

Shareholder Activism - M&A/Proxy Contests

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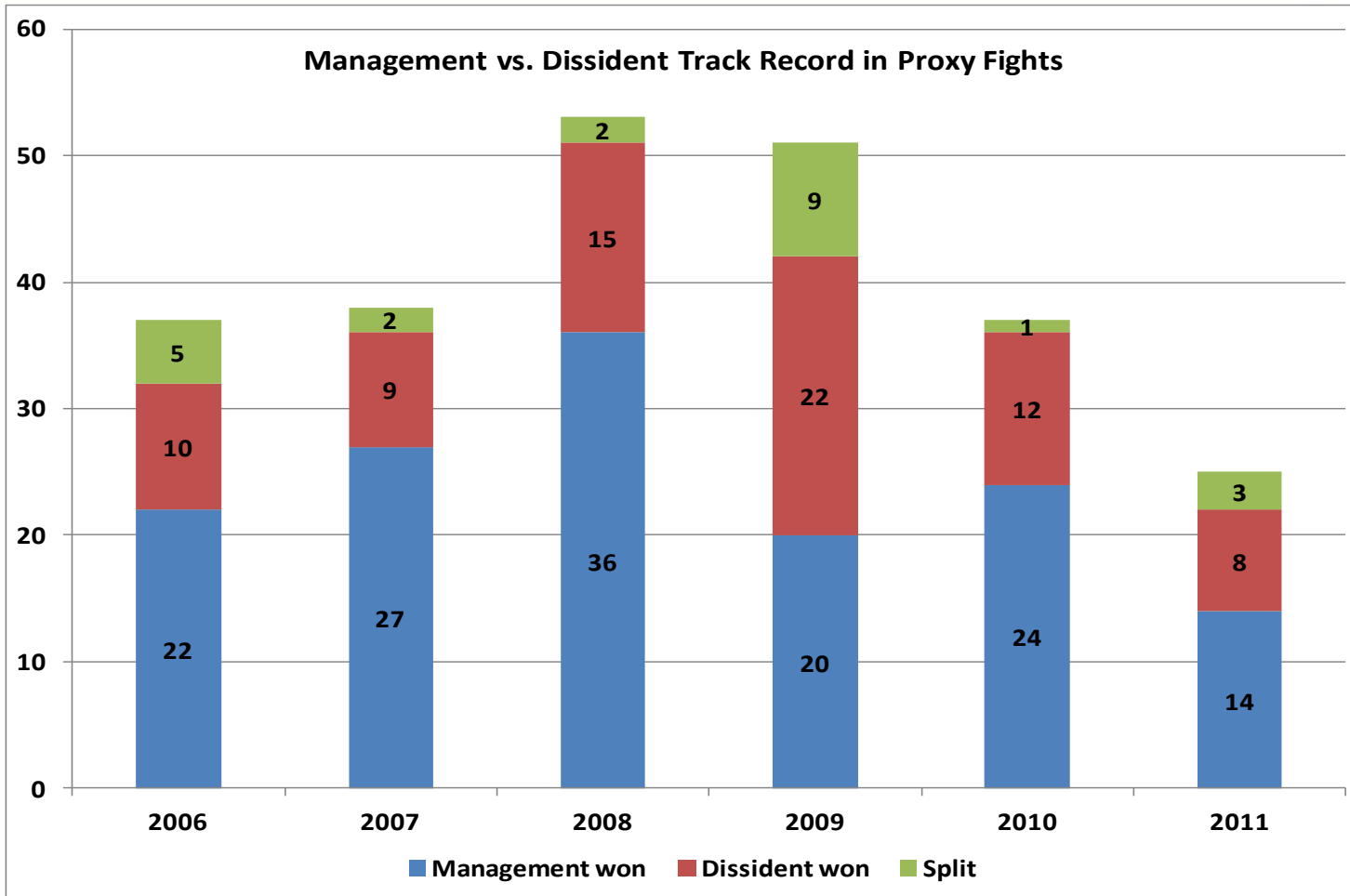
The Shareholder Communication Strategists



About Alliance Advisors LLC

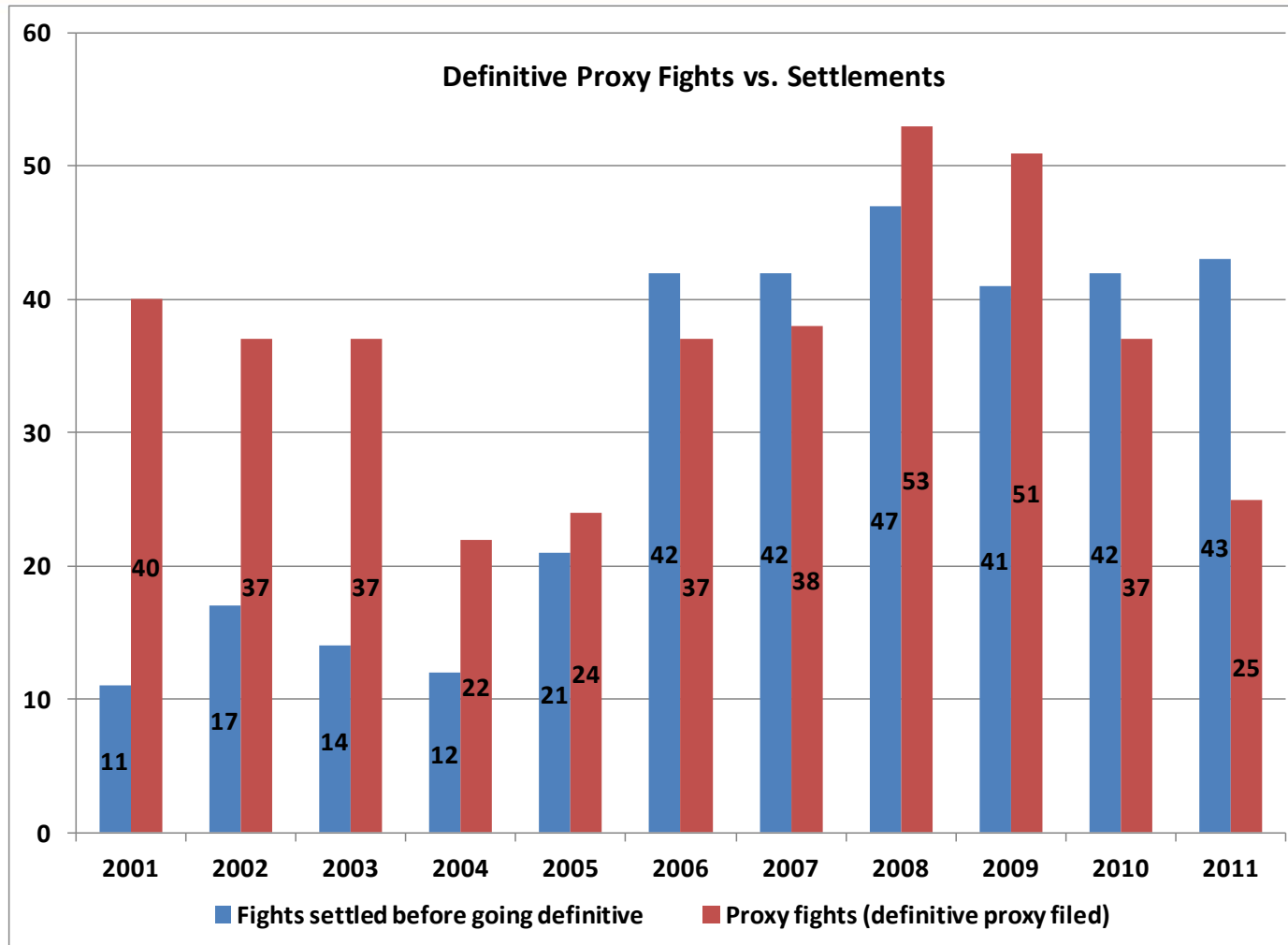
- ❑ Founded in 2005, Alliance is a multi-faceted shareholder communications firm specializing in proxy solicitation, governance consulting, information agent services and proxy management.
- ❑ The firm is lead by former founders of Corporate Investor Communications (CIC), which was acquired by Computershare - now Georgeson. Principals have over 25 years in the proxy solicitation business.
- ❑ Four former senior ISS/Proxy Governance team members on staff with topic expertise in executive compensation, corporate governance and M&A/Proxy Fights.
- ❑ Offer specialized year-round Activist Monitoring, Compensation and general Corporate Governance consulting services.
- ❑ Over 200 clients including several Fortune 500 companies – DELL, Starbucks, Walgreens, Exelon Corp, AGL Resources, Southern Company.

Downward Trend in Proxy Fights



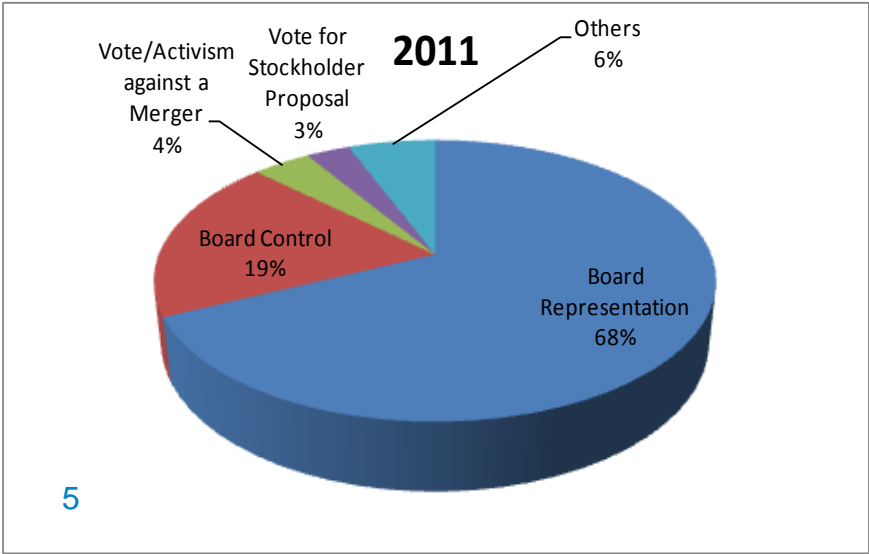
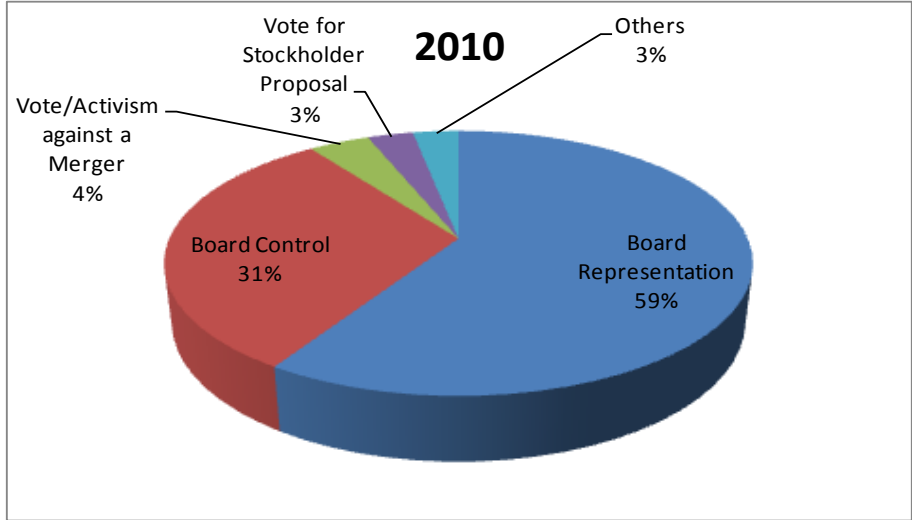
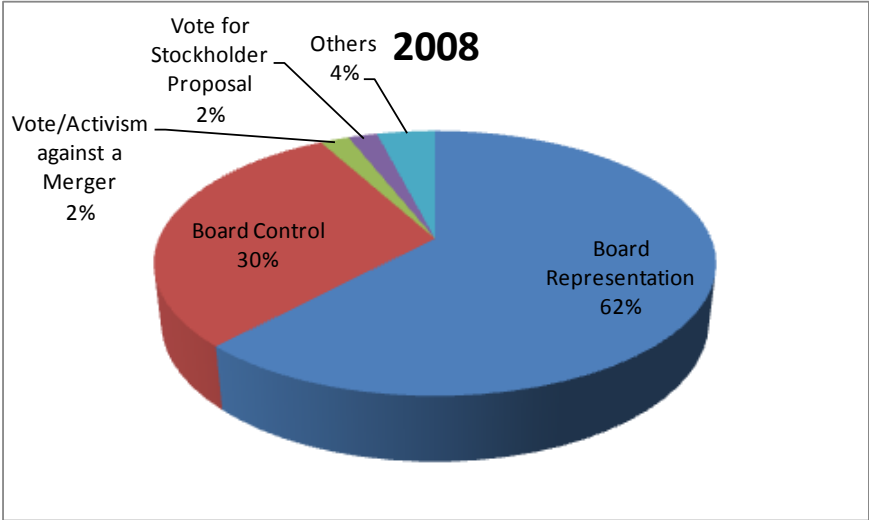
Source: FactSet Shark Repellent. Data as of 6 Feb. 2012

..... primarily due to settlements



Source: FactSet Shark Repellent. Data as of 6 Feb. 2012

Activists Typically Seek Minority Representation

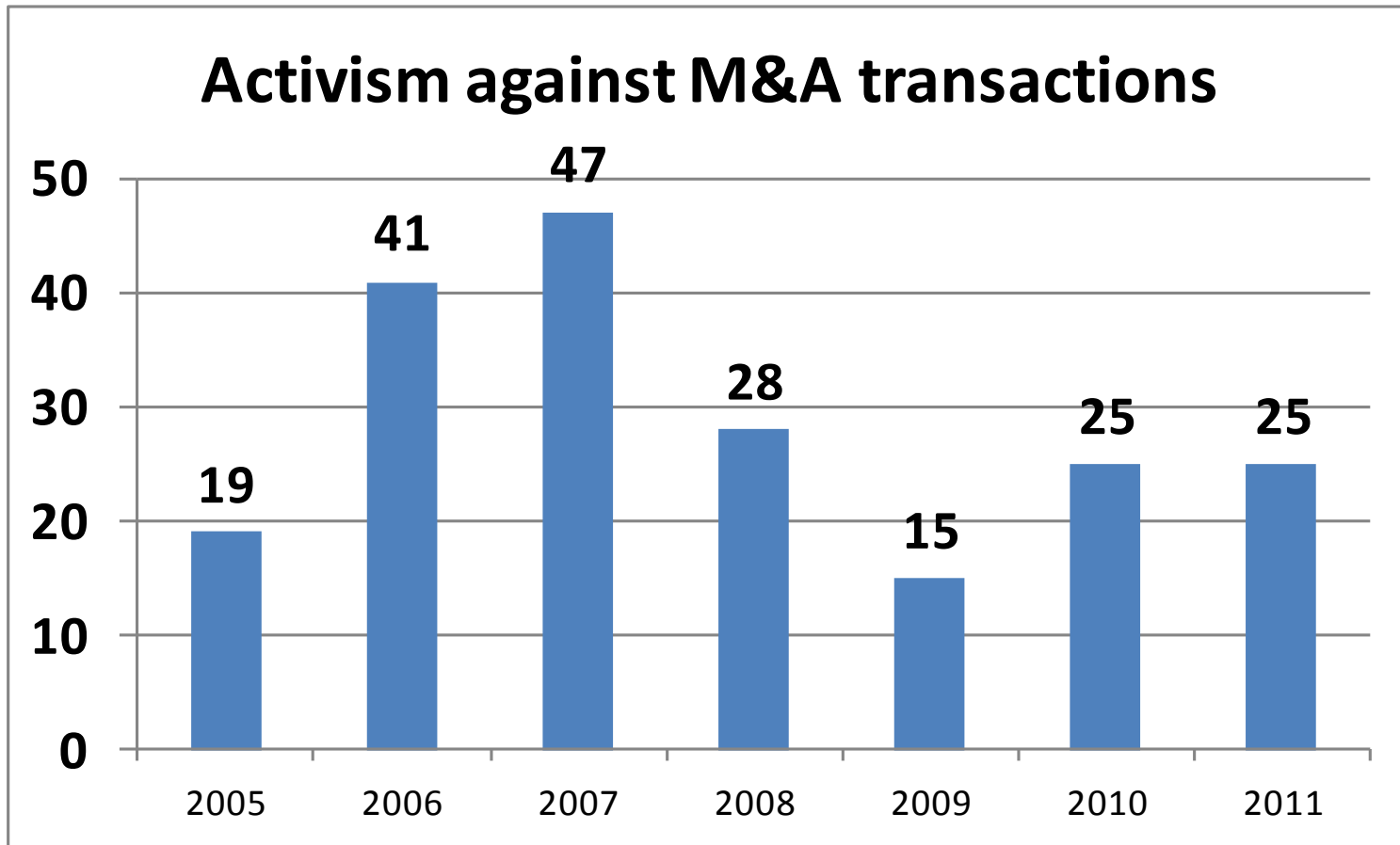


Source: FactSet Shark Repellent. Data as of 6 Feb. 2012

Types of Proxy Contests

- ❑ Minority Representation
 - Target, Office Depot, Barnes & Noble, Mentor Graphics, Forest Labs
- ❑ Majority Representation
 - Asure Networks, LCA Vision
- ❑ M&A driven
 - Airgas/Air Products; IPC Holdings/Validus, Casey's/Couche-Tard
- ❑ Written Consents (for board seats)
 - Zoran, Vitacost, Adaptec
- ❑ Written Consents (merger related)
 - Cephalon/Valeant Pharmaceuticals, Dynege/Seneca + Icahn, Emulex/Broadcom, Anheuser/InBev
- ❑ Vote no campaign + exempt solicitation

M&A Activism



Source: FactSet Shark Repellent. Data as of 6 Feb. 2012

Unsolicited/Hostile Offers



Source: FactSet Shark Repellent. Data as of 6 Feb. 2012

Contested M&A Transactions

❑ Strategic Acquirors

- Airgas/Air Products; IPC Holdings/Validus, Casey's/Couche-Tard
- Transatlantic Holdings/Validus
- Vulcan Materials/Martin Marietta
- Dollar Thrifty/Hertz & Avis
- CF/Agrium/Terra Industries

❑ Opposition to deal announcement by hedge funds

- Alpha Natural Resources/Foundation Coal – Duquesne Capital
- Charles River/Wuxi – Jana Partners
- Cedar Fair going private – Q Funding
- Dynegy going private– Seneca Capital and Icahn

ISS Framework – Proxy Contests

□ ISS proxy contest framework for board representation:

- Have the dissidents met the burden of proving that board change is warranted?
And, if so;
- Will the dissident nominees be more likely to affect positive change (i.e., increase shareholder value) versus the incumbent nominees?
- **For majority board representation**
 - the dissidents is required to provide a well-reasoned and detailed business plan (including the dissidents' strategic initiatives), a transition plan that describes how the change in control of the company will be effected, and if applicable, identify a qualified and credible new management team
- **For minority board representation**
 - the dissident is required to prove that board change is preferable to the status quo; &
 - the dissident director slate will add value to board deliberations including by, among other factors, considering issues from a different viewpoint than the current board members

ISS Framework – M&A Proxy Contests

□ In M&A related proxy contests, ISS focuses on the following:

- Did the acquirer make a reasonable offer?
- How did the target board respond to acquirer's offer?
- Does the target have anti-takeover mechanisms in place?
- What options do target shareholders have to realize value for themselves?
- Are acquirer nominees conflicted?
- Would acquirer nominees likely maximize value for target shareholders?

ISS Framework – Contested M&A Transactions

❑ In contested M&A transaction, ISS focuses on the following:

- Economics of and market response to the offer;
- The governance and strength of the sales process;
- The strategic reasons for the merger; and
- The relative attractiveness of the available alternatives.

“In the context of one or more competing bids, ISS will look in particular at the desirability of the agreed transaction relative to the other bids, mindful that competing bids must demonstrate not only more favorable economic terms, but also a reasonable certainty target shareholders can realize that value, or a higher value, if they take the risk of voting down the deal in hand.”

Key Considerations for Board/Management

❑ What is the reason for activism?

- Share price performance;
- Deterioration in operating metrics: Declining revenues and profitability, low ROIC;
- Balance sheet activism: Return capital to shareholders, change capital structure , history of poor/failed acquisitions/investment/R&D
- Corporate governance concerns: Classified board, non-shareholder approved poison pill, failure to implement majority supported shareholder proposals.

❑ Who is the dissident shareholder?

- Hedge fund or traditional long term investor;
- Duration for which the dissident has been a shareholder;
- Dissident ownership compared to board/management stake;
- Industry knowledge/understanding of the dissident investor

❑ Did the company engage with the dissident investor?

- Settlement discussions with the dissident;
- Reasonableness of dissident demands;
- Board's process for evaluating dissident nominees;
- Likelihood of expanding the board and giving a seat to the dissident

Takeover Defense: Certificate of Incorporation & Bylaws

- Since most provisions of the bylaws can be amended with just Board approval, near-term focus should be on the bylaws
- Can shareholders make proposals or nominate director candidates without providing advance notice?
- Can shareholders call a special meeting?
- Are there any restrictions on when a special meeting can be called, and for what purposes?
- Can directors be removed without cause?
- Can shareholders fill vacancies on the Board?
- Can shareholders take action by written consent?
- Do the bylaws include a “10+10” record date provision for actions by written consent?
- Are there director qualification provisions?

ABC Activist Vulnerability Analysis

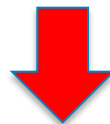
Activist Vulnerability Analysis

□ Key Takeaways

- ABC's share price has under-performed its peer median over the longer 5-year period. As ISS and institutional investors focus on relative TSR, ABC's under-performance could support an activist's argument for change.
- The fact that ABC has managed to generate above-peer-average operating and EBITA margins, in particular, ROIC in excess of its cost-of-capital, is indicative of a strong expense management and capital allocation strategy.
- That said, much of the revenue growth since 2005 has come from acquisitions. Activists could argue that the company has failed to formulate and execute a growth strategy for organically growing the core and acquired businesses.
- Based on analyst estimates, management's current plan offers limited upside potential.

ABC Activist Risk Profile

Relative TSR Performance*



Financial Performance*



Acquisitions History



Corporate Governance



Analyst Consensus*



** TSR, financial data and analyst consensus are sourced from Thomson Reuters database. Peer group comprises of companies mentioned in ABCs 2011 Investor Meeting Presentation – Dec. 2, 2011*

M&A/Proxy Contest Experience

□ Waheed Hassan, CFA – Managing Partner, Alliance Advisors LLC

- Waheed has over ten years of institutional equity research, corporate governance, M&A valuation, and proxy advisory experience. He has interacted with C-level management and board of directors, having led over 200 in-person meetings with senior management of public companies, including many S&P500 firms.
- Prior to joining Alliance, Waheed managed the M&A/Proxy Contest research team at Institutional Shareholder Services ("ISS") - a division of MSCI Inc. At ISS, he provided advisory vote recommendations on 100+ contested M&A transactions and proxy contests with the combined market value of targeted companies in excess of \$75 billion. Waheed was involved in several high profile proxy fights (Target, Barnes & Noble, NRG Energy, Office Depot), and mergers (IPC Holdings/Validus, Xerox/ACS, First Energy/Allegheny Energy).
- Previously, Waheed worked as a Senior Research analyst with Indosuez W.I. Carr Securities, UBS Warburg, and Khadim Ali Shah Bukhari. He was included among the #1 rated financial sector research analysts in The Reuters Survey of Global Emerging Markets 1998 and was a member of the #1 rated research team according to both The Reuters Survey of Global Emerging Markets 1999 and Euromoney Awards for Excellence 2000. Waheed is a CFA charter holder and received an MBA with Beta Gamma Sigma honors from Vanderbilt University.

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