

Report Finds Shareholder Activism Evolving from Niche Strategy to Acceptance Across Investors

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With 371 public campaigns against U.S. companies, according to [a recent J.P. Morgan report](#) on the new normal in shareholder activism, the 2017 proxy season proved to be fairly active. Although only 19 of the 54 actual contests that were completed by June went to vote, while the same number settled and the remainder were withdrawn, activists were able to obtain at least one board seat 46% of the time, compared to 41% last year.

Settlements continue to be on the rise, even though several major institutional investors have urged companies not to agree with activists so quickly and at least make public the reasons for the settlement. We previously talked about State Street's policy [here](#). This season, the New York City Comptroller's office initiated a "vote no" campaign against a director who was appointed as part of the energy company's settlement with Elliot, questioning the director's qualifications, especially in light of his prior public positions on climate change.

It's increasingly clear that activists come from all walks of investors. The report finds that smaller funds were the most active this past season, focused on smaller-cap companies where they can take big positions and obtain leverage over management and boards. Nearly two-thirds of all 2017 U.S. campaigns targeted companies with market caps below \$500 million. Since they have not adopted all of the governance norms of the large-cap companies, poor governance can often be cited by activists to garner support from shareholders.

At the same time, according to the report, larger, well-known activists are still present even with the hedge fund industry suffering six consecutive quarters of outflows. They tend to run longer and more sophisticated campaigns that advocate for complicated strategic or operational shifts, often including changes in leadership. Other demands may include cost-cutting, transforming the strategic direction of major businesses or changing a company's capital structure. Given the time needed to implement their interests, the larger activists tend to have longer investment horizons. The report concludes that since targeted companies may fight back due to the significant modifications being sought, these activists must also have the credibility to obtain the support of the institutional investors making voting decisions as well as attract top talent to replace board members or even management.

Institutional investors are increasingly joining the activist fray, launching campaigns themselves. 44 campaigns this year were initiated this season by mutual funds, investment advisers and pension funds. Governance issues are usually the target, but more than half of the campaigns were focused more generally on maximizing shareholder value. Institutional investors also agitate for higher prices in M&A transactions, and may partner with activist funds in proxy contests or side with activists seeking leadership changes. The report contains an interesting exhibit on how often certain institutional investors support dissident slates.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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