Vote	Reason for Withhold	Company Response
Starwood Hotels & Resorts Worldwide, Inc.	5/24/2007	J. Chapus (61%)	Poor attendance	Did not stand for re-election in 2008
Tessera Technologies, Inc.	5/17/2007	J. Goodrich (66%)	Poor attendance	Remains on the board; no attendance issue in 2008
Wabash National Corp.	5/24/2007	R. Stewart (58%)	Poor attendance	Remains on the board; no attendance issue in 2008

¹ Gen-Probe has a majority vote standard and director resignation policy. Although the board initially rejected her resignation, Jemison eventually resigned from the board on Nov. 14, 2007.