Does Confidential Proxy Voting Matter?

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Abstract

Confidential voting in corporate proxies is a principal recommendation in activist institutional investors' guidelines for corporate governance reforms. This paper examines the impact of the adoption of confidential corporate proxy voting on proposal outcomes through a panel data set of shareholder and management proposals submitted from 1986-98 to the 130 firms that adopted confidential voting in those years. Institutional investors promoting confidential voting maintain that private sector institutions have conflicts of interest that prevent them from voting against management even though to do so would maximize the value of their shares; they contend that anonymous ballots will enable such investors to vote their true interest, and thereby anticipate reduced support for management proposals and increased support for shareholder proposals. The paper finds, contrary to confidential voting advocates' expectations, that adoption of confidential voting has no significant effect on voting outcomes. Voting outcomes are best explained by proposal type; neither institutional nor insider ownership, nor prior performance, significantly affect the level of support a proposal receives. Moreover, the conflict of interest hypothesis is not supported in the data, as private institutional holdings post-adoption of the voting reform do not affect the support level for proposals. Confidential voting also does not affect firms' stock performance. The results suggest that institutional investor initiatives directed at confidential voting are not a fruitful allocation of investors' resources.

1. Introduction

Institutional investors have over the past decade vigorously engaged in corporate

governance activities, introducing proposals under the SEC's proxy proposal rule 14a-8 and

privately negotiating with the management of targeted firms over adoption of governance

reforms. One of the more prevalent reform proposals with institutional activists is adoption of

confidential proxy voting--voting procedures under which management does not know how

individual shareholders vote. Confidential voting proposals are among the most common type

of proposal submitted by institutions, on a par with proposals to eliminate defensive tactics to

takeovers (see table 1). It has also been a focus of the private negotiations undertaken by the

behind-the-scenes activist institution, TIAA-CREF, the pension fund for university educators

(Carleton, Nelson and Weisbach, 1998). These actions are consonant with the fact that

confidential proxy voting is the first principle listed in the "core corporate governance policies"

of the Council of Institutional Investors (CII),[1] an organization of pension funds that promotes

institutional investors' concerns and serves as an informational clearinghouse and forum for its

members to coordinate and communicate on shareholder activism programs.

Proponents of confidential voting proposals maintain that a number of shareholders have

conflicts of interest that prevent them from voting against management when to do so would

maximize share value (e.g., Pound, 1988). They conjecture that shareholders with such conflicts

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[1] "All directors should be elected annually by confidential ballots counted by independent tabulators. Confidentiality should be automatic and permanent and apply to all ballot items. Rules and practices concerning the casting, counting and verifying of shareholder votes should be clearly disclosed." The Council's corporate governance policies are listed on their website at: http://www.cii.org/corp_governance.htm. Other core policies involve the independence of the board of directors and specified board committees. The Council's "core policies" are those that it "believes should be implemented by all companies."

will not feel constrained to vote with management if it were unable to ascertain how they voted. These proposals obtain broad support among investors beyond the sponsoring institutions: confidential voting proposals receive high levels of support compared to other shareholder proposals–only proposals to repeal takeover defenses obtain an equal or higher average support level (see, e.g., Gillan and Starks, 2000, 292).[2]

There has been, however, no prior empirical research on the impact of confidential proxy voting to determine whether the widely held belief that it is beneficial is accurate and consequently, whether institutional investors should continue to direct efforts at advocating that reform of the proxy process. This paper measures the efficacy of confidential voting by examining whether its adoption has affected voting outcomes, as contemplated by its proponents. The central finding of the paper is that confidential voting has no significant effect on voting outcomes. It also has no impact on firm performance, paralleling the results of insignificance regarding the performance effects of other types of governance reform proposals advanced by activist shareholders (for reviews see Black, 1998; Romano, 2001).

2. Why Do Investors Propose Confidential Voting?

Proponents of confidential voting believe that conflicts of interest prevent certain shareholders from voting against management when to do so would maximize share value (e.g., Pound, 1988). Voter anonymity is expected to eliminate or mitigate such conflict. Banks and insurance companies are identified as the prime candidates for such conflicts, as they have more dimensions on which they may aspire to do business with a firm whose shares they hold in fiduciary accounts, than other institutional money managers, and those business prospects could

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[2] This is true of this study's set of shareholder proposals as well (see table 4).

be jeopardized by voting against management (e.g., Black, 1992: 826). Advocates of confidential voting contend that institutions in such a predicament will not feel constrained to vote with management when it is against their interest as shareholders, that is, when management's position would not maximize share value, were management unable to ascertain how shareholders voted. There is an unspoken premise underlying the argument: that non-value-maximizing management proposals are approved and value-maximizing shareholder proposals are rejected.

In the view of the advocates of confidential voting, it will eliminate institutional investors' conflicts of interest in proxy voting, and thereby pave the way for activist investors' greater success in opposing non-value-maximizing policies supported by management. Consistent with this view of conflicted investors, 79 percent of respondents to a 1990 survey of institutional investors by the Investor Responsibility Research Center (IRRC), a non-profit research group serving institutional investors, stated that they were contacted by management to discuss pending proxy votes, and 15 percent felt that the contact "had been improper" (Hunt, 2001, p. 8). In a more recent IRRC survey undertaken during the 2001 proxy season, of 25 respondents to questions on "experiences with governance activism," eight responded that they felt management's contact was "improper" while nine responded that they did not (Hunt, 2002, 9). A more recent example of conflicted voting emphasized by activist investors is Deutsche Bank's asset management subsidiary's voting on the contested merger between the Hewlett-Packard and Compaq corporations: after a conversation with the Hewlett-Packard CEO, the institution shifted to vote in favor of the merger allegedly in exchange for additional banking

business from the firm.[3]

An ancillary concern of advocates of confidential voting is the potential for vote resolicitation. The contention is that management will attempt to pressure shareholders to change their votes when a tally is not going its way, and that such action places management opponents, such as initiators of shareholder proposals, at a disadvantage because they do not have access to the proxy cards (nor the resources) to mount a resolicitation campaign (Hunt, 2002, 9-10). There is, however, a dearth of evidence concerning whether resolicitation of voting is common; of the 25 respondents to the 2001 IRRC survey noted earlier, three stated that they had been resolicited to change votes. Most companies assert that resolicitation is rare, and usually "intended only to draw the attention of stockholders (whose votes) may have been incorrectly marked" or mistakenly confused with follow-up solicitation efforts to obtain a quorum, rather than directed at pressuring shareholders to change votes (Hunt, 2002, 10). That is probably why, as the IRRC's analysis of the issues emphasizes, the principal motivating force for confidential voting proposals among institutional investors is the concern that investor conflicts of interest may skew voting outcomes in management's favor. Indeed, the allegations surrounding the circumstances of Deutsche Asset Management's voting switch on the Hewlett Packard merger suggest that a prime reason for concern over management's resolicitation of votes involves its direction at investors with conflicts of interest.

It would seem to be intuitively plausible to expect voting institutions to affect outcomes:

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[3] Nell Minow, a stockholder activist and founder of the Corporate Library, a web site dedicated to corporate governance, cited Deustche Asset Management's voting on the merger as one of the three lowest points of the year in corporate governance, the other two being the accounting scandals at the Enron and WorldCom corporations (Jenkins and Minow, 2002).

in the U.S. election context, for instance, the adoption of "Australian" ballots--state-prepared and administered ballots that are secret, in contrast to the party ballot system--was associated with an increase in ticket-splitting, although the change in ballot form (organized by office rather than party) appears to have had a more significant effect than the confidentiality of the ballot (Rusk, 1970). However, it is also quite possible that the principal effect of the Australian ballot was not to alter voting outcomes but rather, to reduce party expenditures on election campaigns, as it eliminated the bribes parties were paying voters under the open ballot system because they no longer could be assured of the bribes' desired outcome (Gerber, 1993).[4] Under this alternative hypothesis, the procedural reform was adopted because it was in the interest of the major political parties, and not simply due to effective reformist agitation, and thus could not be expected to alter the status quo in elections. The analogous alternative hypothesis in the proxy context is that managers are willing to adopt confidential voting because they do not expect it to shift significantly support levels for proxy proposals so as to produce voting outcomes that are detrimental to their interest. In such a scenario, management's adoption of confidential voting falls into the category of a nuisance suit settlement, in which management placates a prominent investor through a one-time low cost payout.

3. Prior Research

There has been no empirical research into the effect of confidential voting on proxy

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[4] Gerber models when political parties would prefer secret to open ballots, in order to reduce bribery, and suggests that the conditions under which U.S. states switched to the Australian ballot in the late 19th century--increasingly competitive elections--are consistent with the model predictions. In support of this hypothesis, in a history of the voting reform, L.E. Fredman (1968) states that over time, several observers noted that the Australian ballot checked obvious bribery but did not seriously weaken the power of political machines.

proposal outcomes, which would assist in determining whether reality comports with the

expectation of advocates of the policy that support for management declines post-adoption.

There is, accordingly, no data besides the IRRC surveys to ground the theory of an activist

investor agenda to adopt confidential voting in order to facilitate voting against management, or

more specifically, to eliminate or reduce investor conflicts. Three studies have examined the

premise underlying the advocacy of confidential voting, the idea that some institutional investors

have conflicts of interest, although none of these investigated the firms' voting policies.[5]

John Pound (1988), who was one of the first scholars to articulate in detail the hypothesis

of investor conflicts of interest, investigated the outcomes of proxy fights in relation to

institutional ownership. He found that when the dissidents won, there was a lower level of

institutional ownership than when they did not, and that firms that were the subject of proxy

fights had lower institutional ownership (by 30 percent) than firms that did not.

Pound considers these results as evidence that institutions have conflicts of interest that

lead them to support management against their interest in obtaining a higher share value through

support of dissidents. An alternative explanation that he notes but rejects is that firms with

higher institutional ownership are less likely to have meritorious proxy fights because

institutional investors monitor management. A further related alternative explanation is that the

difference in ownership is due to institutions' selection of superior performing investments. In

either scenario, if institutions are less likely to hold shares in poorly managed firms, then there

will be fewer proxy fights in higher institutional ownership firms and shareholders engaging in

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[5] While these studies go to the principal rationale provided for advocating confidential voting,
unconstrained voting by investors, no study has been directed at substantiating the subsidiary
rationale provided for confidential voting, prevention of resolicitation by management.

proxy fights in those firms will not fare as well as those in firm with lower institutional ownership (because the latter firms would have poorer performing managements). A recent study by Tracie Woidtke (2002) provides support for the alternative hypothesis. Woidtke finds that private pension funds invest in higher performing firms than public pension funds. But even if the alternative hypothesis regarding institutional ownership is incorrect, it should further be noted that Pound's data are not probative for assessing the efficacy of confidential voting for ordinary proxy proposals as the dynamics of proxy fights are quite distinct from uncontested proposals, such that contests are explicitly excluded from the confidential voting policies of firms adopting the practice, given the ongoing solicitation of voters by both sides during a contest.[6]

The two other studies that have examined the issue of investor conflicts have investigated votes on management proxy proposals involving adoption of takeover defensive tactics. The earlier study, by James Brickley, Ronald Lease and Clifford Smith (1988), does so by attempting to correlate voting outcomes on uncontested proxy proposals with ownership composition. It does not examine whether or not the sample firms have confidential voting procedures, and consequently does not provide evidence on whether such a voting procedure affects outcomes. The second study, by Karen Van Nuys (1993), is a case study of the actual votes of institutions in one proxy solicitation.[7]

Brickley and his colleagues report that support for management proposals to adopt takeover defensive tactics is higher when the voting pool contains more institutional investors

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[6] Once firms adopt such confidential voting policies, activist shareholders do not typically continue to propose confidential voting to include contests (see table 4a).

[7] The firm, Honeywell, Inc., which is included in this paper's sample, adopted confidential voting after the proxy season studied by Van Nuys.

that they consider sensitive to pressure by managers because they may have business relations with the firms (banks and insurance companies). Because the study does not have data on institutional investors' actual votes, there is no means for determining whether the institutions deemed "pressure sensitive" (banks and insurance companies) actually supported management at higher rates than did other shareholders. Brickley and his colleagues' result would also hold if firms with large bank and insurance company holdings proposed less contentious amendments than other firms (see Van Nuys, 1993, p. 104). Hence Brickley and his colleagues' study is at best suggestive that there might be a benefit from confidential voting: if none of their sample firms had confidential voting in place, it is possible that its adoption would reduce the support level for management proposals on takeover defensive tactics in the firms with higher ownership by banks and insurance companies.

The case study by Van Nuys is of the proxy voting in Honeywell Inc.'s 1989 solicitation of votes on management proposals to adopt takeover defensive tactics, which was actively opposed by an institutional investor. The advantage of this study is that it identifies proxy votes precisely with specific voters, and thus explicitly tests whether institutional investors with potential conflicts–those with business relations with the targeted firm–voted differently from institutional investors without such relations. Van Nuys found that the financial institutions that had specific business relations with Honeywell, the targeted firm, did *not* vote in favor of management more than institutions that did not have such "pressure-sensitive" relations. This finding, derived from matching investors and votes, is at odds with Brickley and his colleagues' interpretation of the difference in voting support across firms with different investor pools in their sample as evidence that conflicted investors vote for management at a higher rate than other

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shareholders. Consequently, the Van Nuys case study is at odds with the claim that confidential

voting mitigates institutional investor conflicts of interest; indeed, the data do not show that such

conflicts exist.

Finally, it should be noted that studies of shareholder activism find that shareholder

proposals produce insignificant stock price effects but private negotiations over proposed

proposals sometimes produce significant positive effects (Romano 2001). The results are similar

for confidential voting when the studies separately report this category of governance reform.

Gillan and Starks (2000) indicate that the stock price effects of confidential voting proposals are

insignificant. The price effects of negotiated agreements over confidential voting by TIAA-

CREF are, however, also insignificant, in contrast to their negotiated agreements involving repeal

of defensive tactics, that are significantly positive (Carleton, Nelson and Weisbach, 1998).[8] Such

findings suggest that the market does not share the view of advocates of confidential voting that

it will have a beneficial effect (that is, that it will eliminate investor conflicts of interest and

thereby facilitate value-maximizing proxy voting outcomes).

4. Sample construction and characteristics.

This paper examines proxy proposal voting outcomes in a panel data set consisting of the

proposals presented to firms that adopted confidential voting between 1988 and 1997. These

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[8] Strickland, Zenner and Wiles (1996) report that the negotiated agreements of the United
Shareholders Association, an organization of small shareholders created by a prominent takeover
bidder, T. Boone Pickens, produce a positive price effect; these agreements include adoption of
confidential voting along with repeal of defensive tactics. They note (but do not report the
values) that they did not find significant differences across the different types of agreements in
their sample. But the numbers in their study are so small --34 agreements in total, from which a
subset of four types of proposals are distinguished and compared-- that it would be difficult
statistically to identify any significant difference across the groups, were one to exist.

years delimit the sample because they fall into the years for which data on voting outcomes are available that permit an examination of the impact of confidential voting on proposal outcomes: such votes have been compiled systematically by the IRRC only since 1986. Because firms voluntarily choose whether to adopt confidential voting, to avoid the endogeneity concerns that would arise when comparing voting levels in support of management across firms that have and have not adopted the practice, the voting levels of the adopters are instead compared before and after the practice was adopted.

4.1. Sample construction

A sample of 130 firms with confidential voting was constructed from a list of 174 firms identified by the IRRC as the population of firms that had adopted the practice by 1997.[9] Only firms whose confidential voting adoption date was identifiable in the firm's proxy statements and which date fell within years in which voting outcomes are available from the IRRC (after 1986), were included in the sample.[10]

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[9] The IRRC tracks the governance procedures and proxy votes of over 1,900 firms, including the Fortune 500, Standard and Poor's 500 and other publicly owned corporations. Since 1997, the last year for construction of this paper's sample of firms with confidential voting, the IRRC has identified 30 more firms with confidential voting, for a total of 204 out of 1,906 companies in its research universe (Hunt, 2002, p.3). According to Hunt (2002), the pace of adoption has slowed since 1994, with no more than six firms adopting the practice per year since 1996, and a record low, adoption by only two companies, in 2001.

[10] The IRRC was unable to identify an adoption year for 37 firms. Eight of those firms had confidential voting in place before 1986 and were consequently eliminated from the sample; another ten were eliminated because they had confidential voting in place in all of their available proxies, although the initial proxy year occurred after 1986, and hence the year when the policy was adopted could not be identified. For 12 firms, the year of adoption could be identified from the firm's proxy statements that fell within the sample period, and those firms were included. Table 2 summarizes the details of the sample construction. Where there were discrepancies in the adoption year between the IRRC's data and a firm's proxy, the firm's proxy year was used. The principal explanation of such discrepancies (22 of 26 firms) is that the policy was adopted after

The first criterion, notification in the proxy that votes would be kept confidential, was used to insure that shareholders knew the policy existed and could therefore factor it into their voting decision. This ensures a clean statistical test. The second criterion, that the voting procedure change was adopted during the period in which voting data on submitted proposals are available, assures that for each sample firm, proposals could have been offered both before and after confidential voting was adopted, and hence that there could be variation in the presence or absence of confidential voting within each firm's observations of proposal voting outcomes, which is necessary for statistical testing. These two criteria eliminated 41 firms, as indicated in table 2.

The distribution of the adoption of confidential voting across sample firms is reported in table 3. The rate of adoption accelerates in the early 1990s, with a peak in 1993. As a consequence, for a majority of the sample firms there are several years in which a proposal could have been submitted to shareholders both before and after the change in voting procedure. The SEC revised the proxy rules in 1992 to facilitate shareholder communication; it is possible that there is a connection between the increase in firm adoptions of confidential voting and the reforms: the alternative hypothesis of confidential voting –the nuisance suit analogue–would suggest that if some shareholders became more active in corporate governance, some managers might engage in a proactive strategy of coopting such investors by voluntarily selecting a voting rule the activist institutions prefer, which would entail minimal cost compared to other potential governance changes.

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the annual meeting held during the year reported by the IRRC as the adoption year, and thus it was implemented at the next year's annual meeting, which is the relevant year for analysis (the first year in which proxy votes were tabulated under confidential voting).

In fact, a majority of the sample firms adopted confidential voting without experiencing a shareholder proposal on the subject. But of the firms receiving such a proposal prior to adopting the procedure (52 firms), management is responsive to the level of shareholder support for the initiative. Seven of the proposals obtained a majority vote, and in each of those instances, management instituted confidential voting for the following year (that is, it was in place at the first annual meeting following the meeting at which the proposal passed). More important, management responds to confidential voting proposals as support for the proposal increases. The average support for 44 confidential voting proposals submitted in the year before management adopted the practice was 39.2 percent (35.8 percent excluding the six proposals that obtained a majority vote), whereas the average level of support for 26 confidential voting proposals received two years before adoption was 31.9 percent and the average support for 20 confidential voting proposals received three years before adoption was 26.4 percent. For the 23 firms where a confidential voting proposal was submitted consecutively for two years before the proposal was adopted by management, the difference in the mean support level the proposal received across the two years before adoption, 8.5 percent, is significantly positive (significant at .001).[11]

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[11] Of the 16 firms for which confidential voting proposals were submitted three years in a row commencing three years before the procedure was adopted, the difference in mean support level received between proposals submitted one and two years before adoption is smaller in magnitude, 5.0 percent, than that of the full set of firms with two consecutive proposals culminating in adoption of the procedure, although still significantly positive (significant at .004) and higher than the difference in mean support level received between proposals submitted two and three years before adoption, 3.4 percent, which is only marginally significantly positive by conventional statistical standards (significant at .063). But the key statistic, the difference in differences, which is the increase in voting support for proposals submitted between one and two years before the adoption year compared to the increase in voting support for proposals submitted between two and three years prior to the adoption year, is not significant (mean difference in difference of 1.6 percent, significant at .5098). While the small sample size undoubtedly is a factor explaining the low level of statistical significance for the differences in support, these data

Management's responsiveness to such proposals does, however, vary, even among adopters: seven (two) firms received a confidential voting proposal four (six) years in a row before adopting the procedure, whereas 25 firms acted only after one such proposal was received (four of those firms' proposals received a majority of the votes cast and six of those firms acted only several years after having received the proposal).

Proposals submitted to sample firms were obtained from the IRRC's reports of voting outcomes on corporate governance proposals.[12] There were 916 management-sponsored proposals and 801 shareholder-sponsored proposals voted on by the sample firms' shareholders during the sample period, 1986-98.[13] Descriptive information concerning proposal type and voting outcomes is provided in table 4. The breakdown of shareholder proposals by category in this sample, which does not consist solely of institution-sponsored proposals, is very similar to that of a comprehensive study of 2,042 shareholder proposals submitted from 1987-94 to 452 firms by Gillan and Starks (2000), as reported in table 5. This comparison indicates that firms

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indicate that the decision to enact confidential voting in a given year is not exclusively a function of increasing support.

[12] The IRRC publication containing voting results has varied over time: 1986 voting results are in *Corporate Governance and Shareholder Rights* (1986); voting results from 1987-89 are in annual volumes with the title, *Voting by Institutional Investors on Corporate Governance Issues in the [year] Proxy Season*; 1990 results are in Sander (1991); and since 1990, voting results are in the loose-leaf service, *Corporate Governance Bulletin*. Only proposals that went to a vote are included in the sample.

[13] Three proposals included in the sample were offered at shareholder meetings held in the fall of 1985, because the annual meeting period covered in the IRRC's 1986 voting data began in September 1985. Voting data for management proposals for four of the fourteen sample years (1992, 1993, 1995 and 1996) could not be obtained. This is not a significant problem for the analysis because many more management proposals are offered than shareholder proposals: even with the reduced number of years, virtually all sample firms had management proposals submitted after the adoption of confidential voting.

that adopt confidential voting are not substantially different from all firms that are subject to

shareholder proposals with respect to the issues that interest activist shareholders. However, if

the subject matter of proposals is evaluated before the adoption of confidential voting, the sample

firms were subject to proposals for confidential voting more frequently than the firms in Gillan

and Starks' sample; after the procedure's adoption, as those proposals understandably decline,

the proportions of proposal type in the two samples are even more similar.

As table 4 indicates, voting outcomes vary widely by proposal type. For example,

management proposals obtain greater support than shareholder proposals; management proposals

on executive compensation plans obtain greater support than management proposals to construct

defenses to takeovers; and shareholder proposals to repeal or modify takeover defensive tactics

obtain greater support than shareholder proposals on executive compensation. The variability in

voting across proposals requires controlling for proposal type in the statistical analysis to

minimize potentially spurious findings: for instance, a finding of an increase in votes for

shareholder proposals with confidential voting in place is not likely to be due to the procedural

change if the subject matter of the proposals simultaneously changes from executive

compensation to defensive tactics.

4.2. Sample firm characteristics and voting outcomes

The statistical analysis examining whether confidential voting affects proposal voting

outcomes controls for individual firms' distinctive characteristics by running a panel regression

with firm fixed effects. However, some researchers have identified relationships between

specific firm characteristics and voting on shareholder proposals: in particular, studies find a

positive correlation between voting support for shareholder proposals and institutional

ownership, and a negative correlation between voting support and prior performance (e.g., Gillan and Starks, 2000).   The analysis therefore also directly controls for ownership by institutions and prior performance. It also controls for inside ownership, which should be inversely related to proposal support (an intuitively plausible hypothesis because in all but one instance in the sample, management opposed the shareholder proposal), and the presence of blockholders (holders of five percent of the outstanding securities). Institutions and blockholders are distinguished by type to examine the hypothesis of advocates of confidential voting that specific investors–financial institutions–are more likely to support management than other investors. To test more finely their thesis that confidential voting will affect the voting of institutions with potential conflicts of interest, variables interacting the presence of confidential voting and the presence of financial institution blockholders, as well as the percentage of shares owned by banks and insurance companies, are included in the analysis.

For the ownership calculations, institutional holdings were obtained from institutions' 13-f filings under the federal securities laws, available from Thomson Financial Securities Data, for the quarter of the record date of the voting of the proxy proposals.[14] The holdings of insiders

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[14] These filings (which indicate an institution's stockholdings) are required of all institutional investment managers with discretion over accounts of at least $100 million. To check on the completeness of the Thomson data, institutional holdings were also obtained from the monthly issues of *Standard & Poor's (S&P) Security Owners' Stock Guides*. Holdings were averaged over the three months of S&P guides following the record date for voting at the meeting at which a proposal is submitted. The S&P holdings are significantly positively correlated (at less than 1 percent) with the Thomson data: the correlations are .85 (.81) for the shareholder (management proposals). The Thomson data are used in the analysis because they permit identification by type of institution. But all of the models reported in the paper were also estimated using aggregate institutional holdings calculated from the S&P guides instead of the different institutional holdings calculated from the Thomson data, and the results regarding confidential voting were unchanged.

(directors and officers) and block ownership (five percent owners) were obtained from the firms'

proxy statements. Institutional and insider ownership are computed as the proportion of

outstanding voting shares. The institutional holdings are calculated for Thomson's five

classifications: banks, insurance companies, investment companies (mutual funds), independent

investment advisors, and all other institutions (which includes pension funds and endowments).

Block ownership is indicated by dummy variables for the presence of a blockholder by investor

type: financial institution, multiple financial institution (i.e., more than one financial institution is

a five percent owner), public pension fund, corporation, individual, and employee stock

ownership plans (Esop).[15]

Descriptive statistics are presented in table 6. The sample firms' institutional ownership

averaged 57 percent (55 percent) over the years in which a shareholder (management) proposal

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[15] I classified the blockholders. Separate dummy variables are used for corporate and
individual blockholders that are represented on the board and those that are not, in case there are
systematic differences between blockholders with board representation and those without it.
Individual blockholders who are insiders (officers or relations of officers of the corporation) are
not classified as individual blockholders; their holdings are included in the insider ownership
variable. That enables distinguishing the different positions regarding management that inside
and outside individual blockholders generally have, permitting the individual blockholder
dummy variable to capture the impact on voting outcomes of investors with substantial interests
in the firm who are outsiders. A block held by TIAA-CREF is classified as a public pension fund
block because TIAA-CREF does not offer business services that could create a conflict of
interest, as hypothesized by confidential voting advocates and, consistent with such a view, in
contrast to other private financial institutions it engages in shareholder activism. The Esop
dummy variable includes blocks held by employee savings, profit sharing and retirement plans.
It does not distinguish between plans in which votes are specifically allocated and passed-
through to employees and those where they are not, and also includes a few instances of blocks
held in fiduciary accounts by banks to which the proposals are submitted, on the theory that all of
these instances constitute the presence of a block of shares in hands friendly to management, and
hence are likely to have a similar effect on voting outcomes. The FDIC held a block in one
sample firm in two years in which shareholder proposals were submitted; a separate dummy
blockholder variable is included for those observations in the shareholder proposal regressions.

was introduced. (The average percent institutional ownership for shareholder and management proposal years, calculated with the S&P data, is, respectively, 59 and 58 percent.) This is similar to the average institutional ownership percentage of firms receiving shareholder proposals: Bizjak and Marquette (1998) report a mean institutional ownership of firms receiving shareholder proposals of 59 percent; Karpoff, Malatesta and Walkling (1996) report a mean institutional ownership of firms with shareholder proposals of 52 percent; and Smith (1996) reports mean institutional ownership of firms targeted by CalPERS of 64 percent. Insider ownership is, on average, small (less than 3 percent in the shareholder proposal years, 4 percent in the management proposal years). In addition, the most frequent blockholders are financial institutions and employee savings and retirement plans (between 1/4 to 1/3 of proposals are submitted to firms where such blockholders are present), but most firms have no five percent blockholder.

To measure prior performance for the regression of voting outcomes, the return on a buy-and-hold investment in the sample firms was calculated using monthly return data from the University of Chicago Center for Research in Security Prices (CRSP) database, for five years (60 months) ended prior to the meeting at which a proposal is introduced, with the value-weighted CRSP portfolio as the market return proxy, following the measure of performance used in the literature that finds a correlation between voting support for shareholder proposals and performance (e.g., Gillan and Starks, 2000).[16] As table 6 indicates, the mean abnormal return is

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[16] The calculation of the buy-and-hold abnormal return (BHAR) is:
$$BHAR_{i\tau} = \prod_{\tau} [1+R_{i\tau}] - \prod_{\tau} [1+R_{m\tau}],$$
where i indexes the security, τ the month, and m, the benchmark portfolio (see generally Barber and Lyon, 1997). The value-weighted CRSP portfolio is used as the benchmark for abnormal returns ($R_{m\tau}$) because the literature –and institutional investors– compare firms' performance

positive, but it is smaller in years preceding shareholder proposals than in years preceding

management (.08 compared to .15).[17] In addition the range in value was somewhat smaller for

the shareholder proposal sample, going from -1.86 to 4.95, compared to a range of -2.5 to 7.2 for

the management proposals. The average unadjusted buy-and-hold return for the 60-month period

prior to proposal submission was 2.075 for the shareholder proposal sample and 2.302 for the

management proposal sample.

5. Results

5.1. Effect of confidential voting on proxy proposal outcomes

A panel regression was run separately for shareholder proposals and management

proposals, in which the level of support for a proposal is regressed on dummy variables for

proposal type, whether confidential voting is in place at the time, and the past performance and

ownership variables described above. The principal categories of proposals indicated in table 4

are used to construct dummy variables to identify proposal type: they are shareholder proposals

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with the S&P index, which is value-weighted, and the sample firms tend to be large, which
renders comparison to a value-weighted index preferable to an equal-weighted one. But the
returns were also estimated using the equal-weighted CRSP portfolio, and employing that
performance measure instead in the analysis did not change the results. A market benchmark was
used not only to render my results comparable with the literature on voting for shareholder
proposals but also because a matched sample of firms without confidential voting would lose too
many observations for the analysis: only 95 of the 130 firms could be matched with firms in the
same industry (using two, three or four digit SIC codes) and comparable size (assets within 200
percent of the sample firm's assets).

[17] Twenty-two proposals at ten firms did not have a full 60 months of returns prior to the
proposal's submission (the firms had not been publicly traded that many years earlier); the
BHAR for these proposals was calculated using as many months as possible, which ranged from
a minimum of 24 months to a maximum of 58 months. The mean value of the BHAR for the
shareholder (management) proposal sample excluding these proposals is .085 (.16). The
regressions were also estimated without including those proposals, and because the results
regarding the impact of confidential voting were unaffected, they are not reported.

on board independence, confidential voting, repeal or modification of defensive tactics to takeovers, matters involving directors, executive compensation and matters involving the proxy process; and management proposals on blank-check preferred stock, adoption of defensive tactics to takeovers, or their repeal, executive and director compensation, the authorization and issuance of common stock, and director and officer liability and indemnification.[18] Because the range of the dependent variable, percentage of votes in support of a proposal, is restricted between 0 and 1, a conventional logistic transformation was undertaken to create a continuous dependent variable,

$$y = \log\left(\frac{\frac{votes}{100}}{1 - \frac{votes}{100}}\right)$$, where votes is the percent in support of the proposal.

In addition to the variables previously described, interaction effects between proposal type and the presence of confidential voting are also included in the regressions. Two further indicator variables are included for the twelve firms that experienced proxy fights during the sample period. The first indicates whether a proposal was submitted in the year of a proxy fight, as that will undoubtedly affect the support level for a proposal, compared to proposals submitted at meetings without a contest, because anti-management votes are being actively solicited.[19] The second indicates whether a proposal was submitted after a proxy fight, to control for the

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[18] The miscellaneous category of proposals is the dummy variable that is omitted in the regressions.

[19] Two firms reached an agreement with the dissident shareholders prior to the annual meeting; the statistical analysis is unchanged if the value for the proxy fight year indicator dummy variable for those meetings' proposals is one or zero.

possibility that firms that have been subjected to proxy contests systematically experience

different proposal support levels than other firms after the contest, independent of the adoption of

confidential voting (since for all these firms confidential voting was adopted after the contest).

The regressions include both firm fixed effects and year effects. The fixed effects control

for any additional firm-specific characteristics that would affect voting outcomes at the firm,

besides the ownership and performance variables specifically included in the model, which do

not change over time. The year effects are included because studies indicate that support for

shareholder proposals has increased over time (e.g., Gillan and Starks, 2000; Georgeson & Co.,

1998; IRRC, 1998; IRRC, 1995; Sander, 1991).[20] Thus, such an effect must be distinguished

from the effect of confidential voting: proposals introduced under the confidential voting regime,

by definition, occur in years later than those introduced before, and thus will coincide with any

independent trend of increasing support. Finally, because many firms are subjected to more than

one proposal at a meeting, the regressions are estimated using a robust variance estimator, that

permits non-independence of those observations (proposals introduced at the same firm in a

single year), while retaining the independence assumption for observations across firms and

years.[21]

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[20] As discussed below, in addition to the reported specification with year effects, an alternative
panel regression with a time trend (year), including a nonlinear term (year- squared), was
estimated, retaining only the firm fixed effects, and the results regarding confidential voting are
identical across the models.

[21] The regressions were estimated in Stata, using the cluster command, which relaxes the
linear regression assumption of independence by requiring observations to be independent only
across clusters, with observations clustered by firm*year. The cluster command estimation uses
the robust variance estimator developed by Huber and White, which affects the estimated
standard errors but not the estimated coefficients (see StataCorp., 1999, pp. 256-59).

Table 7 reports the regression results. As indicated in panel A, the presence of confidential voting does not increase support for shareholder proposals. Indeed, the sign of the coefficient is negative–which would imply that shareholder proposals obtain lower support after the procedure is in place–but it is insignificant. The firms that experience proxy fights have higher voting support levels for shareholder proposals in the year of the proxy fight (a not unexpected result as the challengers to management in proxy fights are actively soliciting support for most of the proposals).[22] Thereafter, the support levels are not distinguishable from the rest of the sample–the variable indicating a proposal submitted after a proxy contest is insignificant. Given the significantly higher level of votes for proposals submitted in the year of a proxy fight, the regression was reestimated eliminating those proposals. As reported in the table, confidential voting continues to have no impact on voting outcomes when those proposals are eliminated.

Only two of the ownership variables are significant, the Esop blockholder dummy variable and the variable for an individual blockholder who is represented on the board, and the effect of both of these blockholders is negative, although when the proposals submitted during proxy fights are excluded, only the Esop variable remains significant at 5 percent (the individual

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[22] Eight of the proxy fight firms had shareholder proposals submitted in the proxy fight, including the two firms for which the proxy fight was resolved prior to the meeting. At one of the firms, the dissidents' proposals were not in the official proxy, but were separately solicited during the contest; the regression results are unaffected whether those five proposals are included, and the table reports the estimation including them. Not counting the two firms with negotiated agreements terminating the proxy contest prior to the meeting, dissidents won in only two of the contests. The regressions were also estimated eliminating all of the observations for firms experiencing proxy fights; there is no significant difference in any of the results for the smaller sample regarding the impact of confidential voting. In addition, the indicator variable for proxy fight year is significant and, as noted earlier, unchanged in magnitude whether or not it takes on a value of one for the proposals for the two firms where the contest was settled before the meeting.

blockholder variable is only marginally significant at 7 percent and the investment company and

other institutions' ownership variables are now marginally significantly negative at 10 percent).

With that caveat in mind, the presence of a mangement-friendly blockholder, not surprisingly,

appears to decrease the level of support for shareholder proposals. Blockholding outsiders who

are represented on the board appear to behave the same as Esops–that is, they tend to support

management. In fact, that is often why those investors are present: management concerned about

a hostile takeover occasionally places a block of stock in the hands of a friendly investor known

to hold on to his shares, such as Warren Buffett (see Romano 1996, pp. 305-306), who appears in

several instances in the sample as an individual blockholder with board representation. An

alternative explanation is that such blockholders are effective monitors who render management

more responsive to shareholder concerns and, therefore, the other shareholders are less disposed

to vote against management than they would be if such blockholders were not present. But given

the decline in significance level of the variables when proposals offered during proxy fights are

excluded, neither explanation can be offered as anything more than a very tentative conclusion.

Most important with regard to the ownership variables, the dummy variables interacting

financial institutions' ownership and blockholder status and the presence of confidential voting

are insignificant in both regressions (the interaction with bank ownership is significantly positive

at 10 percent, and insignificant when proxy fight year proposals are excluded). A test for

whether the coefficients of the four interacted ownership variable terms are the same, as well as a

test of whether they are all equal to zero, could not be rejected (respective F-statistics of 1.13 and

1.01, with respective significance levels of .3383 and .3996).

Models were also estimated combining the bank and insurance companies' holdings and

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the investment company and other institutions' holdings, the formulation used by Brickley and

his colleagues (1988) in their study of management proposals. The combined variables were still

insignificant, and again, the variable interacting the combined bank and insurance company

holdings and the presence of confidential voting was significantly positive at 10 percent, but

insignificant when the proxy fight year proposals were eliminated. Moreover, again, a test

whether the coefficients of the three interacted ownership variable terms are the same, as well as

a test whether they are all equal to zero, could not be rejected (respective F-statistics of 1.66 and

1.31, with respective significance levels of .1920 and .2694). Thus the data do not support the

hypothesized benefit from confidential voting of changing financial institutions' support for

shareholder proposals.

Prior performance has no impact on voting support for shareholder proposals; the sign is

insignificantly negative. The variables that significantly affect voting outcomes on shareholder

proposals are, instead, those relating to proposal type–votes are significantly positively correlated

with proposals to adopt confidential voting and to repeal defensive tactics. These results are not

affected by confidential voting: the only interacted term between a proposal type and the

presence of confidential voting that is significant is the term interacting confidential voting and

executive compensation proposals, and it is negative (it is significant at the 6 percent level in the

full sample, and at 3 percent when proposals offered in the year of a proxy fight are eliminated).

There is, accordingly, no evidence that confidential voting increases votes in support of

shareholder proposals (votes cast against management), as expected by its proponents.

All of the year dummies except the earliest year are positive and significant. The

coefficients of the last six years are larger (ranging between .53 and .70) than those of the earlier

years (ranging between .06 in year two, which has few proposals, .32 in year three and .49 in year eight; year one is the omitted year); this is consistent with the literature indicating that support for shareholder proposals has been increasing over time. A joint test that the coefficients of the year dummies are equal is rejected (F-statistic of 4.6, significant at 0.000), although tests for the equality of the coefficients of various pairs of year dummies cannot be rejected.

An alternative specification of the model was estimated that included a time trend variable in a nonlinear specification, year and year-squared, rather than estimating the model with dummy variables for each year. The trend variables were, however, insignificant. The sign on the linear term, years, was positive and of the nonlinear term, years-squared, negative, suggesting that votes in support of shareholder proposals increase at a diminishing rate over the sample period, but a test of whether the coefficients of the two variables were equal could not be rejected (F statistic of 2.48, significant at .12). The results of that model are otherwise the same as the model reported in table 7: the presence of confidential voting has no effect on voting outcomes (it is still insignificantly negative); all of the variables interacting financial institutions' ownership and confidential voting are insignificant, including the bank ownership interaction term; the dummy variables for the year of a proxy fight, the presence of an Esop and an individual blockholder on the board, and for proposals to adopt confidential voting or repeal or modify takeover defenses are significant (but neither blockholder variable is significant at 5 percent when the proposals offered in the year of a proxy fight are excluded); and the interaction variable between confidential voting and proposals on executive compensation is significant at 6 percent in the full model and at 4 percent when proxy fight year proposals are eliminated. In addition, when the combined institutional holdings as computed by Brickley and his colleagues

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are used in the time trend specification, the interaction term between confidential voting and the combined bank and insurance company holdings is not significant, whether or not proxy fight year proposals are excluded. Finally, the coefficient estimates are nearly indistinguishable across the different time trend specifications.

Panel B of table 7 reports similar results for the management proposals. Confidential voting again does not significantly affect the voting support for proposals. The dummy for proposals offered during a proxy contest is again significant and positive. This complicates the explanation offered in the shareholder proposal context, that active solicitation against management is the reason for the significance of the variable. Active solicitation appears to raise the level of voting in general, as it results not only in an increase in support of shareholder proposals but also in an increase in support of management proposals, and therefore the effect of competing proxy solicitation is not one-sided.[23] The model was accordingly also estimated excluding proposals presented during proxy fights, and again, as the table indicates, confidential voting has no impact on voting outcomes.

Proposal type is still the key explanatory variable of voting outcomes: proposals to adopt blank check preferred stock and other defensive tactics, including those proposals where a vote on the tactic was combined with another matter, have lower levels of support, and proposals concerning executive and director compensation plans have higher levels of support. Because there is only one proposal of a takeover defense, one proposal combining a takeover defense with another matter, one proposal concerning director and officer liability, and no blank check

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[23] Management proposals were presented in six of the proxy fights, and in five of these contests, shareholder proposals were also presented.

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preferred stock proposal after the adoption of confidential voting, the model specified in table 7 includes no interaction variables with the presence of confidential voting for these categories of management proposals.[24] None of the interaction terms between management proposal types and the presence of confidential voting that are feasible for inclusion in the analysis are significant.

It might be suggested that the absence of proposals involving takeover defenses after the adoption of confidential voting evidences a proposal selection effect caused by the voting procedure: namely, management no longer introduces proposals adverse to shareholder interests because it fears that such proposals would lose under confidential voting, given the loss of its ability to pressure particular shareholders. It is, for instance, well known that managers consult proxy firms and do not submit proposals to a vote that they are advised have a low probability of approval. But this explanation is not empirically supported: the peak period during which firms adopted confidential voting was the mid-1990s, well after the peak period of management proposals to adopt takeover defenses (the late 1980s). The majority of proposals on defenses (63 of 75), and blank check preferred stock proposals (16 of 22), were adopted in this sample by 1988, and this trend does not appear to be unrepresentative of firms without confidential voting. For example, one of the later adopted defenses in response to changing bidder tactics, management proposals to limit shareholder action by written consent, peaked at 17 in 1988, and were down to a handful by 1999 (Shier, 2002, p.2). In addition, management proposals of classified boards peaked in 1986 (at 88) and then declined dramatically throughout the 1990s

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[24] Because there are only two proposals combining director and executive officer compensation in the absence of confidential voting, the model also does not include an interaction dummy for such proposals as well, as the variable would be too highly correlated with the dummy variable for that category of proposal.

(only a few a year) (Burke and Monaco, 2002, p. 2 and figure 1).

In sum, the most plausible explanation for the absence of such proposals after the adoption of confidential voting is that the sample firms' defensive tactics were already in place by the 1990s when they began instituting confidential voting. Indeed, the predominance of shareholder proposals to repeal defensive tactics after the adoption of confidential voting underscores the timing explanation--that defenses were already intact--rather than the alternative explanation--a revision in management's proposal selection subsequent to the voting procedure change.

Prior performance again has no effect on outcomes. There are differences in the effect of the ownership variables on voting support for management proposals, compared to shareholder proposals. The Esop dummy variable is insignificant, as is the presence of an individual blockholder who is on the board, and the presence of a corporate blockholder with board presence is significantly positively correlated with management proposal support, while a public pension fund blockholder is marginally significantly positively correlated (at 10 percent) with support. In the sample without proposals offered during a proxy fight, the only difference is that the presence of an individual blockholder not represented on the board is marginally significantly negative at 10 percent.

The finding that support for management proposals increases with the presence of a corporate blockholder on the board is not particularly surprising. Such blockholders often are in control of, or have close business relations with, the corporation on whose board they sit and it would therefore be highly unlikely for management to propose action that would be disapproved by such a blockholder. Although it is counterintuitive for voting support to increase with the

presence of a public pension fund blockholder, because such investors are among the most active

investors in corporate governance and do not have conflicting business interests as might private

institutions,[25] in my judgment, not much weight should be attributed to the result as it is only

marginally significant.

The most important finding regarding the ownership variables, however, is again that

voting support after the adoption of confidential voting is unrelated to those institutions'

presence. In fact, the interaction term for insurance company ownership and for the presence of

multiple financial institution blockholders is marginally significantly positive (the interaction

term between confidential voting and insurance companies' ownership is positive and significant

at 5 percent in the regression excluding proxy fight year proposals). These results are contrary to

what we would expect if the assumptions of advocates of confidential voting regarding conflicts

of interest were correct: votes against management do not increase, despite the ability of such

hypothesized conflicted investors to vote with anonymity.

Finally, it should be noted that the year dummies are all positive and significant. Again,

the earlier years' coefficients are generally smaller than the later years' coefficients, but the

difference is not as distinct as in the shareholder proposal regression (range of .33 to .41 for the

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[25] Two competing explanations for increased support of management proposals in the
presence of a public pension fund blockholder are either that when such investors are present
they perform an effective monitoring role, such that management only puts up proposals that
benefit investors and thus they receive higher levels of voting support; or that such investors are
more likely to support management proposals because management has agreed to cooperate with
those shareholders' agenda, which may not be in the interests of other shareholders. Woidtke's
(2002) study finding public pension funds invest in poorer performing firms than private pension
funds would be consistent with the latter interpretation: adoption of confidential voting could be
one indicia of management's cooperation with such investors that could produce reciprocal
increased voting support.

first four years, years two through five, .28 for year six, and range of .35 to .48 for the last four

years). A joint test of the equality of the coefficients is, in fact, insignificant (F-statistic of .82

significant at .58). Because the data indicating that voting support has increased over time was

collected for shareholder, rather than management, proposals, there is no reason to expect that the

fixed time effects should be as pronounced in these regressions. As with the shareholder

proposal regressions, neither the linear nor nonlinear trend variable is significant, and, although

the signs of the coefficients are the opposite (year is negative and year-squared is positive), the

equality of the coefficients cannot be rejected (F statistic of .66, significant at .41). The

specification using trend terms rather than year dummies did not substantially change the results

on confidential voting: the only differences are that the interaction between confidential voting

and insurance company ownership is now significantly positive at 5 rather than marginally

significant, and the presence of an individual blockholder with board representation is marginally

significantly positive at 10 percent.

5.2. Performance effects of confidential voting

To corroborate the insignificance of the procedural change to confidential voting on

voting outcomes, investors' expectations of whether adoption of confidential voting enhances

firm value were examined using standard event study methodology to test for the stock price

effects of the announcement of the adoption of confidential voting. The event date, day 0, is the

mailing date of the proxy in which the adoption of confidential voting was first announced.[26]

Abnormal returns are calculated using a market model (with the CRSP equal-weighted stock

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[26] For firms with no explicit mailing date indicated in the proxy, the date of the proxy
statement was used because the two dates are identical for 80 percent of the firms whose proxies
contain both dates.

return portfolio as the market portfolio), $R_{it} = a_i + b_i R_{mt} + e_{it}$, with the parameters, a_i and b_i, estimated in an ordinary least squares regression over the 200 day pre-event interval from day -220 to day -20. CRSP return data were not available for one firm; for another six firms, daily returns were missing on the event date. As a consequence, the event study portfolio consists of 123 sample firms.

There is no significant stock price effect upon the announcement date, nor on the day after. As shown in table 8, the return is small and negative on the proxy mailing date announcing the adoption of confidential voting and insignificantly positive on the following day. The cumulated abnormal return over those two days is insignificantly negative. Abnormal returns cumulated over a variety of intervals between 20 days and one day before and after the announcement are reported in table 8. None are significant.

For 38 sample firms, there was a press release or other news report of the adoption of confidential voting; abnormal returns were reestimated for those firms using the press report date as the event date. The results are still insignificant using the press announcement date and are not reported.

These results parallel the insignificance found in the event studies of the announcement of shareholder proposals on confidential voting, and of TIAA-CREF's negotiations over confidential voting. The market's expectation of the impact of confidential voting on firm value–none--is consistent with this paper's finding that the procedure has no effect on voting outcomes.

In addition, there is no significant long-term improvement in stock performance after the adoption of confidential voting. Monthly abnormal buy-and-hold returns were computed over 12

to 36 months after the adoption of confidential voting. As reported in panel A of table 9, the difference in mean buy-and-hold returns adjusted by the value-weighted CRSP portfolio the first 12 months after adoption is insignificantly positive (t-statistic of .11). The difference is insignificantly negative over 24 months, and insignificantly positive computed over 36 months after the procedural change.   The abnormal returns were also computed using the equal-weighted CRSP portfolio (not reported) and those are also insignificant.

Firms engaged in proxy contests experience positive abnormal returns around the contest, regardless of outcome, a finding that appears to be related to significant firm-level changes that occur after the contest, such as asset sales, mergers and top management changes (Mulherin and Poulsen, 1998; DeAngelo and DeAngelo 1989). The abnormal returns were therefore also computed excluding the firms adopting confidential voting that had experienced proxy contests, since the voting policy was in all instances adopted after the proxy contest, and thus any performance impact attributable to confidential voting could be obscured by earlier-experienced positive returns at the time of the proxy fight. As indicated in panel B, the abnormal returns for the remaining firms are still insignificant. Confidential voting is therefore not associated with better subsequent performance.

Abnormal buy-and-hold returns were also computed by subtracting the returns on a control portfolio of firms, matched by size and industry, that have not adopted confidential voting (for the subset of sample firms that could be matched), an approach that is considered more reliable than a market model over lengthy measurement intervals (Barber and Lyon, 1997). The cutoff used to identify a match was assets within 200 percent of the sample firm's assets, in the year ended before the year of adoption of confidential voting, and a match on the sample

firm's two-digit Standard Industrial Classification Code, when a three or four-digit code match was not available within the range of asset values. Panels C and D of table 9 reports the results for all matched firms and for the subset of matched firms excluding the pairs with proxy fight firms. The firms with confidential voting do not experience positive abnormal returns after its adoption when the performance benchmark consists of matched firms that do not have confidential voting. Their performance post-adoption is insignificantly higher than the matched firms over the subsequent 24 months, and insignificantly worse when computed over 36 months post-confidential voting adoption; measured over the first 12 months, the sign of the abnormal returns changes from negative to positive when the proxy fight firm pairs are excluded, but for both samples it is insignificant.

The long-term performance data indicate, then, as the market anticipated on announcement of the procedural change, that confidential voting does not improve performance. Although this paper finds that confidential voting has no impact on voting outcomes, it must be noted that even had the procedure affected voting outcomes, there might still have been no performance effect. To the extent that the subject of the vast majority of shareholder proposals does not improve performance (see Romano 2001), then changing the voting procedure to enhance the probability of such proposals' adoption would not be expected to improve performance either.

5. Conclusion

This paper finds that confidential voting does not affect voting outcomes as its proponents expect: in a panel data set of proposals submitted from 1986-98 at firms adopting confidential voting from 1988-97, support for shareholder proposals does not increase and

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support for management proposals does not decline after adoption of the procedure. Moreover, there is no reduction in the support level for management after the voting change in relation to the holdings of the financial institutions whose votes are supposed to be constrained prior to confidential voting because of conflicts of interest. The insignificant impact of confidential voting on voting outcomes most likely explains why many firms voluntarily adopt the procedure: it doesn't matter. Consistent with the literature regarding the impact on firm value of the three other principal categories of activist institutional investor proposals involving defensive tactics, board independence, and executive compensation, proposals to adopt confidential voting also have no discernible performance effect. Thus, institutional investors' initiatives to promote confidential proxy voting are not being directed at a corporate governance reform that is likely to improve firm value.

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Table 1. Shareholder Proposals Submitted by Institutional Investors
This table indicates the distribution of shareholder proposals on corporate governance submitted by institutional investors, as reported in the most comprehensive empirical studies focusing on institutional investors, grouped into the four principal categories in which such investors make proposals: adoption of confidential voting (Confid. Voting), elimination of defensive tactics to takeovers (Def. Tactics) , enhancement of board independence (Board Indep.), and adoption of executive compensation limits or disclosure of compensation arrangements (Exec. Comp.).

Study	Confid. Voting	Def. Tactics	Board Indep.	Exec. Comp.
Del Guercio and Hawkins, 1999 (266 proposals at 125 firms, sponsored by 4 funds, 1987-93)	44%	41%	9%	0%
Gillan and Starks, 2000 (676 proposals by institutional investors and groups, of 2042 proposals at 452 firms, 1987-94)	31%	48%	9%	.02%
Smith, 1996 (66 identifiable proposals at 51 firms, sponsored by CalPERS, 1987-93)	18%	45%	9%	8%
Wahal, 1996 (247 proposals at 146 firms, sponsored by 9 funds, 1987-93)	41%	36%	16%	4%

Table 2. Confidential Voting Firm Sample Construction

This table summarizes the construction of the sample of firms with confidential voting, by indicating the impact on sample size of the criteria for inclusion.

	No. of Firms
Firms identified by IRRC	174
Firms adopting policy by 1986	12
Firms with no verifiable adoption year	17
Firms with no proxy reference to policy	9
Firms with no recent proxy reference to policy	3
Firms with miscellaneous identification problems	3
Total Firms in Sample	**130**

Table 3. Sample Distribution of Confidential Voting Adoptions.

This table provides the distribution by year of the adoption of confidential voting across sample firms.

Year Confidential Voting Adopted	Number of Firms
1988	5
1989	3
1990	11
1991	20
1992	18
1993	27
1994	21
1995	19
1996	3
1997	3

Table 4. Mean Voting Outcomes by Proposal Type

This table reports mean voting outcomes as a percentage of votes in support of the proposal (%Yes) by proposal type, separately classifying shareholder proposals, shareholder proposals on defensive tactics, and management proposals, for all proposals and for proposals grouped by whether they was presented before or after the adoption of confidential voting ("c.v."). The number of proposals is indicated in parentheses.

Panel A. Shareholder Proposals

Type	%Yes	%Yes before c.v. adoption	%Yes after c.v. adoption
All	27.2 (801)	26.5 (385)	27.9 (416)
Board Matters	15.9 (39)	22.1 (8)	14.3 (31)
Confidential Voting	33.6 (124)	33.1 (107)	36.9 (17)
Repeal or Modify Defensive tactics	33.7 (413)	29.0 (192)	37.8 (221)
Director Matters	16.6 (81)	12.2 (29)	19.1 (52)
Executive Compensation	11.5 (82)	12.7 (23)	11.0 (59)
Proxy Process	10.9 (19)	10.9 (13)	10.9 (6)
Miscellaneous	14.6 (43)	11.8 (13)	15.8 (30)

Panel B. Shareholder Proposals - Repeal or Modify Defensive Tactics

Type	%Yes	%Yes before c.v. adoption	%Yes after c.v. adoption
Cumulative voting	24.0 (91)	18.7 (35)	27.3 (56)
Golden parachutes	28.6 (39)	28.8 (17)	28.5 (22)
Poison pills	41.4 (95)	38.2 (56)	46.1 (39)
Staggered boards	37.2 (141)	27.1 (51)	42.9 (90)
Supermajority provisions	31.0 (9)	27.2 (7)	44.5 (2)
Takeover statutes	25.2 (11)	25.6 (9)	23.6 (2)
Targeted share placements	39.8 (10)	45.9 (2)	38.3 (8)

Table 4. Mean Voting Outcomes by Proposal Type (continued)

Panel C. Management Proposals

Type	%Yes	%Yes before c.v. adoption	%Yes after c.v. adoption
All	80.6 (916)	77.4 (541)	85.2 (375)
Blank Check Preferred	63.7 (22)	63.7 (22)	no proposals
Defensive Tactics	61.6 (75)	61.5 (74)	66.3 (1)
Defensive tactic and another matter	65.1 (7)	66.8 (6)	55.4 (1)
Executive (Officer) Compensation	87.1 (364)	86.3 (157)	87.7 (207)
Director (Nonofficer) Compensation	87.1 (58)	86.3 (26)	87.8 (32)
Executive and Director Compensation	82.9 (23)	77.5 (2)	83.4 (21)
Increase Common Stock	78.0 (141)	74.8 (80)	82.1 (61)
Liability or Indemnification	79.4 (129)	79.4 (128)	70.3 (1)
Repeal or Modify Defensive Tactics	81.9 (19)	80.8 (6)	82.4 (13)
Miscellaneous	75.4 (84)	73.1 (44)	77.9 (40)

Table 5. Comparison of Sample Shareholder Proposals with Gillan and Starks' Proposal Dataset.

This table compares the distribution of shareholder proposals by category submitted over 1987-98 to the 130 sample firms adopting confidential voting with the distribution of the 2,042 proposals submitted over 1987-94 to 452 firms in Gillan and Starks (2000) (table 3). The distribution of the subsample of proposals for the firms for which there is a proposal submitted both before and after the adoption of confidential voting ("matched proposal" subsample) is indicated in parentheses. The data in Gillan and Starks are adjusted to include cumulative voting proposals in the defensive tactics category, since they treat cumulative voting proposals as a separate category but such proposals are most appropriately classified with proposals to repeal defensive tactics: proposals to adopt cumulative voting are commonly understood as an effort to make the firm more susceptible to a takeover (a bidder holding a block can cumulate votes and gain representation on the board).

Proposal type	Gillan and Starks' full sample	This paper's sample (sample divided before and after confidential voting adopted)
Confidential voting	12%	15% (28%; 4%)
Board independence	2%	5% (2%, 7%)
Executive compensation	11%	10% (6%, 14%)
Defensive tactics	49%	52% (50%, 53%)
Poison pills (as a percent of defensive tactic proposals)	25%	23% (29%,18%)

Table 6. Sample Firm Characteristics: Descriptive Statistics

This table provides descriptive statistics for the firm characteristics, used in the regression analysis for proposal voting outcomes, in the years in which proxy proposals are presented.

A. Firm characteristics when shareholder proposals are presented (501 firm-years)

Variable	Mean	Standard Deviation	Minimum	Maximum
Insider (director and officer) ownership	.0270	.0466	.0004	.385
Bank ownership	.1506	.0628	.0051	.4245
Insurance co. ownership	.0455	.0224	.0024	.1473
Investment co. ownership	.0731	.0649	.0018	.4474
Investment advisor ownership	.2269	.0822	.0457	.5269
Other institution ownership	.0703	.0474	0	.3117
Financial Institution blockholder	.2495	.4332	0	1
Public Pension blockholder	.0519	.2220	0	1
Corporate blockholder on board	.0299	.1706	0	1
Corporate blockholder without board representation	.0259	.1591	0	1
Individual blockholder on board	.0180	.1330	0	1
Individual blockholder without board representation	.0459	.2095	0	1
Employee Savings plan blockholder	.3193	.4667	0	1
Multiple financial institution blockholders	.1637	.3703	0	1
Buy-and-hold abnormal monthly return, calculated over five years before proposal	.0786	.9761	-1.8649	4.9537

Table 6. Sample Firm Characteristics: Descriptive Statistics (continued)

B. Firm characteristics when management proposal are presented (556 firm-years)

Variable	Mean	Standard Deviation	Minimum	Maximum
Insider (director and officer) ownership	.0427	.1014	.0003	.699
Bank ownership	.1519	.0736	.0093	.6756
Insurance co. ownership	.0475	.0275	.0015	.2078
Investment co. ownership	.0765	.0737	.0006	.3391
Investment advisor ownership	.2143	.0881	.0179	.5001
Other institution ownership	.0621	.0355	0	.2793
Financial Institution blockholder	.2518	.4344	0	1
Public Pension blockholder	.0396	.1951	0	1
Corporate blockholder on board	.0144	.1192	0	1
Corporate blockholder without board representation	.0270	.1622	0	1
Individual blockholder on board	.0180	.1330	0	1
Individual blockholder without board representation	.0486	.2151	0	1
Employee Savings plan blockholder	.2464	.4313	0	1
Multiple financial institution blockholders	.2050	.4041	0	1
Buy and hold abnormal monthly return, calculated over five years before proposal	.1521	1.1052	-2.4864	7.2262

Table 7. Panel Regressions of Voting Support for Proxy Proposals, 1985-98

This table provides the results of panel regressions of voting on proxy proposals with firm fixed effects and year dummies. The dependent variable is Log {vote/100} - Log {1-(vote/100)}, where vote is the percent in support of the proposal . The estimation uses a robust variance estimator, as developed by Huber and White (see StataCorp, 1999) , in which observations are clustered to permit correlations in errors for proposals offered at a firm in the same year. The first column reports the results using the full sample; the second column excludes proposals offered in the year of a proxy fight; standard errors are indicated in parentheses; significance levels indicated by: ***1%, **5%, *10%. Institutional and D&O ownership are percentages of outstanding shares; blockholders are dummy variables for the presence of a holding of 5percent of voting shares; proposals are dummy variables indicating proposal type; interaction terms (independent variable multiplied by the indicator variable for the presence of confidential voting) are identified by *pcv. The benchmark for the abnormal buy-and-hold returns is the value-weighted CRSP portfolio.

A. Voting Support for Shareholder Proposals

Variable	Full sample	Proposals in proxy fight year excluded
Post-confidential voting indicator variable	-0.3077 (.1911)	-0.2121 (.2021)
Post-proxy fight indicator variable	-0.0095 (.0754)	-0.0090 (.0765)
Proxy fight year indicator variable	0.2705 (.1107)**	
Buy-and-hold return five years before proposal	-0.0155 (.0138)	-0.0149 (.0136)
D&O ownership	0.0414 (.6599)	0.1491 (.6547)
Bank ownership	-0.5185 (.4405)	-0.5089 (.4615)
Insurance company ownership	-0.7872 (.8971)	-0.6147 (.8939)
Investment company ownership	-0.4972 (.3249)	-0.5408 (.3232)*
Investment advisor ownership	0.0410 (.2697)	0.1493 (.2683)
Other institution ownership	-0.3331 (.4567)	-0.8484 (.4367)*
Financial institution blockholder	0.0331 (.0511)	0.0309 (.0513)
Multiple financial institution blockholders	-0.0524 (.0632)	-0.0174 (.0632)
Public pension fund blockholder	-0.0335 (.0798)	0.0761 (.0661)
Corporate blockholder not represented on board	-0.0300 (.0733)	0.0083 (.0691)
Corporate blockholder with board representation	0.0882 (.0727)	0.0900 (.0753)
Esop blockholder	-0.1003 (.0380)***	-0.0764 (.0358)**

Table 7. Panel Regressions of Voting Support for Proxy Proposals, 1985-98 (continued)

A. Voting Support for Shareholder Proposals (continued)

Variable	Full sample	Proposals in proxy fight year excluded
Individual blockholder not represented on board	-0.0283 (.0582)	-0.0317 (.0527)
Individual blockholder with board representation	-0.2735 (.1029)***	-0.1694 (.0942)*
FDIC blockholder	0.3920 (.3620)	0.3864 (.3751)
Bank ownership*pcv	0.8541 (.5007)*	0.7869 (.5351)
Insurance co. ownership*pcv	2.1232 (1.6731)	1.7530 (1.7448)
Financial institution blockholder*pcv	0.0380 (.0567)	0.0395 (.0568)
Multiple financial institution blockholder*pcv	-0.0136 (.0689)	-0.0576 (.0660)
Board reform proposal	0.1838 (.1367)	0.1997 (.1510)
Confidential voting proposal	0.5366 (.0919)***	0.5982 (.0988)***
Defensive tactic proposal	0.5001 (.0902)***	0.5514 (.0974)***
Director related proposal	0.0794 (.0951)	0.1173 (.1057)
Executive compensation proposal	0.0970 (.1016)	0.1456 (.1080)
Shareholder proxy process proposal	0.0521 (.1172)	0.0766 (.1201)
Board reform prop.*pcv	-0.1793 (.1523)	-0.1868 (.1678)
Confidential voting prop. *pcv	0.1473 (.1180)	0.0362 (.1181)
Defensive tactic prop. *pcv	0.1495 (.1045)	0.0932 (.1103)
Director-related prop.*pcv	0.0412 (.1174)	-0.0072 (.1234)
Executive compensation prop.*pcv	-0.2276 (.1190)*	-0.2788 (.1241)**
Shareholder proxy process prop.*pcv	-0.0780 (.1920)	-0.1355 (.1948)
Firm fixed effects	yes	yes
Year fixed effects	yes	yes
	R-squared = .7573	R-squared = .7665
	No. obs. = 785 (501 clusters)	No. obs. = 760 (492 clusters)

Table 7. Panel Regressions of Voting Support for Proxy Proposals, 1985-98 (continued)

B. Voting Support for Management Proposals

Variable	Full sample	Proposals in proxy fight year excluded
Post-confidential voting indicator variable	-0.1032 (.1474)	-0.1031 (.1504)
Post-proxy fight indicator variable	0.0851 (.0910)	0.1201 (.0947)
Proxy fight year indicator variable	0.2731 (.0977)***	
Buy-and-hold return five years before proposal	0.0166 (.0178)	0.0133 (.0182)
D&O ownership	0.9681 (.7773)	0.9415 (.7871)
Bank ownership	-0.1922 (.3652)	-0.1617 (.3670)
Insurance company ownership	-0.0677 (1.0054)	-0.0992 (1.0108)
Investment company ownership	0.3134 (.4325)	0.2742 (.4319)
Investment advisor ownership	-0.1832 (.2913)	-0.1671 (.2917)
Other institution ownership	-0.0771 (.6932)	-0.0845 (.7193)
Financial institution blockholder	0.0406 (.0514)	0.0379 (.0513)
Multiple financial institution blockholders	-0.0545 (.0650)	-0.0569 (.0651)
Public pension fund blockholder	0.2034 (.1091)*	0.2093 (.1137)*
Corporate blockholder not represented on board	-0.0341 (.0633)	-0.0344 (.0618)
Corporate blockholder with board representation	-0.2824 (.1057)***	-0.2782 (.1047)***
Esop blockholder	-0.0548 (.0472)	-0.0491 (.0482)
Individual blockholder not represented on board	-0.1361 (.0950)	-0.1852 (.0985)*
Individual blockholder with board representation	0.2117 (.1339)	0.1995 (.1335)
Bank ownership*pcv	0.3808 (.4605)	0.3630 (.4624)
Insurance co. ownership*pcv	2.2550 (1.1567)*	2.5413 (1.1837)**
Financial institution blockholder*pcv	0.0522 (.0742)	0.0554 (.0744)
Multiple financial institution blockholder*pcv	0.1449 (.0826)*	0.1503 (.0850)*
Blank check preferred stock proposal	-0.3700 (.0897)***	-0.3569 (.0899)***
Director compensation proposal	0.2981 (.1043)***	0.3155 (.1071)***
Executive compensation proposal	0.3295 (.0834)***	0.3435 (.0842)***

Table 7. Panel Regressions of Voting Support for Proxy Proposals, 1985-98 (continued)

B. Voting Support for Management Proposals (continued).

Variable	Full sample	Proposals in proxy fight year excluded
Executive and director compensation proposal	-0.1416 (.1270)	-0.1393 (.1288)
Defensive tactic proposal	-0.4100 (.0860)***	-0.3927 (.0887)***
Proposal combining defensive tactic and other matter	-0.2829 (.1181)**	-0.2750 (.1187)**
Increase common stock proposal	-0.0337 (.0806)	-0.0203 (.0812)
Liability and/or indemnification proposal	0.0869 (.0813)	0.0993 (.0821)
Repeal defensive tactic proposal	-0.0862 (.1806)	-0.0592 (.2135)
Director compensation prop.*pcv	-0.1179 (.1414)	-0.1453 (.1438)
Executive compensation prop.*pcv	-0.1485 (.1233)	-0.1696 (.1255)
Increase common stock prop.*pcv	-0.0826 (.1362)	-0.0994 (.1374)
Repeal defensive tactic prop.*pcv	-0.1481 (.2374)	-0.2585 (.2717)
Firm fixed effects	yes	yes
Year fixed effects	yes	yes
	R-squared = .5205	R-squared = .5195
	No. obs. = 904 (556 clusters)	No. obs. = 888 (550 clusters)

Table 8. Abnormal Returns on Announcement of Adoption of Confidential Voting

This table reports event study results of the stock price effects on the adoption of confidential voting. Abnormal returns are calculated using a market model (with the CRSP equal-weighted stock return portfolio as the market portfolio), $R_{it} = a_i + b_i R_{mt} + e_{it}$, in which the parameters are estimated using an ordinary least squares regression over a 200 day pre-event interval from day -220 to day -20, where day 0, the event date, is the proxy mailing date of the first proxy indicating firms' adoption of confidential voting. Only the 123 sample firms with returns available on all days, starting 220 days before the event date and through 20 days after it, are used in the analysis.

Interval	Abnormal returns	t-statistic
Day 0	-0.0008	-0.4630
Day +1	0.0011	0.6519
Days 0 through +1	0.0003	0.0668
Days -1 through +1	-0.0027	-0.2998
Days -5 through +5	-0.0137	-0.2210
Days -20 through +20	-0.0115	-0.0258

Table 9. Long-Term Performance of Firms Adopting Confidential Voting

This table reports the long-term performance effects of confidential voting. Buy-and-hold abnormal returns are calculated using monthly return data from the University of Chicago Center for Research and Security Prices (CRSP) data over the 12 months, 24 and 36 months ended after the month announcing the adoption of confidential voting. The computation follows Barber and Lyon (1997): $BHAR_{i\tau} = \prod_{\tau} [1+R_{i\tau}] - \prod_{\tau} [1+R_{m\tau}]$, where $R_{m\tau}$ is the value-weighted CRSP portfolio in panels A and B, and in panels C and D, a portfolio of firms without confidential voting, matched to the sample firms by size (assets within 200% of sample firm's assets for the year ended before the adoption of confidential voting) and industry (matched on at least twodigit SIC codes).

Panel A. Abnormal Buy-and-Hold Returns, Full Sample.

	+ 12 months	+ 24 months	+36 months
Confidential voting firms' buy-and-hold return	1.1567	1.3289	1.6779
Value-weighted portfolio's buy-and-hold return	1.1541	1.3322	1.6249
Difference	0.0027	-0.0033	0.0530
t-statistic	0.1126	-0.0899	0.7491
No. firms	129	129	128

Panel B. Abnormal Buy-and-Hold Returns, Proxy fight firms excluded.

	+ 12 months	+ 24 months	+36 months
Confidential voting firms' buy-and-hold return	1.1663	1.3456	1.7132
Value-weighted portfolio's buy-and-hold return	1.1549	1.3323	1.6345
Difference	0.0113	0.0397	0.0768
t-statistic	0.4496	0.3337	1.0243
No. firms	117	117	116

Table 9. Long-Term Performance of Firms Adopting Confidential Voting (continued)

Panel C. Abnormal Buy-and-Hold Returns, Matched Sample.

	+ 12 months	+ 24 months	+ 36 months
Confidential voting firms' buy-and-hold return	1.1573	1.3698	1.7486
Match firms' buy-and-hold return	1.1625	1.3523	1.8174
Difference	-0.0052	0.0176	-0.0687
t-statistic	-0.1457	0.2905	-0.7233
No. firms	95	94	92

Panel D. Abnormal Buy-and-Hold Returns, Matched Sample, Proxy fight firms excluded .

	+ 12 months	+ 24 months	+ 36 months
Confidential voting firms' buy-and-hold return	1.1586	1.3753	1.7677
Match firms' buy-and-hold return	1.1524	1.3564	1.8379
Difference	0.0062	0.0189	-0.0702
t-statistic	0.1691	0.2946	-0.6975
No. firms	89	88	86