J.P.Morgan

2019 PROXY SEASON REVIEW

Published by J.P. Morgan’s M&A team in August 2019

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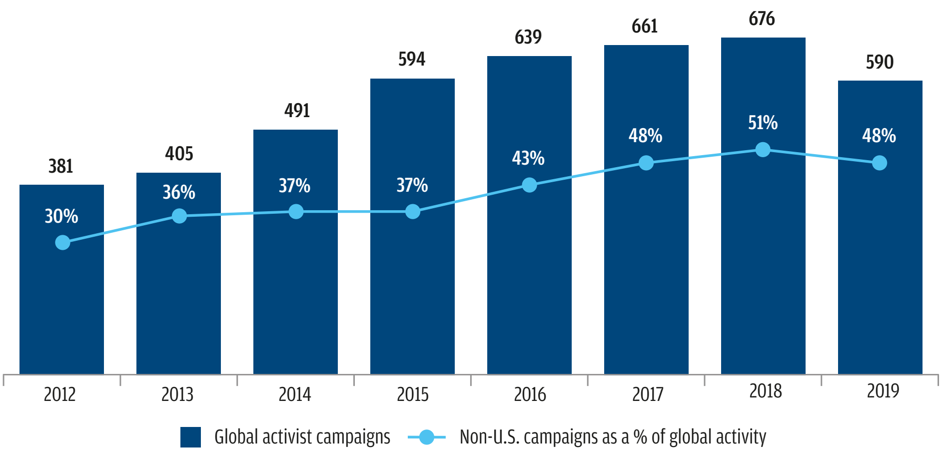
1. Review of shareholder activism activity

Activism activity continued to be robust during the recently concluded 2019 proxy season, the 12-month period ending June 30. Almost 600 new campaigns were initiated globally in addition to the focus some activists gave campaigns announced in prior proxy seasons that had yet to be resolved. Global campaign volume stabilized this proxy season, fueled previously by rapid expansion of shareholder activism in the U.S., but in recent years by increased activity in Europe and Asia.[1] Despite the constantly evolving nature of the activism market, certain themes remain consistent from previous proxy seasons – the pivotal roles passive investors play in the ecosystem, the aggressive tactics that activists will use when targeting a company, the continued prevalence of settlements between activists and targets to resolve campaigns, and the threat of a proxy contest to achieve the activists' goals.

Shareholder activism campaigns globally[a]



Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger.
[a] U.S., Europe, Asia and Australia.

[1] Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger. Global refers to U.S., Europe, Asia and Australia.

The global reality of shareholder activism

Despite a slowdown in new campaign launches, shareholder activism activity outside the U.S. — supported by governance reform and an improved playbook by a number of U.S.-based activists — gained a heightened level of visibility.[2] In Europe, despite a number of high-profile mega-cap campaigns initiated by top-tier activists, overall campaign volume slowed to 129 from 139 in the 2018 proxy season, driven largely by the economic uncertainty surrounding Brexit. Similarly, campaign volume decreased in Asia, where activity was down 39% compared with 2018.[3] Elliott Management saw its previously announced battle against Korean conglomerate Hyundai through a shareholder vote, while Dan Loeb's Third Point re-emerged in Sony after having targeted the Japanese technology company in 2013.

Local activists continue to drive the bulk of activity outside the U.S., accounting for 75% of new campaign launches. In Europe, 71% of campaigns were initiated by European investors, up from 63% in 2018.[3] These include some of the largest targets of the season. French fund Charity Investment Asset Management (CIAM) publicly opposed Renault's merger with Fiat Chrysler Automobiles, while Cevian Capital, one of Europe's most seasoned activists, launched campaigns against Finnish bank Nordea and Irish CRH.

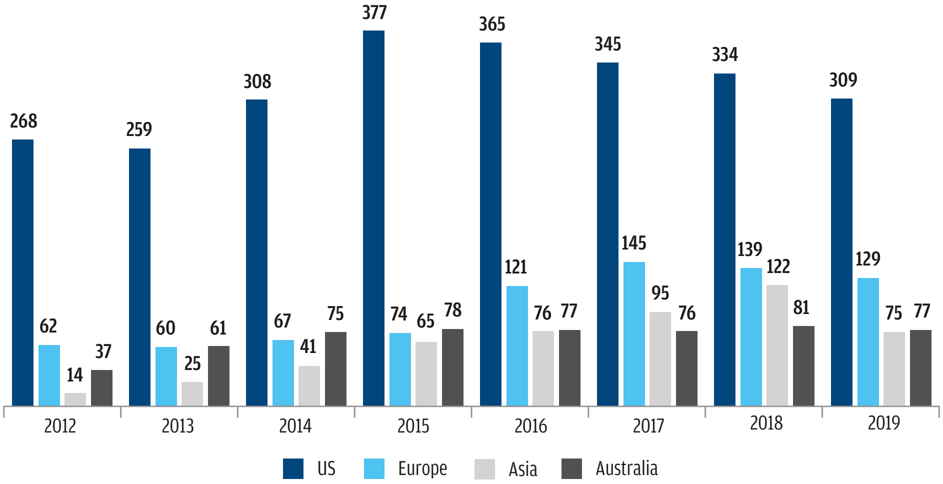
The above does not mean a wavering appetite from foreign, particularly U.S., activist funds for Asian and European issuers. Trian Fund recently launched a Guernsey-based investment company, Trian Investors 1 (TI1), admitted for trading on the Specialist Fund Segment of the London Stock Exchange. TI1 raised approximately £271 million to make a substantial minority investment in a U.K. or U.S. company, and was one of the funds Trian used to acquire a nearly 6% stake in Ferguson plc.[4]

590

overall campaign volume slowed to 590 campaigns from 676 in the 2018 proxy season

[2] Europe, Asia and Australia.
[3] Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholdervalue, remove director(s), remove officer(s) and vote/activism against a merger. Excludes campaigns launched by domestic activists in conjunction with foreign investors.
[4] Sources: "US activist Trian seeks new target after raising £270m," Citywire, 09/25/18; Ferguson Plc TR-1: Standard form for notification of major holdings, 06/13/19

Global activism campaign volume[a]



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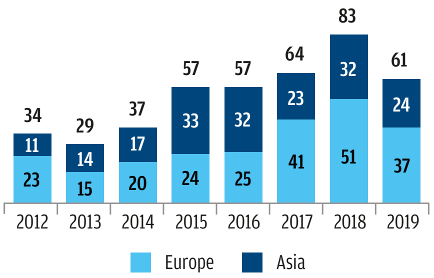
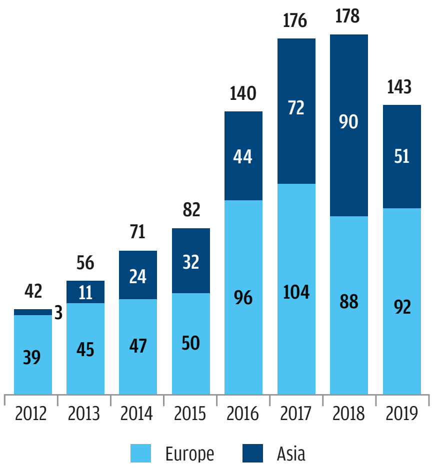
[a] Global refers to U.S., Europe, Asia and Australia.

European and Asian campaigns by foreign investors[a]



European and Asian campaigns by "local" investors[b]



Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger.

[a] Includes campaigns launched by foreign activists in conjunction with domestic investors, includes non-U.S. foreign investors.

[b] Excludes campaigns launched by domestic activists in conjunction with foreign investors.

Institutional investors embracing their power

Institutional investors hold the keys to the success or failure of shareholder activists' effectiveness in accomplishing change at target companies, as activists cannot succeed without these investors' votes at the shareholder meeting. Beyond the support of established activists, traditional institutional investors have become emboldened to grab the reins and attempt to catalyze change directly, with or without the involvement of a traditional activist, by opposing announced deals, voting against directors, even launching activist campaigns directly.

Wellington Management: An 8% shareholder in Bristol-Myers Squibb, Wellington filed a Schedule 13D, which is reserved for investors (such as a shareholder activist) with a stated intent to influence or control the target company. It publicly opposed the company's acquisition of Celgene, arguing the deal was too risky and expensive, and not in the interest of shareholders. This marked the first time Wellington publicly opposed a management team and board in such a high-profile manner.

> **While Wellington agrees that Bristol-Myers should be active in business development that secures differentiated science and broadens the future revenue base, Wellington does not believe that the Celgene transaction is an attractive path towards accomplishing this goal.**
>
> Wellington Management press release: "Wellington Management Does Not Support Bristol-Myers Squibb's Acquisition of Celgene Corporation"
> February 27, 2019

T. Rowe Price: Known for occasionally agitating for change at target companies, T. Rowe publicly disclosed its intent to vote against the Occidental Petroleum board after the company restructured its deal to acquire Anadarko in such a way that would eliminate the need for a shareholder vote on the transaction.

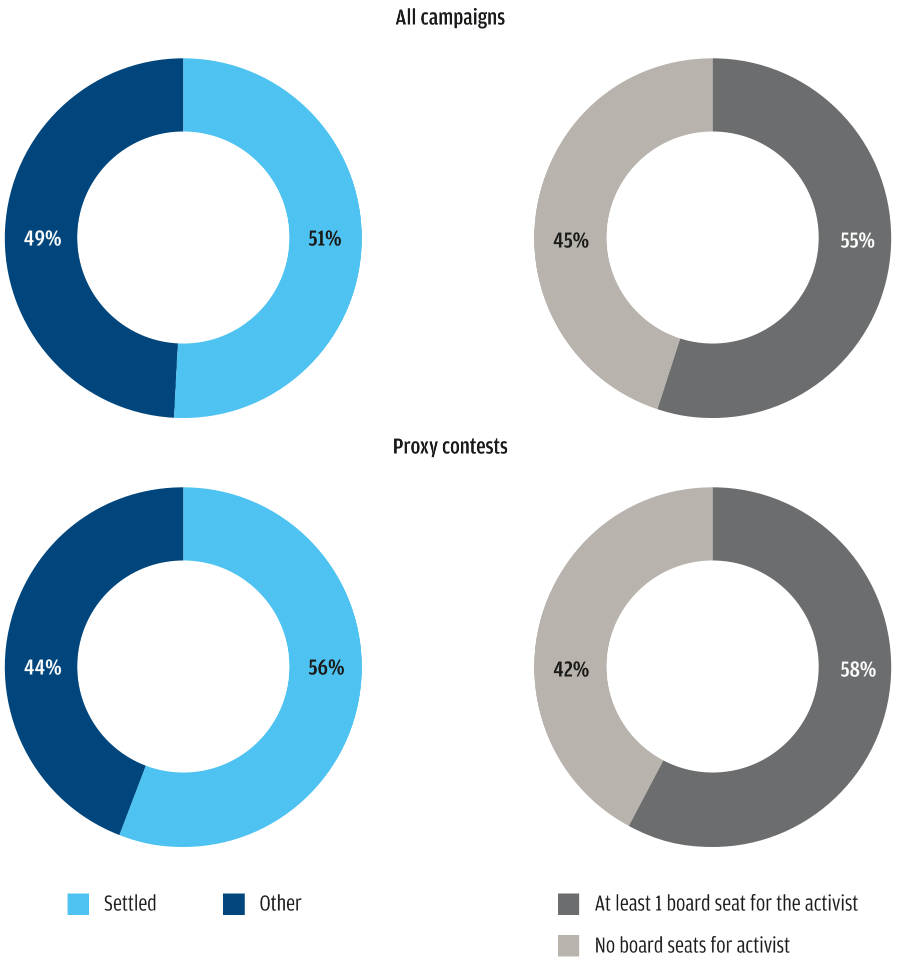
> **[T. Rowe Price] intends to vote against the board at the meeting because [CEO] Hollub and her team restructured their Anadarko bid to remove the need for a separate vote on the deal [...] Given the fact that the Occidental management team has refused to put this to a shareholder vote, we feel like we're left with no choice.**
>
> John Linehan, T. Rowe Portfolio Manager
> Bloomberg, May 9, 2019

In addition to throwing their voting might behind a specific situation, institutional investors are blazing the trails for future areas of focus and shareholder action. Passive investors are driving forward with ESG-focused agendas while public pension funds are elevating issues such as proxy access and gender diversity in the boardroom.

Board representation

As the most powerful weapon available to an activist, replacing incumbent directors with nominees chosen by the activist remains a critical component of the activist toolkit. In the U.S., of the 279 campaigns initiated during the 2019 proxy season (excluding activism against mergers), 144 were completed by June 30. 55% of those resulted in board representation for the activist, up from 47% in 2018.[5]

2019 U.S. completed campaign breakdown



Source: SharkRepellent as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) - excludes vote/activism against a merger.
Note: Completed means a proxy fight was withdrawn, settled or a winner has been announced or for a non-proxy fight activist campaign there has been a logical conclusion (e.g. value demand was granted, activist withdrew demands / sold stake etc.).

[5] Source: SharkRepellent as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) - excludes vote/activism against a merger.
Note: Completed means a proxy fight was withdrawn, settled or a winner has been announced or for a non-proxy fight activist campaign there has been a logical conclusion (e.g. value demand was granted, activist withdrew demands / sold stake etc.).

Settlements

51% of the 144 launched and completed campaigns were settled, meaning 91 of the 124 board seats that changed hands were granted through agreements rather than won at the ballot. Only 17 of the 52 proxy contests initiated and completed during the past year reached a shareholder vote; with 29 settled and 6 withdrawn.[6]

Historical success by activists has persuaded many target companies to not just settle, but to settle quickly to avoid the public distraction of an activist campaign and allow management to focus on running the business. These quick settlements have received scrutiny from shareholders who argued that board seats should not be perceived as a bargaining chip as well as threats to vote against incumbent directors if this trend continues. Despite these concerns, settlements continued to be a feature of the market in the 2019 proxy season. Carl Icahn reached a deal with Caesars Entertainment only 10 days after the public campaign announcement, while Starboard Value obtained a board seat at eBay 38 days after its demands were publicly reported. However, these timelines may obscure private engagement with both the activist and shareholders that may have made the settlements more acceptable than a cursory review would conclude.[6]

On the opposite end of the spectrum, some companies and activists are choosing to delay the settlement, frequently until after proxy advisors' recommendations are made and a more precise handicapping evaluated. Campbell Soup announced that it reached an agreement with Third Point only three days before the contested meeting was set to happen. Similarly, Voce Capital Management abandoned its proxy fight against Argo Group International within a week after the proxy advisors released their recommendations. As more companies push back on activist attacks and the ensuing settlement overtures, and see success at the shareholder vote or witness the activist abandon, standing firm is increasingly becoming a viable option for management teams and boards.

[6] Source: SharkRepellent as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) – excludes vote/activism against a merger.

Note: Completed means a proxy fight was withdrawn, settled or a winner has been announced or for a non-proxy fight activist campaign there has been a logical conclusion (e.g. value demand was granted, activist withdrew demands / sold stake etc.).

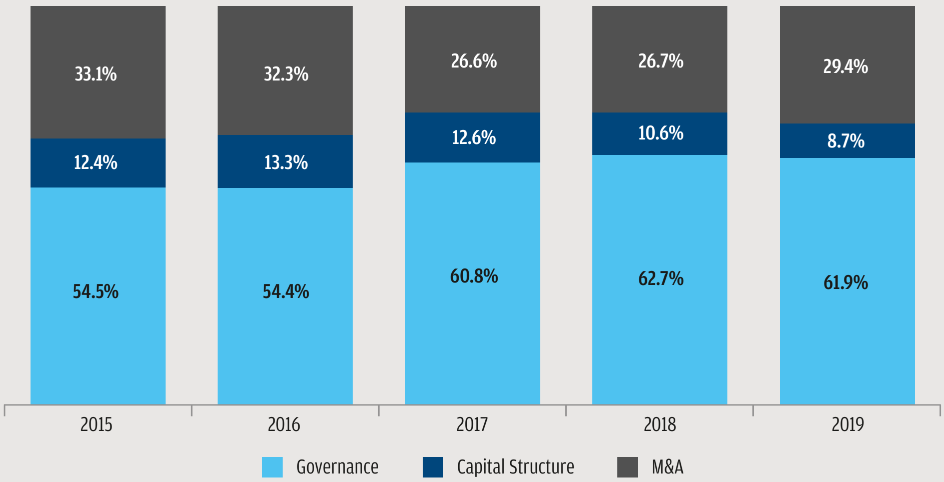
Source: SharkRepellent.

2. Key themes and takeaways

M&A-focused activism

Despite the nuanced changes to activists' approaches in recent proxy seasons, activists continue their focus on M&A- or corporate clarity-related demands and other transformative corporate actions, as these strategies typically yield the quickest path to the largest theoretical value creation. During the past proxy season, M&A demands continue to be roughly 30% of total value and governance demands. Even though there was a slight decrease in demands for strategic review, demands for outright sale and breakup reached new heights in the 2019 proxy season. Activist push for sale or merger was the highest in the past three years, reaching 81 instances versus 76 in the prior two proxy seasons respectively. Similarly, demands for breakups / corporate clarity reached a historical high of 58, increasing by 23% from the previous proxy season.[7]

Change in global activist demands[a]



Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger.
[a] U.S., Europe, Asia and Australia.

[7] Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger. Global refers to U.S., Europe, Asia and Australia.

During the 2019 proxy season, activists continued to push for corporate clarity on a global scale. Following successes in the 2018 proxy season at household names such as Whitbread, United Technologies and thyssenkrupp, activists have doubled down on companies with multiple business lines, agitating for increasingly aggressive transformations.

In the United Kingdom, Sherborne Investors Management criticized Barclays for overallocating resources to its investment banking business, claiming that it earns a significantly lower return than Barclays' consumer business and "threaten[s] the overall stability" of the company. In a letter to shareholders in January 2019, Sherborne argued that "the most expedient way of [protecting the long-term interests of Barclays' shareholders] is through a judicious reduction in the CIB's assets."

In Japan, in its continuing multi-year attack on the company, Third Point recommended Sony spin off its semiconductors division into a stand-alone public stock, formally classify the entertainment divisions as Sony's core businesses, refocus Sony's loss-making mobile phone division and divest its public equity stakes in Sony Financial, M3 Inc., Olympus and Spotify.

In the U.S., Starboard Value demanded Dollar Tree explore all strategic alternatives for its Family Dollar business, including an outright sale of the Family Dollar assets acquired just a few years earlier. In its Jan. 7, 2019, letter to the board, Starboard argued that the "distraction" of Family Dollar will "continue to fester, draw significant resources, and adversely impact the Company."

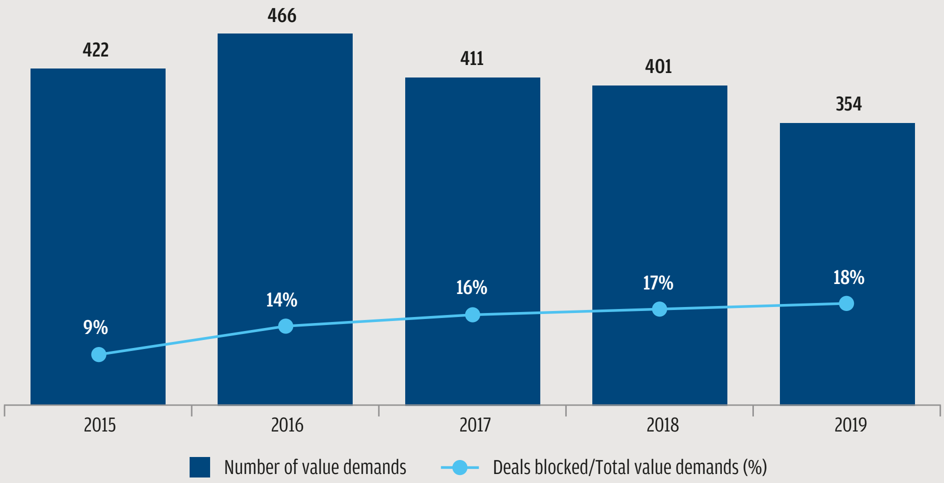
As demands for M&A and corporate clarity continue to drive interest among institutional investors and activists alike, the strategy is creating a global blueprint for local and U.S. activists to continue to push targets to restructure or spin off underperforming divisions.

Opposing M&A — the next low-hanging fruit?

While some activists strive for increasingly complex M&A demands to create value, others seek to block announced transactions. Activists launching campaigns against announced M&A transactions either criticize the offer price as insufficient to catalyze a higher price (a strategy known as "bumpitrage") or criticize the fundamental rationale for the deal to pressure the acquirer to abandon the deal entirely.
In the 2019 proxy season, activists publicly opposed transactions on 63 occasions, an increase of 58% from five proxy seasons ago. Opposition to announced M&A represented 18% of global value demands during the 2019 season, a record high in the five most recent proxy seasons.[8]

[8] Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger.

Activists blocking transaction globally[a]



[a] U.S., Europe, Asia and Australia.
Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019. Represents the following campaign types: board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger.
Note: Value demands include: seek sale / merger / liquidation, review strategic alternatives, block transaction, breakup company, divest assets / divisions, separate real estate, return cash via dividends / buybacks, other capital structure related, increase leverage, etc.

As the low-hanging fruit of capital allocation and returns of capital have become scarce, opposing announced M&A has become an effective and less time-intensive strategy for activists with limited downside risk. Instead of running a nine-month proxy fight requiring significant effort and expenses (epitomized by the estimated incremental $35 million that Procter & Gamble spent on keeping Trian Fund Management's Nelson Peltz off the board in 2017), the activist needs only to sprint between the dates of the deal announcement and the shareholder vote.[9]

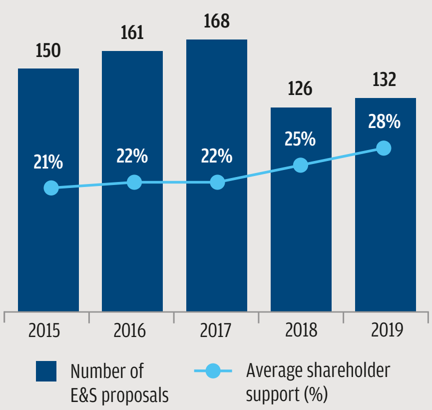
In the past year, three of the most industry-transformational transactions – Cigna's merger with Express Scripts, United Technologies Corporation's merger with Raytheon, and Bristol-Myers Squibb's merger with Celgene – received resistance from Carl Icahn, Third Point and Starboard Value, respectively. In all three instances, institutional shareholders were vocal campaign participants, highlighting the unprecedented levers activists can now pull to influence the outcome of an M&A situation. Wellington Management Group and Dodge & Cox, two of Bristol-Myers Squibb's largest shareholders that have not historically made public statements opposing friendly M&A transactions, openly opposed the company's merger with Celgene. Wellington went as far as filing a 13D, expressing disbelief that the transaction was in line with the company's goals. As institutional investors increasingly view "bumpitrage" as an acceptable practice and become vocal supporters, issuers need to be even more diligent in communicating and securing shareholder buy-in to its M&A strategy before announcing transformative transactions.

Note: Value demands include: seek sale / merger / liquidation, review strategic alternatives, block transaction, breakup company, divest assets / divisions, separate real estate, return cash via dividends / buybacks, other capital structure related, increase leverage, etc.
[9] Source: The Procter & Gamble Company DEFC14A filed August 1, 2017.

ESG growing in importance and driving votes

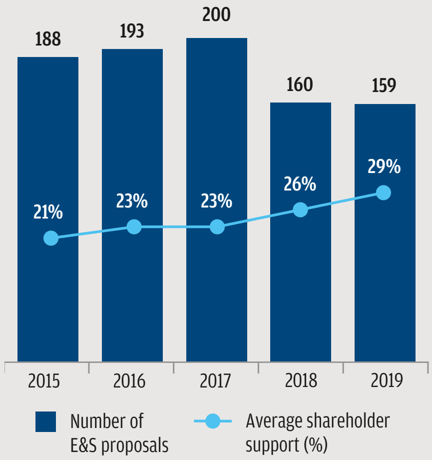
Environmental, social and governance (ESG) issues have long been a focus among activists. Governance, in particular, has served as a focal point for dissidents to assign blame to directors in an attempt to take hold of a company's future. In comparison, the environmental and social components of ESG have consistently been overlooked as activists struggled to identify their correlations with company performance and questioned their resonance with shareholders. As environmental and social issues have risen in importance across society as a whole, institutional investor have focused significant effort in evaluating how to apply new societal expectations to their investing activity. This has resulted in a number of actions focused on ESG issues, ranging from countries and states that are enacting new governance and diversity laws, to index funds that are voicing ESG considerations in their voting and shareholder engagement decisions, to activist funds that are incorporating ESG in their investment methodology. Shareholder support for environmental and social proposals have reached all-time highs of 28.0% and 29.4% for the S&P500 and Russell 3000, respectively, underlining the need for immediate consideration of this topic among companies and shareholders alike.[10]

Environmental and social (E&S) proposals among the S&P500



Source: Proxy Insight as of June 30, 2019.

Environmental and social (E&S) proposals among the Russell 3000



Source: Proxy Insight as of June 30, 2019.

[10] Source: Proxy Insight as of June 30, 2019.

Countries and states

Governing bodies across the globe are enacting rules and regulations, such as the Principles for Responsible Investing, United Nations-supported Principles for Responsible Investment, UN Sustainable Development Goals, and Japan's Stewardship Code, taking a more forceful stance in incorporating ESG into corporate decision-making.

United Kingdom draft regulations have been published to require additional ESG annual reporting obligations. Companies must report on how they have engaged with suppliers and customers and on how they have complied with its duty to promote the success of the company for the benefit of members as a whole.

Illinois passed a law that requires companies to report the demographics of their executive team and state how they are promoting diversity in the workplace.

California passed a bill that mandates big companies based in the state include female directors on their boards by the end of 2019. On boards with five or more directors, two or three women (depending of the Board's size) will be required by the end of 2021.

Passive investors

Now recognized as holding the decisive voting blocs in most proxy contests, index funds continue to spearhead ESG issues through engagement with issuers.

State Street, starting in 2020, will vote against the entire slate of board members on the nominating committee of companies that do not have at least one female board member and have not engaged in a successful dialogue on State Street's board gender diversity program for three consecutive years.

Vanguard will vote against executives holding two or more public company board seats, aside from the one where they are employed. Vanguard said it would also oppose the appointment of nominees seeking more than four seats at a time.

CalPERS identified climate change, board diversity and compensation for top executives as top priorities during the 2019 proxy season. This includes continued calls for more women on corporate boards, research on best-in-class pay ratio between CEO and employees, and establishment of an initiative called Climate Action 100+ to reduce carbon emissions.

Activists

Activists have historically used governance — or, more precisely, poor corporate governance —as the convenient problem driving many of the claimed failings of their activism targets. While environmental and social issues have not yet received the same level of attention as governance, activists have taken notice of the importance of all three ESG components to institutional investors and are actively seeking opportunities to incorporate these themes into their campaigns. In addition, activists have recognized the desire by many limited partnerships to deploy capital to "responsible" investing vehicles. Following multiple years of LPs pulling capital from actively managed funds in favor of passive strategies, a number of activists have seized on the opportunity and launched ESG-focused activist funds, attracting or retaining LP capital and capturing associated management fees.

ValueAct Spring Fund: ValueAct Capital has long been at the forefront of combining activism with ESG. Since its 2018 launch, The Spring Fund has made investments in companies such as AES Corp., Strayer Education, Enviva Partners, Hawaiian Electric Industries and PG&E. It also expanded beyond public company investments by leading the Series A round of AppHarvest (for construction of AppHarvest's 2.76 million-square-foot greenhouse) and participating in the Series B round of Arcadia Power (for expansion of geographic reach and the data science and engineering teams). ValueAct's new fund has so far been yielding results; according to *Institutional Investor*, the ValueAct Spring Master Fund posted 10.5% gross return and an 8.8% net return in Q1 2019.

JANA Impact Capital: Since announcing the launch of its new impact investing fund in early 2018, JANA Partners has partnered with CalSTRS to pressure Apple in resolving smartphone addiction among teenagers and children. In September 2018, Apple released Screen Time, an application that generates activity reports showing how long users spend in applications or at websites, among a number of other new functionalities to combat smartphone addiction.

Impactive Capital: $250 million fund seeded by CalSTRS and iconically founded by Lauren Wolfe and Christian Asmar, two former investing partners at Blue Harbour Group.

> **ESG can be a lever for long term value creation and we will focus on improving those ESG factors that are demonstrably linked to long term economic benefits. Our approach aims to create value for shareholders and to build better, more sustainable businesses for the long run.**
>
> **Christian Asmar, Impactive Capital**
> **Impactive Capital press releases: "Activist Investment Management Firm Impactive Capital Secures $250 Million Anchor Investment"**
> **February 11, 2019**

In an article published in May 2019, Business Insider reported that Lauren Wolfe announced that "low-hanging ESG fruit" such as installing motion-sensor lighting systems and modern air-conditioning systems will both improve Wyndham's bottom line and help the environment. Impactive Capital also plans to push for a mandatory green program for all the brands Wyndham owns, requiring hotels and motels to give loyalty points to people who reuse towels and linens to increase engagement in a brand's loyalty program, save money on water use and help the environment.

Irrational Capital: A hedge fund that picks stocks based on how effective companies are as employers. Irrational Capital has a system to quantify employee engagement, pride in their work, sense of purpose across the corporate world, and their contributions to value creation. It received funding from ValueAct's Spring Fund.

Proxy advisors

Glass Lewis: Starting January 2019, will recommend against the chair of the nominating committee if the board has no female directors. In certain cases, can recommend votes against other directors it deems responsible for the board's recruitment practices.

Impact on issuers and implications on the broader market

Although the correlation between ESG objectives and shareholder returns has yet to be confirmed, investors are nevertheless feeling more emboldened to voice their opinions, reflected in the increasing proportion of environmental and social proposals as a percentage of all shareholder proposals, rising from 33% in 2018 to 38% in 2019 among the S&P500.[11]

Arjuna Capital: Urged 11 financial and technology firms, including Facebook, Bank of America and Amazon, to disclose an unfiltered global gender pay gap statistic. The statistic reveals how many women, compared with men, are in a company's top-ranking, highest-paying jobs.

CtW Investment Group: Filed a proposal in late 2018 calling for the Alphabet board to nominate a non-executive employee as a director at the 2019 annual meeting. CtW argued that an employee director would add insight on issues critical to the success of the company and would be useful in the board's oversight of corporate culture.

[11] Source: Proxy Insight as of June 30, 2019.

Company heads in the crosshairs

Board representation, on either expanded boards or filling vacancies created by the removal of current directors, has historically been enough to placate activists by allowing them the possibility of pushing their agenda from inside the company. However, recent campaigns show that investors are taking their calls for change a step further. Arguing that the company cannot succeed under current leadership, activists are increasingly targeting management directly. Seeking to oust the CEO of a company sends a stronger message than the removal of any director and signals a deep desire to completely part ways with the status quo.

CEOs, by virtue of being not just the key decision-makers but also the public face of companies, draw significant media attention that activists commonly desire. Attacks on CEOs may be triggered by a specific event, such as the mishandling of a potential transaction, or due to investor fatigue following prolonged company underperformance. Regardless of the angle, activists targeting CEOs have consistently argued that existing management is no longer fit to run the company and that new management is needed to right the ship.

While activists have direct access to the board only through a shareholder vote and cannot change management directly, they must rely on other strategies to achieve objectives that target the CEO. The increased prevalence of personal attacks in activist campaigns, rather than simply presenting an alternative path for shareholder value creation, has motivated boards to be more open to management change as a potential path to avoid a proxy fight and the personal attacks on individual directors.

In Voce Capital's campaign against Argo Group International Holdings, Voce Capital went out of its way to paint the CEO's expenses as excessive by releasing the company's corporate jet flight logs and documents showing Argo's corporate housing arrangement for the CEO. In another situation, CIAM submitted a proposal to oust SCOR's CEO Denis Kessler from the board, following the company's rejection of an unsolicited bid. Even though the fund clarified it only wanted the executive to surrender the chairmanship, and not leave the executive role, the proposal got only 25.4% shareholder support.[12] Even if that's the case, shareholders are expected to grow more comfortable with the idea of voting out a CEO, just as they have with replacing entire boards.

Recently targeted CEOs

Campaign announcement	Target	Country	CEO	Activist(s)	Departure announcement
Mar. 2019	Bed Bath & Beyond Inc.	U.S.	Steven Temares	Legion Partners Ancora Advisors Macellum Capital	May. 2019
Sep. 2016	ABB Ltd.	Switzerland	Ulrich Spiesshofer	Cevian Capital	Apr. 2019
Dec. 2018	Just Eat plc	U.K.	Peter Plumb	Cat Rock Capital Management	Jan. 2019
Mar. 2018	Telecom Italia S.p.A.	Italy	Amos Genish	Elliott Management	Nov. 2018
Nov. 2017 May 2018	thyssenkrupp AG	Germany	Heinrich Hiesinger	Cevian Capital Elliott Management	Jul. 2018

Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019.

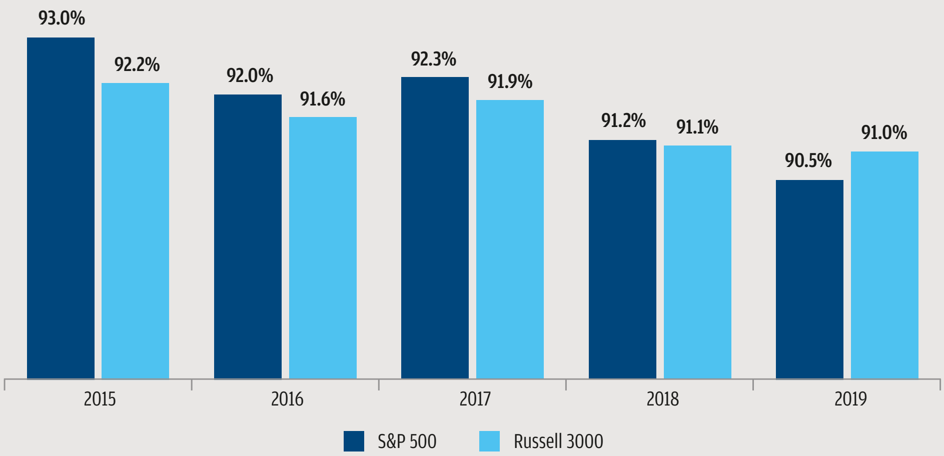
[12] Institutional Shareholder Services.

> **CEOs do not hold the job by right. The Board must continually evaluate who should be running the company. Each day, the CEO is effectively hired by the Board.**
>
> Elliott Management's letter to Arconic's independent directors February 23, 2017

Excessive executive compensation

Activists are increasingly targeting management compensation. They frequently argue that an executive's pay is not aligned with total shareholder return, incentives are not clearly identified and compensation peers are poorly selected. For instance, Legion Partners argued in its April 2019 presentation that Bed Bath & Beyond's "'Executive Office' has been awarded over $300 million in total compensation during a period in which they oversaw the destruction of over $8 billion in market value [...] Victoria Morrison, as chair of the compensation committee (despite 4 consecutive failed say-on-pay votes), didn't receive majority of votes last year and the Board unanimously refused to accept her resignation." This argument resonates with many shareholders, as the correlation between an executive's compensation and the company's performance can be easily tracked and, a result, magnified. In fact, shareholder support on say-on-pay has reached historical lows, demonstrating high levels of shareholder dissent and, more importantly, validating this new activist approach.

Shareholder support on say-on-pay



Source: Proxy Insight as of June 30, 2019.

Activists continue to innovate and refine their strategies

Activism strategies have evolved over the years, seen through innovations in areas of governance, shareholder outreach, M&A and various other attack vectors. One area that has garnered a high level of sophistication over the years is the intersection of activism and private equity. Elliott Management is the industry-recognized innovator in its approach toward combining activism with private equity and continues to refine and expand on its approach.

Elliott's proposal to acquire QEP Resources in January 2019 for $2.1 billion was a continuation of Elliott's buyout strategy to support its traditional activist activity. Elliott followed up by launching a takeover bid for Barnes & Noble a few months later for $476 million with plans to build scale and realize synergies by combining Barnes & Noble with U.K. portfolio company Waterstones, with Waterstones CEO James Daunt assuming the top role at the combined company following the completion of the transaction.

Elliott's hybrid activist/private equity strategy has been gaining traction within the activist community. Following a failed attempt to gain board representation in 2018, Canyon Partners teamed up with Platinum Equity to make an all-cash offer for Navient a year later. Two days after Navient rejected the offer, Canyon promptly withdrew its interest in acquiring the company and instead chose to seek four board seats. Navient eventually settled with Canyon Partners and agreed to appoint two new directors to the board. Similarly, Vintage Capital, in its push to convince Red Robin Gourmet Burgers to commence both a strategic review and CEO search process, added that it was prepared to bid $40 per share in an auction process to acquire the company in an all-cash transaction, adding more pressure on Red Robin to take action.

The unprecedented maneuvers observed in the market during the 2019 proxy season, led by Elliott and mirrored closely by other activists, underscore the increasing complexity of activist playbooks and solidify shareholder activism as a permanent investment strategy in the financial markets.

$2.1 billion
to acquire QEP Resources to support Elliott's traditional activist strategy

$476 million
to acquire Barnes & Noble with plans to combine with U.K. portfolio company Waterstones

3. Emerging trends

U.S.-style settlements expanding abroad

During the second half of the 2019 proxy season, we witnessed the proliferation of U.S.-style settlements abroad. These types of agreements usually see activist representatives or activist-backed nominees join a company's board in exchange for assurances of support and an agreement by the activist to cease agitation for a period of time. In Asia, where companies have historically been reluctant to compromise and shareholders remain reluctant to support activists at the ballot, settlements have also been gaining ground.

Europe

Playtech plc (Isle of Man): In April 2019, Playtech announced the appointment of two SpringOwl Asset Management-endorsed candidates to its board, effective immediately.

Hammerson plc (U.K.): In March 2019, Elliott Management confirmed its support for the company's plan to divest assets and refresh the board. The company said it would expand its board and establish a board investment and disposals committee with a view to divesting £900 million in assets.

Premier Foods (U.K.): In February 2019, Premier Foods decided to conduct a review of its strategic options for increasing shareholder value. In connection with these discussions, the company also announced that Orkun Kilic, a Paulson partner, and Daniel Wosner, Oasis Management's head of Europe, would be granted board seats, along with a third new non-executive director.

Asia

Toshiba (Japan): In May 2019, Toshiba refreshed a majority of its board following discussions with a host of shareholders, including King Street Capital Management and Effissimo Capital Management. Toshiba appointed seven new directors to an enlarged 12-member board, including three non-Japanese directors for the first time in nearly 80 years.

Olympus (Japan): In January 2019, Olympus agreed to propose ValueAct partner Rob Hale be named a director at the June meeting and work with ValueAct to select two additional board members.

Sources: SharkRepellent, Activist Insight and Activist Monitor as of June 30, 2019.

Control slates on the rise

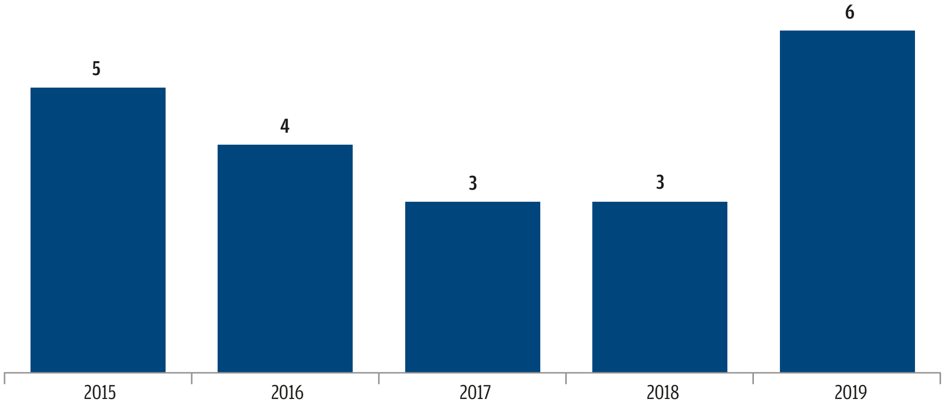
Control slates (defined as 50% or more of total board seats) have always been a part of activists' arsenals, but have been a tool rarely used as the requirements to secure support to take control of a company's board goes beyond simply convincing shareholders that change is needed; instead, an activist must outline a detailed plan and strategy for the company's future. This past proxy season saw control slates become more visible after gaining traction among larger targets. With mixed results in 2019, it is yet to be seen if this will become a regular part of the activist ecosystem.

Activists are pursuing control slates to demonstrate that they are more committed to changing the strategic direction of the company, rather than to catalyze a short-term gain and to better position themselves with a more aggressive starting position for the inevitable settlement discussions that are likely to occur.

Commitment to a strategic shift via reconstituted board: Based on the premise that the board is not acting in the best interest of all shareholders – and citing myriad issues that may include failed strategic decisions, troubling corporate governance practices, overall entrenchment, complacency, poor stewardship and persistent failure to discharge its fiduciary duties – activists will campaign for the reconstitution of a majority of the board. They will put forward a slate of nominees they deem to have the appropriate skills and experience (often exhibiting strong industry backgrounds), to improve the leadership and provide proper oversight at the company.

Positioning for a settlement: As previously mentioned, the majority of proxy fights are resolved through a settlement rather than a shareholder vote. Over time, a clear pattern has emerged where activists settle for fewer board seats than they initially seek, often resulting in only a single seat forming the basis of a settlement. By initially seeking a majority of the board, activists are positioning themselves for a settlement that involves a more meaningful number of board seats while fostering an image of flexibility by moving away from seeking control. During the 2019 proxy season, Starboard Value nominated three control slates, ultimately settling at Magellan Health for four seats and GCP Applied Technologies for two seats and withdrawing its control slate at Dollar Tree.

Control slates at U.S. companies with market capitalization greater than $1bn



Source: SharkRepellent as of June 30, 2019. Represents the following campaign types: Board control and representation, enhance corporate governance, maximize shareholder value, remove director(s), remove officer(s) and vote/activism against a merger.
Note: Control slates defined as 50% or more of total board seats.

Control slates are also gaining traction outside the U.S. In 2018, Elliott Management gained control of the Telecom Italia board. Similarly, King Street Capital Management nominated a full slate at Japan-based Toshiba in March 2019, and Coast Capital at U.K.-based FirstGroup in May 2019.

Industry expertise driving activist agendas

Historically, activism demands were more company dependent, largely driven by company-specific underperformance and misuse of capital. However, the search for value, combined with changes in market perception (such as the heightened focus on ESG), has caused a number of activists to focus on agitating at companies within a narrow sector where the activist has a unique perspective or specialized expertise.

Existing pure-play activists such as Land & Buildings Investment Management and Sarissa Capital Management have demonstrated that domain expertise provides a competitive advantage, allowing them to survive while peers such as Pershing Square and Greenlight Capital have struggled. Other activists are taking notice. For instance, John Paulson, a noted "gold bug," launched the Shareholders Gold Council to team up with other gold investors to improve returns in the sector.

More interestingly, the power and utilities space, a highly regulated industry where increased profitability often benefits ratepayers rather than shareholders, has become one of the most frequent hunting grounds for ValueAct Capital. In early 2018, after ValueAct launched its Spring Fund, which is known for promoting environmental and social goals at companies that it partners with, ValueAct targeted The AES Corporation, with ValueAct co-founder Jeffrey Ubben obtaining a board seat and vowing to help the company decrease debt and move away from fossil fuels to cut pollution. ValueAct then further built on its industry expertise by participating in a $25 million Series B financing round in Arcadia Power. Eva Zlotnicka, vice president of ValueAct Spring Fund, joined as an observer to the board. In October 2018, ValueAct targeted Hawaiian Electric Industries, urging the utility company to increase its use of renewable energy and end its dependence on imported oil. In its Toronto investor conference presentation, ValueAct proposed a path forward for value creation by prioritizing social and environmental goals.

> **We think that Hawaiian Electric will be rewarded by the markets for pulling forward a sustainable business model [...] by future proofing its business and using technology, it has the potential to be the utility of the future.**
>
> **Jeff Ubben, ValueAct Capital Management**
> **Bloomberg, October 25, 2018**

As activism strategies continue to evolve with activists searching for their competitive advantages, no industry is immune to activism, even highly regulated industries such as financial services and specialized industries such as oil and gas. Given the circumstances, it is even more important for issuers to be tactful in setting their strategy and diligent in preparing for a potential activist approach.

Short selling

Short campaigns share many similarities with traditional long activist campaigns, but stop after outlining the target company's problems. They do not offer any solutions or alternative strategies, instead indicating it is too late to save the company. Investors launch and conduct public short-selling campaigns using tactics similar to traditional campaigns, often announcing their positions at conferences and releasing white papers laying out their short theses in greater detail. Funds such as Spruce Point Capital and Muddy Waters Research also leverage social media, and regularly tweet about their short positions. Unlike in traditional campaigns, they tend to be more aggressive in their criticism because the end goal is not to influence the board or implement changes, but rather to simply convince the market that the stock is overvalued.

Short sellers typically target companies with one of several potential issues, including aggressive accounting practices, overestimating their addressable market, underestimating competition, management or corporate scandals or outright fraud. These issues do not need to be proved, as often even the speculation that a company has committed a misdeed is enough to drive the share price down significantly, creating a profit for the short seller in the interim.

Long and short activism are not mutually exclusive. Companies have had to deal with both, sometimes simultaneously. In April 2019, Verint Systems announced that Neuberger Berman notified the company of its intention to nominate a slate of three directors at the 2019 annual meeting. In May 2019, Spruce Point Capital published an investor presentation on the company, highlighting how Verint faced 60% to 70% downside risk, referencing the market's misunderstanding of the company's flat to negative organic sales growth, low-quality acquisitions complicating organic growth, aggressive accounting measures, executive compensation and key executives with dubious pasts.

Target companies can help mitigate stock volatility by being able to quickly articulate the fundamental value proposition of its business model to the market and the future drivers of incremental shareholder value. It is important to note that each case is unique. An unknown short seller may not have the necessary market credibility to meaningfully affect the company's share price with its public attack. Further, a poorly articulated attack by an established short seller may have a more material impact on the share price in the short term than its analysis merits, solely based on its track record and reputation. In either case, as with traditional long activism, advance preparation and shareholder engagement are keys to eventual success.

4. Implications for companies

The 2019 proxy season showcased the permanence of shareholder activism as an investment and engagement strategy. Companies' awareness and understanding of shareholder activism have matured over the years, and so has the appreciation for proper "clear day" preparation. Activism preparedness, now a priority for boards and management teams worldwide, is not a one-time task; rather, it's an ongoing process that needs to be refined and updated as the set of investors willing to be active widens and the tactics used to target companies become more complex. Taking steps to identify and address vulnerabilities, and to proactively engage with shareholders by developing a robust communications plan tailored for each specific constituency, will help companies minimize the potential risks of becoming an activist target, and respond in case a threat emerges.

Shareholder activism defense framework

Internal organization	• Organize internal communications and governance • Formulate response guidelines
Assess vulnerabilities	• Assess activism environment and activist • Prepare mock activist attack themes, rebuttals on various themes: total shareholder return, valuation, operational performance, optimal capital structure, corporate governance, etc.
Know value thresholds	• Monitor share price, trading and equity analyst views • Assess status-quo business plan • Prepare and asses standalone intrinsic value and strategic alternatives
Monitor shareholder base	• Review and build relationships with major shareholders and analysts • Refine and fine-tune equity story • Identify shareholders who could follow activist • Monitor short positions • Understand potential shareholder views by topic
Prepare defense strategy	• Develop response or action per activist attack theme • Decide actions to be taken (both internally and externally)
Defense response plan	• Conduct 'live' simulations and role play to prepare • Optimize responses and actions • Prepare IR / communications / media plan
Monitor market activity	• Track stock trading and any changes in shareholder base • Watch for additional activists • Monitor short position and derivatives market
Implement communication plan	• Establish key messages to effectively communicate, demonstrate and convince • Conduct shareholder roadshows • Coordinate Interaction with activist

5. J.P. Morgan M&A advisory solutions and shareholder activism expertise

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Clients benefit from customized solutions combining:

- In-depth knowledge of sector and market dynamics with M&A bankers based locally in most major markets globally
- Innovative advice on valuation, transaction structures and deal tactics/negotiations
- Rigorous execution delivered with responsive and agile service
- Ability to partner with product experts across our full range of competencies, including comprehensive financing through our debt and equity issuance platforms, as well as derivatives and treasury services, including escrow services

J.P. Morgan provides M&A advisory solutions across the full strategic life cycle of our clients:

Shareholder activism and engagement strategy

J.P. Morgan has an extensive record of helping clients prepare for and respond to shareholder activism. Our size and scale, wide array of product offerings and experience enable us to provide a differentiated approach to shareholder activism defense for clients:

- Defense preparations for publicly announced and non-public approaches
- Dedicated shareholder activism advice
- Advisory services for corporate clients only
  - J.P. Morgan does not advise shareholder activists on activist campaigns
  - Interests are fully aligned with company interests and enhancing long-term shareholder value
- Experience with all major activists in some of the most sophisticated campaigns around the world
  - Deep understanding of potential activist tactics
  - Firsthand experience of what works when defending against an activist

Strategic expansion

- Acquisitions, including cross-border opportunities
- Mergers and joint ventures

Enhancing business value

- Corporate combinations
- Divestitures
- Capital restructuring projects
- Spinoffs and other repositionings

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