Costly Corporate Governance:
Evidence from Shareholder Approval in Mergers and Acquisitions[*]

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Abstract

Shareholder approval, as an ultimate mechanism of corporate governance, is often perceived as either perfunctory or beneficial. We provide evidence of a more nuanced view that emphasizes certain costs of shareholder approval, as well as managers' attempts to circumvent these costs. Firms listed in major U.S. stock exchanges are subject to shareholder approval if they issue new shares of more than 20% of their existing shares outstanding. We examine the financing of acquisitions and find that a disproportionally large number of acquirers construct deals to issue new stock slightly less than 20%, thereby avoiding shareholder approval. This opportunistic behavior suggests that managers do not perceive shareholder approval as perfunctory. Moreover, we find that acquirer announcement returns are greater for deals that avoid shareholder approval, suggesting that the circumvention of shareholder approval does not stem from managerial agency conflicts. Rather, managers may act in good faith to avoid the potential costs of shareholder approval. Our evidence suggests that managers structure deal financing to avoid shareholder approval when there is greater information asymmetry between managers and shareholders about the merits of the acquisition, as well as to reduce the duration and transaction costs associated with negotiating the deal. Our findings highlight the potential costs associated with shareholder empowerment and suggest a more balanced view of direct shareholder governance.

Keywords: Corporate governance; Mergers and acquisitions; Agency problems; Information asymmetry; Shareholder voting; Shareholder empowerment

1. Introduction

Separation between ownership and control is often considered a hallmark of modern American corporations. It however gives rise to an array of agency problems stemming from a misalignment of interests between shareholders and managers, which can reduce shareholder value (Jensen & Meckling, 1976). One proposed solution to mitigate such agency problems is to empower shareholders to participate more directly in corporate decisions. This proposal is appealing since, by construction, it shrinks the gap between ownership and control – the ultimate source of agency problems. As a result, Bebchuk (2005) argues that, "*Providing shareholders with the power to intervene can significantly improve governance problems ... and enhance shareholder value by addressing agency problems that have long afflicted publicly traded companies*".

We examine direct shareholder governance in the context of corporate acquisitions. Acquisitions are an interesting setting to explore this issue because many acquisitions appear to be value destroying from the perspective of acquirer shareholders,[1] and shareholders have opportunities to approve the deal under certain circumstances. Empirical evidence indicates that acquirer shareholders approve the vast majority of acquisition deals on which they are allowed to vote, with the average approval rate as high as 98% of the votes cast (Burch, Morgan, and Wolf, 2004). The evidence thus raises an interesting question whether shareholder voting on acquisitions is perfunctory. From a different perspective, Listokin (2010) asks: if you give shareholders power, do they use it? He examines how shareholders with different power granted in different U.S. states participate in opting out of the antitakeover protections in the 1980s and concludes with a negative answer.[2] In addition to the high approval rate, Burch, Morgan, and Wolf (2004) also find that the average turnout rate

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[1] For example, Roll (1986), Masulis, Wang, and Xie (2007) and Harford and Li (2007) suggest that managerial overconfidence and empire building can be the underlying motivations for value destroying acquisitions.

[2] In another study, Listokin (2008) challenges the efficacy of shareholder voting. He examines votes on management-sponsored resolutions and finds that management is overwhelmingly more likely to win votes by a small margin than lose by a small margin. Management seems to be able to influence the voting outcome, especially those close ones.

is only 75%, suggesting a high percentage of shareholders do not bother participating voting on the acquisitions.

It is also important to recognize that managers can control various aspects of the voting process. For example, they can avoid pursuing acquisitions that are unlikely to garner shareholder support, in which case, one might argue that shareholder voting is a screening process to prohibit managers from pursuing value-destroying acquisitions. Managers can also actively structure the deals in a way to circumvent shareholder voting. In these cases, one might be concerned that managers are avoiding shareholder oversight to pursue their own interests. Shareholder approval in these cases is expected to rein in managers and increase firm value.

A third and often under-emphasized view is that shareholder participation comes at a significant cost. First, the procedure of shareholder voting is time-consuming and incurs some direct costs. More importantly, corporate managers may have information and skill advantage over average shareholders and it is costly, and sometime impossible, to communicate and share the information and skills. Harris and Raviv (2010) suggest that shareholders may overestimate the potential agency costs and underestimate the information advantage of managers and therefore a higher degree of shareholder participation in corporate decisions does not necessarily create value. Mukherjee (2013) argues that the efficacy of shareholder rights crucially depends on the cost of acquiring firm-specific information. Shareholder rights have a positive effect on firm value when information costs are low but little or no effect when acquiring information is very costly.

In this paper, we examine acquirer shareholder approval in mergers and acquisitions. In the U.S. market, the consummation of an acquisition deal is subject to approval by target shareholders but not necessarily by acquirer shareholders. Major U.S. stock exchanges, including NYSE, AMEX, and NASDAQ, however, require shareholder approval if a listed

public company issues new shares more than 20% of its existing shares outstanding.[3] This stock exchange listing rule effectively gives acquirer shareholders a chance to vote on the deal if the acquirer plans to finance the acquisition by a large amount of stock financing. If shareholder voting is a perfunctory procedure, acquirer management should not account for it in constructing the deal financing. On the other hand, if the management intends to avoid this procedure, they can opportunistically suppress new stock issuance below the 20% threshold in order not to trigger the shareholder approval contained in the listing rule.[4]

We examine the distribution of mixed-financing acquisition deals based on the percentage of the acquirer's new stock issues relative to its existing shares outstanding. Figure 1 shows a significant discontinuity in the distribution – a disproportionally large number of acquisition deals were pushed down below the 20% threshold. The evidence cannot be explained by other reasons except that acquirers evade the procedure of shareholder approval by constructing financing strategically. This evidence challenges the perfunctory view of shareholder voting. Managers do care about the procedure and, in many cases, try to avoid it, resulting in the distortion of the distribution.

Why do managers evade shareholder approval on the acquisitions? One might conjecture that the shareholder-management conflict of interest and agency problems are the underlying drivers of managers' opportunistic behavior. Our further evidence, however, does not support this hypothesis. We find that acquirers that construct the deal financing to avoid shareholder voting earn average stock returns of about 3% higher than acquirers that incurred shareholding voting at announcement. They also earn higher stock returns in the whole bid-

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[3] See NYSE Listed Company Manual Section 312.03(c), NYSE MKT Company Guide §712(b), and NASDAQ Stock Market Rule 5635(a).

[4] The Kraft case is such an example. On September 7, 2009, Kraft Foods Inc. made a public offer to acquire the British confectionery company Cadbury with 300 pence in cash and 0.2589 Kraft shares in exchange for one share of Cadbury. The offer was initially rejected by Cadbury. On September 16 in a CNBC TV interview, Warren Buffett, the CEO of Berkshire Hathaway which holds 9.4% of Kraft's outstanding shares, expressed his concern that Kraft management might overpay the target and added that he would vote against the bid if he had the chance. In January 2010, Kraft completed the acquisition of Cadbury, after restructuring the payment for one Cadbury share to be 500 pence in cash and 0.1874 Kraft shares. For that, Kraft issued $9.5 billion of senior unsecured notes for the cash financing and issued 262 million new shares, representing 17.74% of its shares outstanding at the time. (Amy Wilson, The Telegraph, 20 Jan 2010)

period and achieve better operating performance in the years following the acquisitions. The stock return results hold after controlling for acquiring firm and deal characteristics. The evidence suggests that these acquisitions that evaded shareholder approval are at least as good as, and more often better than, other deals that are subject to shareholder approval.

Our evidence suggests that managers could avoid shareholder approval for good (for shareholder) reasons. Compared to the control group of acquisition deals in which acquirers incur shareholder approval, the deals constructed to evade shareholder voting more often involve firms in high-tech industries; the target firms are more likely to be private; earn-outs are used more frequently as a method of payment; Both acquirer and target firms show higher commitment to the deal as suggested by their inclusion of termination fees in merger agreements and less hostile attitude. Indeed, these deals have a higher probability to consummate and consummate faster. These deal characteristics suggest that acquirer managers seem to have information advantage in evaluating the deal; once they identify a good deal, they have incentives to close the deal faster, to better protect information from competitors, and to avoid potential competing bids. Our logistic regression results further confirm that in deals of significant information asymmetry, managers are likely to have information advantage and they tend to construct the financing to avoid shareholder approval. Moreover, we show that avoiding shareholder approval is particularly preferred (yields higher announcement returns) if the acquirers have been doing well in the past, as measured by higher valuation ratios, higher ROA, or higher stock returns. Presumably managers of these performing firms are relatively more skilled and of less agency concern. Shareholder approval is therefore more likely redundant, if not detrimental.

In this study we examine the impact of shareholder empowerment on acquisition outcome. Our empirical results suggest that the optimal structure of corporate governance does not necessarily entail broader shareholder involvement in corporate affairs. Beside the acclaimed disciplinary benefits, strong shareholder rights may also bring about significant costs to the firm and impair shareholder value. The separation between ownership and control

gives rise to potential agency problems but it also provides the much-needed liquidity to the equity market (Berle and Means, 1932). Specialization in both professional skills and risk bearing also justifies a controlling team distinct from the owners of a large public firm (Bainbridge, 2003). When shareholders are substantially empowered to interfere, managers are discouraged to acquire information, make investment decisions or engage in other value-increasing activities (Shleifer and Vishny, 1997; Burkart, Gromb, and Panunze, 1997; Aghion and Tirole, 1997). Chu and Zhao (2016) find that firms make more efficient acquisitions after the reduction of shareholder litigation risk, and argue that the threat of shareholder litigation distorts managers' incentives and imposes significant opportunity costs to the firm. The cost of acquiring information is particularly severe for an average shareholder to actively and effectively participate corporate decisions, and the dispersed benefits lead to the well-known free-rider problem even among institutional investors (Bainbridge 2006; Strine 2006). In addition, the interest heterogeneity among shareholders often makes shareholder control less effective or less clear in the benefits. For example, shareholder activism research shows that private benefits accrue to union and public employee pension funds (Anabtawi, 2006; Bainbridge 2006; Cai and Walking 2011; Agrawal, 2012) as well as active hedge funds (Hu and Black, 2006; 2007; 2008) but not necessary to shareholders at large. Pivoting the control power back to shareholders can unleash all these detriments.

More broadly, our research contributes to the unsettled debates over shareholder democracy among both lawyers and economists. Studies on the impact of shareholder activism on firm performance yield indeterminate empirical results. While many advocating the positive influence of shareholder activism in general, and hedge fund activism in particular, on firm valuation (Cremers and Nair, 2005; Clifford, 2008; Brav, Jiang, Partnoy, and Thomas, 2008; Klein and Zur, 2009; Cuñat, Gine, and Guadalupe, 2012; Bebchuk, Brav, and Jiang, 2015), evidence also exists indicating little gain from shareholder activism, after accounting for the severe costs of negotiations and campaigns (Gillan and Starks, 2000; Gantchev, 2013). Greenwood and Schor (2009) show that firms heeding to hedge fund

activists on corporate decisions do not gain unless the changes in decisions result in the company being taken over at the end. When we turn to certain specific aspects of shareholder empowerment, evidence again diverges depending on how they are empowered. For example, most studies on expansion of proxy access tend to show the positive impact it brings to firm performance (Renneboog and Szilagyi, 2011; Cohn, Gillan, and Hartzell, forthcoming; Fos, forthcoming). However, findings appear less favorable to shareholder voting on executive pay (Cai and Walkling, 2011; Wagner and Wenk, 2015), and the empirical results about shareholders' power to elect directors range from no impact on firm performance (Cai, Garner, and Walking, 2009) to substantial positive effects, which nevertheless vanished in the long-term (Arena and Ferris, 2007).

We carry on the endeavor to test the pros and cons about corporate governance through strong shareholder rights in relation to particular corporate activities, instead of relying on a handful of overarching indexes (Gompers, Ishii, and Metrick, 2003; Bebchuk, Cohen, and Ferrell, 2008). The empirical results of our paper suggest that the optimal structure of corporate governance does not necessarily entail broader shareholder involvement in corporate affairs. Even if management opportunism remains a concern to bidders in takeover transactions (Masulis, Wang, and Xie, 2007), mandating shareholder approval could be a wrong approach to combat it. Because "shareholder voting is properly understood not as a primary component of the corporate decision making structure, but rather as an accountability device of last resort, to be used sparingly, at most" (Bainbridge, 2006).

2. Regulatory background and identification strategy

In case of corporate mergers in the U.S. market, target shareholders have the right to vote before consummating the deal while acquirer shareholders do not necessarily own the same right. In the absence of shareholder discipline, the management of the acquiring firms is often criticized for agency problems and the resulting poor acquirer shareholder returns (Jensen and Meckling, 1976; Jensen, 1986; Roll, 1986; Masulis, Wang, and Xie, 2007). There

are however exceptions if the acquirer is a publicly listed firm in a major U.S. stock exchange, such as NYSE, (the historic) AMEX, and NASDAQ. According to these exchange listing rules, if the acquirer needs to issue 20% or more new shares of its pre-transaction outstanding shares for this acquisition, shareholder approval is required prior to the issuance of new shares. For example, NASDAQ Stock Market Rule 5635(a) specifies (NYSE Listed Company Manual Section 312.03(c) suggests similarly),

> *Shareholder approval is required prior to the issuance of securities in connection with the acquisition of the stock or assets of another company if:*
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> *(1) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:*
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> *(A) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or*
>
> *(B) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities;*

Delaware is known for incorporating over half of the publicly traded U.S. corporations. Interestingly, prior to 1967 Delaware corporate law required all mergers to be approved by shareholders of both firms but in 1967, it followed the NYSE rule and denied acquirer shareholders a vote when the company issued less than 20% stock (Seligman, 1988).[5] Thereafter, most American states adopted the same rule in their corporate law except Alaska, Louisiana, Missouri, and New York. Among the four states, Louisiana required shareholder approval if the acquirer issued 15% or more new shares of its existing shares outstanding and since 2015, it also raises the threshold to 20% to be the same as most other states. For the

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[5] See Delaware General Corporation Law §251(f). In addition to 20% threshold, the Delaware law actually requires two other conditions to be met before the acquirer's shareholder voting can be eliminated: 1) the acquirer's articles of incorporation is not amended after the merger; and 2) the acquirer's outstanding shares are unaffected by the transaction. In practice, however, these two additional conditions can be easily satisfied to bypass the acquirer's shareholder approval through so-called triangular mergers where the acquirer sets up a shell subsidiary to merge with the target (Bainbridge, 2012a). And the triangular mergers are considered as common practices in M&A transactions (Coates, 2015). Therefore, the 20% threshold becomes the de facto binding condition for avoiding the acquirer's shareholder approval.

other three states, however, shareholder approval is still required for both firms regardless of the amount of new stock issuance.[6]

This stock exchange regulatory requirement provides a promising basis for investigating how relevant shareholder approval is. If shareholder approval is perfunctory, acquirer managers would not take it into consideration when they decide how much new stock to be issued as payment for the acquisitions. New stock issues could be driven by the demand for financing – acquirers need to issue more stock for acquiring larger targets, or by other factors such as stock overvaluation – firms issue more stock when it's overvalued (Shleifer and Vishny, 2003). On the contrary, if acquirer managers have incentives to evade shareholder approval, they may want to issue less than 20% new stock, especially in those deals they have flexibility in constructing deal financing.

How to test managers' incentives towards shareholder approval? We compute the percentage of new stock issues relative to the acquirer's shares outstanding and examine the distribution of acquisition deals over this metric. We shall observe a smooth distribution near the threshold of 20% if managers view shareholder approval as perfunctory and thus do not care. In contrast, if managers take it into serious consideration, we expect to observe a cliff at the 20% threshold with substantially more deals clustered to its left (the percentage of new stock issues is less than 20%) but a pronounced drop in deal number to the right, as a result of managers refraining from issuing more than 20% new stock to avoid triggering the procedure of shareholder approval.

Advocates of the perfunctory view make the arguments based on the simple fact that the average shareholder approval rate is as high as 98% of the votes cast. Moreover, the turnout rate is often low, suggesting shareholders are not interested in participating in the procedure. However, they overlook the selection bias of managers – managers tend to submit those deals for shareholder approval only when they expect to gain large shareholder support.

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[6] See Alaska Corporations Code §10.06.544, Louisiana Business Corporation Law §112E(1)(c) and Louisiana Business Corporate Act §1-1104(8)(d), Missouri General Business and Corporation Law §351.425, and New York Business Corporation Law §903. Companies need to comply with both the corporate law where it incorporates and the stock exchange rules where it was listed. So the rule binds whichever is stricter.

Acknowledging the selection bias, Burch, Morgan, and Wolf (2004) show that despite the high average approval rate, there are still variations (a standard deviation of 3%) across deals and the approval rates are positively related to acquirer stock returns. Their findings suggest that the high approval rate is not completely meaningless and its variation signals the different quality of deals. However, their focus on the deals that have experienced the shareholder approval procedure does not directly address the selection bias and misses important information in the other deals that have evaded the procedure.

If shareholder approval is not a perfunctory procedure and managers sometime pay efforts to circumvent it, are these managers avoiding the procedure for good or bad reasons? If shareholder approval is viewed purely as a mechanism to discipline managers with agency problem incentives, it might be intuitive that shareholders of the acquiring firms whose managers avoid shareholder approval suffer value loss in the acquisition deals. The reduction in value is expected to be more severe in firms with greater agency problems (poor corporate governance).

However, shareholder approval may come at significant costs as well. First, it incurs some direct costs to fulfill the procedure. Second, it takes longer time to accomplish the deal, during which it increases additional direct costs such as more legal and finance advisor fees and worse, it increases the chance to inviting competing bidders. Third, it deprives of the decision rights of managers with superior information and skill advantages. In other words, managers could avoid shareholder approval for reasons good for their shareholders. The benefits of avoiding the procedure are more evident when the managers have more significant information and skill advantage than the average shareholders. We examine stock returns and operating performance of acquirers to test the competing hypotheses.

3. The sample of acquisitions

We obtain our sample of mergers & acquisitions from the SDC Platinum database. We start with all the acquisitions announced between January 1985 and December 2015 in the U.S. market. We filter our sample according to the following criteria: (1) the acquirer is a

public firm listed on the NYSE, AMEX, or NASDAQ; (2) the acquisition is financed partially by new stock issues of the acquiring firm (that is, mixed-financing deals; pure cash or stock acquisitions are excluded); (3) the relative size of the deal, i.e. the deal transaction value relative to the acquirer's market value of equity at announcement,[7] is at least 20%; and (4) the acquirer is not incorporated in Alaska, Louisiana, Missouri, and New York. The corporate law of these four states requires shareholder approval even if the acquirer issues less than 20% new stock. We obtain acquirer and (public) target stock returns from CRSP and firm financials from Compustat fundamental annual file.

We leave out acquisitions financed purely by cash or stock in our primary sample, because many other factors, as documented in the literature, affect acquirer's choice of payment methods, such as (relative) market valuation of stock, access to the capital (debt/equity) market, target shareholder clientele due to tax or other reasons. The potential triggering of shareholder approval is just one of the many, and perhaps not even a primary factor. Including these transactions, hence, may obscure the influence of shareholder voting on the structuring of deal financing. In other words, the observations kept in our sample represent the deals where acquirer managers, after taking into consideration all the other factors of payment methods, decide to use both cash and stock to finance the transactions. Nevertheless, they still need to decide the relative proportion of cash versus stock. With that said, we include some all-stock deals in an extended sample as a robustness test. These acquirers issue more than, but not too much more than, 20% new stock. As a result, they incur the procedure of shareholder approval though they could have avoided it by issuing less new stock.

Relative size measures how costly to acquire the target firm from the acquirer's perspective. If the target firm is very small, that is, less than 20% of the acquirer's market capitalization, even if the acquirer uses all stock financing, it would not trigger shareholder approval. Shareholder approval becomes acquirer managers' discretionary choices only when

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[7] In particular, the acquirer's market value of equity is the latest available market capitalization within the last seven days before the announcement day.

the relative size of the acquisition is no less than 20%. This sample selection criterion distinguishes our research from prior studies (Hsieh and Wang, 2008; Kamar, 2011). Without this restriction, these prior studies include many small-target deals in which acquirer shareholder approval is not required regardless of the deal financing. It is beyond the managerial discretion to issue 20% or more new stock. Also note that the frequency distribution of acquisition deals is monotonically decreasing in relative size, as we show in Figure 1 Panel B. Without the restriction of relative size, one would inappropriately include many small target deals.

To make sure that the 20% threshold for shareholder voting is binding indeed, we exclude further from our main sample the acquirers incorporated in those states whose corporate laws requires shareholder approval for new share issues lower than 20%. They are Alaska, Louisiana, Missouri, and New York, having 1, 15, 11, and 96 deal observations respectively.[8] Later we use this excluded sample for our placebo tests.

4. Empirical results

4.1. Shareholder voting and deal financing

If shareholder approval is perfunctory, as suggested by investors' inertia to participate in voting and the extremely high approval rates based on the vote cast, acquirer managers would care little in constructing the deal financing whether or not to trigger the procedure. In particular, they do not need to purposely push the percentage of new stock issues for the acquisition below the 20% threshold. In contrast, if acquirer managers view the shareholder voting requirement as a material hurdle to the fulfillment of their business plans, they would skirt around the point that triggers the voting procedure. Hence, some deals that would have been financed by new stock of 20% or more of acquirers' outstanding common stock will instead use more cash just to circumvent the voting requirement. For example, after Kraft's

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[8] Louisiana required shareholder approval if the acquirer needed to issue 15% or more in the past and raised the threshold to 20%, effective as of Jan. 1, 2015. However, there is no deal in our sample involving an acquirer incorporated in Louisiana and announced on or after this date. Acquirers in the other three states need to be approved by their shareholders even if the deal is financed by all cash.

largest shareholder expressed concerns on its acquisition for Cadbury, Kraft increased use of bank loan (cash) and reduced issuance of new stock to avoid triggering the 20% threshold. As a result, in the frequency distribution of acquisition deals over the percent of new stock issues, we expect to see a spike in deal number right below the 20% threshold, which is to evade shareholder voting, and then a sudden drop in deals immediately across the threshold.

To test this, we break our main sample into 21 brackets based on the percentage of new stock issued relative to the acquirer's outstanding shares. The first 20 brackets hold deals with 5% sequential increments in the percentage of new stock issues and the last bracket contains all the deals financed by 100% or higher percentage of new stock. Table 1 reports the distribution of deals across these 21 brackets and the upper panel of Figure 1 plots the distribution. The number of deals gradually increases as the percentage of new stock issues approaches the 20% threshold, but then drops sharply after crossing it. To be more specific, as we move from the fourth bracket, in which the deals were financed by new stock issues of 15% to right below 20% of the acquirer's outstanding common stock (shareholder approval avoided), to the fifth bracket where 20% to 25% new stock were issued (shareholder approval triggered), the number of deals declines by more than a half. There exists a clear discontinuity in the distribution of deals.

What would the distribution be if there were no influences of shareholder approval? This is equivalent to ask what could explain acquiring firm's issuance of different amounts of new stock in mixed-financing deals. The first and most important determinant is perhaps the transaction value relative to the acquirer. All else being equal, an acquirer needs to issue more stock in financing the acquisition of a larger target. We run a regression of the percentage of new stock issues on the deal relative size, where relative size is measured as the ratio of transaction value to the acquirer's pre-merger market capitalization. The regression results confirm the importance of relative size in explaining the amount of new stock issues. In the right columns, Table 1 reports the distribution of acquisition deals based on the relative size of the deal, similarly divided into 21 brackets. The distribution is also illustrated in the bottom panel of Figure 1 (in red bars). It is noteworthy that the number of deals falls off smoothly as

the relative size grows larger. This is not surprising since acquisitions of a small target happened much more often than acquisitions of a large target. In more than 20% of the deals (the first bin), the transaction value of target is less than 5% of the acquirer's pre-merger market capitalization. In more than half of the mixed-financing deals (the first four bins), the transaction value is less than 20% of the acquirer's market capitalization; for these deals, even if the acquirer uses all stock financing, it could not issue 20% or more new stock and thus not trigger shareholder approval. Therefore, we exclude these deals from our primary sample for the analysis of managerial opportunism.

Comparing to the smooth and monotonically decreasing distribution of acquisition deals based on the relative size, the distribution based on the percentage of new stock issues is anomalous at least in two aspects: (1) the sharp drop in deal number around the 20% threshold and (2) the increasing number of deals across the first four bins. Both anomalies are not explained by the distribution based on the relative size. It suggests that some acquirer managers, in order to avoid the procedure of shareholder approval, purposely issue less than 20% of new stock. This pushes some deals to the first four bins that managers would have issued more than 20% new stock if there were no such exchange listing rule. The marginal cost of reducing new stock issues is, however, increasing in the number suppressed. This has two implications: (1) if shareholder approval is to be avoided, managers prefer to be in Bin 4 than in Bin 3, and similarly, prefer to be in Bin 3 than in Bin 2; (2) It might not be possible or economically optimal to issue less than 20% new stock if the target is very large relative to the acquirer and the acquirer would issue a lot more new stock than 20% if there were no such an exchange listing requirement. These implications explain the increasing number of deals in the first four bins and the sharp drop in deal number at the 20% threshold. After crossing over the 20% threshold, the distribution based on new stock issues moves on along with the distribution based on relative size.

To ascertain managers' evasion of shareholder approval at the 20% threshold, we implement the automatic manipulation tests developed in Cattaneo, Jansson, and Ma (2016) (CJM hereafter). Based on a local polynomial density estimator, the CJM test can be used to

detect self-selection exposed to a known threshold-crossing assignment rule. The CJM test is built on the insight in McCrary (2008) that is set to formally test whether units are systematically sorting around the cutoff point. But for self-selection, the density of the units around this point would be continuous. Thus, like the one used in McCrary (2008), it is a Wald test of the null hypothesis that the discontinuity in unit distribution near the cutoff is zero. However, the CJM test does not require a pre-binning of the data, hence avoiding the need of choosing additional tuning and smoothing parameters. In our case, the test indicates whether the structural break in the distribution demonstrated in Figure 1 has statistical significance. In particular, we want to show that, under the pressure of shareholder approval requirement, managers of some acquirers do manipulate the structure of deal financing to circumvent the procedure. Table 2 reports the *t*-statistic and *p*-value obtained in CJM test. To further confirm that management manipulation is a response to the shareholder voting requirement, we ran three placebo tests. The first two, using our main dataset, test the manipulation effects at, respectively, 15% and 25% new stock issuances. The last one tests the distribution break at the 20% cutoff point but uses the auxiliary sample including only firms incorporated in the four states whose acquirer shareholder voting thresholds are either mandatory or, in the case of Louisiana, set below 20%. These test results confirm that the manipulation effect exists only when the percentage of new stock issues triggers shareholder approval.

In a nutshell, evidence shows that the shareholder voting requirement is not perfunctory. Acquirer managers conscientiously devise deals to maneuver around this requirement when necessary.

4.2. Shareholder approval and acquirer performance

Why do some acquirers evade shareholder approval? Does the evasion destroy firm value? Acknowledging the existence of agency problems, advocates of shareholder approval argue that oversight from shareholders rein in potential management misbehaviors and hence increase firm value. This reasoning is further justified by the existing evidence that suggests

agency problems an important driver for the usual poor performance of acquirers (Jensen, 1986; Roll, 1986; Harford and Li, 2007; Masulis, Wang, and Xie, 2007, Harford, Humphery-Jenner, and Powell; 2012). Following this hypothesis, we expect that acquirer shareholders fare relatively worse in deals that are devised to circumvent their approval. To test this prediction, we examine acquiring firms' cumulative abnormal returns (CARs) during the five-day announcement period, i.e., from two days before to two days after the announcement,[9] and during the bid period, i.e., from 20 days before the announcement through the close date. We need the deal to be consummated for computing the bid period CAR, whereas this requirement does not apply for computing announcement CAR. CARs are estimated by the two-parameter market model where the CRSP valued-weighted market return is used as the market portfolio return and the daily stock returns from 365 to 60 days before the announcement date are used to estimate the two parameters. We require the target transaction value less than the acquirer market capitalization, that is, the relative size is less than one. In deals with relative size greater than one, it is more difficult for the acquirer to issue less than 20% new stock, which, for our research purpose, should be acquirer managers' discretionary choice. Our following results, however, are robust to inclusion of these deals.

Table 3 reports the announcement and bid-period CAR results. Column (1) includes mixed-financing acquisition deals that avoid acquirer shareholder approvals by issuing less than 20% new stock (Group I), and column (2) contains deals that are subject to shareholder approvals because the percentage of new stock issues is above the 20% threshold (Group II). Since relative size of the deal is an important driving factor for the amount of new stock issuance, the relative sizes of the deals between Groups I and II are expected to be very different. As we explain above, an acquirer has less discretion to issue less than 20% new stock if the target is particularly large relative to its own size, while in our ideal research setting, managers decide to cross or not the 20% threshold only based on their preference for

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[9] In footnote 11 (pp. 1856), Masulis, Wang, and Xie (2007) justify the use of five-day window for estimating acquisition announcement returns, based on Fuller, Netter, and Stegemoller's (2002) verification in a random sample. Our results are also robust to CARs of a three-day window – from the day before to the day after the announcement.

shareholder voting. To mitigate the potential impact from the difference in relative deal size, a third group, Group III, is thus constructed in column (3). It is a subset of the Group II acquisitions whose relative deal size is capped below mean plus one standard deviation of the non-voting group's (Group I) relative deal size. This ceiling filter results in 377 deals in Group III (49% of Group II), which have much closer relative deal size to those in Group I, as we reported later in Table 6. Finally, we add Group IV consisting of all-stock deals with relative sizes between 20% and 55% as another group for comparison. There are 1129 deals in this group. The last three columns in Table 3 report the differences in CARs, respectively, between Group I and Group II, between Group I and Group III, and between Group I and Group IV.

Table 3 shows that acquirers that construct the deal financing to evade shareholder voting earn higher announcement returns (panel A), as well as higher bid-period returns (panel B), than acquirers that are subject to shareholder approval. The differences in both the means and medians are statistically significant at the 1% level. When we restrict our comparisons to acquisitions with similar relative deal sizes, either using mixed payments (i.e., between Group I and III) or all stocks (i.e. between Group I and IV), the higher returns earned by the avoid-voting group become even more pronounced. The average CARs of the deals in this avoid-voting group is more than 3% higher at announcement and more than 7% higher during the bid-period than the deals with similar relative size but subject to shareholder voting. This evidence goes strikingly against the argument that shareholder approval creates value for acquirer shareholders.

We also examine acquirers' long-run operation performance. In Table 4, Panel A presents the three years post-acquisition median Operating ROA, measured as operating income before depreciation (OIBDP) divided by the average total assets (TA) at the beginning and the end of the fiscal year, for the four groups of acquirers. The deals under examination are consummated. The Operation ROA is further decomposed into two components – Asset Turnover and Operating Margin, in which Operating ROA is the product of these two. Asset Turnover is computed as sales divided by the average of the beginning

and ending period total assets. Operating margin is computed as operating income before depreciation (OIBDP) divided by sales. Panel B and Panel C then report the comparison of Asset Turnover and Operating Martin respectively, between Group I and the remaining three groups Panel A suggests that acquirers in Group I, which avoid shareholder approval, exhibit significantly better operating performance in years following the deal completion when compared to all-stock deals with similar relative sizes, though, in this respect, they are generally no different from the mixed-payment acqusitions subject to shareholder approval. However, when we dig deep into two elements of the operating performance, it becomes clear that the acquirers who avoided shareholder approvals show higher Asset Turnovers but lower Operating Margin, both highly significant. Operating Margin is largely determined by the product market structure and industry competitiveness and hard to change by managers. Asset Turnover measures the productivity of operating assets, which is more reliant on managerment operation skills. The evidence suggests that the acquirers whose management designed deals to bypass shareholder approvals are actually better operated in the long run after closing. The evidence is also at odds with the argument that managers evade shareholder approval for agency problem reasons.

Do acquirer firm attributes and/or the acquisition deal characteristics explain the different return performance of acquirers in Table 3? Next we run multiple regressions to control for various firm and deal attributes that potentially affect acquirer stock returns, as suggested in the literature. Table 5 reports the regression results. Results in the first two columns are based on our entire sample of mixed-payment deals (Group I and Group II) whereas Columns 3 and 4 are based on the acquisitions using mixed payments with similar relative deal sizes, i.e., deals in Group I and III. Finally, the last two columns in Table 5 are results of the regressions run on the combined sample of acquisitons with similar relative sizes, both using mixed payments and all stocks (Group I, Group III and Group IV). The results suggest that the significantly higher CARs of the non-voting deals reported in Table 3 cannot be explained by the differences in acquirer or deal characteristics, no matter which sample is used. Bypassing shareholder approval, captured by the dummy variable "AA"

(Avoiding Approval), is still reliably associated with a higher announcement return for acquirer shareholders. Acquirer announcement returns are negatively related to the size of acquirer market capitalization (log(ME)), the existence of earn-out arrangements, and public targets. In the sample combining all the acquisitions of comparable relative sizes, acquirer announcement returns are also negatively associated with the acquirer's Tobin's Q, ROA and the prior year stock return. On the other hand, the acquirer's announcement return is positively related to the acquirer's sales growth and the presence of termination fees by targets, though the latter is significant only in the deals with similar relative sizes. In particular, it is important whether the target is a public firm. Other things being equal, acquirer announcement return is lower by 4% - 5% if its target is a public company compared to if its target is a private firm or a subsidiary. Table 5A reports the results from the regressions of the bid-period abnormal returns using similar models, which again shows a positive correlation with avoiding shareholder approvals, but now the existence of earnouts or target termination fees, as well as ROA, is no longer significant. The results in Table 5 and 5A are consistent with the univariate comparisons conducted in Table 3.

4.3. Why do managers avoid shareholder voting?

In Table 6, we compare a series of deal and firm attributes of acquirers that are subject to shareholder voting verses those that are not. The acquisition deals constructed to avoid shareholder approval are found to be different from those under shareholders' oversight in a variety of ways. The former deals have a higher probability to consummate, and consummate in a shorter duration (close faster). Acquirers bypassing shareholder approvals typically spend only half of the time closing the deal relative to those subject to such approvals. Also in these deals, both acquirer and target firms are more likely to agree on having termination fees and adopting earn-outs in their merger agreements. They are less hostile in deal attitue. These acquisitions more frequently involve acquirer and target firms in high-tech industries. They are less likely to attract competing bids and involve lower percentage of toeholds. Finally but very importantly, targets in these acquisitions are more likely to be private companies. On the

other hand, the firm characteristics of acquirers and targets differ to a much lesser extent across the voting and non-voting groups, especially when we compare the acquisions with similar relative deal sizes, except that acquirers in the avoid-voting group tend to have smaller size in total assets, and better operating performance, whereas the targets in this group display slower sales growth. As for the target firm attributes, note that we are only able to obtain information for public targets, due to the Compustat coverage. Moreover, we also compared certain corporate governance metrics between the acquirers that bypassed shareholder approvals and those did not. As Table 6A indicates, there is no significant difference found. However, the available data on corporate governance is limited to a few number of aquirers only.

Our findings suggest that, in contrast to the perfunctory view, managers do take shareholder approval into consideration when constructing financing of the acquisition deal. Why do acquirer managers avoid shareholder voting on the deal? At odds with the view of agency problems, deals that avoid shareholder approval generate significantly higher value for acquirer shareholders. This evidence suggests that there might be good reasons for some acquirer managers to avoid shareholder approval. The significant differences in some deal characteristics, reported in Table 6, also point to this direction.

Harris and Raviv (2010) provide a theoretical analysis on whether shareholders would be better off with enhanced control over corporate decisions. They suggest that shareholders could underestimate the information advantage of professional managers and overestimate the potential agency costs. Empowering shareholders in such situations results in suboptimal decisions and destroys firm value. In similar spirits, Mukherjee (2013) points out the efficacy of shareholder control rights crucially depending on the cost of acquiring firm-specific information. When it is impossible or very costly for an average shareholder to acquire information that is relevant for decision making, allocating more control rights to shareholders reduces firm value. Our examination on deal characteristics suggests that managers may have significant information advantage over shareholders in those acquisitions that circumvent shareholder voting.

To further explain the acquirer's choice to avoid shareholder approval, we run a series of logistic regressions using the avoiding approval dummy (AA) as the dependent variable. Table 7 reports the results. Like in Table 5, the regressions were run on three different samples: one including all mixed-payment deals, another one including mixed-payment deals with similar relative sizes and a third one including mixed-payment and all-stock deals with similar relative sizes. Consistent with our findings in Table 6, acquirers are more likely to avoid shareholder approval if the target is not a public firm, if the target agrees to include a termination fee requirement and an earn-out provision. It is more difficult for average shareholders to acquire value-relevant information about non-public targets. Professional managers are also more likely to have information advantage on deals in high-tech industries, compared to average shareholders. Officer (2003) suggests that termination fees are more often used when information asymmetry between the two merging parties is severe. Earn-outs are widely believed as a mechanism to alleviate the risk of misvaluation in mergers due to information asymmetry between the parties (Kohers & Ang, 2000; Datar et al., 2001; Ragozzino & Reuer, 2009; Cain et al. 2011). Therefore, these two specific deal features also suggest that the acquirer management tends to avoid shareholder voting when shareholders have greater difficulty in assessing the merits of the deal.

Finally, despite an apparent difference in the univariate comparison, the multivariate logistic regressions show that the acquisitions avoiding shareholder voting are not more inclined to be diversifying deals often motivated by management fervor for "empire building" (Malmendier & Tate, 2008;) and leading to lower financial returns (Berger & Ofek, 1995; Harford, 1999; Akbulut & Matsusak, 2010). Similarly, we do not observe avoidance of shareholder approval becomes more likely as acquirers' blockholder ownership, which tends to strengthen monitoring of the management (Harford et al., 2012), declines. Although institutional ownership may inspire avoidance of shareholder approvals, its economic significance appears to be rather small. Nor does the acquirer's cash holding affect its choice to bypass shareholder voting, implying that agency costs associated with cash-rich firms (Jensen, 1986; Harford, 1999) are not driving such a choice. These findings seem to be at

odds with the view that management selection to avoid shareholder approvals is indicative of the agency problem.

Table 7A reports the results of logistic regressions only on the corporate governance indicators, using the same three samples. The effect of E-index might suggest acquirers with weaker corporate governance tend to bypass approvals more often. Institutional ownership still shows a significant positive correlation with avoiding shareholder approvals. Besides, the existence of blockholders and the percentage of independent directors appear to be positively, whereas the strong board index negatively, correlated with the tendency of bypassing such approvals, though these latter correlations are probably less robust. While the results in Table 7A might imply a higher likelihood of designing deals to circumvent shareholder approvals in weakly-governed acquirers in the traditional sense, they need to be treated with caution given that merely a very small number of acquirers in our samples have values of corporate governance metrics.

4.4. Cross-section analysis

We further analyzed the effects of avoiding shareholder approvals on acquirers' stock returns across several different sections of acquirers. Table 8 reports our findings. The interaction effects between avoiding approval and Tobin's Q, ROA in the year prior to the acquisition as well as the prior year return are all positive and statistically significant. These results suggest that, judging from the stock returns, bypassing shareholder approvals are particularly desirable for the well-operated firms. The idea of empowering shareholders may be anathema to these firms, at least insofar as acquisition decisions are concerned.

In a recent study, Gantchev (2013) models shareholder activism as a sequential decision process and examines the costs of each stage. He shows that an activism campaign ending in a proxy fight has average costs of $10.71 million. After accounting for the costs, the average net activist return is close to zero. We also explore one type of costs incurred during the acquisition process – investment banking fees. Unlike other costs such as opportunity costs of management time and efforts, fees paid to merger advisors are directly observed for many deals (reported in the SDC database). We run regressions of investment bank advisor fees

paid by the acquirer and target firms on the duration of the deal. The estimate suggests that, on average, one more day of the duration costs about $0.0506 million additional investment banking fees (in 2013 dollars). So the extended duration of two months for the deals incurring shareholder approval costs more than $3 million per deal in banking fees. We have reasons to believe that this direct cost is just a tip of an iceberg.

Weighing the evidence all together, we argue that, in some deals, acquirer managers evade shareholder approval for the benefit of shareholders. When they identify some good targets and it is costly for them to communicate their private information with shareholders, they act in the interest of shareholders not to involve shareholders in the decision process. Consequently, they are able to close the deal faster, to reduce the direct costs such as advisor fees, to avoid potential competition from other bidders, and to better protect proprietary information from competitors.

5.   Conclusion

Plagued by corporate fraud and managerial expropriation, shareholders and regulators intend to tighten corporate governance. Empowering shareholders to participate more in corporate decisions is often acclaimed as an effective control. Advocates argue that the firm is ultimately owned by shareholders and they always have the correct incentive of firm value maximization. Others, however, argue that shareholders suffer from the free-rider problem and have difficulty in making collective decisions. They either do not bother to turn out to voice their opinions or, even if they turn out to act, do not really understand what they are voting for and are often manipulated by their firm managers. Shareholder voting seems perfunctory.

We provide evidence to show that both views about shareholder rights are incomplete. Our findings suggest that, in contrast to the perfunctory view, managers take potential shareholder voting into serious consideration and they sometime try hard to maneuver around the procedure. However, they get around the procedure probably not to evade shareholder discipline but to maximize firm value for shareholders, at least in some circumstances. The

requirement of shareholder voting, therefore, imposes noticeable costs for firm value maximization. It is optimal for professional managers to have more decision rights when they have information advantage (which is often true) and communication of such information is very costly. It is especially so when other corporate governance mechanisms are at work and agency problems are not of a serious concern. Taking shareholder approval as an example, our study highlights the often overlooked costs of corporate governance mechanisms.

As Arrow (1974) famously noted, "the centralization of decision-making serves to economize on the transmission and handling of information". It is characteristic of our modern public corporations that constituencies have different interests and access to information. Accordingly, they require a "central decision-making body vested with the power of fiat", and "shareholders will prefer to irrevocably delegate decision-making authority to" such a small body (Bainbridge, 2012b).

References

Aghion, Philippe, Tirole, Jean, 1997. Formal and real authority in organizations. Journal of Political Economy 105, 1-29.

Agrawal, Ashwini K., 2012. Corporate governance objectives of labor union shareholders: Evidence from proxy voting. Review of Financial Studies 25, 187-226.

Akbulut, Mehmet E., Matsusaka, John G., 2010. 50+ years of diversification announcements. Financial Review 45: 231-262.

Anabtawi, Iman, 2006. Some skepticism about increasing shareholder power. UCLA Law Review 53, 561-599.

Arena, Matteo P., Ferris, Stephen P., 2007. When managers bypass shareholder approval of board appointments: Evidence from the private security market. Journal of Corporate Finance 13, 485-510.

Arrow, Kenneth J., 1974. The Limits of Organization. W.W. Norton & Company, New York, NY.

Asquith, Paul R., Bruner, Robert F., Mullins, David W. Jr., 1990. Mergers returns and the form of financing. Working paper, available at: http://dspace.mit.edu/bitstream/id/1938/SWP-3203-22601312.pdf/.

Bainbridge, Stephen M., 2003. Director primacy: The means and ends of corporate governance. Northwestern University Law Review 97, 547-606.

Bainbridge, Stephen M., 2006. Director primacy and shareholder disempowerment. Harvard law Review 119, 1735-1758.

Bainbridge, Stephen M., 2012a. Mergers and Acquisitions (3rd ed.). Foundation Press, St. Paul, MN.

Bainbridge, Stephen M., 2012b. Corporate Governance after the Financial Crisis. Oxford University Press, New York, NY.

Bebchuk, Lucian Arye, 2005. The case for increasing shareholder power. Harvard Law Review 118, 833-914.

Bebchuk, Lucian Arye, Brav, Alon, Jiang, Wei, 2015. The long-term effects of hedge fund activism. Columbia Law Review 115, 1085-1155.

Bebchuk, Lucian A., Cohen, Alma, Ferrell, Allen, 2008. What matters in corporate governance. Review of Financial Studies 22, 783-827.

Bebchuk, Lucian A., Ferrell, Allen, 1999. Federalism and corporate law: The race to protect manages from takeovers. Columbia Law Review 99, 1168-1199.

Berger, Philip G., Ofek, Eli, 1995. Diversification effect on firm value. Journal of Financial Economics 37: 39-65.

Berle, Adolf A., Means Gardiner C., 1932. The Modern Corporation and Private Property. Harcourt, Brace and World, New York, NY.

Boone, Audra L., Broughman, Brian J., Macias, Antonio J., 2016. The cost of supermajority target shareholder approval: mergers versus tender offers. Indiana Legal Studies Research Paper No. 331, available at: http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2629424.

Bradley, Michael, Desai, Anand, Kim, E. Han, 1988. Synergistic gains from corporate acquisitions and their division between the stockholders of target and acquiring firms. Journal of Financial Economics 21, 3-40.

Brav, Alon, Jiang, Wei, Partnoy, Frank, Thomas, Randall, 2008. Hedge fund activism, corporate governance, and firm performance. Journal of Finance 63, 1729-1775.

Burkart, Mike, Gromb, Denis, Panunzi, Fausto, 1997. Large shareholders, monitoring, and the value of the firm. Quarterly Journal of Economics 112, 693-728.

Burch, Timothy R., Morgan, Angela G., Wolf, Jack G., 2004. Is acquiring-firm shareholder approval in stock-for-stock mergers perfunctory? Financial Management 33.4, 45-69.

Byrd, John W., Hickman, Kent A., 1992. Do outside directors monitor managers? Evidence from tender offer bids. Journal of Financial Economics 32, 195-221.

Cai, Jie, Garner, Jacqueline L., Walking, Ralph A., 2009. Electing directors. Journal of Finance 64, 2389-2421.

Cai, Jie, Walking, Ralph A., 2011. Shareholders' say on pay: Does it create value? Journal of Financial and Quantitative Analysis 46, 299-339.

Cain, Matthew D., Denis, David J., Denis, Diane K., 2011. Earn-outs: A study of financial contracting in acquisition agreements. Journal of Accounting and Economics 51, 151-170.

Cattaneo, Matias D., Jansson, Michael, Ma, Xinwei, 2016. Simple local regression distribution estimators with and application to manipulation testing. Working paper. http://www-personal.umich.edu/~cattaneo/papers/Cattaneo-Jansson-Ma_2016_LocPolDensity.pdf.

Chang, Saeyoung, 1998. Takeovers of privately held targets, methods of payment, and bidder returns. Journal of Finance 53, 773-784.

Chu, Yongqiang, Zhao, Yijia, 2016. The dark side of shareholder litigation: Evidence from corporate takeovers. Working paper, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2593134.

Clifford, Christopher P., 2008. Value creation or destruction? Hedge funds as shareholder activists. Journal of Corporate Finance 14, 323-336.

Coates, John C., 2015. M&A contracts: Purposes, types, regulation, and patterns of practice. ECGI working paper, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2593866.

Cohn, Jonathan B., Gillan, Stuart L., Hartzell, Jay C., forthcoming. On enhancing shareholder control: A (Dodd-) Frank assessment of proxy access. Journal of Finance.

Cremers, K.J. Martijn, Nair, Vinay B., 2005. Governance mechanisms and equity prices. Journal of Finance 60, 2859-2894.

Cuñart, Vicente, Gine, Mireia, Guadalupe, Maria, 2012. The vote is cast: The effect of corporate governance on shareholder value. Journal of Finance 67, 1943-1977.

Datar, Srikant, Frankel, Richard, Wolfson, Mark, 2001. Earn-outs: The effects of adverse selection and agency costs on acquisition techniques. Journal of Law, Economics, & Organization 17, 201-238.

Fama, Eugene F., 1980. Agency problem and the theory of the firm. Journal of Political Economy 88, 288-307.

Fos, Vyacheslav, forthcoming. The disciplinary effects of proxy contests. Management Science.

Fuller, Kathleen, Netter, Jeffry, Stegemoller, Mike, 2002. What do returns to acquiring firms tell us? Evidence from firms that make many acquisitions. Journal of Finance 57, 1763-1793.

Gantchev, Nickolay, 2013. The costs of shareholder activism: Evidence from sequential decision model. Journal of Financial Economics 107, 610-631.

Gillan, Stuart L., Starks, Laura T., 2000. Corporate governance proposals and shareholder activism: the role of institutional investors. Journal of Financial Economics 57, 275-305.

Greenwood, Robin, Schor, Michael, 2009. Investor activism and takeovers. Journal of Financial Economics 92, 362-375.

Gompers, Paul A., Ishii, Joy L., Metrick Andrew, 2003. Corporate governance and equity prices. Quarterly Journal of Economics 118, 1007-1155.

Hamermesh, Lawrence A., 2003. Premiums in stock-for-stock mergers and some consequences in the law of director fiduciary duties. University of Pennsylvania Law Review 152: 881-915.

Harford, Jarrad, 1999. Corporate cash reserves and acquisitions. Journal of Finance 54, 1969-1997.

Harford, Jarrad, Humphery-Jenner, Mark, Powell, Ronan, 2012. The sources of value destruction in acquisitions by entrenched managers. Journal of Financial Economics 106, 247-261.

Harford, Jarrad, Li, Kai, 2007. Decoupling CEO wealth and firm performance: The case of acquiring CEOs. Journal of Finance 62, 917-949.

Hart, Oliver D., 1983. The market mechanism as an incentive scheme. Bell Journal of Economics 14, 366-382.

Harris, Milton, Raviv, Artur, 2010. Control of corporate decisions: Shareholders vs. management. Review of Financial Studies 23, 4115-4147.

Hsieh, J., Wang, Q., 2011. Acquirer-shareholder voting rights in mergers and acquisitions. Working paper.

Hu, Henry T.C., Black, Bernard, 2006. The new voting buying: Empty voting and hidden (morphable) ownership. Southern California Law Review 79, 811-908.

Hu, Henry T.C., Black, Bernard, 2007. Hedge funds, insiders, and the decoupling of economic and voting ownership: Empty voting and hidden (morphable) ownership. Journal of Corporate Finance 13, 343-367.

Hu, Henry T.C., Black, Bernard, 2008. Equity and debt decoupling and empty voting II: Importance and extentions. University of Pennsylvania Law Review 156, 625-1093.

Jennings, Robert H., Mazzeo, Michael A., 1991. Stock price movements around acquisition announcements and management's response. Journal of Business 64, 139-163.

Jensen, Michael C., 1986. Agency costs of free cash flow, corporate finance and takeovers. American Economic Review 76, 323-329.

Jensen, Michael C., Meckling William H., 1976. Theory of the firm: Managerial behavior, agency costs, and ownership structure. Journal of Financial Economics 3, 305-360.

Jensen, Michael C., Ruback, Richard S., 1983. The market control for corporate control: The scientific evidence. Journal of Financial Economics 11, 5-50.

Kamar, Ehud, 2011. Does shareholder voting on acquisition matter. Working paper, available at: http://www7.tau.ac.il/blogs/law/wp-content/uploads/2011/11/March-2011.pdf.

Klein, April, Zur Emanuel, 2009. Entrepreneurial shareholder activism: Hedge funds and other private investors. Journal of Finance 64, 187-229.

Kohers, Ninon, Ang, James, 2000. Earn-outs in mergers: Agreeing to disagree and agreeing to stay. Journal of Business 73, 445-476.

Malmendier, Ulrike, Tate, Geoffrey, 2008. Who makes acquisitions? CEO overconfidence and the market's reaction. Journal of Financial Economics 89, 20-43.

Manne, Henry G., 1965. Mergers and the market for corporate control. Journal of Political Economy 73, 110-120.

Listokin, Yair, 2008. Management always wins the close ones. American Law and Economics Review 10, 159-184.

Listokin, Yair, 2010. If you give shareholders power, do they use it? An empirical analysis. Journal of Institutional and Theoretical Economics 166, 38-53.

Masulis, Ronald W., Wang, Cong, Xie, Fei, 2007. Corporate governance and acquirer returns. Journal of Finance 62, 1851-1889.

McCrary, Justin, 2008. Manipulation of the running variable in regression discontinuity design: A density test. Journal of Econometrics 142, 698-714.

Mitchell, Mark L., Lehn, Kenneth, 1990. Do bad bidders become good targets? Journal of Political Economy 98, 372-298.

Morck, Randall, Shleifer, Andrei, Vishny, Robert W., 1990. Do managerial objectives drive bad acquisitions? Journal of Finance 45, 31-48.

Mukherjee, Abhiroop, 2013. Are control rights less valuable when shareholders lack information. Working paper, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1869988.

Officer, Micah S., 2003. Termination fees in mergers and acquisitions. Journal of Financial Economics 69, 431-467.

Ragozzino, Roberto, Reuer, Jeffrey J., 2009. Contingent earn-outs in acquisitions of privately held targets. Journal of Management 20, 1-23.

Renneboog, Luc, Szilagyi, Peter, G., 2011. The role of shareholder proposals in corporate governance. Journal of Corporate Finance 17, 167-188.

Roll, Richard, 1986. The hubris hypothesis of corporate takeovers. Journal of Business 59, 197-216.

Seligman, Joel, 1988. Stock exchange rules affecting takeovers and control transactions, in Coffee, Lowenstein, Rose-Ackerman (eds.), Knights, Raiders & Targets: The Impact of the Hostile Takeover. Oxford University Press, New York, NY.

Servaes, Henri, 1991. Tobin's q and the gains from takeovers. Journal of Finance 46, 409-419.

Shleifer, Andrei, Vishny, Robert W., 1997. A survey of corporate governance. Journal of Finance 52, 737-783.

Strine, Leo E. Jr., 2006. Towards a true corporate republic: A traditionalist response to Bebchuk's solution for improving corporate America. Harvard Law Review 119, 1759-1783.

Travlos, Nicholaos G., 1987. Corporate takeover bids, methods of payment, and bidding firms' stock returns. Journal of Finance 42, 943-963.

Wagner, Alexander F., Wenk, Christoph, 2015. Agency versus hold-up: On the impact of binding say-on-pay on shareholder value. Working paper. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1793089.

Table 1
Distribution of acquisition deals based on the percentage of acquirer new stock issues

The left four columns in the table present the distribution of acquisition deals based on the percentage of acquirer new stock issues relative to its existing outstanding shares (%Stock). The following criteria are used to select the sample: (1) the acquisition is announced during 1985-2015; (2) the acquirer is a public firm listed on the NYSE, AMEX (NYSE MKT), or NASDAQ; (3) the acquisition is financed partially by new stock issues of the acquiring firm (that is, mixed-financing deals; pure cash or stock acquisitions are excluded); (4) the deal transaction value is between 20% and 100% of the acquirer's market value of equity at announcement; (5) the acquirer is not incorporated in Alaska, Louisiana, Missouri, and New York states. We define %Stock as the percentage of acquirer new stock to be issued to acquire the target relative to the acquirer's shares outstanding at announcement. According to the listing requirement rules of NYSE, AMEX, and NASDAQ, firms need to obtain shareholder approval if this ratio (%Stock) exceeds 20%. Relative size is the deal transaction value relative to the acquirer's pre-merger market capitalization. The mean values are reported for the acquisition deals in each bin of %Stock. The three right columns present the distribution of acquisition deals based on their relative size ratio.

New stock issues (%Stock) $\in$	Number of deals	% of deals	Relative size (%)	Relative size $\in$	Number of deals	% of deals
$(0, 5\%)$	240	12.58	34.59	$(0, 5\%)$		
$[5\%, 10\%)$	273	14.31	37.74	$[5\%, 10\%)$		
$[10\%, 15\%)$	326	17.09	36.80	$[10\%, 15\%)$		
$[15\%, 20\%)$	380	19.92	40.30	$[15\%, 20\%)$		
$[20\%, 25\%)$	147	7.70	39.91	$[20\%, 25\%)$	333	17.45
$[25\%, 30\%)$	135	7.08	47.17	$[25\%, 30\%)$	278	14.57
$[30\%, 35\%)$	93	4.87	52.58	$[30\%, 35\%)$	209	10.95
$[35\%, 40\%)$	71	3.72	61.90	$[35\%, 40\%)$	182	9.54
$[40\%, 45\%)$	66	3.46	67.18	$[40\%, 45\%)$	146	7.65
$[45\%, 50\%)$	58	3.04	71.21	$[45\%, 50\%)$	105	5.50
$[50\%, 55\%)$	39	2.04	75.66	$[50\%, 55\%)$	107	5.61
$[55\%, 60\%)$	25	1.31	77.63	$[55\%, 60\%)$	95	4.98
$[60\%, 65\%)$	16	0.84	80.05	$[60\%, 65\%)$	80	4.19
$[65\%, 70\%)$	14	0.73	81.53	$[65\%, 70\%)$	93	4.87
$[70\%, 75\%)$	8	0.42	84.29	$[70\%, 75\%)$	52	2.73
$[75\%, 80\%)$	8	0.42	89.43	$[75\%, 80\%)$	57	2.99
$[80\%, 85\%)$	5	0.26	87.46	$[80\%, 85\%)$	51	2.67
$[85\%, 90\%)$	3	0.16	95.84	$[85\%, 90\%)$	55	2.88
$[90\%, 95\%)$	1	0.05	93.79	$[90\%, 95\%)$	32	1.68
$[95\%, 100\%)$	0	0	N.A.	$[95\%, 100\%)$	33	1.73
Total	1908	100		Total	1908	100.00
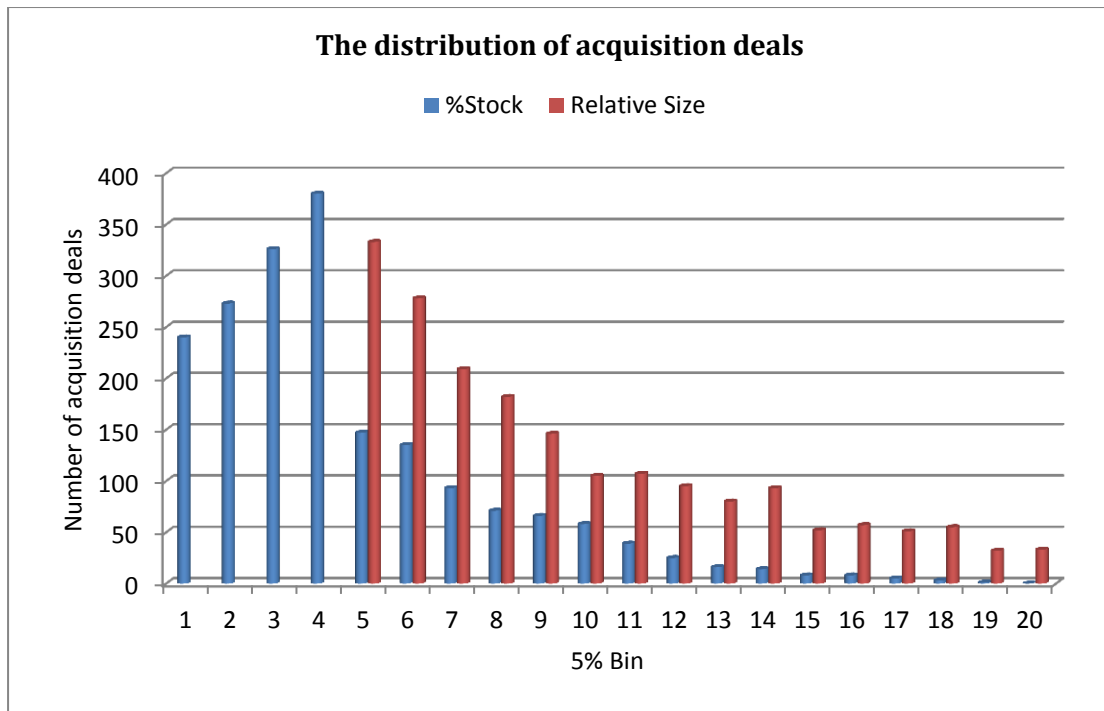
Figure 1

The figure plots the distribution of acquisition deals based on the percentage of new stock issues relative to the acquirer's shares outstanding (%Stock; in blue) and based on the deal transaction value relative to the acquirer's market capitalization (RelativeSize; in red).

Table 2
Manipulation tests

In this table, we report the manipulation test based on density discontinuity following the approach suggested in McCrary (2008) and Cattaneo, Jansson and Ma (2016). The primary test of density discontinuity was conducted at 20% new stock issuance using our main dataset which covers the acquirers subject to the 20% rule. The first two placebo tests used the same main dataset but were conducted at 15% and 25% new stock issuances, respectively, and the last placebo test was conducted at 20% new stock issuance, but using the auxiliary dataset which consists of acquirers not subject to the exchange rule of shareholder approval if new stock issuance over 20%.

Running variable: % Stock	Cutoff (c)	N to the left of cutoff	N to the right of cutoff	t-statistic	p-value
Primary test	20%	1219	689	-5.56	0.0000
Placebo test 1	15%	839	1069	-0.34	0.7328
Placebo test 2	25%	1366	542	-0.87	0.3819
Placebo test 3	20%	61	63	0.67	0.5013

Table 3
Acquirer announcement and bid-period stock returns

This table presents the acquiring firms' five-day [-2, +2] and the bid-period [-20, close] cumulative abnormal returns (CARs, in %). Close date is the completion date of the acquisition (if it completes). The main sample includes 1219 mixed-financing acquisition deals that avoid acquirer shareholder approval (Group I) and 689 deals that are subject to shareholder approval (Group II). Avoid-approval acquisitions are mixed-financing acquisitions with the percentage of new stock issues (%Stock) constructed to be less than 20% of the acquirer existing shares and the groups of approval acquisitions are acquisitions with %Stock greater than 20%. In the third group, we include only the deals in Group II whose relative deal size capped at one standard deviation above the mean relative deal size of Group I, which is 38%+17%=55%. It results in 332 deals in Group III (48.2% of Group II). Group IV consists of all-stock deals with relative size between 20% and 55%. CARs are estimated using the two-parameter market model where the CRSP valued-weighted market return is used as the market portfolio return and the daily stock returns from 365 to 60 before the announcement date are used to estimate the two parameters. The p-values in parentheses for CARs are generated by the t-test (for the means) and the Wilcoxon signed rank test (for the medians). Differences in CARs between bidder groups are tested by the two-sample t-test (for the difference in means) and Wilcoxon Kruskal-Wallis test (for the difference in medians).

	I. Avoid Approval N = 1219	II. Approval N = 689	III. Approval (relative deal size capped) N = 332	IV. Approval (all-stock deals; 20%<relative deal size<55%) N = 1129	Difference (I – II)	Difference (I – III)	Difference (I – IV)
Panel A: CARs at announcement [-2, +2]							
Mean (*p*-value)	3.25 (<0.0001)	0.22 (0.633)	-0.14 (0.835)	0.67 (0.867)	3.03 (<0.0001)	3.39 (<0.0001)	3.18 (<0.0001)
Median (*p*-value)	1.66 (<0.0001)	-1.04 (0.065)	-0.85 (0.269)	-1.37 (0.001)	2.70 (<0.0001)	2.51 (<0.0001)	3.03 (<0.0001)
Panel B: CARs during the bid-period [-20, close]							
Mean (*p*-value)	1.83 (0.052)	-3.12 (0.028)	-6.04 (0.002)	-6.00 (<0.0001)	4.95 (0.003)	7.87 (0.003)	7.83 (<0.0001)
Median (*p*-value)	2.21 (0.042)	-4.32 (0.005)	-4.98 (0.005)	-5.54 (<0.0001)	6.53 (<0.0001)	7.19 (0.0002)	7.75 (<0.0001)

Table 4
Post-acquisition operating performance

This table presents the three years post-acquisition median operating performance for the four groups of acquirers. The deals under examination are consummated. Operating performance is measured as operating income before depreciation (OIBDP) divided by the average total assets (TA) at the beginning and the end of the fiscal year. We denote it Operating ROA. It is further decomposed into two components – Asset Turnover and Operating Margin, in which, Operating ROA = Asset Turnover * Operating Margin. Asset Turnover is computed as sales divided by the average of the beginning and ending period total assets. Operating margin is computed as operating income before depreciation (OIBDP) divided by sales. The groups of acquisition deals are defined in Table 3.

Year after deal completion	III. Avoid Approval N = 1049	II. Approval N = 563	III. Approval (relative deal size capped) N = 279	IV. Approval (all-stock deals; 20%<relative deal size<55%) N = 903	Difference (I – II)	Difference (I – III)	Difference (I – IV)
			Panel A: Operating ROA				
1	8.964	8.180	6.656	3.083	0.784	2.308*	5.881***
2	8.641	8.388	6.955	3.228	0.253	1.686	5.413***
3	8.988	7.791	7.545	3.442	1.198	1.443	5.546***
			Panel B: Asset Turnover				
1	0.719	0.512	0.511	0.409	0.207***	0.208***	0.310***
2	0.726	0.541	0.552	0.423	0.186***	0.175***	0.304***
3	0.707	0.526	0.520	0.428	0.181***	0.187***	0.279***
			Panel C: Operating Margin				
1	12.108	15.158	15.313	17.719	-3.050***	-3.205**	-5.610***
2	11.998	14.902	14.987	18.709	-2.905***	-2.990**	-6.711***
3	12.036	14.926	14.405	19.658	-2.890***	-2.370*	-7.622***

Table 5 Multiple regressions of announcement returns

The dependent variable is announcement return CAR[-2, +2]. AA is a dummy variable that equals one if the acquisition deal avoids shareholder approval, and zero otherwise. The associated *t*-statistics are reported in the parentheses. Model 1-2 are based on the full sample of mixed-financing acquisitions (group I + group II), Model 3-4 are run on the combined sample of group I and group III, and Model 5-6 are run on the combined sample of group I, III, and IV, in which relative size is capped.

Dep Var: CAR [-2, +2]	MODEL1	MODEL2	MODEL3	MODEL4	MODEL5	MODEL6
Avoid Approval (AA)	2.893	2.042	3.363	2.502	2.713	1.557
	(4.61)	*(2.71)*	*(3.89)*	*(2.94)*	*(4.91)*	*(2.73)*
log(ME)	-0.646	-0.165	-0.589	-0.146	-1.019	-0.519
	-(2.73)	*-(0.71)*	*-(2.23)*	*-(0.54)*	*-(5.33)*	*-(2.70)*
Tobin's Q	-0.308	-0.486	-0.343	-0.487	-0.470	-0.547
	-(0.97)	*-(1.54)*	*-(1.04)*	*-(1.46)*	*-(3.86)*	*-(5.01)*
Sales growth	0.025	0.021	0.027	0.022	0.026	0.022
	(6.56)	*(5.79)*	*(6.43)*	*(5.76)*	*(4.98)*	*(4.72)*
Leverage	-0.725	-1.870	0.602	-0.765	1.022	-0.088
	-(0.40)	*-(1.03)*	*(0.30)*	*-(0.38)*	*(0.62)*	*-(0.05)*
ROA	-3.514	-4.405	-4.427	-5.311	-6.724	-7.554
	-(0.89)	*-(1.16)*	*-(1.08)*	*-(1.34)*	*-(2.12)*	*-(2.44)*
Cash holding	1.985	1.775	3.971	3.512	0.074	-0.647
	(0.80)	*(0.73)*	*(1.55)*	*(1.39)*	*(0.03)*	*-(0.28)*
Prior year return	-0.006	-0.006	-0.009	-0.009	-0.012	-0.014
	-(1.06)	*-(0.95)*	*-(1.49)*	*-(1.42)*	*-(2.37)*	*-(2.71)*
Return volatility	0.201	0.106	0.162	0.125	0.347	0.293
	(0.86)	*(0.47)*	*(0.58)*	*(0.45)*	*(1.54)*	*(1.31)*
HiTech	0.835	0.674	-0.247	-0.331	0.156	0.115
	(0.92)	*(0.77)*	*-(0.26)*	*-(0.35)*	*(0.20)*	*(0.14)*
Institutional ownership	0.010	0.004	0.022	0.015	0.027	0.022
	(0.60)	*(0.25)*	*(1.14)*	*(0.78)*	*(1.76)*	*(1.46)*
Blockholder	-0.191	-0.146	-0.383	-0.225	-0.315	-0.175
	-(0.23)	*-(0.18)*	*-(0.42)*	*-(0.26)*	*-(0.46)*	*-(0.26)*
Deal relative size		1.118		0.829		-0.086

		(1.49)		*(0.90)*		*-(0.12)*
Tender		-0.290		-0.826		-0.121
		-(0.23)		*-(0.54)*		*-(0.10)*
CompeteBid		1.346		0.972		0.505
		(0.90)		*(0.49)*		*(0.36)*
Hostile		-0.531		-2.928		-1.313
		-(0.29)		*-(1.47)*		*-(0.91)*
Toehold		0.346		-0.057		-0.483
		(0.19)		*-(0.03)*		*-(0.40)*
Earn-out		-3.575		-3.678		-4.201
		-(3.24)		*-(3.10)*		*-(3.58)*
Diversify		-0.884		-0.930		0.049
		-(1.37)		*-(1.25)*		*(0.08)*
Public Target		-5.309		-4.077		-4.660
		-(6.66)		*-(5.11)*		*-(8.00)*
Target Termination Fee		1.142		1.731		1.086
		(1.48)		*(2.05)*		*(1.97)*
Intercept	3.135	-0.351	1.851	-1.286	4.952	5.212
	(1.86)	*-(0.11)*	*(0.98)*	*-(0.33)*	*(3.31)*	*(1.78)*
Number of Observations	1575	1575	1276	1276	2157	2157
R-Squared	5.80%	10.60%	5.40%	9.40%	10.20%	13.90%

Table 5A Multiple regressions of the bid-period abnormal returns

The dependent variable is cumulative abnormal return during the bid period, i.e., from 20 days before the announcement to the date of deal completion. AA is a dummy variable that equals one if the acquisition deal avoids shareholder approval, and zero otherwise. Other explanatory variables are explained in Table 4. The associated *t*-statistics are reported in the parentheses. Model 1-2 are based on the full sample of mixed-financing acquisitions (group I + group II), Model 3-4 are run on the combined sample of group I and group III, and Model 5-6 are run on the combined sample of group I, III, and IV, in which relative size is capped.

Dep Var: CAR bidperiod	MODEL1	MODEL2	MODEL3	MODEL4	MODEL5	MODEL6
Avoid Approval (AA)	3.610	3.711	7.090	6.087	4.853	2.865
	(2.02)	*(1.61)*	*(2.94)*	*(2.35)*	*(2.85)*	*(1.52)*
log(ME)	-1.101	-0.552	-1.386	-0.871	-1.213	-0.673
	-(1.90)	*-(0.87)*	*-(2.13)*	*-(1.21)*	*-(2.18)*	*-(1.09)*
Tobin's Q	-1.279	-1.366	-0.971	-1.067	-0.934	-1.044
	-(1.40)	*-(1.48)*	*-(0.97)*	*-(1.06)*	*-(1.93)*	*-(2.15)*
Sales growth	0.029	0.025	0.031	0.027	0.043	0.042
	(2.14)	*(1.74)*	*(2.89)*	*(2.37)*	*(4.44)*	*(4.21)*
Leverage	5.273	4.291	6.591	5.844	10.257	9.642
	(1.10)	*(0.90)*	*(1.28)*	*(1.13)*	*(2.28)*	*(2.13)*
ROA	2.999	2.800	4.035	3.852	3.265	3.004
	(0.48)	*(0.43)*	*(0.74)*	*(0.68)*	*(0.69)*	*(0.62)*
Cash holding	8.216	7.226	13.032	11.891	11.871	10.927
	(1.29)	*(1.15)*	*(2.00)*	*(1.84)*	*(2.25)*	*(2.07)*
Prior year return	-0.150	-0.147	-0.146	-0.145	-0.148	-0.149
	-(8.39)	*-(8.20)*	*-(7.33)*	*-(7.17)*	*-(8.69)*	*-(8.66)*
Return volatility	-1.007	-1.080	-1.377	-1.398	-0.918	-0.958
	-(1.53)	*-(1.64)*	*-(1.96)*	*-(1.97)*	*-(1.52)*	*-(1.57)*
HiTech	-0.430	-0.972	-3.585	-4.131	-0.704	-0.944
	-(0.18)	*-(0.40)*	*-(1.45)*	*-(1.63)*	*-(0.32)*	*-(0.43)*
Institutional ownership	-0.064	-0.075	-0.036	-0.047	-0.056	-0.064
	-(1.43)	*-(1.66)*	*-(0.71)*	*-(0.92)*	*-(1.29)*	*-(1.46)*
Blockholder	1.058	0.860	-2.615	-2.671	0.551	0.692
	(0.47)	*(0.38)*	*-(1.09)*	*-(1.10)*	*(0.27)*	*(0.34)*
Deal relative size		4.067		2.237		0.609

		(1.88)		*(0.89)*		*(0.30)*
Tender		4.789		4.451		-0.142
		(1.14)		*(0.98)*		*-(0.04)*
CompeteBid		-0.355		0.286		3.110
		-(0.06)		*(0.04)*		*(0.58)*
Hostile		3.541		4.881		3.324
		(0.33)		*(0.39)*		*(0.38)*
Toehold		-0.781		-0.418		-0.956
		-(0.13)		*-(0.06)*		*-(0.23)*
Earn-out		2.838		2.747		1.870
		(0.96)		*(0.90)*		*(0.63)*
Diversify		-1.343		-1.917		0.066
		-(0.82)		*-(1.08)*		*(0.04)*
Public Target		-7.241		-6.069		-5.592
		-(3.04)		*-(2.26)*		*-(2.61)*
Target Termination Fee		-1.904		-1.067		-0.954
		-(0.84)		*-(0.39)*		*-(0.49)*
Intercept	10.889	-1.977	11.053	4.959	7.721	7.134
	(2.37)	*-(0.20)*	*(2.19)*	*(0.44)*	*(1.69)*	*(0.79)*
Number of Observations	1420	1420	1165	1165	1897	1897
R-Squared	10.50%	11.60%	11.30%	12.00%	10.50%	11.00%

Table 6

Firm and deal characteristics of acquisitions subject (vs. not subject) to shareholding voting

The table presents the deal characteristics and the acquirer and target mean/median firm characteristics. We use the two-tail z-test for the differences in two proportions, t-test for differences in means, and Wilconson Kruskal-Wallis test for the differences in medians. Stastistical significance of 10%, 5%, and 1% is marked by *, **, ***, respectively.

Characteristics	I. Avoid Approval N = 1219	II. Approval N = 689	III. Approval (relative deal size capped) N = 332	IV. Approval (all-stock deals; 20%<relative deal size<55%) N = 1129	Difference (I – II)	Difference (I – III)	Difference (I – IV)
Percent of deal completed (%)	90.98	86.21	87.65	85.21	4.77***	3.33**	5.77***
Target is public (%)	25.68	57.91	48.49	60.41	-32.23***	-22.81***	-34.73***
Hi-Tech Acquirer (%)	36.01	25.67	29.82	33.92	10.34***	6.19**	2.09
Hi-Tech Target (%)	29.45	23.51	26.81	32.60	5.94***	2.64	-3.15
Termination Fee (Acquirer) (%)	93.93	78.23	84.64	84.94	15.7***	9.29***	8.99***
Termination Fee (Target) (%)	81.46	58.78	63.55	68.11	22.68***	17.91***	13.35***
Competing bid (%)	2.54	4.93	3.61	2.21	-2.39***	-1.07*	0.33
Tender offer (%)	3.12	3.48	3.92	2.83	-0.36	-0.8	0.29
Hostile (%)	1.23	4.21	3.01	1.42	-2.98***	-1.78**	-0.19
Toehold (%)	1.97	3.05	4.22	4.25	-1.08*	-2.25**	-2.28**
Earn-out (%)	13.95	4.93	5.72	0.00	9.02***	8.23***	13.95***
Diversify (%)	37.65	29.17	30.42	28.49	8.48***	7.23**	9.16***
Duration (median)	63	134	127	136	-71***	-64***	-73***
Deal Relative Size (median)	31.88	55.97	39.24	31.90	-24.09***	-7.36*	-0.02
Acquirer firm characteristics (median)							
Assets	411.18	805.70	559.38	543.87	-394.52***	-148.20**	-132.69**
Market capitalization	326.06	471.51	368.30	355.29	-145.45***	-42.23**	-29.23*
Tobin's Q	1.41	1.33	1.34	1.33	0.08**	0.07	0.08

Sales Growth	0.15	0.14	0.16	0.19	0.01	-0.01	-0.03***
Debt/A	0.20	0.21	0.17	0.12	-0.01	0.03*	0.08***
ROA	0.03	0.02	0.01	0.01	0.01	0.01*	0.01**
Cash/A	0.08	0.06	0.07	0.09	0.02***	0.01	-0.01
BHAR(-12, -1)	-0.42	3.42	3.32	5.25	-3.84***	-3.74	-5.67***
STD(RET)	2.91	2.58	2.86	3.00	0.33***	0.04	-0.09**
Inst. Ownership	39.73	35.98	33.24	28.59	3.75	6.49**	11.14***
Target firm characteristics (median)							
Number of Targets	244	328	129	498			
Log(Assets)	696.78	999.71	622.72	392.97	-302.93***	74.06	303.81**
V/A (Tobin's q)	1.15	1.20	1.18	1.17	-0.06	-0.04	-0.03
Sales Growth	0.07	0.11	0.11	0.14	-0.04***	-0.04**	-0.06***
Debt/A	0.26	0.26	0.22	0.13	-0.01	0.04	0.13***
ROA	0.01	0.02	0.01	0.01	-0.01	0.00	0.00
Cash/A	0.06	0.03	0.05	0.08	0.02**	0.01	-0.03***

Table 6A Corporate Governance Measures

Number of observations available for each measure is reported in the parentheses.

	I. Avoid Approval N = 1219	II. Approval N = 689	III. Approval (relative deal size capped) N = 332	IV. Approval (all-stock deals; 20%<relative deal size<55%) N = 1129	Difference (I – II)	Difference (I – III)	Difference (I – IV)
Eindex	2.59	2.23	1.63	2.03	0.35	0.95	0.56
	(204)	*(107)*	*(41)*	*(125)*			
Boardsize	7.64	7.63	7.91	6.84	0.00	-0.28	0.80
	(255)	*(160)*	*(57)*	*(170)*			
Pct_IndDir	0.70	0.69	0.65	0.61	0.01	0.05	0.09
	(255)	*(160)*	*(57)*	*(170)*			
StrongBoard	0.66	0.74	0.77	0.76	-0.08	-0.11	-0.10
	(255)	*(160)*	*(57)*	*(170)*			
Duality	0.55	0.63	0.57	0.58	-0.07	-0.01	-0.03
	(231)	*(145)*	*(53)*	*(149)*			

Table 7 Logistic regression to explain firms' choice of Avoiding Approval (AA)

This table presents estimates from logistic regressions where the dependent variable is AA, an indicator variable that equals one if the acquirer issues less than 20% new stock to avoid shareholder approval and equals zero otherwise. Model 1-2 are based on the full sample of mixed-financing acquisitions (group I + group II), Model 3-4 are run on the combined sample of group I and group III, and Model 5-6 are run on the combined sample of group I, III, and IV, in which relative size is capped. The numbers in parentheses are Probability > Wald Chi-Square, similar to the *p*-values in OLS regressions.

Variable	Model1	Model2	Model3	Model4	Model5	Model6
Intercept	0.957	10.587	1.405	4.305	0.283	0.155
	(0.001)	(0.000)	(0.000)	(0.000)	(0.225)	(0.793)
log(ME)	-0.187	-0.028	-0.153	-0.005	-0.212	0.000
	(0.000)	(0.568)	(0.002)	(0.926)	(0.000)	(0.991)
Tobin's Q	-0.009	-0.145	-0.066	-0.137	-0.079	-0.140
	(0.812)	(0.002)	(0.140)	(0.004)	(0.012)	(0.000)
Sales growth	0.009	0.007	0.004	0.005	0.007	0.007
	(0.664)	(0.554)	(0.583)	(0.570)	(0.360)	(0.441)
Leverage	0.689	0.902	1.168	0.984	1.864	1.701
	(0.023)	(0.016)	(0.004)	(0.022)	(0.000)	(0.000)
ROA	0.262	0.142	0.224	0.181	0.237	0.244
	(0.243)	(0.574)	(0.367)	(0.486)	(0.230)	(0.233)
Cash holding	0.694	0.494	0.562	0.266	0.631	0.203
	(0.039)	(0.214)	(0.186)	(0.550)	(0.017)	(0.480)
Prior year return	-0.001	-0.002	-0.001	-0.001	-0.001	-0.002
	(0.107)	(0.059)	(0.385)	(0.304)	(0.047)	(0.032)
Return volatility	0.001	-0.040	0.008	-0.014	-0.034	-0.046
	(0.974)	(0.301)	(0.856)	(0.757)	(0.204)	(0.116)
HiTech	0.248	0.254	0.250	0.245	0.074	0.027
	(0.076)	(0.138)	(0.172)	(0.208)	(0.517)	(0.831)
Institutional ownership	0.009	0.012	0.012	0.011	0.016	0.014
	(0.007)	(0.003)	(0.006)	(0.018)	(0.000)	(0.000)
Blockholder	0.187	0.158	0.134	0.167	0.058	0.091
	(0.187)	(0.359)	(0.464)	(0.389)	(0.622)	(0.481)
Deal relative size		-2.761		-0.978		-0.037
		(0.000)		(0.000)		(0.799)
Tender		0.851		0.676		0.809
		(0.016)		(0.105)		(0.003)
CompeteBid		0.497		0.469		0.562
		(0.147)		(0.271)		(0.063)
Hostile		-0.941		-0.907		-0.204
		(0.029)		(0.061)		(0.611)
Toehold		-0.163		-0.332		-0.705
		(0.718)		(0.451)		(0.016)
Earn-out		0.889		0.857		2.309
		(0.001)		(0.006)		(0.000)
Diversify		0.196		0.132		0.151
		(0.160)		(0.404)		(0.155)

Public Target		-1.075		-0.963		-1.705
		(0.000)		*(0.000)*		*(0.000)*
Target Termination Fee		0.505		0.414		-0.133
		(0.004)		*(0.040)*		*(0.304)*
N	1631	1631	1321	1321	2229	2229
Pseudo R2	2.80%	28.60%	2.60%	10.30%	4.90%	17.90%

Table 8 Interaction Effect: When Does Avoiding Approval Especially Beneficial?

The dependent variable is announcement return CAR[-2, +2]. AA is a dummy variable that equals one if the acquisition deal is constructed to avoid shareholder approval, and zero otherwise. ROA is acquirers' return on assets in one year prior to acquisitions. Other explanatory variables are explained in Table 5. The associated *t*-statistics are reported in the parentheses. Model 1-4 are run on the combined sample of group I and group III, and Model 5-8 are run on the combined sample of group I, III, and IV, in which relative deal size is capped at 55%.

Dep Var: CAR [-2, +2]	Mixed-financing deals with similar relative size				Mixed-financing & all-stock deals with similar relative size			
	MODEL1	MODEL2	MODEL3	MODEL4	MODEL5	MODEL6	MODEL7	MODEL8
Avoid Approval (AA)	1.898	1.508	2.040	-1.632	0.479	-0.049	1.225	1.524
	(2.08)	(1.63)	(2.44)	-(1.08)	(0.72)	-(0.07)	(2.19)	(1.56)
AA*Tobin's Q	1.373				2.136			
	(1.71)				(2.89)			
AA*ROA		1.993				2.795		
		(2.54)				(3.67)		
AA*Prior year return			0.043				0.026	
			(3.34)				(3.23)	
AA*Return volatility				1.272				0.004
				(3.31)				(0.02)
Control variables	yes	yes	yes	yes	yes	yes	yes	yes
Number of Observations	1255	1255	1255	1255	2136	2136	2136	2136
R-Squared	9.39%	9.64%	9.98%	9.96%	14.12%	14.32%	14.20%	13.78%