

The Evolution of Proxy Fights



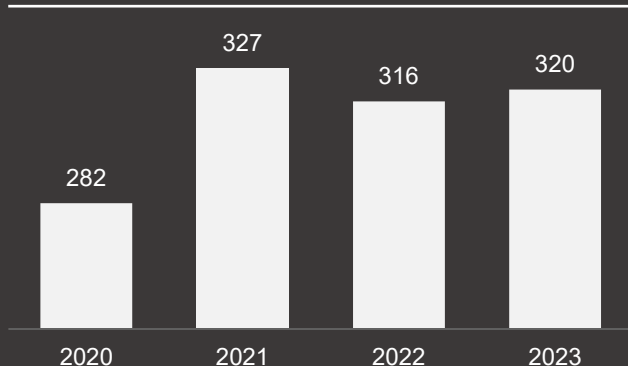
EVERCORE

JUNE 2024

THE EVOLUTION OF PROXY FIGHTS

Activism levels in the U.S. are near record highs as dissidents and raiders continue to leverage the threat of a proxy fight to destabilize companies and catalyze M&A. Activist tactics have become more aggressive and less predictable as activist positions, campaigns and “wins” have increased.

Number of Global Activism Campaigns



Activists have recently taken a number of new positions – Q1 2024 13F filings disclosed 159 new or increased positions by top activists¹; many of these positions will likely become the targets of future activist campaigns.

No company is immune to activists in this increasingly challenging environment. Today activists are more likely to launch “sneak attacks” and build “stealth accumulations” at their targets through broker dealers. At the same time, the lines between activism and private equity continue to blur, as prominent PE firms have partnered with activists to take companies private.

Recent activist campaigns and proxy fights underscore the implications of these evolving dynamics. In the Universal Proxy Card (“UPC”) era, companies are opting to settle quickly with activists – often before a campaign is even publicly launched – rather than face a vote on the UPC. For those that choose to fight, it is an uphill battle, as proxy advisors are more likely than ever to support activists. As a result, a number of companies have faced difficult outcomes.

The world of activist activity has become vastly more complicated. A successful defense in today’s environment requires proactive action to avoid being targeted or to be better positioned in the case of campaign.

It is more important than ever that companies partner with an independent, conflict-free advisor. Evercore has the #1 activism / raid defense practice globally, with an unmatched track record of success. Unlike many other financial advisors, we never work for, advise or stake-build for activists.

Source: FactSet, Refinitiv Eikon, company filings















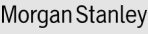





1. Positions and all pricing data as of 3/31/24 13-F filing date. Includes only U.S.-listed companies and the following activists: Barington Cap. Group, Corvex Mgmt., Elliott Mgmt., Engaged Cap., Engine Cap. Mgmt., Glenview Cap. Mgmt., HG Vora Cap. Mgmt., Hudson Executive Cap., Icahn Associates, Partners, Irenic Cap. Mgmt., JANA Partners, Kimmeridge Energy Mgmt., Land & Buildings Invest. Mgmt., Legion Partners Asset Mgmt., Mantle Ridge, Palliser Capital UK, Sacher Head Cap. Mgmt., Sarissa Cap. Mgmt., Scopia Cap. Mgmt., Starboard Value, TCI Fund Mgmt., Third Point, Trian Fund Mgmt. and ValueAct Cap. Mgmt. Excludes selected merger arb positions and derivative positions


HOW HAVE ACTIVIST TACTICS CHANGED?

Launching “Sneak Attacks”

In a change from recent years, activists are now launching public campaigns without any prior notice or previous private engagement with targets. To keep stakes confidential, activists often accumulate positions through derivative contracts at broker-dealers. The broker-dealers will disclose the holdings behind these positions, but the activists are not required to do the same.

Broker-Dealer Accumulations Prior to Campaign Launch

Company	Activist(s)	Select Broker Dealer(s) ¹	
			
	 ValueAct Capital		
	 ELLIOTT INCLUSIVE CAPITAL PARTNERS		
	 STARBOARD VALUE		
	 STARBOARD VALUE	 JANA ADVISORS	

 = Aggregate BD ownership¹

Companies often employ stockwatch firms to try to detect these accumulations. Interestingly, some targets have discovered that their financial advisors for defense are accumulating shares for the activists through their trading arms.

These stealth accumulations are tough to discern, even with stock watch, allowing activists to launch surprise attacks.

Because stealth accumulations are becoming the norm, prior preparation for activism is more important than ever.

Partnering With Private Equity

As activists remain focused on driving M&A outcomes, private equity and activism are increasingly entangled.

A number of prominent PE firms have accumulated public stakes and filed 13Ds in target companies, and some PE acquirers have partnered with activists to force take-private transactions. In fact, since 2019, ~33%² of take-privates have been preceded by an activist campaign.

Activist firms have also formed private equity arms of their own, including Elliott Management and Starboard Value.

“Faux Bids” and “Fire Sales”

Other activist firms have launched bids for companies without any evidence of financing. Observers believe these “faux bids” are designed to attract additional buyer interest, creating the perception that the target is “in play.”

In a similar vein, activists often demand the creation of – and a seat on – a Board committee to pursue strategic alternatives.

All of these tactics can create pressure to launch sales processes which, in this context, can be fraught with potential risk including “fire sale” dynamics and a plummeting stock price if a transaction does not materialize.

Source: FactSet as of 3/31/24, Refinitiv Eikon, Deal Point Data, Insightia, Bloomberg

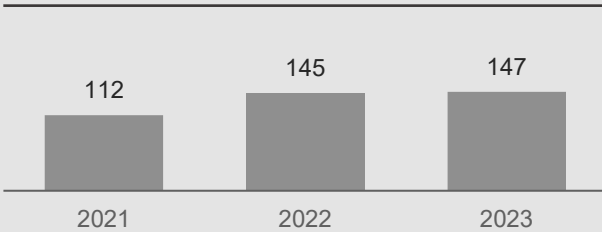
1. Includes all broker-dealer stakes amongst the top 250 institutional shareholders as of the latest 13F filing (quarter ending 3/31/2024)
2. Represents U.S.-based take-privates since 2019 and activist campaigns two years prior to deal announcement

HOW HAVE COMPANIES RESPONDED?

Settlements on the Rise

The number of Board seats won by activists continues to increase.

Number of Board Seats Gained via Settlement at U.S. Companies



While companies have long sought to avoid the potential financial and reputational expense and distraction of proxy contests, this trend has accelerated since the introduction of the UPC – which intensifies the scrutiny on individual directors by shareholders and proxy advisors. Since the UPC went into effect, ISS and Glass Lewis have tended to target¹ the most long-tenured directors on the Board.

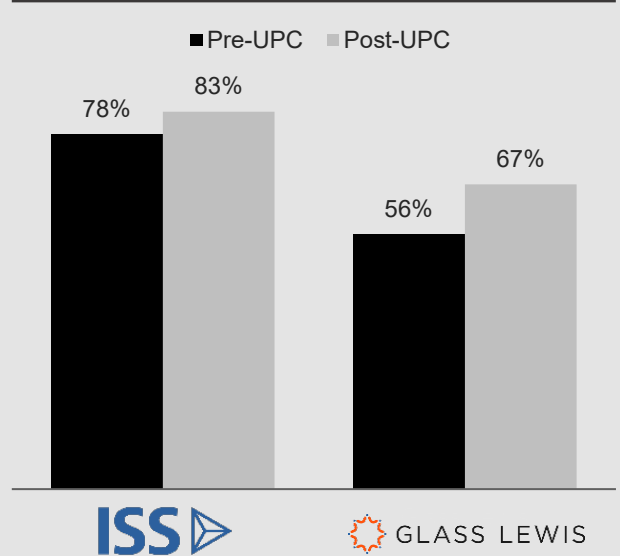
Influence of Proxy Advisors

With the UPC, proxy advisors are providing a more detailed, critical review of each nominee in a proxy fight. Proxy advisor recommendations no longer just focus on who shareholders should vote for, but also which incumbent director(s) should be opposed.

In addition, ISS and Glass Lewis have increased their level of support² for activists in most proxy fights³ – which was already high.

Since the UPC era began, ISS and Glass Lewis have supported activists at an even higher rate than the already elevated levels in prior years. Since UPC, ISS has supported¹ an activist 83% of the time and Glass Lewis has supported an activist 67% of the time.

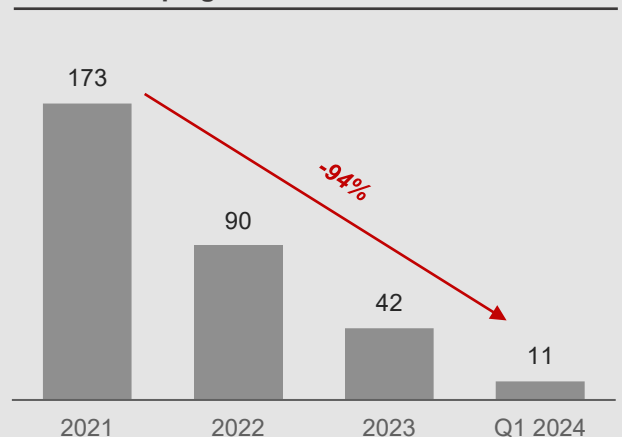
Proxy Advisors Have Supported² Activists in Most of Proxy Fights³



As a result, it is no surprise why companies are settling with activists more quickly than in previous years, sometimes before news of a campaign has even broken.

In fact, the average number of days between campaign launch and settlement has dropped 94% since 2021, from ~6 months to 11 days in Q1 2024 as Boards are opting to settle, rather than face a vote on the UPC.

Average Days From Campaign Launch To Settlement⁴



Source: Activist Insight, FactSet, Institutional Shareholder Services, Spencer Stuart, Diligent

1. Includes proxy fights at companies with greater than \$500m market cap, where ISS and/or Glass Lewis recommended against at least one director

2. Support is defined as a recommendation to vote in favor of a dissident's nominee or to withhold from a management nominee


3. Includes proxy fights at companies greater than \$1bn in market cap that have gone to a vote; pre-UPC refers to proxy contests between 2012-2022 and post-UPC refers to proxy contests since September 2022; proxy contest data and proxy advisor recommendations per Proxy Insight; activist AUM data per FactSet

4. Data sourced from Deal Point Data; dataset includes average days from the public launch of an activist campaign to a publicly announced settlement; campaigns where the settlement coincides with the launch of the campaign are counted in the dataset as "0 days" until the settlement occurred

SCORECARD OF 2024 PROXY FIGHTS

Select proxy fights in 2024 reveal the difficulties facing companies under attack

Key 2024 Proxy Fights

Company / Activist	Public Demands				Proxy Advisor Rec.	Outcome
	Board Change	CEO Change	M&A	Capital Allocation		
 	●	●			ISS: Dissident GL: Dissident	Board Chair ousted Three dissidents elected
 	●	●	●	●	ISS: Dissident GL: Dissident	Entire Board resigned
 	●			●	ISS: Management GL: Dissident	Elliott secured Board seat Company won proxy fight
  	●			●	ISS: Dissident GL: Management	ValueAct granted observer Board seat Company won proxy fight
 	●				ISS: Management GL: Management	Dissident withdrew after ESG concessions

BE PREPARED

KEY NEXT STEPS FOR COMPANIES TO CONSIDER

- **Assess the company's vulnerability and consider whether proactive measures are required**
- **Take proactive steps to “sell the board” to ensure the Board's strengths and role in oversight are well-known – highlight directors' expertise, M&A and value creation track records, risk oversight focus and ESG perspectives**
- **Develop tailored engagement strategy to strengthen relationships with shareholders, including index funds, proxy advisors and other constituencies**
- **Monitor shareholder base and trading patterns for unusual activity**
- **In this environment of macro uncertainty and heightened vulnerability, work with your advisors, including Evercore, to ensure that your response plan is current**

More than ever, proactive preparedness is critical to help avoid being targeted – and to be better positioned if hostile activity occurs

EVERCORE'S ACTIVISM / RAID DEFENSE FRANCHISE

#1

Top defense advisor globally with 400+ defenses and an unmatched track record of success

\$1.9tn

Currently advising companies representing approximately \$1.9tn in market value in activist defense

30+

Years of defense experience

25+

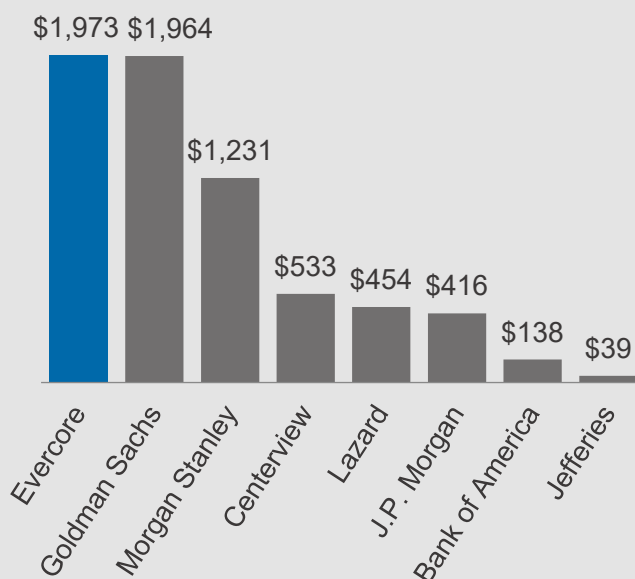
Number of dedicated activism defense professionals – the largest team on Wall Street

0

No Conflicts – Evercore does not stake-build for, finance or advise activists

2017 - 2024 YTD DEFENSES¹ BY TOTAL MARKET VALUE

(\$ in billions)



EVERCORE HAS ADVISED ON THE MOST SIGNIFICANT DEFENSES IN RECENT YEARS



Source: FactSet Shark Repellent, WSJ

1. Data sourced from FactSet Shark Repellent; includes publicly announced defense assignments between January 1, 2017 – May 1, 2024 for each advisor; does not include exempt solicitations

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