

## Gender Diversity Firestorm Symptomatic of Greater Scrutiny of Shareholder Activists

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During the past week, there have been a number of news reports regarding [Bloomberg's](#) analysis that since 2011, only seven of the 174 people nominated to boards by five of the largest U.S. shareholder activist funds (Elliott Management, Icahn Associates, Pershing Square, Third Point and Value Act) have been women. This is not a surprise given that shareholder activist funds often nominate their employees, and to date their senior employees remain predominantly men. (A "pipeline" problem does not, of course, fully explain the numbers since shareholder activist funds also nominate independent directors who are not employees.) These news reports echo [Andrew Ross Sorkin](#) who raised the question last year of whether shareholder activists target women CEOs, noting that although only 23 women lead companies in the S&P 500, nearly a quarter of them have been in the crosshairs of shareholder activists. We recognize that shareholder activists are not alone in having room for improvement when it comes to diversity – most of the companies they target and the professional services firms that advise on these matters could improve in this area as well.

We also believe that the recent attention to this issue is potentially symptomatic of a greater scrutiny of the corporate governance credentials and financial successes of shareholder activists. For example, the plunge in Valeant's stock price recently put its Chairman's overboarding in the [spotlight](#), and we expect this could spark similar scrutiny of the other corporate governance practices at Valeant, Canadian Pacific and other companies that have been lauded by shareholder activists. Investment failures by shareholder activists will undoubtedly make it more difficult for them to retain the confidence of the market and their investors. Poor, or even mediocre, investment returns could cause a significant shift in the trends with respect to shareholder activist assets under management. Not only is it difficult to maintain high AUM numbers through sustained losses (Pershing Square is reported to have already shrunk to \$12.2 billion from \$19.9 billion in February 2015), those losses, and reduced – even if still positive – performance levels should result in a much sharper focus on the low investment diversification, liquidity challenges and personality-dependent strategies that feature prominently in the asset class.

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Arthur F. Golden, Thomas J. Reid and Laura C. Turano were the contributing editors to the recently published, inaugural edition of [Getting the Deal Through: Shareholder Activism & Engagement 2016](#), a volume that provides an overview of the rapidly evolving global shareholder activism and engagement landscape. Their [editors' introduction](#) to the volume includes a further discussion on shareholder activism engagement trends and speculates on the area's future direction.

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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