2022

THE ACTIVIST INVESTING ANNUAL REVIEW

THE NINTH ANNUAL REVIEW OF TRENDS IN SHAREHOLDER ACTIVISM.

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A PIVOTAL YEAR

BY ELE KLEIN, MARC WEINGARTEN, AND BRANDON GOLD, MEMBERS OF SCHULTE ROTH & ZABEL'S SHAREHOLDER ACTIVISM GROUP.

The most significant aspect of Engine No. 1's proxy fight at Exxon Mobil was not that it was the biggest proxy fight ever. Instead, it was the campaign's focus on the Exxon board's failure to pursue a strategy addressing climate change. We believe shareholders' increased focus on ESG issues, as well as imminent regulatory changes such as a universal proxy card, will lead to a shift in both the why and how of shareholder activism in the years to come.

UNIVERSAL PROXIES: COMING SOON TO A PROXY NEAR YOU

Under a recent Securities and Exchange Commission (SEC) reform coming into effect in September, both parties in most contested elections will be required to list both parties' nominees on their proxy cards, allowing shareholders to vote for any mix of company and shareholder nominees.

While the rules will lead to important shifts in how proxy contests are conducted, we believe it is premature to conclude that universal proxies will generally favor either activists or companies. Activists should expect companies to attempt to game the use of a universal proxy, including by attempting to convince different shareholders it believes are supporting an activist to round-out their votes with different sets of management nominees. This can lead to the perverse result where no activist nominees are elected even in situations where every activist nominee has the support of a majority of the votes.

To counter this, activists will need to carefully identify which management nominees they are targeting and ensure that shareholders understand the possible consequences of voting for a targeted management nominee. This may entail a greater focus on individual directors, rather than the targeted company, during a proxy contest, which, in turn, may lead to more hostility on all sides.

ENVIRONMENTAL ACCOUNTABILITY IN ACTION

Environmental-focused activist campaigns had a banner year in 2021, exemplified by Engine No. 1's watershed victory at Exxon following its ESG-focused campaign. As top institutional investors, proxy advisers, and regulators focus on climate-related risks, environmental issues will play a role in more activist campaigns.

While the SEC intends to propose rules mandating certain climate-related disclosures, shareholders have no intention of waiting to hold companies to account. BlackRock and State Street both recently announced expectations of companies to make the disclosures requested by the Task Force on Climate-related Financial Disclosure (TCFD) along with plans to reduce emissions. State Street specifically noted it may start voting against directors of certain companies that fail to meet disclosure expectations. Proxy advisers Institutional Shareholder Services (ISS) and Glass Lewis have also stated they intend to focus on holding boards accountable for environmental issues, with ISS specifically focusing on 167 significant emitters and noting it will recommend against certain directors on boards that have failed to take the minimum necessary steps to mitigate climate risks.

BOARD DIVERSITY COMING INTO FOCUS

While the "E" in ESG has historically captured most headlines, board diversity has also become a top focus of shareholders. Proxy advisers and institutional investors have indicated that they will take action against companies with boards that are not sufficiently diverse. Board diversity policies are generally moving from the expectation that companies have at least one woman director to an expectation of 30% women directors, and certain directors may be held accountable for the failure to have any racially or ethnically diverse board members.

We expect activists to expend significant resources to identify diverse director nominees. When facing boards lacking sufficient diversity, activists should highlight how their nominees will enhance the overall diversity of the board. At a minimum, activists must try to ensure that the election of their nominees will not lessen the board's overall diversity – a goal that may be especially difficult when the activist has no say in which directors to target (e.g. if the board is staggered).

CONTENTS

THE ACTIVIST INVESTING ANNUAL REVIEW 2022

EDITOR'S FOREWORD

CHANGE AT INSIGHTIA AND IN THE ACTIVISM WORLD IS KEEPING US ON OUR TOES, WRITES INSIGHTIA EDITOR-IN-CHIEF JOSH BLACK.

Although the purpose of this publication is primarily to review the year just past, the beginning of 2022 brought exciting news. In January, we announced that Insightia had agreed to be acquired by Diligent Corp., the leading provider of software to help track governance, risk, and compliance issues.

While it is business as usual for our team and our readers (excluding the regular pre-planned enhancements to our services), our combination with Diligent should in time increase the scope of insights we can offer – as well as their reach. If you are coming across this report for the first time, welcome to Insightia. We'd be delighted to hear your feedback on this review of shareholder activism, as well as on your other interactions with our data and editorial.

SOME CHANGES TO THE ANNUAL REVIEW

Activist investing is today a much broader topic than at any point in the past nine years I've edited our Annual Review. In recent years, our product management teams have built on our core competencies to offer more expansive ESG datasets.

So, while a few things have remained fundamental to our reporting – everyone wants share prices to go up but sometimes disagree on how, proxy fights are the most fun you can have in business journalism, and shareholders want more and more heed paid to their voice – some elements of this publication have evolved.

One of the key metrics tracked by the *Activist Investing Annual Review* over the years has been the overall number of companies publicly subjected to activist demands – a measure that has grown more elastic and arguably less useful over time. It's no longer quite as useful to say there was more or less activism this past year (there was less, but many of our sources said they were busier than ever). Activism increasingly means different things to different people, from an event-driven strategy for maximizing returns to a method for changing the world one company at a time. Some activism is proactive, some reactive. The boundary between ESG and hedge fund activism is getting thinner every day.

For those reasons, we haven't included the overall number of companies targeted or activist "focus types" in this edition, instead favoring more specific measures of activism, including those that have seen increases (opposition to M&A, environmental, and remuneration-based), and those that have seen big decreases (interestingly, attempts to remove prominent directors or executives are down worldwide while pro-M&A activism also suffered – surprisingly – in last year's boom).

SOME CHANGES YET TO COME

Distant memory as it may seem, it was only a year ago that we were extolling the benefits of the merger of Activist Insight and Proxy Insight to form Insightia, a provider of analytics and insights in the fields of governance, engagement, and stewardship. Well, this coming year will see the launch of a new platform we are calling Insightia One that makes access to cross-module newswires and datasets much easier for our users. If you see yourself as an early adopter or opinionated fan of our services, please do reach out to info@insightia.com for a demonstration or trial.

Also rebranding is our podcast, which will now adopt the name of our interview series, *Beyond the Boardroom*. If you have suggestions for new formats or interviews we can tackle, please don't hesitate to share them with us.

Changes are regular fodder for journalists but we are particularly excited about the opportunities ahead of us this year. As per usual, we'll be at the forefront both of promoting developments within Insightia's solutions, and explaining what is happening out there in the wider world.

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BY THE NUMBERS

DEDICATED ACTIVISTS ARE KEEN TO SUGGEST THAT CONDITIONS ARE BETTER THAN EVER BUT THEIR ACTIVITY DID NOT DOMINATE CORPORATE LIFE AS IN YEARS PAST, WRITES JOSH BLACK.

WHERE YOU SEE THIS BUTTON THROUGHOUT THE REVIEW, SIMPLY CLICK TO DOWNLOAD YOUR CHOSEN TABLE OR CHART AS A PNG FILE, PERFECT FOR PREPARING PRESENTATIONS OR SHARING WITH COLLEAGUES AND CLIENTS.

If the arrival of COVID-19 in early 2020 put a temporary halt on activist investing, many hedge funds have since said that the arrival of summer that year proclaimed a return to normal conditions, perhaps even open season. More companies trading near 52-week lows, wide dispersions in performance, and new challenges for management teams – not just those related to the pandemic – had reshuffled the pack so that every player had a new hand.

Even so, activists held their cards close well into 2021 as issuers were on the front foot in both M&A and board refreshment. Activists won 23% fewer board seats worldwide in 2021, partly reflecting a decrease in public demands. More may be happening behind the scenes, of course, and some activists preferred placing independent directors to their own employees during the pandemic to avoid trading restrictions, and because virtual board meetings presented fewer opportunities for "reading the room."

However, proxy contests were notably unproductive in the U.S. and Europe. Box's victory over Starboard Value, where shareholders gave the management team the benefit of the doubt on its turnaround despite a seemingly defensive equity issuance, may have been more representative of the mood than Engine No. 1's green-tinged triumph at Exxon Mobil, with management teams given space to correct underperformance absent catastrophic governance concerns.

Indeed, although there were fewer special purpose acquisition company (SPAC) launches to distract activists in 2021, the number of companies subjected by various types of activist demands fell year-on-year.

One such category was pro-M&A activism. The number of companies publicly pushed to sell or acquire businesses fell below 100 in 2020 and to 69 in 2021, while opposition to deals instead spiked. Indeed, at the end of the year, the tie-up of Zendesk and Momentive Global was attacked on procedural and strategic grounds on both sides – a rare recognition that each set of shareholders harbored concerns.

On the other hand, it was a grueling year for companies. Compensation revolts, defined as instances of "say on pay" votes receiving less than 80% support, spiked from 108 in 2020 to 177 in 2021 in Europe (nearly 12% of annual meetings). In the U.S., the proportion of pay revolts actually fell from 13% in 2020 to 12% in 2021 – but there were 150 more revolts against director re-elections than a year previously, a 10% increase on last year.

2021 also saw investor support for shareholder proposals on environmental and social issues rise between five and seven percentage points. New proposal types, including "say on climate" and racial equity audits, found their way into the mix with some successes. But management support for some proposals – in itself a sign of success – may have inflated the shareholder vote.

Some credit is due to issuers. Many of the poison pills adopted in 2020 were unwound within a year and the S&P 500, Russell 3000, and FTSE 350 indexes all saw an increase in the proportion of female director appointments after progress stopped in the first year of the pandemic, although none of the three has yet reached parity.

ACTIVIST CAMPAIGN TYPES

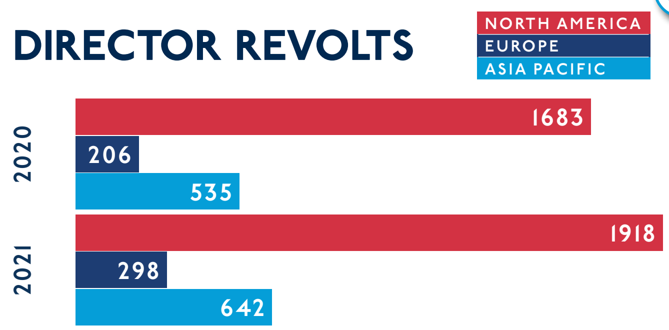
CAMPAIGN TYPE	2019	2020	2021	'20 VS. '21 +/-
APPOINT PERSONNEL	380	306	286	-20
REMOVE PERSONNEL	220	208	158	-50
OPPOSE M&A	70	66	72	+6
PUSH FOR M&A	107	96	69	-27
DIVESTITURE	85	69	68	-1
CAPITAL STRUCTURE	40	41	36	-5
OPERATIONAL	54	105	71	-34
RETURN CASH TO SHAREHOLDERS	94	117	100	-17
ENVIRONMENTAL	67	61	79	+18
SOCIAL	127	127	113	-14
GOVERNANCE	421	387	391	+4
REMUNERATION	96	82	90	+8

NUMBER OF COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS EACH YEAR BY EACH DEMAND GROUP, GLOBALLY.
SOURCE: INSIGHTIA

EUROPE "SAY ON PAY" REVOLTS

NUMBER OF ADVISORY PAY VOTES RECEIVING LESS THAN 80% SUPPORT AT EUROPE-BASED COMPANIES BY YEAR.
SOURCE: INSIGHTIA

DIRECTOR REVOLTS



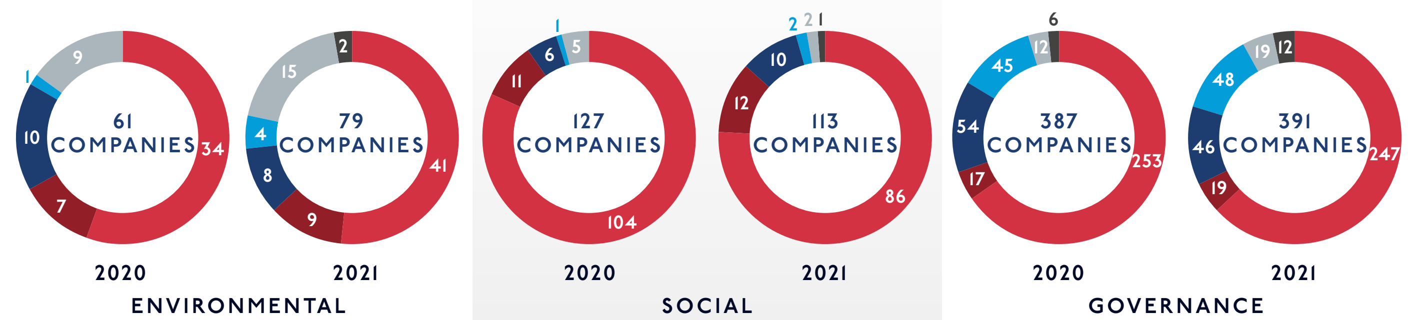
NUMBER OF MANAGEMENT DIRECTOR CANDIDATES RECEIVING LESS THAN 80% SUPPORT BY YEAR AND REGION.
SOURCE: INSIGHTIA

ACTIVIST BOARD SEAT DEMANDS

COMPANY HQ	SETTLEMENTS 2015	2016	2017	2018	2019	2020	2021	WENT TO VOTE *(PROXY CONTESTS*)* 2015	2016	2017	2018	2019	2020	2021
US	137	165	116	148	119	91	65	19 (19)	26 (25)	26 (25)	24 (24)	18 (18)	21 (19)	21 (21)
CANADA	16	22	15	24	11	10	6	12 (11)	8 (8)	8 (7)	14 (11)	7 (5)	10 (6)	5 (5)
EUROPE	19	24	13	23	23	16	18	43 (15)	57 (22)	56 (19)	51 (19)	51 (29)	30 (13)	29 (17)
ASIA	4	8	4	6	13	8	4	22 (19)	29 (16)	34 (17)	36 (17)	32 (20)	37 (26)	45 (17)
AUSTRALIA	10	12	12	17	11	8	12	20 (19)	15 (14)	26 (22)	24 (20)	30 (27)	33 (28)	22 (15)

NUMBER OF ACTIVIST BOARD REPRESENTATION DEMANDS BY METHOD AND REGION.
**A PROXY CONTEST IS DEFINED BY INSIGHTIA AS WHEN DISSIDENT NOMINEES RECEIVE PUBLIC OPPOSITION FROM THE COMPANY.*
SOURCE: INSIGHTIA

ESG ACTIVISM TARGETS

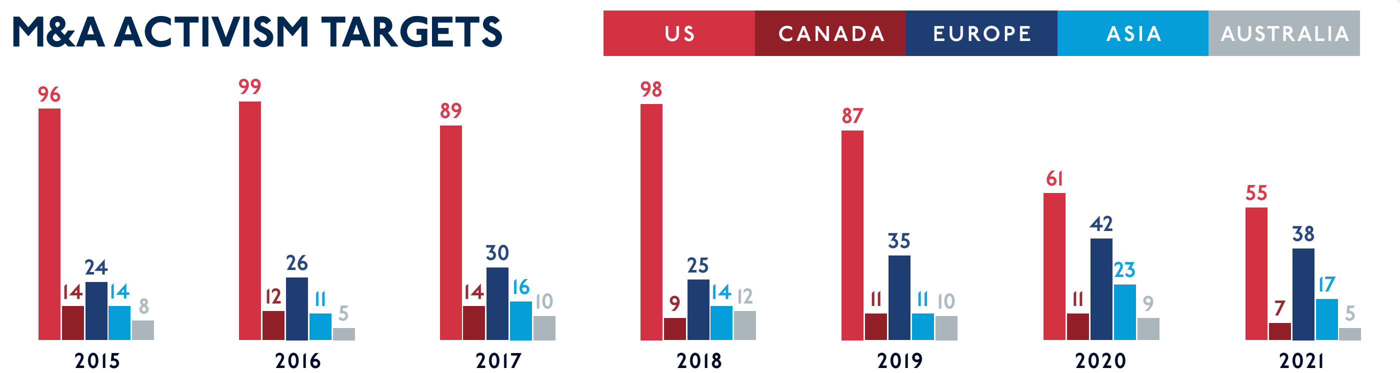


NUMBER OF COMPANIES PUBLICLY SUBJECTED TO ESG ACTIVIST DEMANDS EACH YEAR BY COMPANY HEADQUARTER REGION.
SOURCE: INSIGHTIA

DIRECTOR APPOINTMENTS IN 2021 BY GENDER

PROPORTION OF NEW DIRECTOR APPOINTMENTS MADE IN 2021 BY GENDER AND INDEX.
SOURCE: INSIGHTIA

M&A ACTIVISM TARGETS



NUMBER OF COMPANIES PUBLICLY SUBJECTED TO ACTIVIST 'PUSH FOR' OR 'OPPOSE' M&A DEMANDS BY YEAR AND REGION.
SOURCE: INSIGHTIA

THE POISONED WELL

IF 2020 WAS MARKED BY INCREASED COLLABORATION BETWEEN COMPANIES AND ACTIVISTS, 2021 SAW CAMPAIGNS REVERT TO MUDSLINGING AND EVASIVE MANEUVERS, WRITES JASON BOOTH.

There was a lot of talk in 2021 about activism campaigns getting rougher, with rhetoric becoming more personal and more dirty tricks being played.

Judging whether one year was rougher than any other is subjective at best. But several factors may be to adding to the vitriol. For one, companies appear to be fighting back harder and settling less.

Globally, around 43% of board seats won by activists were via shareholder votes in 2020 and 2021, rather than settlements, up from an average of 38% over the five years ending 2019. And activists appear to be having a harder time winning. Overall, activists had a 53% success rate gaining a board seat in 2021, roughly the same rate as in 2020, but down significantly from an average of 62% between 2014 and 2019. "It's been harder for activists to take action or win contests," noted one activist fund manager who asked to remain anonymous. "So, I think they are aggressively saying 'enough is enough,' we're going to mat on this."

GRUDGE REMATCH

Some of the most personal fights were follow-ons from previous contests where the activist had lost, and was coming back for a second try, or had reached a prior settlement and felt management was still ignoring their interests.

Standard General's second campaign in two years at Tegna focused heavily on allegations of racial insensitivity on the part of CEO Dave Lougee, with the activist even hiring a private investigations firm to look into the matter. Management still won the fight.

> *"I HEAR THE BUZZING OF A HARMLESS INSECT, I BELIEVE IT IS A GAD FLY... SOMEONE HAND ME A SWATTER."*

Likewise at Box, where Starboard Value gained a board seat in 2020, but was dissatisfied with the results, putting most of the blame on CEO Aaron Levie. Levie's decision to accept a $500 million equity investment from KKR particularly rankled Starboard, whose typically even-tempered founder Jeff Smith called the deal terms "garbage" and an attempt to "buy the vote" in a television interview.

HARD PILLS TO SWALLOW

While most of the poison pills adopted in 2020 were redeemed with minimal fuss last year, as stock prices rose and the worst fears of activist incursions or hostile takeovers abated, 2021 was notable for the fightback against some of the more egregious corporate maneuvers.

In March, a Delaware court ruled that an unusual pill adopted by The Williams Cos., which featured a 5% threshold for activist investors and an acting-in-concert provision, was invalid. The board "failed to show that this extreme, unprecedented collection of features bears a reasonable relationship to their stated corporate objective," the judge wrote. Two other companies sued over their poison pills, AAR and Tribune Publishing, retreated before cases got to court.

Nonetheless, the year ended with another example of a board pushing the boundaries of generally accepted practice. Responding to both Starboard Value and Jana Partners accumulating stakes, Mercury Systems adopted a pill with a 7.5% threshold. The Massachusetts-based company benefits from a more protective legal regime than peers incorporated in Delaware, but Starboard issued a surprisingly mild letter asking Mercury to raise the threshold or abandon the pill, stating that it was "not in the best interests of the company's shareholders."

THE SOCIAL MEDIA CURSE

Some of the roughest fights involved newer activists who, it can be argued, are still establishing their reputations as activists. Outerbridge's bare-knuckle fight at Comtech – another company to employ a private placement to shift the terms of engagement – was the firm's first fully-fledged proxy fight, while Tegna was Standard General's second contest and Driver Management's First United spat was its third.

But probably the biggest factor has been the increased use of digital outreach and focus on retail investors which has upped the vitriol as both sides attempt to garner hard hitting headlines putting the other side on the defense. Twitter, in particular, has given a platform for hotter debate and disparagement.

Dan Loeb of Third Point Partners, once known for his poison pen, has tried to take the high road in recent years. But he was less diplomatic when faced with criticism by fellow activist Asset Value Investors (AVI) which has a large stake in Third Point's publicly traded entity Third Point Investors Limited, comparing AVI to an insect and disparaging its return on investment.

"I hear the buzzing of a harmless insect, I believe it is a gad fly," wrote Loeb. "Someone hand me a swatter."

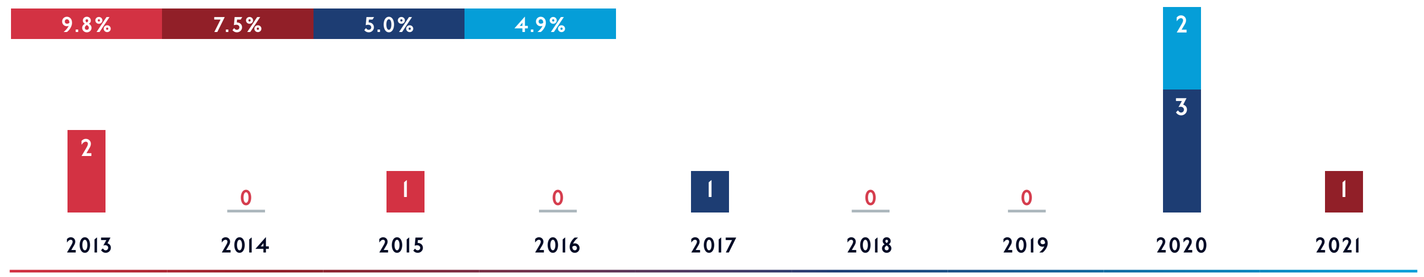
Naturally, the comments spurred a flurry of additional, even more incendiary comments from Loeb's followers, upping the vitriol further.

The tone of dialogue is not likely to improve this year, judging by Driver Management's most recent screed regarding a buyback announcement by its newest target Codorus Valley Bancorp, which it compared to "a fart in a stiff wind."

ADOPTED POISON PILLS

NUMBER OF POISON PILLS ADOPTED BY YEAR (RUSSELL 3000).
SOURCE: INSIGHTIA

ADOPTED POISON PILLS WITH A LESS THAN 10% THRESHOLD



BREAKDOWN OF POISON PILLS ADOPTED BY YEAR WITH A LESS THAN 10% THRESHOLD (RUSSELL 3000, EXCLUDES NOL PILLS).
SOURCE: INSIGHTIA

SNOWED UNDER

OVERBOARDING AND BOARD DIVERSITY PROMPTED SIGNIFICANT INVESTOR DISSENT IN 2021 AS SHAREHOLDERS SOUGHT ASSURANCES THAT CEOS WERE DEDICATED TO THE POST-PANDEMIC RECOVERY, WRITES REBECCA SHERRATT.

In a demanding year that required boards to navigate complex new challenges, investors took stronger voting action against directors deemed to have an excessive number of outside commitments.

Proxy advisers warn issuers that anything below 90% support for director elections is a cause for concern and evidence suggests that investors' concerns are growing, with average support for Russell 3000 directors having declined to 94.9% in 2021, compared to 95.3% in both 2019 and 2020.

Overboarding remained the primary reason for dissent, with 23 of the 68 director nominees having failed to receive majority support in 2021 due to overcommitments, Insightia data reveal.

"As most investors and proxy advisory firms have explicit policies around how many board roles it deems excessive, companies should not really be surprised," Maria Moats, leader of PricewaterhouseCooper's Governance Insights Center told Insightia in an interview for this report.

> ***"BOARD DIVERSITY WAS THE MOST FREQUENT REASON WHY BLACKROCK VOTED AGAINST U.S. DIRECTORS IN THE 2021 PROXY SEASON."***

Notably, seven of the 23 directors opposed in 2021 due to overboarding concerns actively served as chairs of outside public boards, while a further five directors were opposed due to their roles as CEOs of outside boards.

BMO Global Asset Management, which voted against the re-election of Steven Roth as a director to two boards, because of the two CEO roles he maintains, noted in its voting rationale that it expects CEOs to "ensure they have sufficient time to discharge their roles properly, particularly during unexpected situations requiring substantial amounts of time. "Nonetheless, Insightia data suggest that the number of CEOs taking on additional directorships is only increasing. In 2021, 16.7% of new S&P 500 directors were active CEOs, compared to 15.2% in 2020. In addition, only 33.7% of S&P 500 boards report a specific limit on the number of outside boards on which the CEO may serve.

A lack of racial diversity was also a priority concern for investors in response to the Black Lives Matter protests of 2020. Board diversity was the most frequent reason why BlackRock voted against U.S. directors in the 2021 proxy season, voting against 1,554 directors for "inadequate" diversity reporting, according to its proxy season review. Vanguard similarly accelerated its focus on board diversity in 2021, engaging with 290 U.S.-listed companies in the first half of the year "due to a lack of sufficient strategy or progress on board diversity," compared to 67 in the same period in 2020, according to its annual report.

"Institutional investors vote against directors more frequently and for more reasons than they would have in the past," said Brian Valerio, senior vice president at Alliance Advisors, in an interview with Insightia. Overboarding and diversity are two key reasons for votes against directors, but not the only ones. Climate change, executive compensation, and human capital management are just three issues that have been driving "against" votes more recently, according to Valerio.

In December, Institutional Shareholder Services (ISS) revealed its expectation that all "large companies" in the U.S. should have at least one racially or ethnically diverse director in 2022. Glass Lewis will also recommend voting against nominating committee chairs at FTSE 100 companies that have failed to appoint at least one director from a minority ethnic group.

Looking forward, the introduction of universal proxy ballots by the Securities and Exchange Commission (SEC) may lead more non-traditional activists to nominate directors, given the absence of a 3% ownership threshold, as was the case with proxy access.

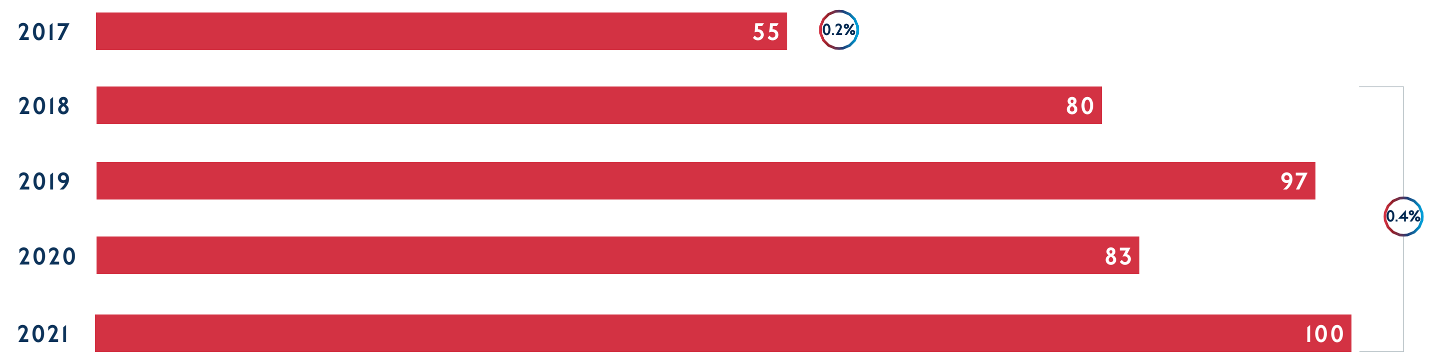
High dissent against directors inevitably increases the risk of shareholder activism, according to *Activist Insight Vulnerability*. "Given that our mandate is to catalyze change on behalf of the shareholder base, low vote tallies signal that other shareholders are likely to be supportive of the changes we are driving," an activist investor, who declined to be named, said.

DIRECTOR SUPPORT

INDEX	GENDER	2015	2016	2017	2018	2019	2020	2021
FTSE ALL SHARE	MALE	98.6	98.3	98.0	97.5	97.6	97.6	97.7
	FEMALE	99.0	98.9	98.4	98.1	98.3	98.6	98.3
RUSSELL 3000	MALE	95.9	95.8	95.7	95.6	94.9	94.7	94.4
	FEMALE	97.2	97.0	96.9	97.0	96.6	96.6	96.3

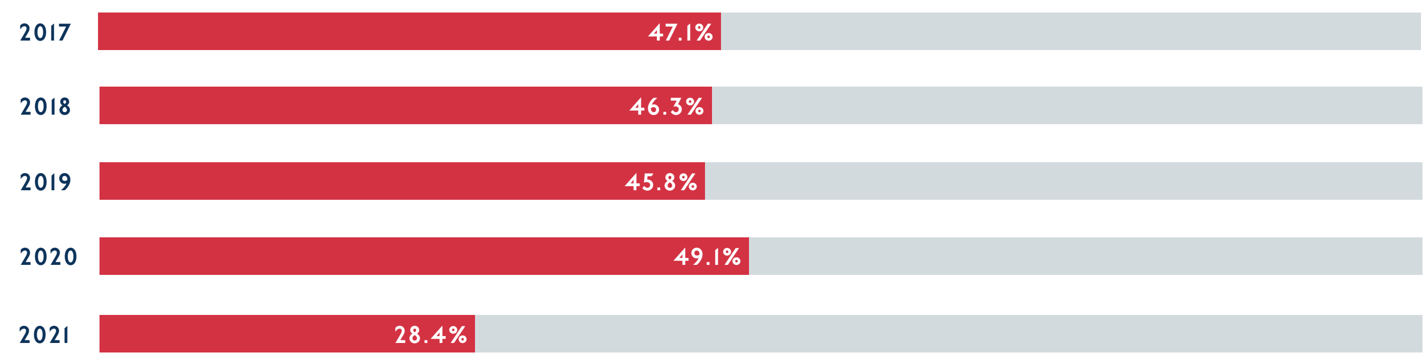
AVERAGE DIRECTOR SUPPORT (% FOR) BY YEAR, INDEX, AND GENDER.
SOURCE: INSIGHTIA

DIRECTORS RECEIVING LESS THAN 50% SUPPORT



NUMBER OF DIRECTORS AT U.S.-LISTED COMPANIES RECEIVING LESS THAN 50% SUPPORT, BY YEAR. % OF ALL DIRECTORS IN CIRCLE.
SOURCE: INSIGHTIA

AVERAGE SUPPORT FOR* US DISSIDENT DIRECTOR CANDIDATES



AVERAGE SUPPORT FOR DISSIDENT DIRECTOR CANDIDATES AT U.S.-BASED PROXY CONTESTS.
*DATA REPRESENT THE AVERAGE OF SHARES AT MEETINGS VOTED FOR DISSIDENT DIRECTOR CANDIDATES AT U.S.-BASED PROXY CONTESTS, AS A PERCENTAGE OF THE GREATEST NUMBER OF VOTES VOTED ON A SINGLE RESOLUTION AT EACH MEETING.
SOURCE: INSIGHTIA

THE GAMIFICATION OF INVESTING

AN ARTICLE BY CAS SYDOROWITZ, GLOBAL HEAD OF GEORGESON.

Before 2020, only a small number of retail investors bought stocks or voted at an annual meeting, but retail investors can now have a powerful effect on a company and the market. 2021 marked the rise of retail investor influence and the “gamification” of investing with app-based brokerages like Robinhood. A new generation of investors more likely to engage through online communities are finding fellow shareholders with similar views or focus on a particular company.

During 2021 the price of shares in both Gamestop and AMC increased significantly, with the rise being largely attributed to like-minded investors coordinating their activity in forums found on the social media site, Reddit.

THE RISE OF RETAIL ACTIVISTS

As the pool of like-minded retail investors grows, their influence and ability to apply pressure to companies in their portfolio also increases. Barriers that might have prevented investors who wanted to “make a difference” with their investment no longer exists. App-based brokerage services offer retail investors an accessible and affordable way to own stock in any company for virtually all income brackets without incurring additional fees. In addition, these platforms often offer an option to buy on margin or fractional ownership, eliminating one obstacle to owning high-value stocks.

The proliferation of no-cost trading makes investing available to anyone, including those investors who may be more impassioned and committed to specific causes. This cause-related investing or retail activism might appeal to Generation Z investors, who are more likely to be active than older generations in addressing issues such as climate change. Outside the U.S., retail activism likely has an even greater appeal because beneficial owners can’t easily vote in their local markets.

BlackRock’s CEO Larry Fink recently wrote to its portfolio companies that BlackRock is “committed to a future where every investor [even individual investors] can have the option to participate in the proxy voting process if they choose.” This further supports the potential power retail investors could yield going forward.

HAVE YOUR SAY

Online communication platforms and investment apps allow retail investors to pool their resources and become retail activists. Crowdsourcing for retail activists on platforms such as Iconik and Tulipshare enables investors to buy shares by pledging their voting support to specific causes. Examples of two such campaigns are the “Remove hate speech” from Meta’s Facebook platform and the demand to stop JP Morgan’s investments in or lending to carbon-intensive companies. Tulipshare specifically focuses investors on funding specific ESG activist campaigns.

With the acquisition of Say Technologies, Robinhood’s brokerage customers can engage with the companies that they invest in, a privilege usually reserved for large institutional investors. Indeed, Aviva and Legal & General use Tumelo, a technology platform with a polling tool that gives pension plan participants a voice on how these two institutions vote on various ESG issues.

RESPONSE TO RETAIL ACTIVISM

Companies must defend against online campaigns and be prepared to respond to a new generation of investors and interested parties. The weight of these new activist campaigns will grow over time, and they can target companies globally.

Retail activist campaigns can grow quickly as these investors mobilize swiftly through online platforms, and they may even partner with other impact investors or organizations. Companies need to pivot and respond to opposition to their actions or policies before retail activist campaigns go viral and receive a groundswell of support, resulting in opposition through shareholder proxies.

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SIZING DOWN

PUSHING FOR BREAKUPS AND ASSET SALES HAS BECOME THE GO-TO STRATEGY FOR THE LARGEST ACTIVISTS IN RECENT YEARS AND THE TREND IS UNLIKELY TO TAIL OFF, WRITES IURI STRUTA.

It may come as no surprise that the largest activist in the world pushes for breakups most often. With sizable war chests, big activists are forced to target bigger companies.

Elliott Management, which manages $48 billion, has pushed 32 companies to make divestitures or breakups since Insightia records began in 2014. The activist significantly stepped up this activity in 2018, coinciding with a 59% global increase in companies facing public divestiture demands, when it pushed eight companies to pursue leaner business models, including ThyssenKrupp, Whitbread, and Sempra Energy.

As some value-creating options, such as a sale at a premium, are not available at mega-cap companies, these investors are pushing firms to downsize in the hope that the sum of the parts will be worth more separate.

After a pause in 2020 because of the pandemic, Elliott this year targeted four companies with divestment demands, most notably utilities Duke Energy and SSE, and biotechnology company Clinigen, where it has been opposing a transaction in favor of a split.

> *"THE FACT THAT GE HAS THROWN IN THE TOWEL, IT TAKES AWAY A HUGE SUPPORT BLANKET FROM THE REMAINING CONGLOMERATES."*

Starboard Value, the third most prolific divestment activist, has not had a divestment campaign since 2019, when it pushed eBay and Dollar Tree to shake up their portfolios. That may be partly influenced by its choice of targets. In 2019, the average market capitalization of a Starboard target was $16 billion, dropping to $9 billion in 2020 and creeping up to $13 billion in 2021.

GROWING PRESSURE

Activists looking to break up conglomerates should have additional wind in their sales in 2022. Large companies have been pursuing breakups without any public pressure, although they might be reacting to feedback from the broader shareholder base. General Electric, an iconic conglomerate that has Trian Partners on its share roster and in the boardroom, and Johnson & Johnson both announced plans to split in 2021. Even GlaxoSmithKline announced plans to separate its consumer and healthcare businesses before Elliott intervened publicly.

This does not bode well for firms with similar structures. "The fact that GE has thrown in the towel, it takes away a huge support blanket from the remaining conglomerates," Chris Young, global head of contested situations at Jefferies, has said. "I think you're going to see many more boards of companies that resemble GE, albeit at a smaller profile, looking at this."

At the same time, the classic argument made by conglomerates that diversification brings benefits rarely convinces investors. "Institutional shareholders say they can diversify their revenues and cash flows streams themselves, they don't need a company to do that," Young said.

ESG DIVESTMENT

ESG gives companies wishing to maintain conglomerate structures an additional headache.

Third Point Partners, which is the second most active activist in the divestments space, pushed Royal Dutch Shell to split its refining and renewable energy operations, arguing they cater to different shareholders and stakeholders. Elliott called on Scottish utility SSE to spin off its renewables arm. Bluebell Capital Partners, a relatively new activist that has already pushed for divestments at four companies, called on Glencore to divest its thermal coal business. All these companies and some of their shareholders have for now rejected these ideas.

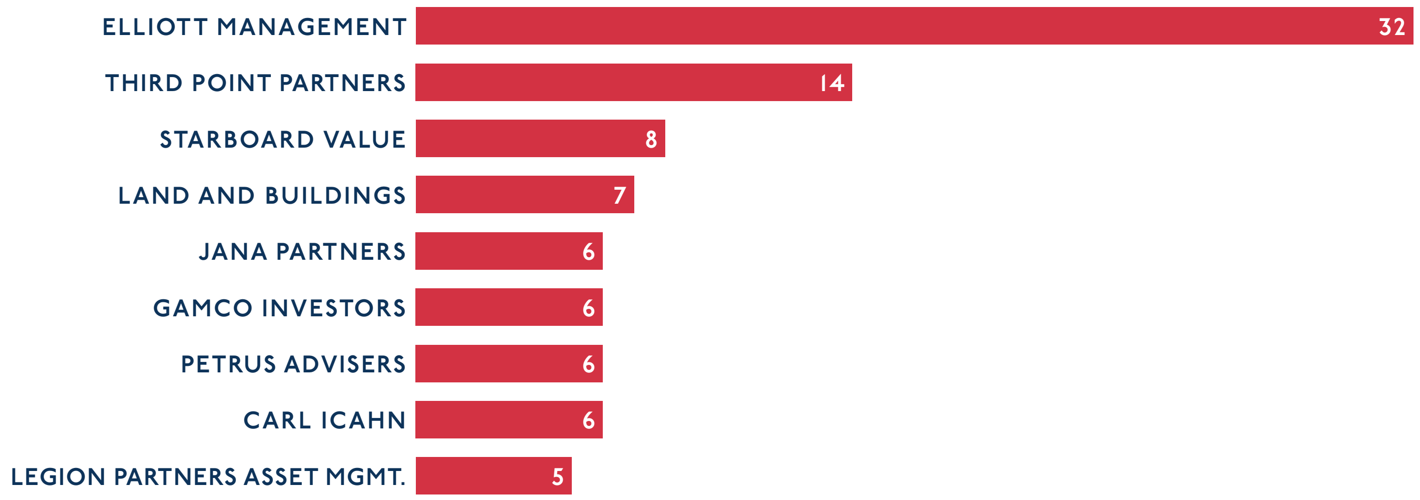
But some divestment demands need more time to gain broad traction. It took AT&T more than a year to pursue a breakup after Elliott first floated the idea.

ACTIVIST DIVESTITURE DEMANDS

COMPANY HQ	2015	2016	2017	2018	2019	2020	2021
US	34	29	24	32	36	22	28
CANADA	4	6	4	5	2	3	1
EUROPE	9	9	12	26	22	17	19
ASIA	5	7	6	10	15	19	14
AUSTRALIA	1	7	5	7	3	5	1

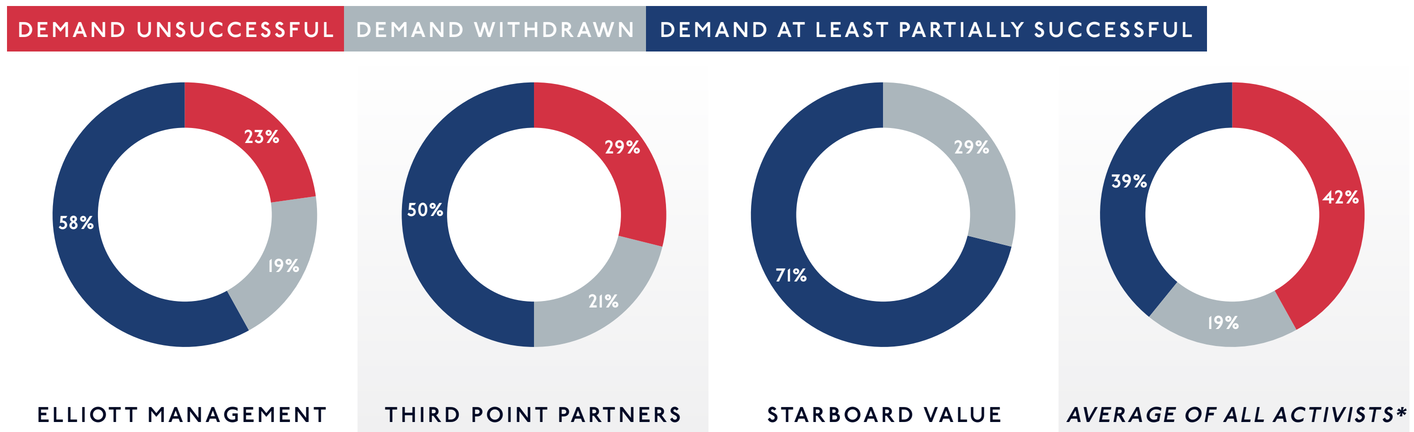
NUMBER OF COMPANIES PUBLICLY SUBJECTED TO DIVESTITURE DEMANDS EACH YEAR BY COMPANY HEADQUARTER REGION (DATA EXCLUDES FUNDS).
SOURCE: INSIGHTIA

TOP DIVESTITURE ACTIVISTS



MOST PROLIFIC U.S.- AND EUROPE-HEADQUARTERED ACTIVISTS BY THE NUMBER OF COMPANIES PUBLICLY SUBJECTED TO DIVESTITURE DEMANDS, GLOBALLY, IN THE PERIOD 2014-2021 (DATA EXCLUDES FUNDS).
SOURCE: INSIGHTIA

OUTCOMES OF DIVESTITURE CAMPAIGNS



OUTCOMES OF RESOLVED ELLIOTT MANAGEMENT, THIRD POINT PARTNERS, AND STARBOARD VALUE DIVESTITURE DEMANDS IN THE PERIOD 2014-2021. (DATA EXCLUDES FUNDS)
SOURCE: INSIGHTIA

THE ACTIVIST TOP 10

Each year, Insightia creates a ranking of the most influential activists over the past year, based on the quantity, size, and performance of their activist investments, comprehensively derived from the *Activist Insight Online* database.

The following categories have been used to create a points-based ranking of each activist for this year's list: number of companies publicly subjected to activist demands, average market capitalization of targeted companies, success of public demands; average 2021 Total Follower Return*, and the depth of news coverage on the activist on *Activist Insight Online* in 2021.

To qualify, an investor must regularly employ an activist strategy and have publicly targeted three or more companies in 2021.

*Total follower returns in this article are calculated using a starting price from the close on January 4, 2021 for investments held prior to this date. The start price of investments first publicly disclosed during 2021 are measured from the closing price on the disclosure date. The end price is the closing price from December 31, 2021 for investments currently held at this time. The end price for investments publicly disclosed as being exited in 2021 are measured using the closing price on the disclosure date. The data includes investments with ongoing campaigns during 2021 only.

1. ELLIOTT MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	10
AVERAGE TARGET MARKET CAP:	$30.1B
AVERAGE 2021 TOTAL FOLLOWER RETURN:	26.3%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	112

Reclaiming the top spot after a one-year break in its long streak at the top of our rankings, Elliott Management had a highly successful 2021 both in returns and in companies at least partially meeting its demands.

As per usual, the activist's engagements had a broad sweep. It started the year with a settlement at U.S.-based Public Storage, engaged throughout the year with utilities Duke Energy, Evergy, and, in the U.K., SSE, and ended the year by beating Starboard Value to a settlement with insurer Willis Towers Watson, leading to the appointment of four directors.

Heading into 2022, the activist is particularly busy in the U.K., with demands at Clinigen, Taylor Wimpey, and GlaxoSmithKline outstanding.

But according to Steven Barg, Elliott's global head of corporate engagement, followers of Elliott's campaigns should not necessarily assume that the hedge fund is only looking for potential targets in specific sectors or geographies. "We have a deep team of portfolio managers who cover a wide variety of industries across geographies. They're good at turning over rocks," he told Insightia in an interview. "I don't think necessarily what you see is a direct result of a strategy on our part to invest in certain sectors. It's more diversified than what becomes public."

Indeed, the best-performing stocks in the activist's portfolio included insurance, real estate, and technology, helping Elliott to a 26% total follower return for 2021 as a whole.

Another achievement for the fund was its appointment of eight women to boards of target companies during 2021, twice as many as male appointments. Insightia data suggest Elliott led its peers in the proportion of female directors it placed on boards between 2019 and 2021.

"We're constantly looking for skilled, seasoned professionals who aren't necessarily in the club but have every right to be on a board by virtue of their ability," said Barg. "Those directors do the hard work for the benefit of all shareholders."

"I DON'T THINK NECESSARILY WHAT YOU SEE IS A DIRECT RESULT OF A STRATEGY ON OUR PART TO INVEST IN CERTAIN SECTORS. IT'S MORE DIVERSIFIED THAN WHAT BECOMES PUBLIC."

THREE ACTIVISTS SAW THE OPPORTUNITY AT WILLIS TOWERS WATSON BUT IT WAS ELLIOTT MANAGEMENT THAT WON THE ARM-WRESTLE.

2. STARBOARD VALUE

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021: 6
AVERAGE TARGET MARKET CAP: $14.3B
AVERAGE 2021 TOTAL FOLLOWER RETURN: 16.4%
ACTIVIST INSIGHT ONLINE NEWS STORIES: 81

Starboard Value had a challenging year in 2021, losing a proxy fight vote for the first time since 2013 and seeing another portfolio company's stock price cratered. Jeff Smith's fund targeted six companies in 2021 and gained six new board seats, down sharply from the 22 seats won a year earlier.

The year started out well. ACI Worldwide agreed to appoint two new directors to its board and allow Starboard's Tom Cusack to act as a board observer. Shortly after, Corteva agreed to appoint three new independent directors proposed by Starboard.

Then in March, the activist settled for one seat at eHealth, stating in a joint announcement, "We look forward to seeing eHealth deliver improved results and value creation for all shareholders." Since then, however, the stock has lost half its value, resulting in Starboard posting the lowest average 2021 total follower return among this year's top 10.

The hardest blow came in September, when Box shareholders rejected the activist's three-person director slate; the activist's first proxy vote defeat in eight years. Having gained a seat at Box in 2020 via a settlement, Starboard was "on the fence" about whether to launch a proxy at the online data storage company but felt it had no choice after the company entered a $500 million equity financing deal with KKR, which the activist saw as an effort by management to "buy the vote."

"We said to ourselves we have to run this contest, not only for the benefit of Box shareholders, but for the broader [investment] community," Starboard Partner Peter Feld told Insightia following the defeat.

Starboard hasn't let the setback slow it down, however. Days after the Box defeat Starboard disclosed stakes in Huntsman Corporation, where it has since nominated four directors; Mercury Systems, where it has criticized the company's poison pill; Willis Towers Watson, where it wants buybacks; Colfax; and GoDaddy.

3. OASIS MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021: 8
AVERAGE TARGET MARKET CAP: $4.8B
AVERAGE 2021 TOTAL FOLLOWER RETURN: 25.7%
ACTIVIST INSIGHT ONLINE NEWS STORIES: 34

Oasis Management had an especially busy and successful year, publicly subjecting eight companies to activist demands and winning board seats in both Asia and the U.S. The Hong Kong-based activist's primary focus was Japan, where improvements in the governance environment and greater management willingness to engage means more opportunities and quicker outcomes. "We are getting a reputation for winning situations we are involved in, and sticking around after we win, so we are gaining trust earlier," Oasis founder Seth Fischer told Insightia.

Three Oasis nominees were elected to the board of Japanese plastics manufacturer Tenma, just a month after the activist disclosed its stake. The company itself backed the activist slate rather than face the possibility of losing a contested election. Other fights took substantially longer. The management buyout at Katakura Industries concluded a campaign launched by Oasis in 2015. And while the activist failed to win any board seats in a 2018 proxy fight, Katakura's shares rose more than 72% in value during the campaign period.

Oasis also played a leading role in the successful campaign to oust the chairman of Toshiba amid allegations of unfair tactics by the Japanese conglomerate to suppress activist investors, and the subsequent news that Toshiba would spin out its industrial and tech segments into separate companies, a plan revised again in recent weeks.

Oasis' roughest fight of the year was at U.S. company Stratus, where shareholders elected one of Oasis' three director candidates after a long and at times acrimonious campaign. It was a change of pace for Oasis, which took a different approach to reflect cultural differences between the shareholder bases in U.S. and Asian markets.

"In Japan the conversation is still very much about stakeholder capitalism, but in the U.S., you can have a conversation about pushing up the share price," said Fischer.

4. THE CHILDREN'S INVESTMENT FUND

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	4
AVERAGE TARGET MARKET CAP:	$102.5B
AVERAGE 2021 TOTAL FOLLOWER RETURN:	16.6%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	33

The Children's Investment Fund (TCI) exemplified the collapsing distinction between ESG and financial activism in 2021, with a bareknuckle campaign to oust the CEO of Canadian National Railway at the same time as it revolutionized the way in which issuers, activists, and institutional investors addressed climate risk through the introduction of the "say on climate" campaign.

The initiative, which seeks to provide investors with an annual advisory vote on a company's climate transition plan, began at Spanish airline Aena's 2020 annual meeting. In 2021, nine shareholder proposals seeking advisory climate votes have been subject to a vote and 20 companies have voluntarily provided shareholders with annual votes on their decarbonization strategies internationally, with many more due to follow in the coming months.

"The 'say on climate' campaign is certainly one of the hotly-discussed areas of this year and something we will be watching more closely in the coming season," Lisa Harlow, head of investment stewardship, Europe, at Vanguard, told Insightia in a December interview.

TCI shifted focus to Canadian National Railway in the latter half of 2021. The feared activist investor shepherded the successful appointment of a new CEO and a commitment to appoint two new independent directors to the board, following what the fund's founder, Chris Hohn, described as Canadian National's "reckless, irresponsible, and value-destructive pursuit of Kansas City Southern."

5. ANCORA ADVISORS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	6
AVERAGE TARGET MARKET CAP:	$3.7B
AVERAGE 2021 TOTAL FOLLOWER RETURN:	25.9%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	45

Ancora Advisors cemented its position among the top-tier activists in 2021, publicly subjecting six companies to activist demands and generating a strong 26% total follower return for the year as a whole.

Ancora's activism portfolio is a mixture of pure-play activist investment and passive investments where the activist is prepared to go active if things don't work out, according to James Chadwick, who heads Ancora's activism strategy. "We always try to identify the catalysts that are going to drive value, and if those catalysts are things that can occur on their own without intervention or without a fight that's a lot better for us."

The Cleveland-based firm got off to a strong start, with Forward Air agreeing in March to appoint five independent directors in a settlement. Weeks later, department store chain Kohl's settled with Ancora and several other activists to appoint three directors. The value of both stocks has roughly doubled since the activist disclosed its stake.

But the winning streak was broken in April when Ancora failed to win any of the four board seats it was seeking at investment services company Blucora, following what Chadwick described as "one of the most aggressive campaigns we've been involved in."

Ancora began 2022 on an equally pugnacious note, calling on biofuel company Green Plains to declassify its board or face a likely proxy contest. Ancora says it was attracted to Green Plains' environmentally friendly business model but turned activist after management proved "unwilling to work with Ancora" to appoint a shareholder representative to its board.

6. PETRUS ADVISERS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	5
AVERAGE TARGET MARKET CAP:	$2.4B
AVERAGE 2021 TOTAL FOLLOWER RETURN:	27.3%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	44

Petrus Advisers is a new addition to the top 10 this year. The U.K.-based hedge fund founded by Till Hufnagel and Klaus Umek had a very busy, and at times nerve-wracking, year.

The activist investor stepped up its multiyear campaign at Aareal Bank, especially after the German bank announced a sale against the wishes of a majority of shareholders. The activist launched a proxy contest and only a controversial vote tabulation mistake prevented it from declaring total victory over Aareal's incumbent board. The activist also opposed deals involving Czech Republic-based Moneta Money Bank, Austrian real estate firm CA Immobilien, and Belgium's Recticel.

"We saw a continuation of a trend that started in the third quarter [of] 2020 with a significant portion of our portfolio companies becoming subject to what we deem mostly opportunistic takeover bids," Hufnagel said. "Throughout 2021, we were working hard to fight such bids as typically the fundamental value of the underlying businesses was not reflected."

If the campaigns were at times frustrating for Petrus, it could take solace in the fact that its performance has been strong. Hufnagel said Petrus' Cayman fund was up more than 60% in 2021.

7. BARINGTON CAPITAL GROUP

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	3
AVERAGE TARGET MARKET CAP:	$1.4B
AVERAGE 2021 TOTAL FOLLOWER RETURN:	129.3%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	5

Jim Mitarotonda's Barington Capital Group reaped the rewards of L Brands completing the separation of Victoria's Secret from Bath & Body Works in August 2021 following a two-year campaign that saw the activist signed up as an adviser to the company in an unusual move.

The fund had a busy year, also launching campaigns at semiconductor company Rambus and retailer Chico's Fas, as well as preparing a proxy contest at Cedar Realty Trust, which it subsequently dropped when two other activists nominated slates. All were strong performers.

"We did see a lot of activity in 2021 and my feeling is we'll see even more in 2022," Mitarotonda said in an interview, citing lagging small-cap stocks and a likely turn toward value over growth in the coming months. "There are quite a few companies we've been analyzing and some of which we have been waiting for a better buying opportunity."

Although Barington has used most of the activist toolkit at one time or another, Mitarotonda noted the importance of operational efficiency coming out of the pandemic. "Most companies can improve operationally," he said. "If a company can improve operationally and increase the amount of cash it generates, that allows it to do more in capital allocation."

At the start of 2022, the activist invested in Encompass Health, which is reportedly reviewing a spinoff plan for its home health business under pressure from fellow activist Jana Partners.

8. KANEN WEALTH MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	4
AVERAGE TARGET MARKET CAP:	$752M
AVERAGE 2021 TOTAL FOLLOWER RETURN:	84.4%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	14

After a relatively quiet 2020, Kanen Wealth Management demanded changes at U.S. toy retailer Build-A-Bear Workshop including measures to prop up the share price and a board shakeup.

Kanen, with a 7.2% stake in the company, ultimately succeeded in these demands as Build-A-Bear issued a special cash dividend of $1.25 per share and agreed to repurchase up to $25 million worth of stock in December. As Kanen predicted, the company's stock price surged 30% on the news and the win was lucrative for David Kanen's fund, as it generated a total follower return of 84% during 2021.

Kanen also launched a proxy fight with online consumer goods retailer 1847 Goedeker in an effort to elect a five-person slate onto the company's board. Goedeker agreed to elect two independent directors to its board and remove one incumbent.

Today, Kanen has $191 million in assets under management and its current activist investments predominantly consist of U.S.-based micro-cap companies in the consumer cyclical sector.

9. JANA PARTNERS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	5
AVERAGE TARGET MARKET CAP:	$11.4B
AVERAGE 2021 TOTAL FOLLOWER RETURN:	25.1%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	28

Barry Rosenstein's Jana Partners came roaring back after a quiet 2020, publicly targeting five companies in 2021 with a mixture of event-driven demands. "Last year, it was wide open for corporate activity, shareholders were very engaged," said Scott Ostfeld, who co-manages Jana's activism fund with Rosenstein. "From an activist perspective, it felt like more of a normal year."

One of its big winners was Vonage, a telecommunications company that sold itself to Ericsson in November. Jana, which bought in during the first quarter following Vonage's decision not to sell its consumer business, is thought to have nearly doubled its initial investment.

"There is so much opportunity out there," Ostfeld told Insightia. "At Vonage, the sum of the parts discount was in plain sight. By constructively engaging with a board, you can catalyze addressing opportunities like that."

The New York-based activist started 2022 attempting to block the merger of Zendesk and Momentive Global, and potentially preparing for a second bout with Treehouse Foods.

10. SABA CAPITAL

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2021:	9
AVERAGE TARGET MARKET CAP:	$371M
AVERAGE 2021 TOTAL FOLLOWER RETURN:	13.0%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	35

Boaz Weinstein's Saba Capital had another busy year targeting underperforming closed-end funds (CEFs), and, in one case, a fellow activist. Yet the pace was considerably slower than the year before, with nine companies targeted, versus 17 in 2020. The nature of the demands also shifted. While the activist called on 12 different CEFs to terminate their investment advisory agreements in 2020, only one such demand was made in 2021.

That is due in part to the Securities and Exchange Commission's (SEC) decision to revoke the so-called Boulder Letter, 2010 guidance that had prevented CEFs from using state law provisions as a defense against activist investors and hostile acquirers.

Instead, Saba reverted to more traditional demands for board representation and share repurchases. In December alone, Saba nominated a total of seven director candidates at three separate funds. Earlier in the year, Invesco Dynamic Credit Opportunities and several Eaton Vance CEFs agreed to cash tender offers.

Saba also took time to successfully target a fellow activist. In December, Crystal Amber Fund, a Guernsey-based activist vehicle listed on London's Alternative Investment Market, announced plans to wind down after Saba and other shareholders voted against its continuation.

FLEX AND FLEXIBILITY

AN INTERVIEW WITH JIM MCNALLY, LONDON-BASED PARTNER IN SCHULTE ROTH & ZABEL'S SHAREHOLDER ACTIVISM GROUP.

A FEW ACTIVISTS HAVE TARGETED U.K. COMPANIES OVER DELISTINGS OR TAKE-PRIVATES. HOW IS THIS BEING RECEIVED IN THE CITY?

Delistings and take-privates are quite different things, though the former almost always follows the latter. There are a lot of protections for shareholders of companies that are proposing to delist and, as a result, there's quite a high level of engagement with them. A delisting is not something companies do lightly, and activists might find they have limited space to maneuver around an announced plan. But activists can and do engage in respect of proposed changes in exchange, especially if it's tied to a value story. Those scenarios can be quite an attractive proposition for an activist – but it can become very political.

Activists can have quite a lot to say about a take-private transaction. We've seen a lot of people prodding at processes and asking for more disclosure – particularly where there is some management participation in the equity, even if it's quite small (and that's quite common, because acquirer companies want to have properly incentivized management). Whilst the activist will only rarely be able to block such a transaction outright, it can help to ensure that the price is fair to shareholders generally and that management hasn't short-changed them with their enthusiasm for the deal terms. The weakness of the pound and market volatility has led to some pretty soft valuations and short-term opportunities. Naturally, institutional investors are looking for longer-term performance, so what might look great to a private equity firm pursuing a take-private might cause shareholders to question whether it's in their longer-term interests.

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THERE'S BEEN A LOT OF ACTION AT U.K. LARGE CAPS, LESS AT SMALL CAPS. WILL THAT TREND CONTINUE IN 2022?

We've seen action all over, partly because we have a lot of activists of different sizes, geographies, and investment priorities in our stable. That said, the higher profile situations have been large-cap companies, which generally speaking enjoy a bit more flexibility around how they solve the business problems they are facing – they can to a degree "solve it with scale." Whilst smaller companies with primarily domestic markets which have been impacted by the pandemic and by Brexit may offer similar prospective gains, they do it with more risk. There is some reticence in the activist community about getting in at the wrong point of the economic cycle.

I think the kind of trend we've seen thus far is probably likely to continue for the first half of the year, but progress on the pandemic or trade talks could change the attitude of activists, and change it quickly.

BETWEEN A ROCK AND A HARD PLACE

AN INTERVIEW WITH JOHN MAHON, PARTNER IN SCHULTE ROTH & ZABEL'S INVESTMENT MANAGEMENT GROUP.

WHAT IMPACT DID THE WITHDRAWAL OF THE BOULDER LETTER HAVE ON ACTIVISM IN CLOSED-END FUNDS IN 2021?

The most immediate impact of the withdrawal of the Boulder Letter by the Securities and Exchange Commission (SEC) was the trend of Maryland-based closed-end funds (CEFs) and business development companies (BDCs) opting into the Maryland Control Share Acquisition Act (MCSAA), which makes it difficult for larger shareholders to vote their shares.

> *"ANY ACTIVIST THINKING OF LAUNCHING A CAMPAIGN IN THE REGULATED FUND SPACE WOULD NEED TO BE THOUGHTFUL AND CAREFULLY PLAN OUT ITS APPROACH."*

We also saw regulated funds seek to reincorporate themselves in Maryland, either directly or through mergers with an existing Maryland-based fund, to take advantage of the MCSAA. Though not directly addressed in the SEC guidance, certain funds in Delaware and elsewhere also looked to adopt takeover defenses that were structured in a manner similar to the MCSAA, and imposed similar voting restrictions on larger shareholders.

There are still paths forward, though, for more creative investors. For example, it may require multiple activists acting in concert to enforce change. Interestingly, the MCSAA does not have an express group concept, which may create opportunities for certain activists in the future.

We haven't seen the full consequences play out, but any activist thinking of launching a campaign in the regulated fund space would need to be thoughtful and carefully plan out its approach in advance of taking any meaningful equity position. The other thing that we're likely to see in the future will be further court challenges to anti-takeover provisions adopted by funds in Massachusetts, Delaware, and elsewhere that seek to mimic the MCSAA.

There is still some hope that the SEC could revisit through a separate rule-making process the negative impact that the withdrawal of the Boulder Letter had on the equal treatment of shareholders arguably required under the 1940 Act. The outcome of any rulemaking would likely be favorable for investors and limit the ability of funds to opt into the MCSAA and similar anti-takeover provisions.

WHAT FURTHER REGULATIONS ARE LIKELY TO AFFECT ACTIVISM IN THE FUND SPACE IN 2022?

The SEC has issued a tremendous number of rules over the past 18 months. I think the one that might have a direct impact on potential activists is the "fund of funds" rule, which introduced the concept of a cap on aggregate voting power at the adviser level, rather than testing voting power solely on a fund-by-fund basis with respect to private funds. That would be a sea-change in the ability of activists to take meaningful stakes in regulated funds, and at the end of the day would have an impact similar to that of the MCSAA.

It would not necessarily prevent activists from playing a role in the regulated fund space, but it could change the tactics and encourage greater collaboration between activists.

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TOUGHENED UP

AN INTERVIEW WITH ELE KLEIN AND MARC WEINGARTEN, CO-CHAIRS OF SCHULTE ROTH & ZABEL'S SHAREHOLDER ACTIVISM GROUP.

WHAT TRENDS, IF ANY, DO YOU THINK COULD CARRY OVER FROM 2021 INTO THIS YEAR?

Ele Klein: Trend number one is how ESG started to have a real, impactful presence in the marketplace. Obviously, the Exxon Mobil campaign by Engine No. 1 was the most high-profile one. But there's a whole bunch of other investors in the environmental space. And I'm predicting that will continue. I'm also predicting that the S (social) part, which is a little bit trailing, is going to start getting traction and go someplace. The other thing I saw is M&A activism, where investors are objecting to deals being done at what they view as the wrong price.

DO ALL ACTIVIST CAMPAIGNS NEED AN ESG COMPONENT NOW? AND WOULD YOU SAY THAT THE PANDEMIC HAS PERMANENTLY CHANGED ANYTHING ABOUT ACTIVISM?

Marc Weingarten: I don't think that every activist campaign needs to have an ESG component. It can be helpful if there is an ESG argument to be made. But I think traditional activism campaigns, whether it's M&A or just selling the company, those will continue to stand on their own.

EK: I couldn't agree more. ESG has added something to the marketplace. It's added the ability where you see that there is value and money in trying to drive changes and that is something we have been talking about for years. Most companies having ESG issues have other traditional issues. But, like Marc said, traditional activism is still there regardless of ESG.

WITH THIS RISE OF ESG ACTIVISM, IS THE GAP BETWEEN HEDGE FUND ACTIVISTS AND 14A-8 ACTIVISTS NOW SMALLER THAN EVER?

EK: There's always been 14a-8 activism. It's a tool that traditional investors have used occasionally because most investors are trying to drive change or going to do something more substantive. But we're definitely seeing the two sides move closer.

MW: The 14a-8 players really bring their proposals as ends in themselves. They're really promoting a social agenda. Purely as a social agenda, sort of a pure play proposal. Whereas the activists that incorporate ESG are really doing it to drive value to shareholders. And that difference is going to continue. But since they are often proposals that are very similar, the two are coming closer together.

EK: You look at Chris Hohn at The Children's Investment Fund (TCI), a lot of what he's doing is pushing companies to do what is "right on the environment." And he does believe that that will drive value to shareholders, but it has a value in and of itself. I know he's really just trying to do things to improve the world. Do they come together? Undoubtedly.

WHICH WERE THE BIGGEST ENTRENCHMENT DEVICES OF 2021?

MW: I think the one that was most surprising to me was the return of the White Squire defense, something we haven't really seen much of since the 80s takeover days. But we saw it with the Box issuance to KKR, the Twitter deal with Silver Lake, Comtech's deal with White Hat and Magnetar. I think that to me was the most significant new trend in activist defense. And I think we're probably going to see more and more of it since it was successful in a couple of cases.

EK: I agree with that. One thing I wonder is how successful they really were at the end of the day. They definitely got attacked by ISS and Glass Lewis. Like everything else, it's going to be situation-specific in terms of how investors perceive things. I also go back to something that we've seen more of. The advance notice provisions and bylaws continue to get amended and extended and deepened to the extent that there's more basis to ostensibly reject nominations, and that's become more of a game.

Frankly, it's good for our business because it means you really need to have good advisers who know what they're doing and have to spend much more time to make sure that things are done exactly as the bylaws require. It accomplishes nothing and is purely an entrenchment device. It serves zero benefit to companies and boards in terms of an actual agenda that they should be focusing on. But we're seeing more and more of that.

MW: On poison pills, they're going to get toughened up even more. We're going to continue to see issuers flirting with percentages lower than the traditional 10% or 15%. And we've seen recently a company going to 7.5% – that'll be a defense that people continue to play with.

WHAT COULD BE THE IMPACT OF THE UNIVERSAL BALLOT ON THE NEXT TWO PROXY SEASONS?

EK: I don't think we're expecting it to have much impact in 2022, since it doesn't go into effect until August. Some people are getting ahead of it, so we may see it a little bit. But the real impact is going to be when it goes into full swing in 2023.

MW: It's likely to embolden some of the smaller activists who may wage proxy contests where they might not have before, but it's too early to tell whether it's going to have a major impact. I mean, historically, when we've counseled activists, there are situations in which universal proxies are to their advantage and situations in which they are to their disadvantage, and obviously that will be true going forward.

FINALLY, CAN WE GET YOUR BIGGEST TIP FOR ACTIVISTS GOING INTO 2022?

EK: My biggest tip would be that you need to be careful and thoughtful in terms of how you go about campaigns because the defense has gotten more emboldened in trying to come up with ways to shut down activists.

MW: My one tip is that activists should really be on the lookout for minority diverse candidates.

PUSHING BACK

AN INTERVIEW WITH MICHAEL SWARTZ, CO-CHAIR OF SCHULTE ROTH & ZABEL'S LITIGATION GROUP AND HEAD OF THE SHAREHOLDER ACTIVISM LITIGATION PRACTICE.

WHAT WAS THE MOST IMPORTANT ACTIVIST COURT CASE OF 2021?

I think there were actually two; one on nomination deadlines at a company called CytoDyn and the other on a poison pill issued by The Williams Cos.

In the first case, the court agreed that CytoDyn's board could reject an activist's nomination based on the timeliness and quality of the prospective directors' questionnaires. The stockholder nominated on the eve of the deadline, but the board didn't respond for a month and then – unusually – refused to allow the dissident an opportunity to correct deficiencies. The court suggested that the activist might have had a better case had it not submitted its nomination so close to the deadline. I thought that was concerning. We see pushback from boards a lot during the nomination process and, while the CytoDyn case had pretty extreme facts, I am concerned that boards and their counsel will be encouraged by the decision to continue playing games with nominee questionnaires.

The Williams case was an important decision with regards to broadly supporting activism and shareholder rights, highlighting that a poison pill without adequate justification and a threshold below a generally accepted level will not stand. The court was particularly critical of the pill's acting in concert provision, which could have had a serious effect on shareholder communications.

WHAT WAS THE MOST PERSONALLY SATISFYING VICTORY OF 2021?

Schulte represented The Children's Investment Fund (TCI) as part of its "say on climate" proposal at Union Pacific. The company sought no-action relief to exclude the proposal from its proxy statement on the grounds that the proposal, which would have required the company's board to disclose its greenhouse-gas emissions reduction plan and to then provide shareholders with a chance to express non-binding approval or disapproval of that plan at each annual meeting, actually consisted of multiple proposals.

Given that TCI, as part of its broader "say on climate" campaign, had submitted substantively identical proposals at other high-profile public companies in advance of their 2021 annual meetings, a negative decision had the potential to undermine that effort while still in its nascent stages. But the Securities and Exchange Commission (SEC) agreed with Schulte and rejected the company's request for no-action relief. This was a victory for shareholders seeking to spur more aggressive action by companies to combat climate change and set the precedent that issuers cannot exclude similar proposals in the future.

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THE GUSHER

ONE PROXY CONTEST STOOD OUT AMONG ALL OTHERS LAST YEAR BUT THE ENERGY SECTOR'S ATTRACTIVENESS TO ACTIVIST INVESTORS OF ALL STRIPES WILL CONTINUE, WRITES JOSH BLACK.

More than any other sector in 2021, energy became the meeting point between ESG and traditional activist investor demands.

As Exxon Mobil became the largest company by market capitalization ever to go the distance in a proxy contest (ultimately attracting three activist funds and losing three board seats in the ballot), institutional investors averaged majority support for environmental and social shareholder proposals at U.S. energy companies. At the end of the year, Third Point Partners made a bold call for a breakup of Royal Dutch Shell.

Then again, there is ample room for activists to ramp up their demands in 2022, especially for strategic reviews and board seats. Despite the handful of blockbuster campaigns in 2021, activists won just 20 board seats at energy companies during the year, the lowest on record thanks to a shutout by Australian and Canadian companies. Only the U.S. saw a significant resumption in demands for board seats, with six companies receiving board representation demands, up from three in 2020.

GOOD AND BAD NEWS

At just over one-quarter of the Climate Action 100+ list of the largest greenhouse gas emitters, oil and gas production and distribution companies have been given a tougher ride at the ballot. Institutional investors expected more detailed reporting from energy companies, including downstream carbon emissions and lobbying commitments, as public policy began to address climate change with renewed focus.

Meanwhile, the oil price rose sharply through the proxy season from the $40 mark in the summer of 2020 to December, reaching $80 several times by the end of 2021. That gave medium-term investors the confidence to say no to deals (including a rare public letter from T. Rowe Price to Seacor Holdings and opposition from Glazer Capital to QEP Resources' sale to Diamondback Energy), ask for operational improvements, and consider divestitures in greater numbers.

But despite the better economic news, both environmental and financial activists tout similarly doom-laden perceptions of the industry's governance and financial restraint.

"I think the energy industry is at a risk of a lot of these companies being non-viable," Andrew Behar, CEO of nonprofit shareholder activist As You Sow, told Insightia.

"We've talked about three pillars of reform – business model, environmental impact, governance," Kimmeridge Energy's Head of Public Equities Mark Viviano told Insightia in an interview. "They're all interrelated and until they're addressed, the generalist investor isn't coming back."

A TURNING POINT

Kimmeridge, a private equity firm and activist focused on oil and gas companies, launched its second stock picking fund in 2021, raising $376 million so far of its target of $500 million. It has also published white papers arguing for executive compensation to be more closely tied to ESG criteria and positive returns on investment for drilling projects – or risk being viewed as a dying business in the same way as tobacco.

"The fundamentals have probably never looked better," Viviano said, noting that cash flow had improved in the period when COVID-19 forced big cuts to capital expenditure budgets. But he warned that there remains a "high degree of skepticism that anything has changed" after a decade of value destruction. This year is "make or break," he says, for whether the industry can adopt a new shareholder-friendly business model, or returns to its boom and bust investment cycle.

For smaller players, that may mean consolidation as well as more prudent management. For the largest oil majors, it likely means playing some role in the transition to non-petrochemical sources of energy, although as Third Point's Dan Loeb warns, the super majors cannot be all things to all people.

As You Sow, which backed Exxon's settlement with D.E. Shaw & Co. and Engine No. 1's slate, is hoping that the biggest energy companies are part of the solution. "Our position was, whoever the board is, if the company doesn't transition, doesn't transform, it doesn't matter," said Behar.

ENVIRONMENTAL AND SOCIAL SHAREHOLDER PROPOSAL SUPPORT

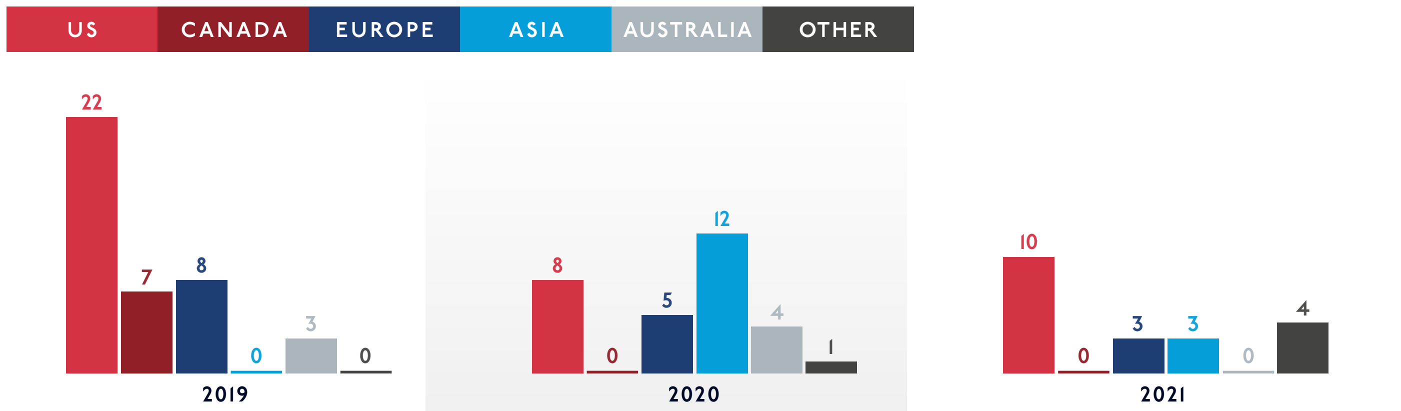
AVERAGE SUPPORT (% FOR) ENVIRONMENTAL AND SOCIAL SHAREHOLDER PROPOSALS AT U.S.-BASED COMPANIES, BY SECTOR IN 2021.
SOURCE: INSIGHTIA

ACTIVIST CAMPAIGN TYPES AT ENERGY COMPANIES

CAMPAIGN TYPE	2019	2020	2021	'20 VS. '21 +/-
APPOINT PERSONNEL	26	18	12	-6
REMOVE PERSONNEL	14	19	4	-15
OPPOSE M&A	6	3	8	+5
PUSH FOR M&A	7	7	3	-4
DIVESTITURE	7	1	6	+5
CAPITAL STRUCTURE	3	2	1	-1
OPERATIONAL	6	3	6	+3
RETURN CASH TO SHAREHOLDERS	5	1	0	-1
ENVIRONMENTAL	10	8	12	+4
SOCIAL	5	4	5	+1
GOVERNANCE	18	10	16	+6
REMUNERATION	5	6	3	-3

NUMBER OF ENERGY COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS EACH YEAR BY EACH DEMAND GROUP, GLOBALLY.
SOURCE: INSIGHTIA

ACTIVIST BOARD SEATS GAINED AT ENERGY COMPANIES



NUMBER OF ACTIVIST BOARD SEATS WON AT COMPANIES IN THE ENERGY SECTOR BY REGION.
SOURCE: INSIGHTIA

THE GREEN AURA

AN INTERVIEW WITH ANELIYA CRAWFORD, GLOBAL HEAD OF ACTIVISM & DEFENSE, UBS INVESTMENT BANK.

WHAT WORK IS UBS DOING ON ESG, GIVEN ITS INCREASING IMPORTANCE TO ACTIVISM?

ESG is central to all we do at UBS and we are at the forefront among our competitors by most rankings. Within the UBS Investment Bank's Activism & Defense group, this means that as we advise our corporate clients on their vulnerability to ESG and map out the likely activism plays, we look carefully at possible ESG angles. We start where we always did with financial and valuation shortcomings but then we add a new layer – how is the company doing in terms of ESG vulnerability, how do ESG lapses relate to its valuation and, importantly, how does the company compare to its peers? If peers are aggressively improving their ESG profile and the company lags even in a relatively benign industry or with palatable ESG standings on an absolute basis, it is still a target.

> *"THE ROLE OF ESG IN FUELING M&A IS CRUCIAL AND WILL CONTINUE."*

Once we know where the issues are, we build strategies for our clients to improve their ESG profile proactively. As an investment bank we focus on portfolio re-evaluation – divestitures of "dirty" assets and acquisitions as part of a comprehensive transition plan to build a more sustainable business suitable for the future.

HOW HAS ESG IMPACTED M&A?

The role of ESG in fueling M&A is crucial and will continue to grow. The drivers are easy to spot – quantifiable links between ESG and valuation, large ESG-conscious capital flows, and institutional support for activism that successfully links ESG to value creation.

More interesting is the impact of ESG financial activism. There are three threads here: greater impact, new M&A rationale, and better image for activists. Greater impact means activists who effectively weave ESG as a central point can win institutional support which they could have never mobilized with more traditional tactics alone. ESG financial activism empowers M&A on new grounds – not for short-term returns as activists are often accused, but for the long-term sustainability of a business in a world that discounts dirty assets and demands portfolio re-evaluation for the future. Proxy voting advisers and institutional investor scrutiny will reasonably shift along. And while activists have upgraded their image with constructivism and other softer tactics, throwing in the green aura of ESG champions gives them a whole new brand as change agents for good.

HOW HAS THE RISE OF ESG IMPACTED ACTIVISM IN NON-U.S. MARKETS?

It is remarkable how different the issues and approaches to ESG are in different regions of the world. In Europe the focus is heavily on environmental issues and this is where, in my view, companies are most mature in their transition planning. Activist pressure is still largely behind-the-scenes and there is a lot of scrutiny on whether activism that purports to be motivated by ESG is just a dress-up for traditional value activism.

In Japan, the focus is on governance. There are those who are pushing large-scale governance reforms – like board diversity – but the campaigns on the ground continue to be largely about capital returns and M&A driven by foreign activists. Governance issues are sometimes seen as the reason why divestitures or transformational M&A are not pursued.

Australia is a different story. ESG is driven by powerful long funds. Clearly there are shareholder proposals and investor-led litigation on climate. But there is also a new wave of investors looking to effect board changes and join boards. They are looking to adapt the style of constructive ESG activists in the U.S., for example to secure a place at the table and be the change-driver themselves.

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THE GREAT ACCELERATION

ACTIVIST INVESTORS HAVE NOT RETREATED IN ASIA AS THEY HAVE IN OTHER PARTS OF THE WORLD AND THE PACE OF ACCEPTANCE IS ACCELERATING, WRITES JASON BOOTH.

While activism slowed in the U.S and Europe, Asia saw a record number of targets in 2021. The region's outperformance was driven largely by Japan where corporate governance improvements and a greater appreciation among domestic investors for shareholder rights paved the way for activist wins.

The biggest headline was the departure of Toshiba's chairman, amid allegations of unfair tactics by the Japanese conglomerate to suppress an activist campaign at the 2020 annual meeting. The conglomerate has since announced plans to spin out its industrial and technology divisions, a move questioned by some activists who feel an outright sale would be a better outcome.

> *"WE ARE SEEING A MASSIVE ACCELERATION OF WHAT WE'RE DOING IN JAPAN, CAMPAIGNS THAT COULD TAKE TWO OR THREE YEARS NOW SEEMS TO BE TAKING THREE MONTHS."*

Marui Group agreeing to add Yasunori Nakagami, CEO of Misaki Capital to its board, along with two other activist nominees, was another notable activist win, as was plastics manufacturer Tenma adding three directors nominated by Oasis Management following additional pressure from Dalton Investments, just a month after Oasis disclosed its stake.

"We are seeing a massive acceleration of what we're doing in Japan," said Seth Fischer at Oasis. "Campaigns that could take two or three years now seems to be taking three months."

DEAL ACTIVISM

Much of last year's activism related to mergers and acquisitions. Yoshiaki Murakami acquired 75% of Japan Asia Group via a tender offer, after a battle with the energy and environment company's chairman. A fund linked to Murakami was reportedly increasing its stake in Shinsei Bank, currently facing a hostile takeover bid by SBI Holdings, raising the prospect of a "bumpitrage" campaign at the Japanese lender.

And while Japan Catalyst failed to halt Nippo's privatization, the activist fund set up by retail brokerage Monex Group said its campaign was evidence that activists are gaining credibility with both Japanese investors and government officials.

"After we raised the issue, we received inquiries from many domestic and foreign investors and the media," wrote Monex CEO Oki Matsumoto. "I was blessed with the opportunity to discuss this matter with related ministries and agencies."

Deal-related activism is expected to continue in 2022. "There is an enormous amount of unused private equity capital sitting on the sidelines," noted James Rosenwald of Dalton Investments. "It seems ripe for arbitrage, M&A, and MBO's [management buyouts]."

OUTSIDE JAPAN

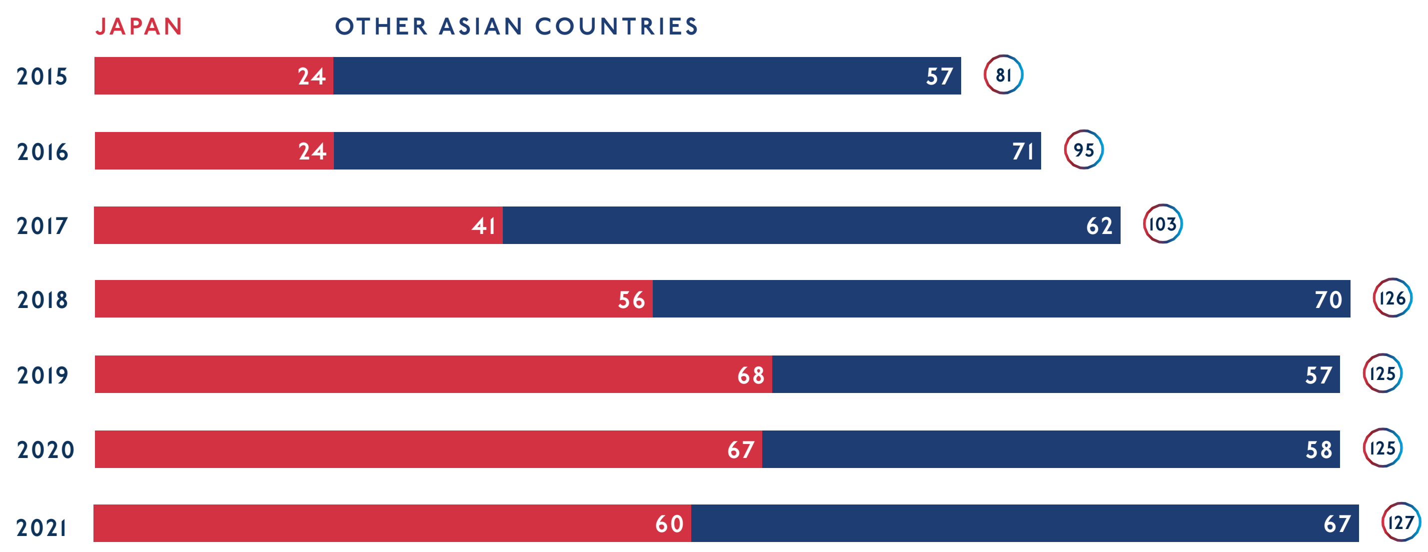
Elsewhere, in a sign of improved conditions for activism in the future, South Korea's National Pension Service (NPS) announced it is considering streamlining the process for launching legal action against portfolio companies.

However, only three non-Korean activists made demands, with limited success; Teton Capital failed to win a seat at furniture maker Hanssem, while Daishin Securities blocked SC Fundamental's shareholder resolutions calling for higher dividend payouts. Efforts by Singapore-based Metrica Partners to get SK Chemicals to launch a strategic review after a discount emerged when it listed its bioscience division, are ongoing.

China saw a couple of big wins for activists, though only after lengthy legal battles in foreign courts. A U.S. court ordered Chinese software as a service company Renren to pay minority investors more than $300 million in a settlement of a case alleging corporate misconduct brought against company insiders by several investors including activists Heng Ren and Oasis Management.

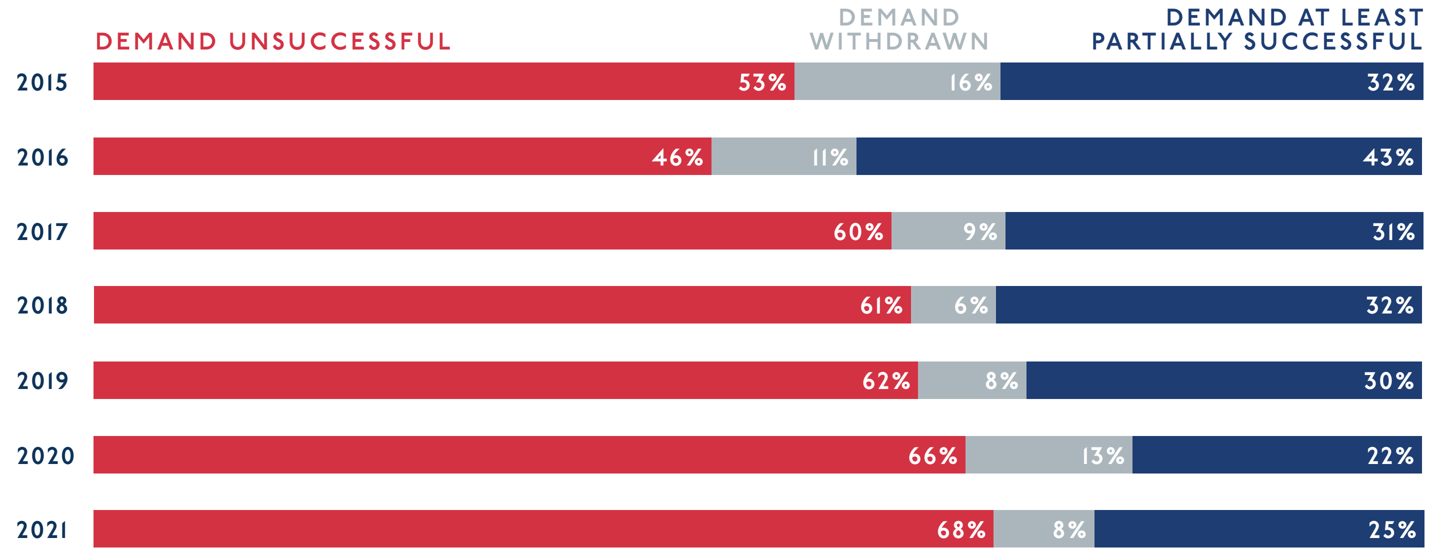
New York-based IsZo Capital, meanwhile, gained six board seats at Shenzhen-headquartered, New York-listed property developer Nam Tai Property, but only after winning a year-long legal battle in the Virgin Islands, where Nam Tai is domiciled, a venue with a long history of being sympathetic to shareholder rights.

ASIA ACTIVIST TARGETS



NUMBER OF ASIA-BASED COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS BY REGION AND YEAR. TOTAL ASIA TARGETS SHOWN IN CIRCLE.
SOURCE: INSIGHTIA

ASIA ACTIVIST CAMPAIGN OUTCOMES



PROPORTION OF RESOLVED PUBLIC ACTIVIST DEMANDS AT ASIA-BASED COMPANIES, BY OUTCOME AND YEAR.
SOURCE: INSIGHTIA

ACTIVIST BOARD SEATS GAINED IN ASIA

METHOD	2015	2016	2017	2018	2019	2020	2021
BOARD SEAT GAINED VIA SETTLEMENT	10	9	8	13	30	19	9
BOARD SEAT GAINED VIA VOTE	28	57	39	68	45	62	63

NUMBER OF ACTIVIST BOARD SEATS GAINED ANNUALLY VIA VOTES VS SETTLEMENTS AT ASIA-BASED COMPANIES, BY YEAR.
SOURCE: INSIGHTIA

OPPORTUNITY KNOCKS

INVESTORS IN EUROPE HAVE NOT ENJOYED THE POST-PANDEMIC M&A WAVE. INSTEAD, THEY HAVE PUSHED FOR CASH RETURNS AND DIVESTMENTS, WRITES IURI STRUTA.

In a year marked by frenetic M&A activity as private equity firms sought cheap targets in Europe, activists and the broader investor base have called for a different path, opposing deals in increasingly greater numbers, while simultaneously pushing for fewer deals.

The number of European companies publicly subjected to anti-deal demands rose from 22 in 2020 to 27 in 2021, reaching a record high. Meanwhile, pro-deal activism reached a four-year low, according to data from Insightia.

Petrus Advisers Partner Till Hufnagel has said "a significant portion" of the fund's portfolio companies became subject to "mostly opportunistic takeover bids," a trend that he said started in the third quarter of 2020. "Throughout 2021, we were working hard to fight such bids as typically the fundamental value of the underlying businesses was not reflected," Hufnagel said.

For others, acquisitions were a blessing. "M&A has helped unlock value in many of our portfolio companies, and we see continued good potential for this entering 2022," Cevian Capital Senior Partner Harlan Zimmerman has said.

CUT THE FAT

Instead of outright sales, activists have suggested companies should pursue portfolio optimizations. Clinigen and Aareal faced calls to break up from Elliott Management and Petrus Advisers, respectively, but chose to sell to private equity firms, leading to rebukes from the activists. Elliott also sought to shape GlaxoSmithKline's breakup and called on Scottish utility SSE to split. Cevian encouraged insurer Aviva to pursue asset sales and return cash to shareholders.

ESG demands also intruded into M&A, placing Europe ahead of the global curve. Glencore and Royal Dutch Shell were targeted with asset sale demands along economic ESG lines by Bluebell Capital Partners and Third Point, respectively. Divesting from carbon-heavy businesses could generate more demand for the shares of these companies, potentially leading to a re-rating.

GENTLEMANLY

Reflecting a global trend, activists in Europe are launching fewer bids for board seats and are quicker to reach settlements. The proportion of board seats won by activists in Europe in 2021 through settlements hit 38%, a high not seen since *Insightia's* records began in 2014, after a second successive increase.

> *"WE CONTINUED TO ADVISE NUMEROUS ACTIVISTS ON BEHIND-THE-SCENES PRIVATE ENGAGEMENTS. IN THESE CASES, COMPANIES WERE WILLING TO ENGAGE IN A CONSTRUCTIVE PRIVATE DIALOGUE TO AVOID PUBLIC CRITIQUE.*

The causes may include growing amenability from European companies and the rising influence of professional activists. Biotechnology company Alkermes reached deals for board seats with two U.S. activists, Elliott and Sarissa Capital Management. Willis Towers Watson was targeted by Starboard Value and Elliott – reaching a settlement with the former. Even France's Lagardère Group eventually caved to pressure from Amber Capital and Vivendi.

This trend is set to continue in 2022. Advisers say that more and more engagement happens out of the limelight. "We continued to advise numerous activists on behind the scenes private engagements. In these cases, companies were willing to engage in a constructive private dialogue to avoid public critique. It will be interesting to see if more of this plays out in 2022," Andrew Honnor, the founder of Greenbrook Communications, said.

NO LETUP

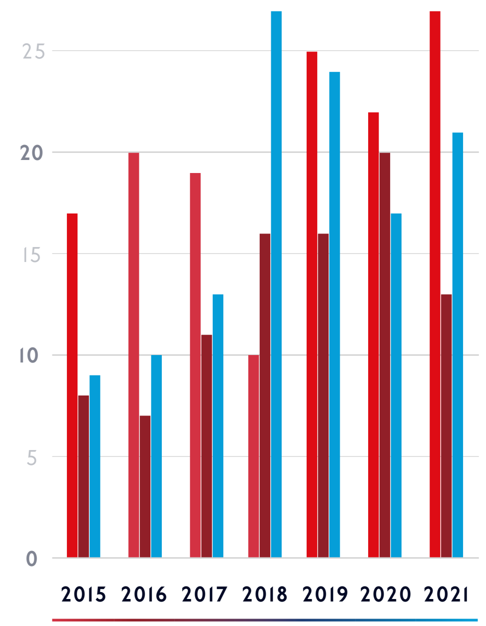
Activists are busy growing their assets under management, said Rob White, a partner at Greenbrook. "The boards of U.K. companies should be on stand-by for increased scrutiny."

Activists themselves expect the M&A appetite to continue into the next year. U.K. proved to be a "particularly attractive hunting ground for takeovers by overseas buyers" in 2021, Liad Meidar, a managing partner at Gatemore Capital Management, has said.

Igor Kuzniar, a managing partner at Teleios Capital Partners, notes that a greater proportion of European companies are "less sensitive to monetary tightening compared to a U.S. market dominated by companies whose high valuations discount growth far out into the future." As a result, Kuzniar believes Europe "may well outperform other markets in 2022."

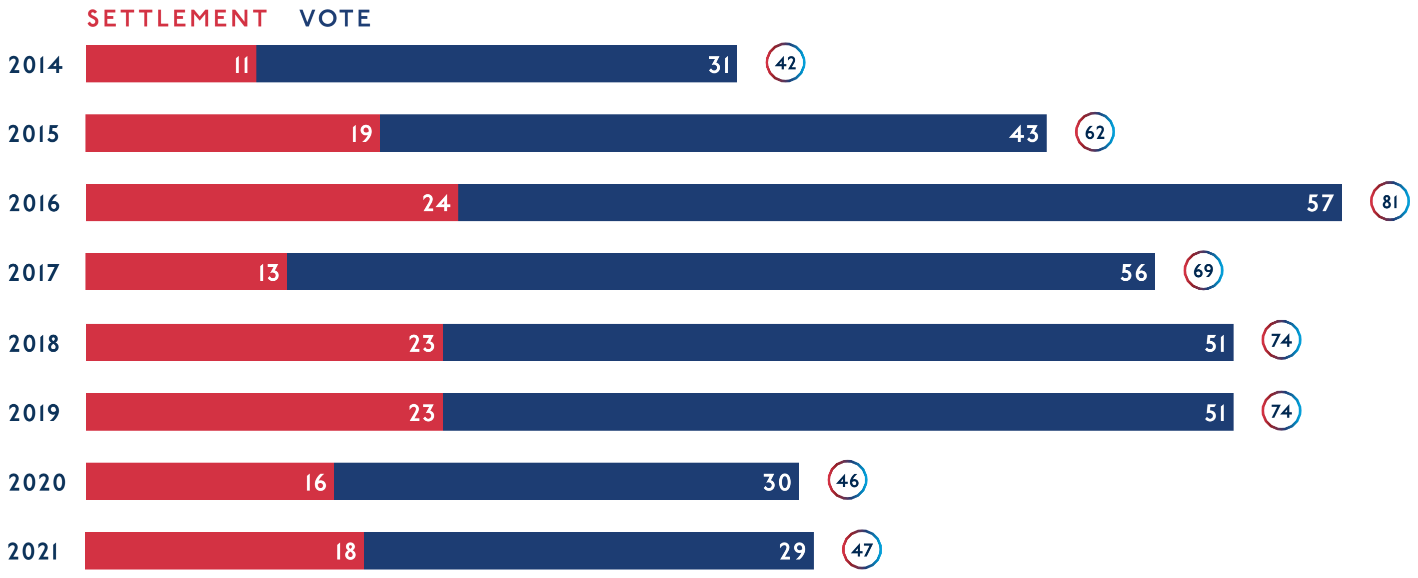
ACTIVIST CAMPAIGNS IN EUROPE

CAMPAIGN TYPE	2015	2016	2017	2018	2019	2020	2021
APPOINT PERSONNEL	59	77	67	76	72	51	47
REMOVE PERSONNEL	25	39	39	46	54	44	36
OPPOSE M&A	17	20	19	10	25	22	27
PUSH FOR M&A	8	7	11	16	16	20	13
DIVESTITURE	9	10	13	27	24	17	21
CAPITAL STRUCTURE	6	9	10	12	13	9	7
OPERATIONAL	10	13	18	22	11	21	13
RETURN CASH TO SHAREHOLDERS	15	13	25	36	25	44	36
ENVIRONMENTAL	3	3	5	5	10	10	8
SOCIAL	6	18	22	4	9	6	10
GOVERNANCE	33	56	62	67	57	54	46
REMUNERATION	15	32	40	17	23	24	20



NUMBER OF EUROPE-BASED COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS EACH YEAR BY EACH DEMAND GROUP.
SOURCE: INSIGHTIA

OUTCOME OF BOARD SEAT DEMANDS IN EUROPE



NUMBER OF RESOLVED DEMANDS FOR ACTIVIST BOARD REPRESENTATION THAT SETTLED AND WENT TO VOTE AT EUROPE-BASED COMPANIES. TOTAL RESOLVED DEMANDS IN CIRCLE.
SOURCE: INSIGHTIA

THE ACTIVIST VIEW

Anne-Sophie d'Andlau, Partner and Deputy CEO at CIAM:

"The European telecoms sector is likely to undergo some interesting developments in 2022... We expect to see increased shareholder activism across the sector, especially around capital returns. We also expect to see increased M&A activity across the sector, including some transformational 'industrial' mergers."

Marco Taricco, co-founder of Bluebell Capital Partners:

"The themes that will prevail in 2022 are strategic repositioning, operational efficiencies, capital allocation decisions, and ESG."

Liad Meidar, Managing Partner at Gatemore Capital Management:

"Record-high levels of dry powder, cheap debt and pent-up activity put on ice due to uncertainty around Covid-19 all played a significant role in fueling the stream of public-to-private deals over the last 12 months, with the U.K. proving to be a particularly attractive hunting ground for takeovers by overseas buyers."

Igor Kuzniar, Managing Partner at Teleios Capital Partners:

"In an environment of rising rates and continued economic expansion, we believe Europe may well outperform other markets in 2022. Compared to the U.S., valuations in Europe are relatively attractive and rates are not expected to rise as much."

Niklas Ringby, Partner and Co-Head of EQT Public Value:

"EQT Public Value put more capital to work than ever before, adding seven European mid-cap companies to its portfolio in the TMT, healthcare, and services sectors. In an environment with heightened uncertainty, we identified unprecedented opportunities to buy in at an attractive price point, achieve influence positions quickly, and instigate transformational change in a constructive manner."

UNIVERSALLY SPEAKING

AN INTERVIEW WITH MICHAEL VERRECHIA, MANAGING DIRECTOR OF THE M&A AND ACTIVISM ADVISORY GROUP AT MORROW SODALI.

THE UNIVERSAL PROXY CARD WILL BECOME MANDATORY ON SEPTEMBER 1, 2022 BUT IT ISN'T TOTALLY NEW. HOW HAS IT BEEN USED IN PAST CONTESTS?

The universal proxy card, of course, is not a new concept, and has been used in a few situations, including proxy contests at Canadian Pacific, EQT, and SandRidge Energy. It has also been proposed and rejected in other situations by activists and companies alike. As it currently stands, both sides would have to agree to use a universal proxy and, as we know, it's difficult to get both sides to agree on anything, so that likely explains its relative lack of use.

WHAT HAS THE REACTION BEEN FROM INVESTORS BROADLY?

Again, the concept of the universal proxy isn't new, so I think there is a focus right now on the "bells and whistles" of the rule change. I think many believe on balance that a universal proxy makes voting easier, and that is likely true, but it will be interesting to see how companies and holders feel about the universal proxy in the early days of implementation.

IS THIS A PRO-ACTIVIST OR PRO-MANAGEMENT DEVELOPMENT?

I think there are arguments to be made for both sides. On the one hand, a universal proxy creates a scenario where the company could keep more of the board intact when facing negative recommendations from proxy voting advisory firms. As it currently sits, those recommendations come on one card or the other and while institutional holders can show up and split their vote at the meeting, that doesn't happen often. This can result in the activist obtaining a number of board seats beyond what the advisory firms recommend.

On the other hand, a universal proxy allows the activist slate to reach the entire shareholder base by virtue of the fact that companies are required to distribute proxy material to ALL shareholders. Under the current setup, if an activist investor was overly cost conscious, and many are, they may decide to stratify their campaign to reach only the top holders in the shareholder profile. We see this often in campaigns with large retail components. With the activists' nominees now included on a management ballot, the ability to vote for those nominees is now guaranteed across the entire shareholder base without the activist having to incur the cost of mailing to all shareholders. The new rules do require the activist to solicit at least 67% of the voting power.

There is also the concern that the process may be confusing to some shareholders and now having both sides on the proxy card makes it easier for a shareholder who generally supports management to check a box for say one or two dissident nominees.

DO YOU THINK IT WILL CHANGE THE TACTICAL APPROACH TO PROXY CONTESTS FOR EITHER SIDE – EITHER IN THE CURRENT SEASON OR NEXT?

While I don't see the rule change impacting the current season in a meaningful way, we expect to see situations where one side or the other proposes it. I absolutely think it changes the campaign strategy for both sides after the change goes into effect in August. Large institutional/hedge funds are sophisticated voters and should quickly understand the nuances of the ballot in front of them. That said, companies with a large retail component will likely need to provide clear instructions on voting mechanics. This message should be delivered through simple follow-up reminder mailings and phone calls to individual holders. On the activist side, I believe campaigns will become more cost efficient and it is likely to see some of the realized savings rolled back into a robust targeted follow-up campaign to the top range of holders.

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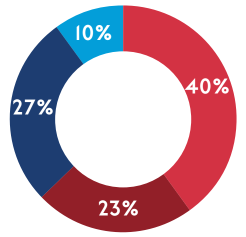
POLL POSITION

EVERY TUESDAY, WE ASK FOR YOUR THOUGHTS ON AN ACTIVISM OR VOTING TREND VIA OUR NEWSLETTER AND SOCIAL MEDIA FEEDS. HERE, KIERAN POOLE COLLATES SOME OF OUR FAVORITE POLLS FROM LAST YEAR.

NOTE: ALL DATA USED IN POLL QUESTIONS CORRECT AT THE TIME OF ASKING.

JANUARY 2021

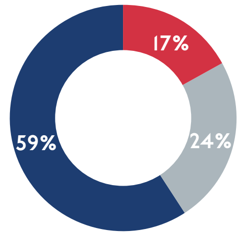
WHICH REGION WILL SEE THE BIGGEST INCREASE IN ACTIVISM IN 2021?



SOURCE: INSIGHTIA

FEBRUARY 2021

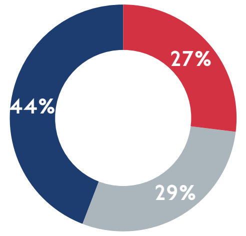
432 U.S.-BASED COMPANIES WERE PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020. WHAT DO YOU EXPECT THAT NUMBER TO DO IN 2021?



SOURCE: INSIGHTIA

MARCH 2021

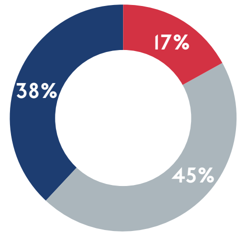
66 JAPAN-BASED COMPANIES WERE PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020. WHAT DO YOU EXPECT THAT NUMBER TO DO IN 2021?



SOURCE: INSIGHTIA

APRIL 2021

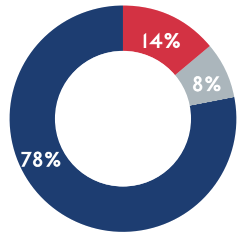
WHAT WILL GARY GENSLER'S APPOINTMENT AS SEC CHAIRMAN MEAN FOR SHAREHOLDER ACTIVISM?



SOURCE: INSIGHTIA

MAY 2021

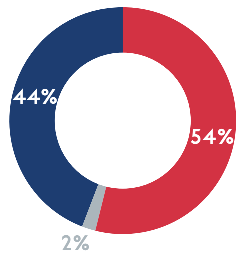
IN LIGHT OF THE EXXON MOBIL RESULT, WILL WE SEE MORE ESG PROXY CONTESTS?



SOURCE: INSIGHTIA

JUNE 2021

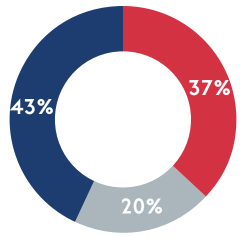
DO YOU THINK ENVIRONMENTAL AND SOCIAL ACTIVIST CAMPAIGNS WILL EXCEED BALANCE SHEET, M&A, AND OPERATIONAL ONES OVER THE NEXT FEW YEARS?



SOURCE: INSIGHTIA

JULY 2021

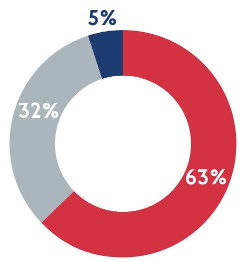
DO YOU EXPECT THE SEC WILL MANDATE THE USE OF UNIVERSAL PROXY CARDS FOLLOWING ITS CONSULTATION ON THE SUBJECT?



SOURCE: INSIGHTIA

AUGUST 2021

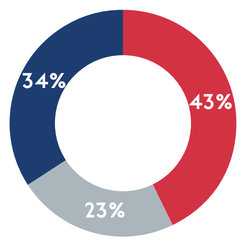
WHICH DO YOU THINK WILL TOP OUR LIST OF 2021'S WILDEST CAMPAIGNS THIS MONTH?



SOURCE: INSIGHTIA

SEPTEMBER 2021

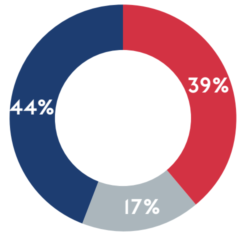
WHAT KIND OF M&A ACTIVISM WILL SEE THE BIGGEST INCREASE IN 2022?



SOURCE: INSIGHTIA

OCTOBER 2021

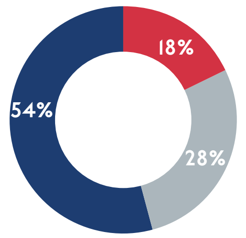
BLACKROCK PLANS TO GIVE ASSET OWNERS MORE CONTROL OVER THE VOTING OF THEIR SHARES, SOMETHING CURRENTLY DONE BY ITS STEWARDSHIP TEAM. WHAT IMPACT WILL THIS HAVE ON ESG VOTING DECISIONS?



SOURCE: INSIGHTIA

NOVEMBER 2021

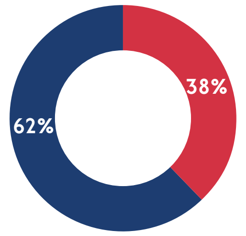
BLACKROCK, VANGUARD, AND STATE STREET ALL GAVE LESS AVERAGE GLOBAL SUPPORT FOR "SAY ON PAY" PROPOSALS IN 2020/21 COMPARED TO 2019/20. DO YOU EXPECT THIS TREND TO CONTINUE NEXT YEAR?



SOURCE: INSIGHTIA

DECEMBER 2021

DO YOU THINK VIRTUAL SHAREHOLDER MEETINGS ARE THE FUTURE?



SOURCE: INSIGHTIA

GETTING AHEAD OF ESG

AN INTERVIEW WITH ETELVINA MARTINEZ, MANAGING DIRECTOR AT ALLIANCE ADVISORS.

HOW HAS ESG IMPACTED OR REDEFINED SHAREHOLDER ACTIVISM?

As the notion that ESG factors play an integral role in sustainable value creation continues to gain acceptance and momentum in the capital markets, it naturally follows that more activists will use ESG as a lens to assess company performance. Perceived weaknesses in a company's ESG practices can open up another useful front for attack, and for some activist strategies it can be a very effective tool. In the context of a proxy contest, however, a case based on ESG alone is unlikely to carry a fight. As observed in the recent Exxon Mobil contest, an activist needs to establish a strong correlation between ESG and a target's financial performance.

On the flip side, the rise of ESG in activism has created a new set of challenges for companies trying to take stock of their potential vulnerabilities and construct a defense strategy. Your defensive strategies will need to be broader and adapted to these new sets of concerns. One of your best defenses is to proactively engage with your shareholders on ESG topics.

Recognize that ESG activism may resonate with a broader base of your investors. For instance, retail investors may be more engaged in campaigns where sustainability forms part of the critique. To effectively reach this audience, you may need to redesign your proxy materials so your ESG narrative is more accessible and presented in a succinct and easy-to-understand manner. For example, consider expanding the standard Q&A section to include common ESG topics.

ARE COMPANIES MORE SUSCEPTIBLE TO ACTIVISM IF THEY LAG THEIR PEERS IN ESG PRACTICES; AND CAN A ROBUST SHAREHOLDER ENGAGEMENT PROCESS BE BENEFICIAL IN THAT CONTEXT?

Underperforming peers on key areas of ESG that are considered material for your company's particular industry will likely attract activist attention. When communicating with investors, it is important to focus on progress. Even if your disclosures and practices aren't yet best-in-class, it is important to show that you are consistently raising the bar and making progress toward your goals. Having a few aspirational peers that exemplify best practice is helpful, but you should also include peers that are comparable to where you are in your ESG journey. If your company has not done an ESG peer review, Alliance highly encourages you to do so.

ESG encompasses a broad range of issues and stakeholders and is a rapidly evolving space. As these issues draw greater attention, your engagement process needs to adapt as well by understanding your investors and the issues they prioritize, having more frequent dialogues during the year on ESG topics, and ensuring the participation of key individuals who can speak in detail about your company's ESG strategy and practices.

SECURING MEETINGS WITH LARGE INSTITUTIONAL INVESTORS CAN SOMETIMES BE A CHALLENGE. HOW CAN ISSUERS GET THEIR MESSAGE ACROSS IF DIRECT DIALOGUE IS NOT POSSIBLE?

Although you should strive for regular engagement with top holders, there will be times when direct dialogue may not be possible, particularly if no concerns surfaced during the annual meeting or prior engagements. Shifting conversations to the off season can help, but you should also consider embedding your ESG message into more traditional investor communication channels. We are increasingly seeing issuers include sustainability summaries in their proxy statements, discuss sustainability topics on earnings calls, and hold ESG-focused investor days. Investors will also review your ESG information and reporting on your website. This can be effective as long as there is a coherent and consistent message across all of these channels.

ETELVINA MARTINEZ
EMARTINEZ@ALLIANCE ADVISORS.COM

BY ALL MEANS

FUNDRAISING IS LARGELY BACK ON TRACK AS PANDEMIC DISRUPTION FADES AND ACTIVISTS TAP NEW SOURCES OF CAPITAL, WRITES JASON BOOTH.

Activist fundraising picked up in 2021 but has yet to return to levels seen prior to the pandemic. And in many cases activists are exploring different paths from prior years amid concerns over market volatility and a growing interest in tapping retail investors. More than ever, reputation counts.

"People who have credibility are finding money," said Eleazer Klein, co-head of Schulte Roth & Zabel's global shareholder activism group. "It's not easy, it's not just flowing like an open faucet, but they're finding it."

COMEBACK KIDS

Assets under management by U.S.-based primary focus activists rose to just over $200 billion as of December 31, up from $154 billion in 2020, and the highest level since at least 2016, according to Insightia data.

Buoyed by stellar returns in 2020, Pershing Square Capital Management saw its AUM surge to almost $14.5 billion, up from $9.2 billion, reversing four straight years of decline. Sachem Head Capital Management also reversed a multi-year losing streak, reporting assets under management of almost $4.6 billion, versus $2.9 billion a year earlier. Engaged Capital disclosed three separate co-investment funds in 2021 that raised over $150 million in total, helping push AUM to $1.36 billion.

Newly launched firms headed by industry veterans who formerly worked at nameplate firms, especially Elliott Management, also appear to be having little trouble attracting money. Politan Capital, launched by Elliott veteran Quentin Koffey, which began raising money in September, reported managing just over a billion dollars. The latest, unconfirmed, news is that former Elliott executive Adam Katz and former Indaba Capital partner Andy Dodge have raised $250 million for a new fund called Irenic Capital.

RETAIL MONEY

Another trend that is expected to gain steam in 2020 is activists seeking money from retail investors.

In June, Engine No. 1 announced it had received $100 million for its new ESG-focused exchange-traded fund (ETF). The ETF, which retail investors can buy and sell on the open market, now has net assets of $275 million, according to the firm.

> *"WITH AN INSTITUTIONAL INVESTOR THERE IS ALWAYS A MATURITY OR SOME OTHER KIND OF ENDING, BUT THIS OPEN-ENDED RETAIL FUND COULD CREATE TRUE PERMANENT CAPITAL."*

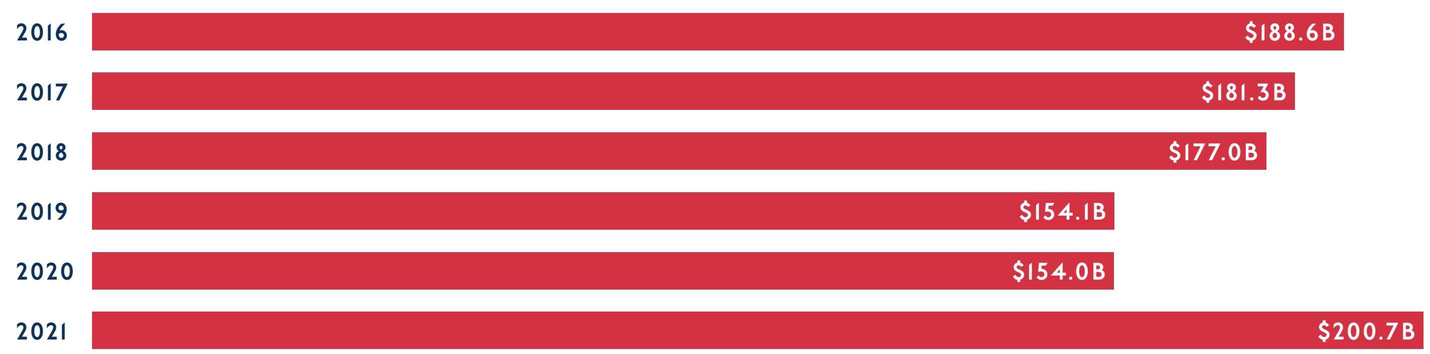
Japan Catalyst, an open-ended mutual fund launched by Japanese brokerage house Monex Group has raised around $100 million from Japanese retail investors, according to CEO Oki Matsumoto. He argues that retail investors may be a more stable source of funds than institutional investors, noting that of the roughly 400 business days the fund has been open, 390 saw net inflows.

"With an institutional investor there is always a maturity or some other kind of ending," he stated. "But this open-ended retail fund could create true permanent capital."

Fundraising via special purpose acquisition companies (SPACs), including those backed by activists, surged in the first half of 2021, though cooled considerably in the second amid stock market losses by "despac-ed" companies and regulatory scrutiny. Things came to a head in July, when Bill Ackman's Pershing Square abandoned a deal for his $4 billion blank-check company to buy a 10% stake in Universal Music Group, due to concerns from the U.S. Securities and Exchange Commission.

Ackman is now looking to raise money through another special purpose vehicle, Pershing Square SPARC Holdings, which will issue warrants instead of shares and will not raise any public capital until a definitive agreement for a business combination has been reached.

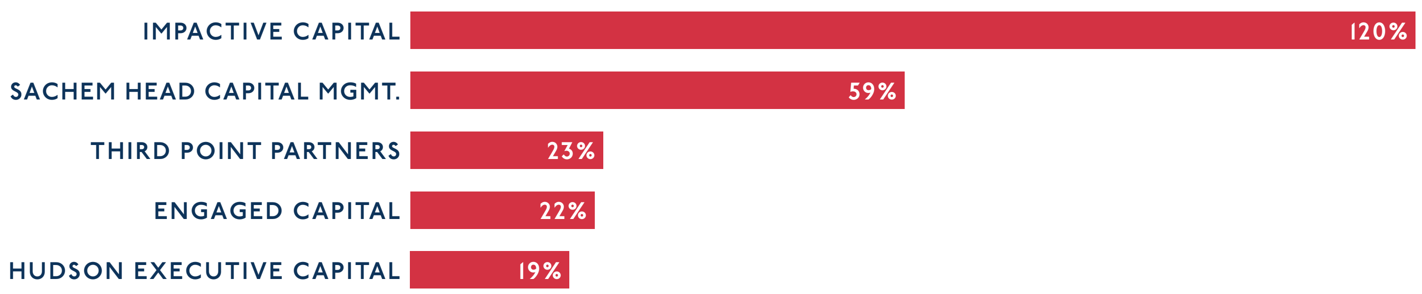
ACTIVIST ASSETS UNDER MANAGEMENT



TOTAL ASSETS UNDER MANAGEMENT OF DEDICATED U.S.-BASED ACTIVIST INVESTORS REPORTED, BY YEAR.
SOURCE: INSIGHTIA

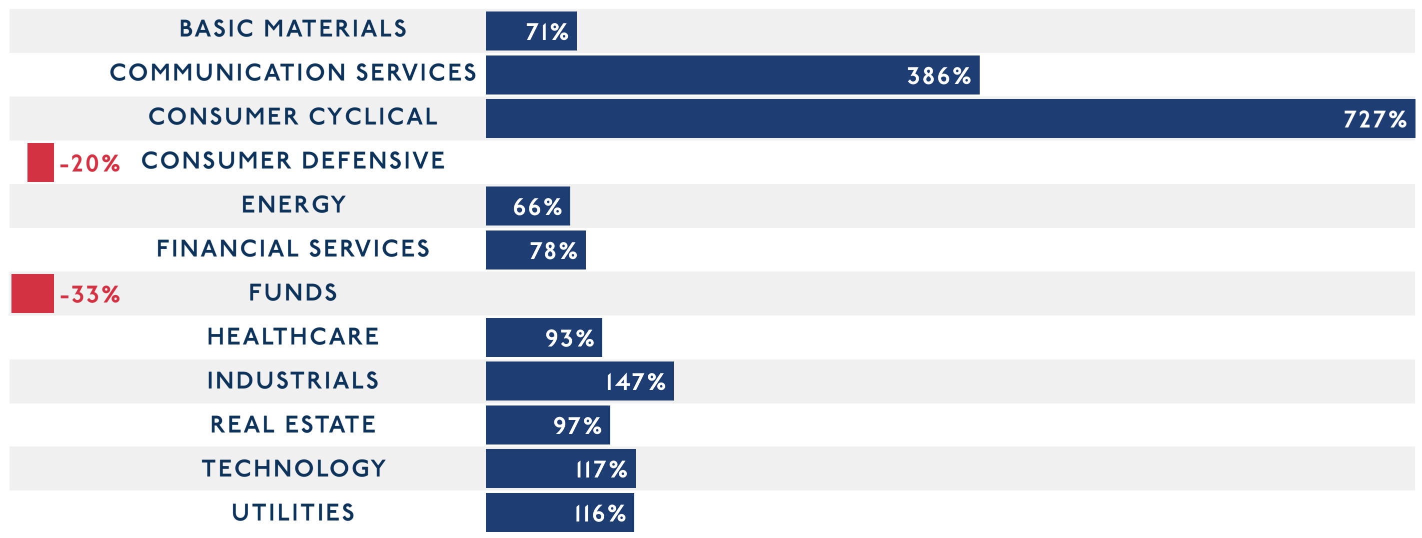
NOTE: DATA USED FOR THE CHARTS ABOVE AND BELOW REPRESENT AN ESTIMATION OF THE MINIMUM AMOUNT OF ASSETS MANAGED BY ACTIVISTS DEEMED BY ACTIVIST INSIGHT TO HAVE A PRIMARY FOCUS ON ACTIVISM. IT SHOULD BE NOTED THAT THERE MAY BE ASSETS MANAGED WHICH HAVE NOT BEEN PUBLICLY DISCLOSED IN ANY PARTICULAR YEAR, FOR WHICH THESE FIGURES DO NOT ACCOUNT.

BIGGEST INCREASES IN ASSETS UNDER MANAGEMENT



BIGGEST INCREASES IN ASSETS UNDER MANAGEMENT BY DEDICATED U.S.-BASED ACTIVIST INVESTORS* IN 2021 VERSUS 2020.
DATA ARE LIMITED TO ACTIVISTS WITH AUM OF $500M OR MORE AT THE END OF 2021, WHICH ALSO ISSUED A PUBLIC DEMAND DURING 2021.
SOURCE: INSIGHTIA

CHANGE IN VALUE OF US ACTIVIST INVESTMENTS



CHANGE IN VALUE OF U.S. ACTIVIST INVESTMENTS BY SECTOR FROM 13F DISCLOSURES AT SEPTEMBER 30, 2021, VERSUS SEPTEMBER 30, 2020.
SOURCE: INSIGHTIA

WHO'S VULNERABLE?

IURI STRUTA HIGHLIGHTS A SELECTION OF THE MOST VULNERABLE COMPANIES IN THE S&P 500 INDEX THAT HAVE NOT YET BEEN ENGAGED BY AN ACTIVIST.

ZIMMER BIOMET HOLDINGS

99%

VULNERABILITY PERCENTILE RANK

SECTOR: HEALTHCARE
MARKET CAP: $26.0B
KEY VULNERABILITIES: GROWTH, VALUATION, PERFORMANCE, PROFITABILITY

Zimmer Biomet has failed to raise revenues since CEO Bryan Hanson took the helm in December 2017. As a result, the medical device company's stock has underperformed its close peers and is undervalued. An activist investor could put pressure on management to boost revenues and focus on margin improvement.

PINNACLE WEST CAPITAL

91%

VULNERABILITY PERCENTILE RANK

SECTOR: UTILITIES
MARKET CAP: $13.0B
KEY VULNERABILITIES: VALUATION, PERFORMANCE, ASSET MIX

Pinnacle West, a regulated electric utility, suffered a credit downgrade and poor stock performance when regulators reduced its permitted return on equity from 10% to 8.7%, undoubtedly disappointing shareholders. An activist investor could now demand the company significantly reduce the dividend and invest available cash in renewables. The company's dividend payout is volumes higher than best-in-class utilities like NextEra Energy, AES, and even Evergy, an Elliott Management target, while the energy production mix has fewer renewables and its valuation may suffer as a result.

CAESARS ENTERTAINMENT

95%

VULNERABILITY PERCENTILE RANK

SECTOR: CONSUMER CYCLICAL
MARKET CAP: $16.5B
KEY VULNERABILITIES: VALUATION, PERFORMANCE, DIRECTOR SUPPORT

Hotel and casino company Caesars Entertainment has missed out on the re-opening rally, with its one-year total shareholder return significantly lower than the median peer. Formed from the merger of Eldorado Resorts and Caesars in 2020, the company needs to fix its debt problems quickly to avoid activist intervention, as its interest expense trumps Ebitda. An activist investor could demand debt-reducing measures like asset sales.

MARKETAXESS

92%

VULNERABILITY PERCENTILE RANK

SECTOR: FINANCIAL SERVICES
MARKET CAP: $14.0B
KEY VULNERABILITIES: PERFORMANCE, CORPORATE GOVERNANCE

MarketAxess, a bond-trading platform, underperformed Nasdaq over the past year and its performance is weaker than peers CME Group, CME Group, and IHS Markit over the past five years. Competition in the trading platforms business has been intensifying lately, with traditional exchanges like London Stock Exchange joining the race through acquisitions. An activist could demand the company expand in markets other than bond trading, or seek a sale. A governance red flag is that the chairman and CEO roles have both been held by Richard McVey for the past 22 years.

VENTAS

97%

VULNERABILITY PERCENTILE RANK

SECTOR: REAL ESTATE
MARKET CAP: $20.5B
KEY VULNERABILITIES: VALUATION, DIRECTOR TENURE, CORPORATE GOVERNANCE

Ventas, a real estate investment trust (REIT) owning and operating healthcare facilities, has been dragged down by high leverage, resulting in poor valuation and weak total shareholder returns. An activist could demand the company sell off the least profitable properties to reduce debt and improve corporate governance by adding fresh directors to its overtenured board.

MOLSON COORS BEVERAGE

93%

VULNERABILITY PERCENTILE RANK

SECTOR: CONSUMER DEFENSIVE
MARKET CAP: $10.0B
KEY VULNERABILITIES: PERFORMANCE, PROFITABILITY, CORPORATE GOVERNANCE

Drink and brewing company Molson Coors needs to find a growth driver quickly to soothe shareholder pain. The company has failed to adapt to changing market tastes and could be questioned by an activist investor. However, Molson Coors is a tough target as its dual-class share structure maintains board control in the hands of the founding family.

EQUINIX

96%

VULNERABILITY PERCENTILE RANK

SECTOR: TECHNOLOGY
MARKET CAP: $65.8B
KEY VULNERABILITIES: PERFORMANCE, PROFITABILITY, EXECUTIVE COMPENSATION

With an over-tenured board and weak one-year total shareholder returns, data center REIT Equinix is vulnerable to shareholder activism. Equinix's three-year and five-year total shareholder returns look better than peers, including core peers CoreSite Realty and Digital Realty, something that could give management a strong line of attack in case of an activist intervention.

OUR TRACK RECORD

27 COMPANIES THAT ACTIVIST INSIGHT VULNERABILITY REPORTERS HAVE HIGHLIGHTED AS VULNERABLE TO ACTIVISM IN REPORTS BETWEEN 2018 AND 2021 WERE SUBJECTED TO ACTIVIST DEMANDS IN 2021. IURI STRUTA PICKS SOME OF THE HIGHLIGHTS.

DOLLAR TREE

REPORT DATE: JULY 2021 DATE TARGETED: NOVEMBER 2021
ACTIVIST: MANTLE RIDGE DEMANDS: GAIN BOARD REPRESENTATION
KEY VULNERABILITIES: GROWTH, UNDERPERFORMANCE, UNDERVALUATION, POOR MARGINS

Just five months after *Activist Insight Vulnerability* said Dollar Tree was vulnerable to activism, Paul Hilal's Mantle Ridge disclosed a stake and nominated 11 directors to the board. *Activist Insight Vulnerability* reporters noted Dollar Tree was struggling to integrate the 2014 acquisition of Family Dollar and move with enough urgency on a multiple price point initiative, while its peers have thrived. Facing inflationary pressures, Dollar Tree raised its price point by 25 cents to $1.25 late last year, but this is unlikely to fend off Mantle Ridge.

ZENDESK

REPORT DATE: NOVEMBER 2021 DATE TARGETED: DECEMBER 2021
ACTIVIST: JANA PARTNERS DEMANDS: OPPOSE DEAL
KEY VULNERABILITIES: BAD DEAL

Activist Insight Vulnerability first highlighted Zendesk as vulnerable in 2020, but our team could not resist profiling it again when its stock plunged on news it was acquiring Momentive Global. Sure enough, Jana Partners joined the share register and launched a campaign against the acquisition.

OPERATIONAL MISSTEPS HAVE MADE DOLLAR TREE A PERENNIAL BARGAIN.

BOTTOMLINE TECHNOLOGIES

REPORT DATE: JANUARY 2021 DATE TARGETED: OCTOBER 2021
ACTIVIST: SACHEM HEAD DEMANDS: GAIN BOARD REPRESENTATION, PUSH FOR SALE
KEY VULNERABILITIES: UNDERPERFORMANCE, UNDERVALUATION, PUSH FOR SALE

Bottomline Technologies was profiled by our writers as a classic M&A target, given its good growth and improving profitability, combined with disappointing shareholder returns and undervaluation. Indeed, nine months after our report, Bottomline settled with activists Sachem Head Capital Management and Clearfield Capital Management. A few months later, the company agreed to be acquired in a $2.6 billion take-private.

GODADDY

REPORT DATE: MAY 2021 DATE TARGETED: DECEMBER 2021
ACTIVIST: STARBOARD VALUE DEMANDS: GAIN BOARD REPRESENTATION, ASSET SALES
KEY VULNERABILITIES: UNDERVALUATION, WEAK EARNINGS GROWTH & SHAREHOLDER RETURNS

GoDaddy fell into the highly vulnerable category at the beginning of 2019 but at one point looked like clawing its way out, according to our model. As profitability took a plunge in 2020, we decided to write a report in 2021, arguing an activist could push to improve performance or seek a private equity buyout. Seven months after, Starboard Value disclosed a stake and said it may push for board changes and asset sales.

BLUCORA

REPORT DATE: JUNE 2020 DATE TARGETED: FEBRUARY 2021
ACTIVIST: ANCORA ADVISORS DEMANDS: GAIN BOARD REPRESENTATION, ASSET SALES
KEY VULNERABILITIES: UNDERVALUATION, POOR PERFORMANCE, COMPANY DIVISION

A lack of synergies between its tax preparation and wealth management businesses made Blucora vulnerable to activism, *Activist Insight Vulnerability* reporters noted in 2020. Ancora Advisors launched a campaign for board seats on a similar platform seven months later, arguing the company should sell its tax preparation unit. Ancora lost the proxy fight but has kept management on its toes since.

STARBOARD VALUE WILL HOPE ITS GODADDY CAMPAIGN GENERATES MORE CLICKS.

THE ACTIVIST SHORT SELLER TOP FIVE

THE MARKET TREATED ACTIVIST SHORT SELLERS UNFAVORABLY LAST YEAR, THANKS TO HIGH LEVELS OF LIQUIDITY FROM CENTRAL BANKS AND GROUPS OF RETAIL INVESTORS PUMPING SURPRISING TARGETS. SHORT SELLERS HAD TO FIND STRATEGIES THAT MARKETS WOULD RESPOND TO. WE MADE A LIST OF THE INVESTORS THAT FARED BEST – AS HIGHLIGHTED IN OUR RANKED LISTING, BASED ON THE NUMBER OF SHORT CAMPAIGNS, THE AVERAGE SIZE OF THE TARGET, SEVERITY OF ALLEGATIONS, COMPANY RESPONSES, AND THE AVERAGE TOTAL CAMPAIGN RETURN* OVER THE FIRST MONTH OF A NEW SHORT.

*Total campaign return is a calculation of the stock price change percentage, minus any dividend payment obligations, of campaigns initiated in 2021 from the close prior to the campaign's announcement until the last close on the defined period.

1. HINDENBURG RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2021:	9
AVERAGE TARGET MARKET CAP:	$3.6B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN:	14.2%

Hindenburg Research held on to the top spot with nine new campaigns in 2021. "It was a wild year," Nate Anderson, founder of Hindenburg, told Insightia. "A dominating theme in 2021 was squeezing short sellers," he added.

"THE MARKET IS STILL LITTERED WITH FRAUD AND FUNDAMENTALLY IRREPARABLE BUSINESSES."

Even so, Hindenburg found that the market reacted well to research into frauds, including on special purpose acquisition companies (SPACs). The short seller's campaign at Lordstown Motors, a SPAC that went public in October 2020, started off a year to forget for the electric vehicle company. Hindenburg alleged in March that "the company's orders are largely fictitious and used as a prop to raise capital and confer legitimacy." A later probe by the Securities and Exchange Commission (SEC) led to two big resignations. The company's share price now languishes at $2.88 per share, having topped $30 earlier in 2021.

"The market is still littered with fraud and fundamentally irreparable businesses, so I expect 2022 will continue to be a busy year for us," said Anderson. With two Hindenburg targets from years gone by, Nikola and Aphria, recently charged by the SEC for wrongdoing and an early January campaign at Royal Caribbean Cruises, Anderson might be right to expect a busy year.

HINDENBURG RESEARCH'S SPECIALITY: AN ELECTRIC VEHICLE DE-SPACED COMPANY.

2. VICEROY RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2021:	6
AVERAGE TARGET MARKET CAP:	$4.7B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN:	24.3%

"2021 was our most successful year to date," Viceroy Research Analyst Gabriele Bernarde wrote in an email to Insightia. "We have published fewer reports compared to previous years but have pursued many investment ideas privately and through whistleblower channels. Our team has generally focused on the quality of our content [rather] than the quantity," he added.

Viceroy published six reports in 2021, which included an attack on German real estate company Adler Group. Viceroy described the company as "hotbed of fraud, deception, and financial misrepresentation designed to hide its true financial position." Adler's share price tanked 26% on the day of publication.

Finishing the year strong, Viceroy targeted Austrian IT company S&T which caused the share price to fall more than 30%. But Bernarde noted that Viceroy has become "much more selective in picking fights," attributing this to investors who see fraud as "a cost of doing business." On the other hand, Bernarde expects the new year to be a profitable one. "Viceroy is navigating into 2022 with our largest backlog of frauds ever. We are going to take our time, do the work properly, and win," the short seller concluded.

3. SPRUCE POINT CAPITAL MANAGEMENT

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2021:	12
AVERAGE TARGET MARKET CAP:	$5.6B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN:	-4.4%

Spruce Point Capital Management published a whopping 12 reports last year, the most of the top five. "To be clear, 2021 did bring significant challenges for the short selling community...but, with challenges also came opportunities," said Ben Axler, founder of Spruce Point.

The short seller is approaching July's 70% downside target on nondairy food producer Oatly Group's stock, after it alleged that the company had been overstating its financial results. "We observe periods of large divergence in revenue and accounts receivable growth rates at Oatly," Spruce Point said at the time. Shares now trade below $7, down from over $21 the day before the announcement.

Axler was happy with the short outfit's ability "to perform sound forensic financial research to uncover poorly positioned companies," in the face of a "bullish environment" last year. He believes the Federal Reserve's desire to taper and raise interest rates may mean markets are harsher on the types of "overvalued and speculative growth stocks" it often targets in 2022.

4. CULPER RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2021:	6
AVERAGE TARGET MARKET CAP:	$387M
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN:	15.6%

Culper Research is a new entry on the top five list with six reports last year, including a damning report on LifeMD. Culper accused the company of using unlicensed doctors to dispense over-the-counter medications and said that it runs afoul of numerous Federal Trade Commission regulations. LifeMD's share price has declined nearly 90% from its 52-week peak.

Several past campaigns also had positive developments. "Above and beyond share prices, we've been heartened to see companies and their insiders held accountable following our research" in 2021, Culper told Insightia.

Culper's 2019 target ProPetro was charged by the SEC in November for undisclosed perks and share pledges, while 2020 target CytoDyn was investigated by the SEC and Department of Justice, and the Food and Drug Administration condemned the use of its main drug candidate PRO-140 for use in treating COVID-19.

"We are dedicated to seeking out situations where we believe insiders and enablers have either misled investors or prioritized self-enrichment over duties to shareholders and the public at large," Culper concluded.

5. J CAPITAL RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2021:	6
AVERAGE TARGET MARKET CAP:	$738M
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN:	3.4%

"It was the year of straight up frauds," Anne Stevenson-Yang, co-founder of J Capital Research, told Insightia in an interview. J Capital produced six reports last year, four of which alleged accounting fraud or major business fraud.

J Capital accused electric vehicle company Faraday Future, which went public via a SPAC merger in 2021, of being "nothing but a bucket to collect money," in October. The campaign resulted in Faraday delaying its third-quarter earnings 2021 earnings to allow a special committee to investigate the short seller's claims. Shares in Faraday have declined 40% since J Capital published its report.

Stevenson-Yang indicated that J Capital has no new campaigns in the pipeline just yet but was preparing for the market to be more volatile. "I think that you can't underestimate the importance of [cash] flow. There does seem to be a little bit less of that promise for this year, and the Federal Reserve has timidly said that they might tighten."

SHORTS: FEWER CAMPAIGNS, MORE MONEY

ACTIVIST SHORT SELLERS WERE FORCED TO BE MORE CAUTIOUS IN 2021 AFTER RETAIL INVESTORS SQUEEZED CERTAIN PARTICIPANTS OUT OF THE MARKET, POSSIBLY TO THEIR BENEFIT, WRITES JOE LYONS.

Last year, the soaring share prices of "meme stocks" GameStop and AMC, after retail investors coordinated their trading to squeeze some short sellers out of their positions, had multiple consequences.

MEME STOCKS

At the beginning of 2021, retail investors took umbrage to short seller Citron Research trying to drive down the share price of retailer GameStop. On January 21, Andrew Left, founder of Citron, said he expected GameStop's stock to go from $40 per share to $20. Instead, retail investors began a short squeeze and forced Left to cover his bet at $90, a massive loss for the short seller. Shares rose to a peak closing price of $347 per share on January 27, 2021.

Left no longer publishes short reports, making him the highest profile victim of the rally; and so began a year of uncertainty for short sellers.

> *"MASSIVE [FEDERAL RESERVE] LIQUIDITY HELPED PROP UP SOME OF THE WORLD'S WORST ASSETS."*

LESS IS MORE

Most prominently, the 126 activist short campaigns in 2021 were the fewest since Insightia records began in 2013, in comparison with 156 the year before and 170 in 2019.

"There's a cyclicality to the number of short activists and their campaigns. The numbers amp up when people think it's a great business model," Carson Block, founder of Muddy Waters Research, told Insightia in an email last year. "Next, reality sets in - the expenses, lawsuits, threats. Then people exit after realizing it's much harder than it looks. 2020 definitely accelerated the thinning of the herd."

Though short sellers were more hesitant to put out reports, the ones that did were making a bigger impact, as 2021 saw the highest average one-month campaign return since at least 2013, according to Insightia data. "We found that deep dive fraud research was still well received by the market," said Hindenburg Research Founder Nate Anderson in an email.

REGULATION PUSH BACK

The GameStop episode also caused regulators to revisit disclosure requirements for short sellers. In October last year the Securities and Exchange Commission (SEC) deemed short selling was not responsible for January's rally in GameStop shares. Yet, the Commission proposed a ruling that would see greater transparency of securities lending.

In late November, Muddy Waters responded to a European Securities and Markets Authority (ESMA) consultation about European short selling, criticizing the idea that "limiting short selling activity can limit volatility and downward price spirals," which the ESMA put forward.

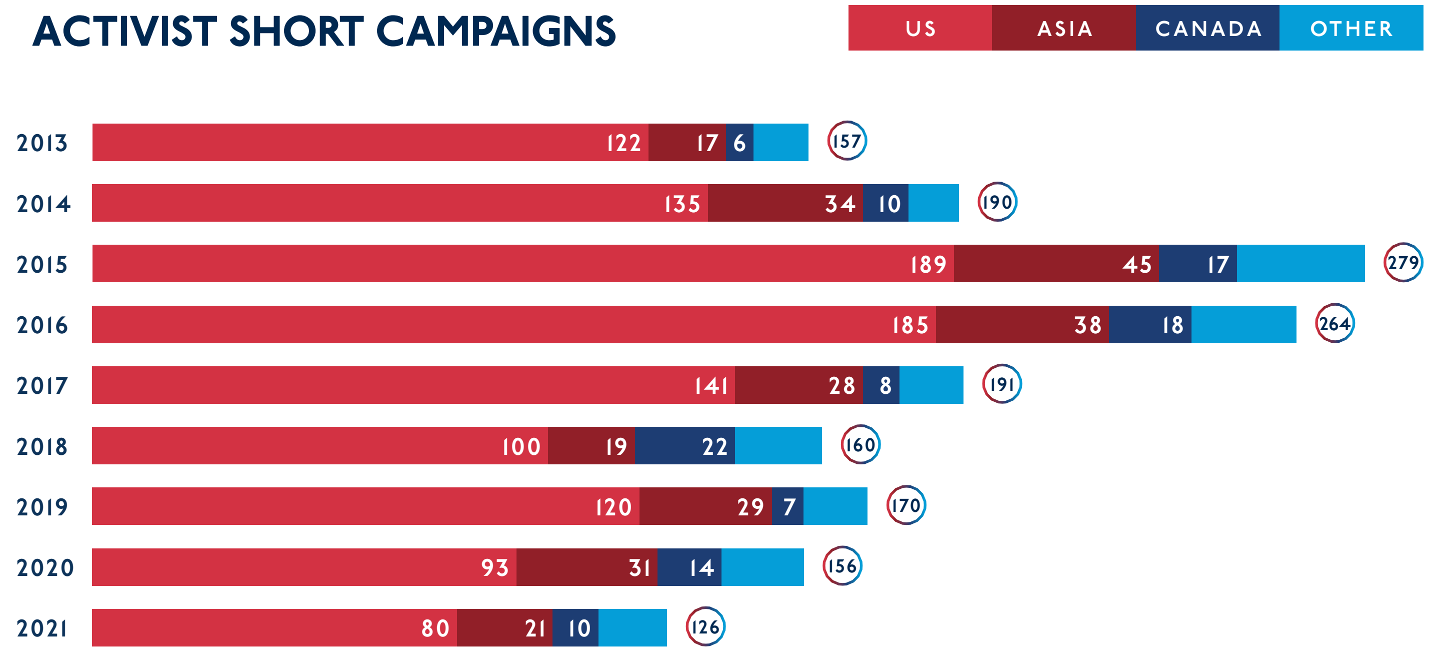
Carson Block's fund argued "no serious study to date has ever substantiated the fears expressed by ESMA toward the supposed negative impact of short selling on the smooth operation of financial markets."

FED LIQUIDITY

Hindenburg's Anderson told Insightia in a January email that "massive [Federal Reserve] liquidity helped prop up some of the world's worst assets" in 2021.

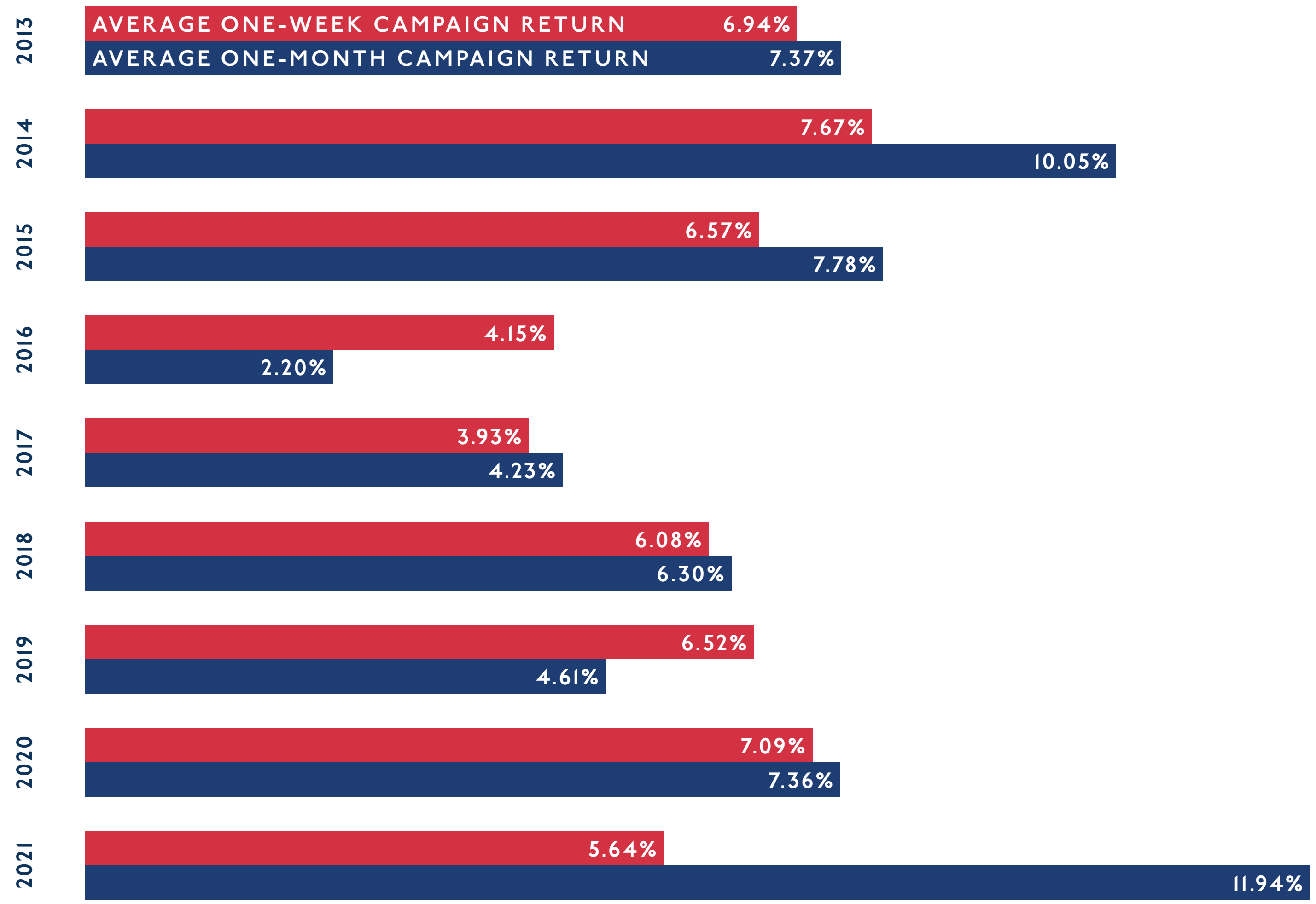
So, it may come as a relief to short sellers that the Federal Reserve has timidly committed to taper bond buying and raise interest rates in 2022. "As a result, we expect equity returns to moderate, volatility to continue to increase and the market to be more discriminating for the types of overvalued and speculative growth stocks we often target," concluded Ben Axler, founder of Spruce Point Capital Management, in a statement.

ACTIVIST SHORT CAMPAIGNS



NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED BY COMPANY HQ AND YEAR. SUM OF ACTIVIST SHORT CAMPAIGNS IN CIRCLE.
SOURCE: INSIGHTIA

ACTIVIST SHORT CAMPAIGN RETURNS



AVERAGE ONE-WEEK AND ONE-MONTH ACTIVIST SHORT CAMPAIGN RETURNS BY YEAR.
SOURCE: INSIGHTIA

INTELLIGENT ANALYTICS

insightia

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WHERE **INTELLIGENCE** MEETS **ANALYSIS**

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