COVID-19: THE IMPACT ON SHAREHOLDER ACTIVISM

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Activist Insight

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CONTENTS

Senior members of Activist Insight's editorial team recorded a special episode of *The Activist Insight Podcast*, offering a hot take on the implications of the COVID-19 outbreak for shareholder activism. Listen now on Apple Podcasts, Spotify, and YouTube. Please consider subscribing on your platform of choice for forthcoming episodes, including one covering activism in the energy sector.

FOREWORD

ACTIVIST INSIGHT EDITOR-IN-CHIEF, JOSH BLACK.

In little over three weeks, COVID-19 put up formidable obstacles to everyday life. The new coronavirus is by no means only a financial story and our first concern is for the health and wellbeing of all of our readers and their loved ones. We hope you are all staying safe.

Like everything else, we know shareholder activism has been dramatically affected by this new reality, even if we don't always know how, or for how long. If the novel coronavirus is more than just a financial story, it is the financial story of 2020.

Consumer spending is drying up, guidance is out the window, and stocks fell sharply before beginning a surprising and unstable recovery. Access to credit is uncertain and cash is king. Talk of a V-shaped recovery is ever fainter. But proxy season – which thanks to advance notice bylaws began just as the crisis hit – is the one chance activists get to push for change at some companies. Dare activists risk the appearance of agitating at the wrong time? Is change essential for companies that might otherwise go out of business?

This report is a snapshot of Activist Insight's attempts to answer those questions. Included are articles our subscribers have had access to for weeks, highlighting the chilling effect of COVID-19 on the 2020 proxy season, the opportunities it has unleashed for both long and short investors, and the hurdles that will have to be surmounted if activists are to remain an influential part of corporate life.

Although we draw on data from three modules on the Activist Insight Terminal (*Activist Insight Online* for campaign data, *Shorts* for activist short seller data, and *Governance* for poison pill data), a snapshot is all this is. Subscribers have access to much more, including regulatory news, campaign-specific developments, interviews, and analysis.

Our reporting for *Activist Insight Monthly*, our online magazine, will reflect the more nuanced trends in different regions and sectors (April, appropriately, is dedicated to the energy sector) and we are also tracking a substantial number of moves up the *Activist Insight Vulnerability* index, which uses financial and ownership metrics to indicate which companies meet the criteria of previous targets. A demonstration of that is also included in these pages.

We hope you find these insights enlightening and consider becoming a subscriber soon if you are not already. For our subscribers or media with questions, our support and editorial teams stand ready to answer your questions. Please email support@activistinsight.com for help.

On behalf of Activist Insight, thank you for your continued interest. Stay safe!

JOSH BLACK
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ACTIVIST INSIGHT

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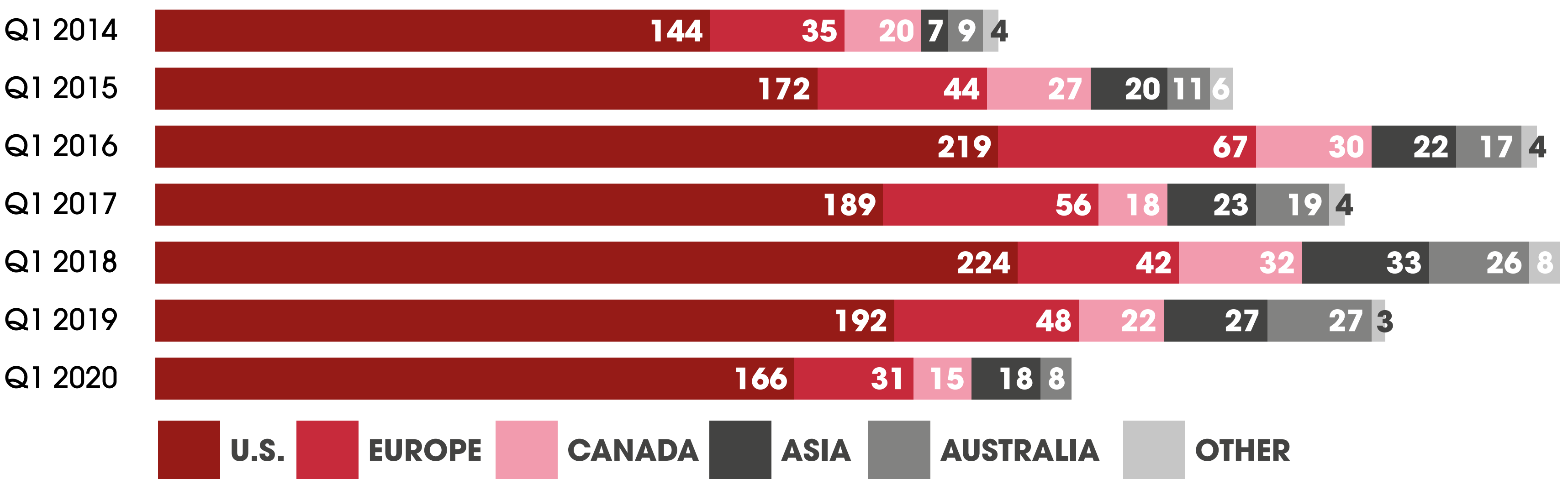
COVID-19 HAS ACCELERATED A SLOWDOWN IN ACTIVIST INVESTING.

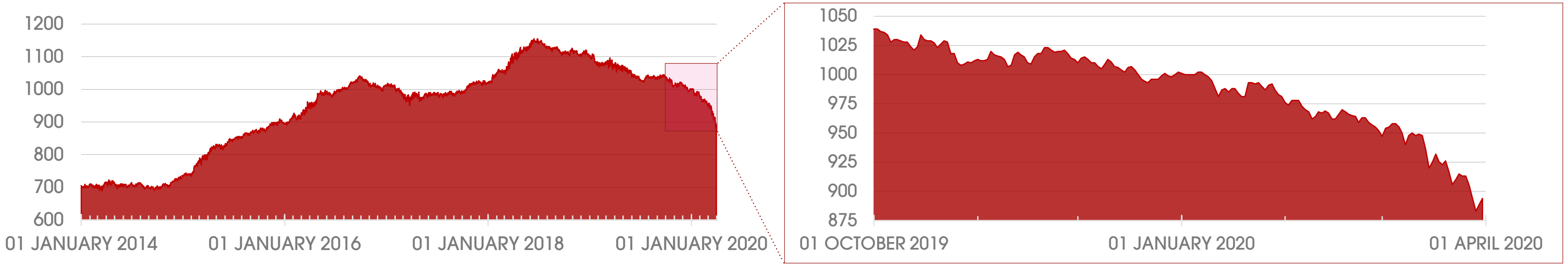
ACTIVISM UNDER THE SHADOW OF COVID-19

ACTIVIST TARGETS IN THE OPENING QUARTER BY YEAR

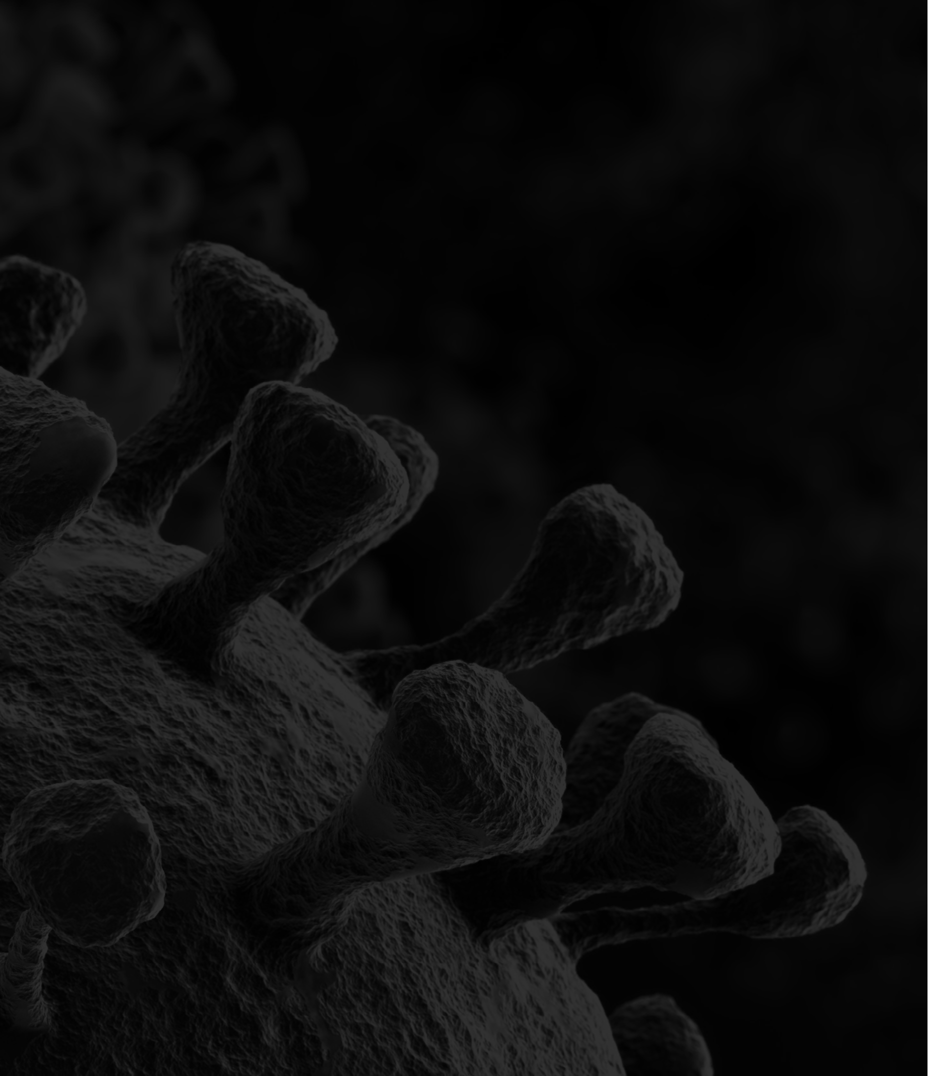


The number of companies publicly subjected to activist demands in the opening quarter, by year and company HQ. *Source: Activist Insight Online*

1-YEAR ROLLING TOTAL OF ACTIVIST CAMPAIGNS

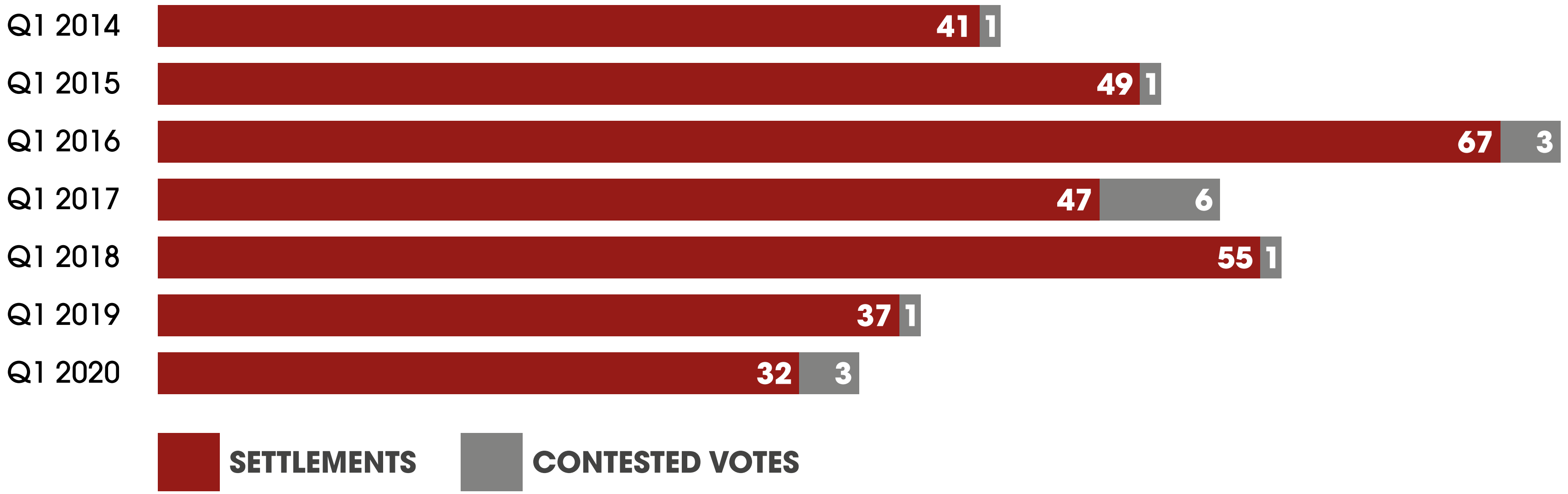


Rolling 365 day total of activist campaigns worldwide. *Source: Activist Insight Online*



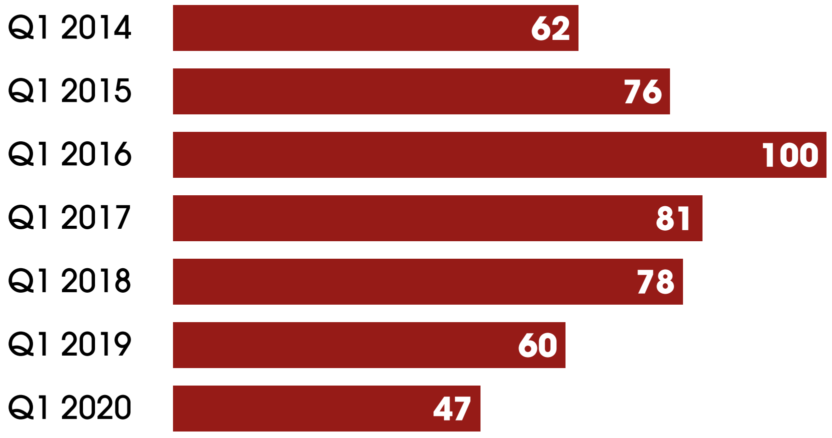
VARIOUS MEASURES PEG ACTIVIST INVESTING IN 2020 CLOSER TO 2014 LEVELS.

SETTLEMENTS AND CONTESTED VOTES IN THE U.S. IN THE OPENING QUARTER BY YEAR



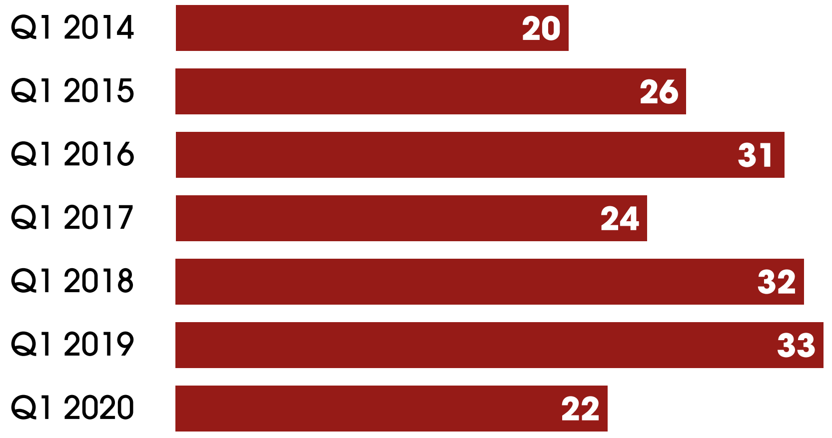
Number of settlements and contested votes for board seats at U.S.-based companies in the opening quarter by year. *Source: Activist Insight Online.*

BOARD REPRESENTATION TARGETS IN THE U.S. IN THE OPENING QUARTER OF THE YEAR



Number of U.S.-based companies publicly subjected to activist demands for board representation in the opening quarter by year.
Source: Activist Insight Online

M&A AND BREAKUP ACTIVISM TARGETS IN THE U.S. IN THE OPENING QUARTER OF THE YEAR



Number of U.S.-based companies publicly subjected to M&A and breakup-related activist demands in the opening quarter by year.
Source: Activist Insight Online

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FIVE UNCERTAINTIES

THE FOLLOWING ARTICLE APPEARED AS ACTIVISM THIS WEEK BY JOSH BLACK ON MARCH 20, 2020.

By now, it’s obvious that the crisis stemming from the spread of COVID-19 is going to be with us for some time – likely for the duration of the proxy season, at least. What does that mean for activism?

Like the many people adjusting to their new realities, these are no less confusing times for the corporate and financial worlds.

The first source of uncertainty is the stock market.

As of yesterday [March 19], the S&P 500 Index is down nearly 25% year-to-date to its lowest level in almost four years. If activists have cash readily available and the market finds some stability, this might be a buying opportunity. Certainly, the level of activism had started to drop last year as the market cruised upward, making value investment opportunities hard to find. That decline was accelerating in 2020 even before this coronavirus became an economic phenomenon.

However, things may not be so simple in as uncertain an environment as this. One activist target in the energy sector has reportedly begun exploring restructuring after the oil price crash caused by Saudi Arabia’s threat to increase production. The same day that Impala Asset Management launched a proxy contest at Harley-Davidson, the motorcycle manufacturer suspended production at its U.S. factories for 11 days.

As if to illustrate the confusion, Bill Ackman this week gave an emotional interview to CNBC in which he warned that certain stocks in his portfolio could go to zero if the health crisis requires a lockdown period of 18 months, then tweeted that he was buying stocks – “bargains of a lifetime if we manage this crisis correctly,” he said. Despite hedging his portfolio, his publicly listed fund was down 6.5% as of Tuesday [five weeks later, the fund is up 9% for the year].

Second is the impact of de-risking strategies on issuers and the wider shareholder base.

Returning cash to shareholders or changing managers is likely to look less appealing in the current climate, while underwater shareholders may rue lowball bids from strategic acquirors or private equity sponsors unless there is a desperate business need. Preserving value, more than creating it, will likely be the priority for this year.

“I think there’s going to be far less activism than we’ve experienced in past years. I can’t imagine an activist aggressively prosecuting a proxy contest,” MacKenzie Partners’ president, Bob Marese, told me this week. “There are the practical elements of logistics to consider in a time of social distancing, but perhaps more importantly the optics of it. How will the investor base view the activity in light of the broader macro conditions?”

Third are the logistics of annual meetings.

In a client memo this week, Ele Klein and Aneliya Crawford, two partners in Schulte Roth & Zabel’s shareholder activism group, warned of “logistical impediments and shifts in timing and strategy,” including delays in moving

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“THE SEC IS MAKING IT EASIER FOR PEOPLE TO HOLD VIRTUAL MEETINGS, WHICH AUTOMATICALLY FAVORS A COMPANY AND DISFAVORS AN ACTIVIST.”

shares from street name accounts. The lawyers also speculated that a bare-bones Securities and Exchange Commission (SEC) might have less time for fact-checking proxy statements, leading to bareknuckle fight letters.

“The SEC is making it easier for people to hold virtual meetings, which automatically favors a company and disfavors an activist,” said Chris Davis, head of Kleinberg Kaplan’s M&A and investor activism groups.

Yet for activists, the urgency might be much greater than that stratagem allows, especially given much of their activity is governed by advance notice bylaws implemented by companies. A nomination letter by Starboard Value at eBay this week read almost apologetically, just as CEO Jeff Smith had said two weeks ago: “I don’t want to seem opportunistic because the first thing we care about is the health and well-being of employees and people around the country, but yes the volatility in the marketplace is a good opportunity for us.”

“We are disappointed that Starboard has decided to announce its previously provided nominations amidst the global COVID-19 pandemic while the board and management are trying to focus on the business, employee health and safety, and the important CEO search and portfolio review that are underway,” eBay shot back.

“The board by-and-large controls the annual meeting machinery and logistics,” with certain procedural protocols discussed between the activist and board in the two or three weeks leading up to the meeting, says Andrew Freedman, a co-head of Olshan Frome Wolosky’s activist practice.

Fourth is getting people to pay attention.

Active (not activist) managers may be too preoccupied to devote significant attention to a proxy contest, Marese told Activist Insight, although institutional stewardship teams should still be engaged.

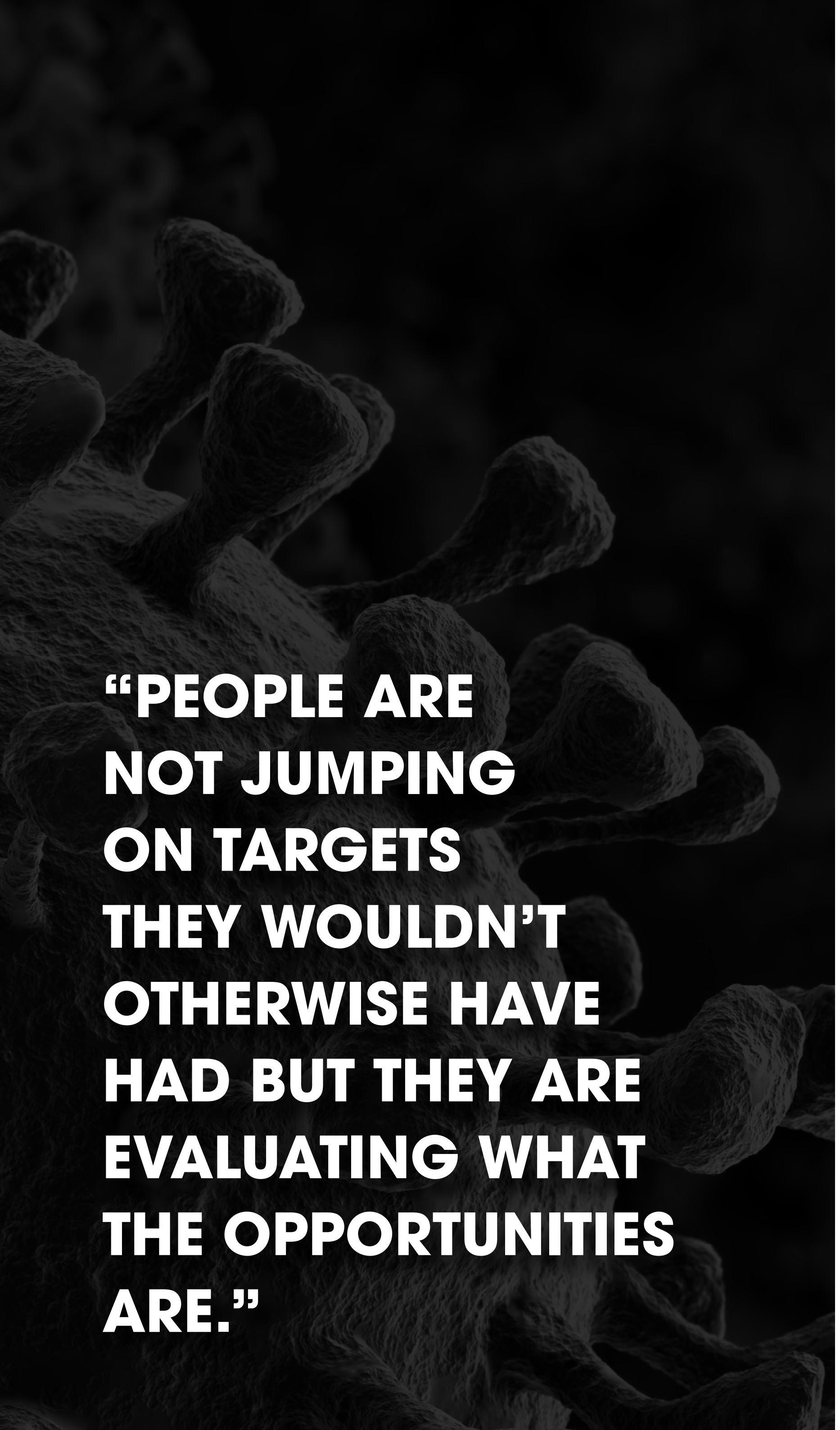
“With so much confusion out there it’s going to be harder to get people to pay attention than it was in past years, so you could end up with suppressed voting totals,” Davis added.

Finally, companies may have more opportunity – and some justification – to delay and defend.

Sarah Wilson, the CEO of U.K.-based proxy voting adviser Manifest, wrote on LinkedIn this week: “Spain has taken the sensible step of allowing meetings to take place up to 10 months later, so long as the annual report is published. This is a great way to handle the disruption. What nobody needs right now is for the whole world to do a “Japan Week” and have all the meetings in the same compressed window.”

Morgan Lewis’ Keith Gottfried and Sean Donahue noted this week in a client memo about poison pills: “Extrapolating what we saw in the wake of the 2008 financial crisis, we would expect to see a significant uptick in poison pill adoptions as public companies – including those in sectors that have been disproportionately impacted by the COVID-19 pandemic – continue to grapple with market valuations that they believe do not reflect their intrinsic value and, accordingly, make them unduly vulnerable.” Dave & Busters Entertainment, which has KKR’s new activist fund on its register, did exactly that this week after a dramatic fall in value.

Freedman hopes that boards respond to the extraordinary nature of the pandemic in is a spirit of cooperation, not by turning on activists. “My sincere hope is that companies and their counsel approach the logistics of holding their meetings in a collaborative and cooperative spirit where an activist has nominated a slate,” he said.



“PEOPLE ARE NOT JUMPING ON TARGETS THEY WOULDN’T OTHERWISE HAVE HAD BUT THEY ARE EVALUATING WHAT THE OPPORTUNITIES ARE.”

HOW QUICKLY DOES ACTIVISM COME BACK FROM THIS?

THE FOLLOWING ARTICLE APPEARED AS ACTIVISM THIS WEEK BY JOSH BLACK ON MARCH 27, 2020.

Stock market rallies three days in a row, stimulus on its way. Are activists looking for fun and feeling groovy?

With stock prices still in correction territory (the S&P 500 is down by almost one-quarter from its peak), thoughts have turned to whether this represents a buying opportunity for activists. A week after Bill Ackman said he warned his portfolio companies, “Hell is coming,” he announced that he had put the proceeds of some smartly-timed hedges back into stocks – almost $2.6 billion in fact.

Engaged Capital and Land & Buildings are reportedly fundraising to take advantage of the current market. Carl Icahn is on maneuvers. Small wonder that 14 poison pills have been implemented at S&P 500 or Russell 3000 companies year-to-date [March 27], according to *Activist Insight Governance*. Opportunity does not self-isolate.

“If redemptions don’t become a problem and fundraising works, especially if the indications are that the economy is coming back and stock prices don’t react as quickly, that’s tailor-made for an activist,” said David Rosewater, Morgan Stanley’s activism defense chief.

Those investors that snatched a watchlist of companies they were already working on when leaving the office are likely to be in the vanguard, according to advisers I spoke to this week.

“Some investors are aggressive, raising money and jumping in,” Ele Klein, co-head of Schulte Roth & Zabel’s shareholder activism practice told me. “People who don’t do activism for a living seem to have less appetite at this moment.”

“Activist funds are much better equipped today to come through the other side” than they were in the last crisis, Rosewater adds. “But they have to have enough confidence to commit the capital.”

Indeed, most of the money deployed so far appears to be going to existing, or recent positions where additional capital can be deployed with a high degree of confidence or can tip the scales of a campaign.

Other factors favor delay, especially for new positions. As well as the economic uncertainty, companies may still be adjusting to new working conditions and future targets could still be in the middle of the pack. Waiting a few more days could flush out underperformers and mean

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“IN PARTICULARLY VULNERABLE COMPANIES, ACTIVISTS ARE CONCERNED ABOUT RUNNING A FULL-BLOWN CONTEST BECAUSE THEY DON’T THINK THE COMPANIES CAN SURVIVE IT.”

positions below 5% don’t have to be disclosed to the market via 13F filings until August, rather than in just over 45 days. That would be a better starting point for a campaign with the potential to develop into a proxy fight in 2021.

“People are not jumping on targets they wouldn’t otherwise have had but they are evaluating what the opportunities are,” says Schulte Roth & Zabel Partner Aneliya Crawford. “There’s an expectation that the underperformers will be flushed out.”

Full-blown campaigns appear to be on hold for this proxy season, although Crawford insists that most logistical worries are overblown.

“I do not imagine we’ll see an acceleration of campaigns,” says Daniel Kerstein, an investment banker focused on activism defense at Barclays. “Timing-wise, the majority of companies’ nomination windows have closed. Starting an activist campaign at this time might be at best a little impractical.”

“A lot of people are finding opportunities to be more open to settlements, on both sides,” Crawford says. “In particularly vulnerable companies, activists are concerned about running a full-blown contest because they don’t think the companies can survive it.”

But that doesn’t mean that the proxy season will be entirely comradely. For one thing, some activists will need to go through with nominations because of nomination windows and can blame companies for maintaining the deadlines.

“We’re not seeing a lot of companies saying they want to delay their annual meeting – some of them because they don’t want to reopen nomination windows,” Klein said. “I think the lack of full thoughtfulness about whether or not to delay at this time has been a little disappointing to me.”

POISON PILLS SURGE, REACTION UNCERTAIN

FIRST PUBLISHED ON APRIL 2, 2020 BY JASON BOOTH ON ACTIVIST INSIGHT ONLINE.

With share prices down and shareholder activists looking for new targets, American companies are implementing poison pills at a rate not seen in a decade. Twenty-three pills have been announced in 2020 thus far [April 2], including 17 in March alone, according to *Activist Insight Governance* data. By comparison, 18 pills were introduced in all of 2019.

What has struck market observers is that many of this year's pills appear to be "preemptive," with no immediate threat of a hostile takeover or indications that an activist shareholder is circling the business. And none of the recent rights plans are subject to a shareholder vote. The rush to put up defenses may give activists additional ammunition for proxy fights in 2021.

Coronavirus pills

"These are like anti-Coronavirus pills," said Professor Marcel Kahan at New York University School of Law – justified, at least in the minds of some executives, by stock market volatility and the difficulty of reacting to an emerging threat due to COVID-19 disruption.

Poison pills – formally known as shareholder rights plans – were developed in the 1980s to fend off hostile takeovers. "Triggered" when an investor goes over a certain ownership level, the plan automatically issues new shares to other stockholders, thus diluting the buyer's stake.

Today's flurry of pills is reminiscent of 2008, when dozens of companies threw up defensive barriers in response to that year's financial crisis and subsequent "Great Recession." But the new batch of pills have some key differences from earlier versions. Most notably, the average lifespan of this year's pills is a little over one year, and in some cases can be terminated even earlier, while many 2008 pills had a 10-year lifespan.

Significant volatility

Consumer cyclical companies are the most numerous adopters of pills this year, accounting for around a quarter of the new rights plans, with energy companies and air travel firms also among those adopting the defensive measure. The majority had market capitalizations of under a billion dollars, though two large-caps and two mid-cap stocks also issued pills, according to *Activist Insight Governance* data.

Six Flags announced a rights plan on March 31, citing the COVID-19 pandemic and "significant volume and volatility" in the trading of its stock. A day earlier Spirit Airlines launched a pill "to reduce the likelihood" that a potential acquirer could gain control via open market accumulation, while aerospace parts company AAR Corp said it needed a pill to give its board time "to make informed judgments and decisions." None pointed to real, or even perceived takeover threats.

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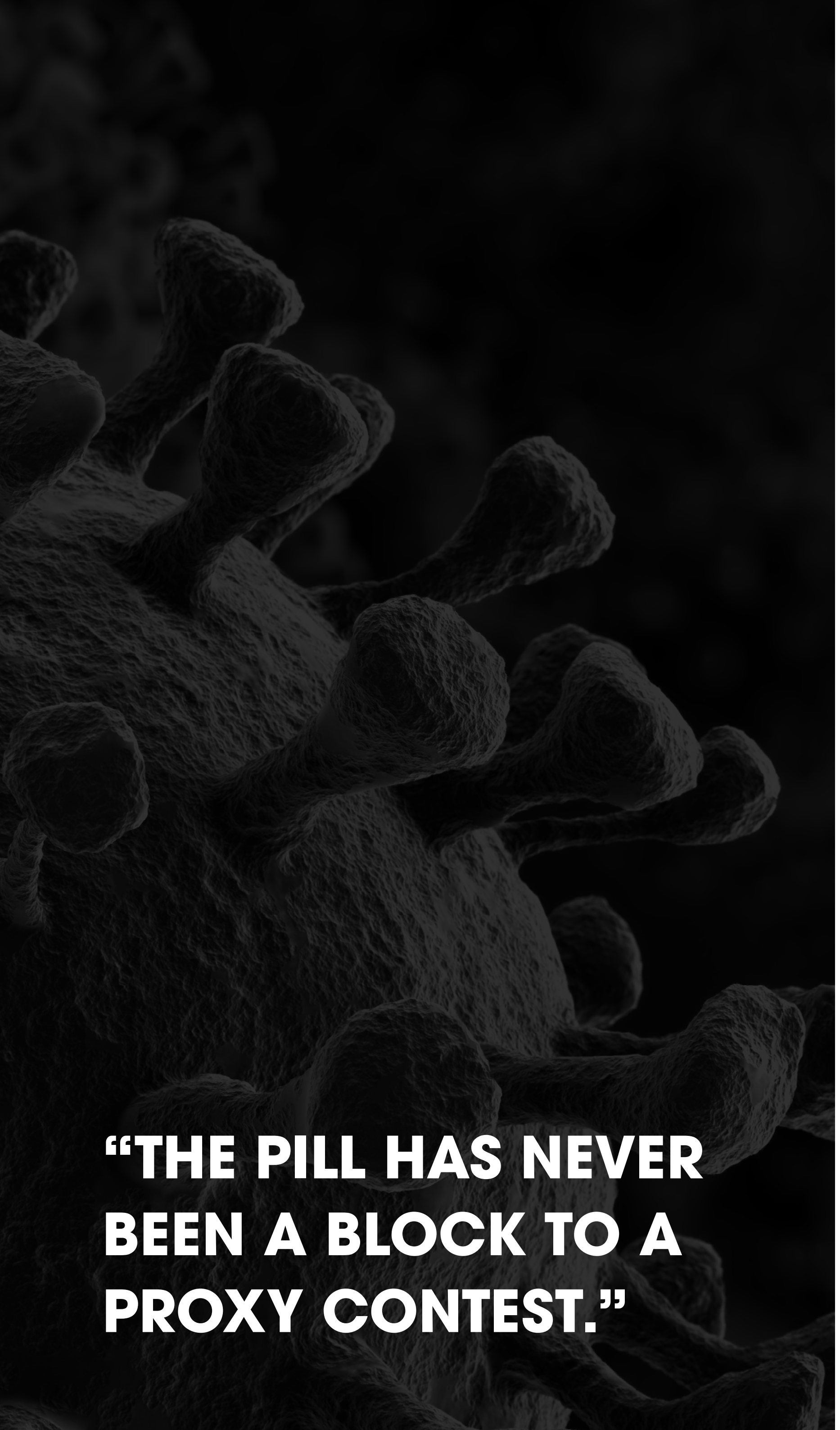


Some pills, however, have been the result of a clear and present threat, especially in the energy sector where habitual acquirers like Carl Icahn have been active. Both Occidental Petroleum and oil refining and distribution company Delek U.S. Holdings put in pills in reaction to Icahn buying shares. Possibly afraid of being the next target, energy infrastructure company William's quickly followed suit.

Some pills do predict activist activity; none quicker than The Chefs' Warehouse, which adopted a pill on March 22, a week before activist investor Legion Partners disclosed a new 5.5% stake in the food distributor.

Activist influence

Shareholder activists deserve much of the credit for shortening the durations of poison pills, according to Morton Pierce, a partner at law firm White & Case. "The activists came along (after 2008) and were taking aim at the pills, and that resonated with the shareholders base as being anti shareholder democracy."

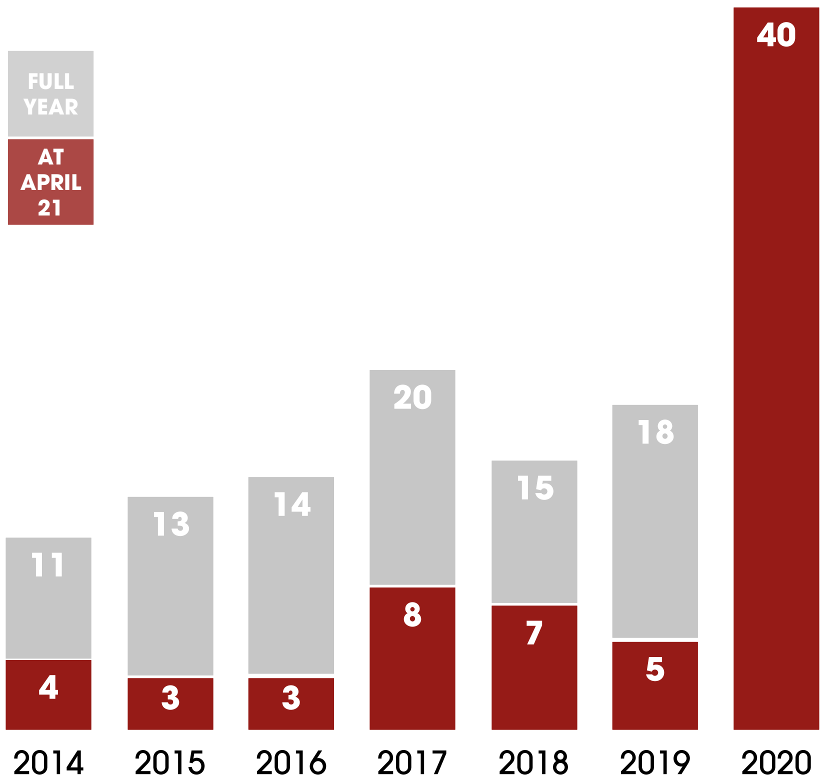
Fear of activism is apparent from current practices, although Pierce cautioned that, "The pill has never been a block to a proxy contest."

Almost half the current pills have 10% trigger points, while in 2008, around two-thirds of those tracked by *Activist Insight Governance* had 15% thresholds (*Activist Insight Governance* does not guarantee the comprehensiveness of 2008 data). Since the Great Recession, some companies have also distinguished between activists, which file Schedule 13Ds, and passive investors on 13Gs, giving the latter higher thresholds. Stripping out 5% pills designed to protect net operating losses, the average trigger this year is around 14%, according to *Activist Insight Governance* data.

Most new pills also last for one year or less and run out before the 2021 proxy season, when issuers may hope the disruption caused by COVID-19 is over and shareholders and proxy advisers alike will take a holistic view of governance and performance.

Several of the companies with new pills are currently vulnerable on both fronts, however. Entertainment destination company Drive Shack and aerospace company AAR Corp each have staggered boards and rank as highly vulnerable on *Activist Insight Vulnerability*.

POISON PILLS ADOPTED BY YEAR



Number of Russell 3000 companies adopting poison pills by year and by April 21 of each year.
Source: Activist Insight Governance.

“BOARDS CONTEMPLATING DEFENSIVE MANEUVERS MAY WANT TO CONSIDER THAT AN EFFECTIVE RESPONSE TO THE PANDEMIC COULD BE MORE ADVANTAGEOUS THAN ANY PILL.”

The reaction

Activist campaigns in the 2021 proxy season will likely center on how management teams reacted to the current crisis and whether they are perceived to have done a good job.

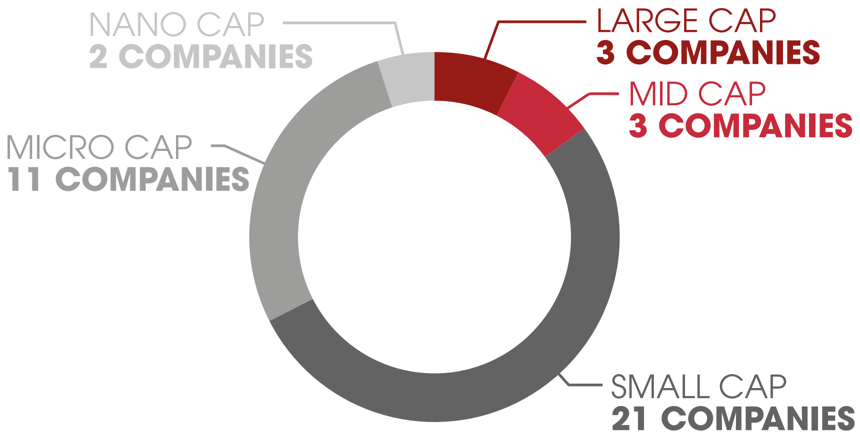
They may also hope to rally the governance community to come down harshly on companies that implemented pills.

Over the last decade, proxy advisory firms like Institutional Shareholder Services (ISS) and Glass Lewis have come out strongly against both poison pills and the board members who implemented them, typically recommending investors vote against an incumbent board that authorizes a long-term poison pill without subjecting it to shareholder approval.

Limiting pills to one year or less, however, makes them far more tolerable. ISS, for example, states in its 2019 proxy guidelines that it may be more lenient if that pill has a term of one year or less, and the board can offer a rationale for adopting it. Whether COVID-19 is sufficient rationale is currently unclear. Both ISS and Glass Lewis declined to comment for this story, though ISS indicated it may provide clarity in coming days.

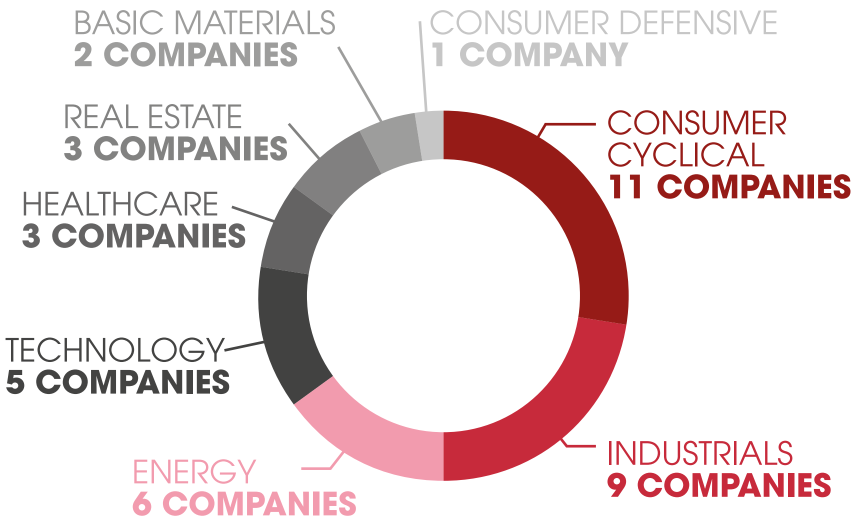
Some advisers warn that implementing a pill should not distract directors or make them complacent, citing a March 19 note from ISS to its clients that “boards contemplating defensive maneuvers may want to consider that an effective response to the pandemic could be more advantageous than any pill.”

2020 POISON PILLS BY MARKET CAP



Number of Russell 3000 companies adopting poison pills as of April 21, 2020 by market cap. Large cap: >$10B, Mid cap: $2B - $10B, Small cap: $250M - $2B, Micro cap: $50M - $250M, Nano cap: <$50M. *Source: Activist Insight Governance*

2020 POISON PILLS BY SECTOR



Number of Russell 3000 companies adopting poison pills as of April 21, 2020 by sector. *Source: Activist Insight Governance*

BUSINESS AS USUAL?

FIRST PUBLISHED ON APRIL 07, 2020 BY JOHN REETUN ON ACTIVIST INSIGHT ONLINE.

The fallout from the coronavirus pandemic has caused logistical and ethical issues for shareholder activists in the U.S., but will this lead to fewer proxy contests or simply defer campaigns until next season?

Attack or backtrack?

Sidley Austin, which mainly represents companies, suggested in early March that the current market instability may prove to be "corporate America's most effective poison pill," as activists wanting to launch proxy contests are left with a choice between a long-term investment that could cost a fund millions, or risk being seen as a short-term investor that "stands to lose credibility" if a proxy fight is followed by a hasty exit.

Moreover, companies have been forced into a survivalist state of mind by the crisis, ditching years of dismantling takeover defenses. So far this year, 25 companies adopted poison pills [April 7], the highest number since at least 2013, according to *Activist Insight Governance*. Meanwhile, some activists have withdrawn proxy contests in a year that had started out more subdued than previous years.

Xerox pulled its proxy contest and takeover effort at HP, while Jonathan Litt's Land & Buildings withdrew its slate at American Homes 4 Rent, citing concerns over the disruptive effect of the coronavirus.

Other contests settled but many more are still ongoing. According to data compiled by *Activist Insight Online*, there are 43 unresolved demands for board representation in the U.S. [April 7], with most of the companies facing these demands yet to announce their annual meeting dates. Starboard Value has proxy contests in play at eBay and GCP Applied Technologies, while Commvault Systems' nomination deadline beckons.

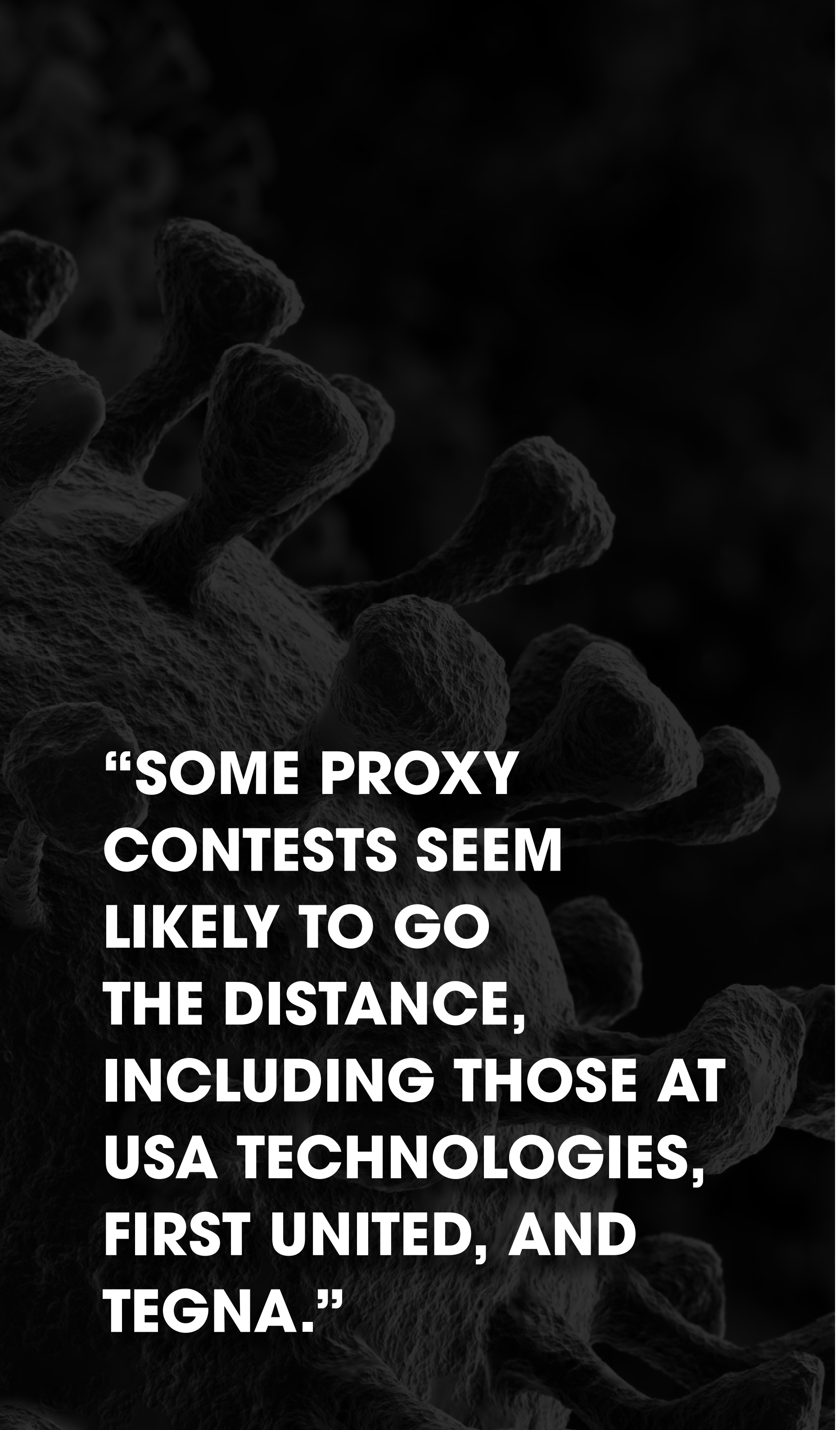
Many of these could settle, and 87% of Activist Insight newsletter readers who responded to last week's poll believe that companies and activists would rather settle than draw out a campaign in these uncertain times. However, some proxy contests seem likely to go the distance, including those at USA Technologies [the campaign ended a few days before the annual meeting with a capitulation by the company], First United, and Tegna.

Image issue

Defense law firm Wachtell, Lipton, Rosen & Katz recently argued that activists who launch campaigns during the current market volatility will be marked as "mere profiteers... opportunistically taking advantage of the COVID-19 pandemic to further line their pockets."

The argument has been echoed by some companies, which have claimed activists running proxy contests amid such market uncertainty are acting insensitively. When Starboard Value launched its proxy contest at eBay in late March, the company lambasted the fund's timing and suggested the contest was an "unnecessary distraction" as eBay remains concerned with its "business, employee health and safety, and the important CEO search."

Patrick Tucker, managing director at communications agency Abernathy MacGregor, told *Activist Insight Online* that funds will not be dissuaded



"SOME PROXY CONTESTS SEEM LIKELY TO GO THE DISTANCE, INCLUDING THOSE AT USA TECHNOLOGIES, FIRST UNITED, AND TEGNA."

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from launching a campaign in fear of their "raider" legacy. "Activists have proven to be very savvy in managing their public profile," Tucker noted, adding that "companies cannot simply assume image concerns will slow an attack."

Indeed, Tucker suggested that the onus will be on companies "to be ready to prove why a proxy contest in this environment is not just unseemly but deeply damaging."

Paperwork

Public image is only one facet that activists would have to consider under the current circumstances of the markets. The other is the logistical issues that arise from mass lockdowns. With campaigns not only relying on meeting dates being honored, there is also the need for regulators to remain vigilant and election inspectors active.

Aneliya Crawford, a partner at Schulte Roth & Zabel, has said that while there are some "logistical challenges," she believes they have little effect on dedicated activists launching campaigns.

"The volume continues to be high, people are not just abandoning contests," Crawford told *Activist Insight Online*. "Different methods of communication may come forward. Contests could just as effectively go the distance."

“WHILE 2008 WAS QUIET, ACTIVISM CAME BACK STRONGLY IN THE IMMEDIATE AFTERMATH OF THE CRISIS.”

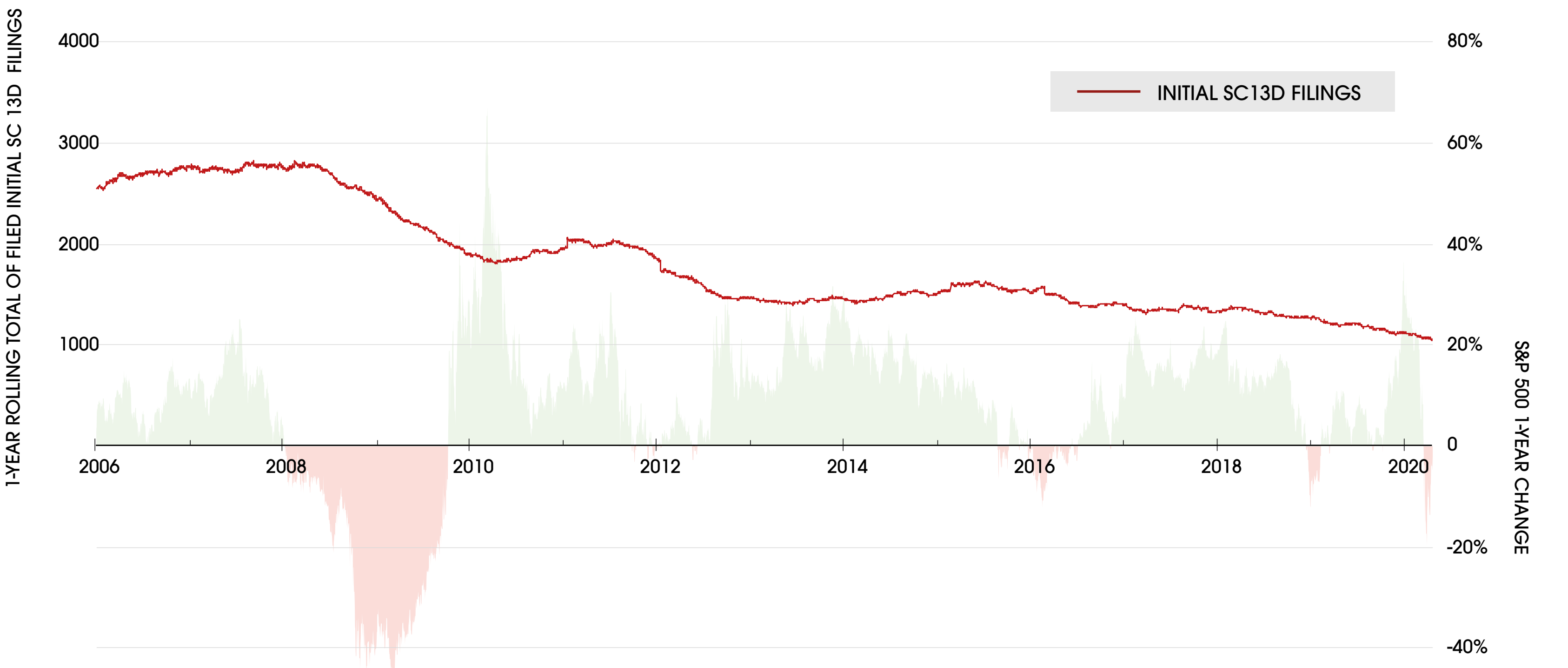
AFTER THE CRISIS, THE DELUGE

THE FOLLOWING ARTICLE APPEARED AS ACTIVISM THIS WEEK BY JOSH BLACK ON APRIL 24, 2020.

One of the questions we’ve been asked most frequently over the last couple of months is what happened to activism during and after the Global Financial Crisis in 2008 and 2009.

Discussions with market players who went through that event point to two major changes. One is that the 2008 crisis was a banking-led liquidity crunch that put pressure on many activist hedge funds by sending limited partners rushing to redeem capital and led to a lull in new investments. The other take is that, while 2008 was quiet, activism came back strongly in the immediate aftermath of the crisis as a stabilizing market left many companies exposed, both in terms of performance and governance.

1-YEAR ROLLING TOTAL OF INITIAL SC 13D FILINGS



Rolling 365 day total number of initial SC 13D filings filed, versus 365 day change in the S&P 500 index.
Source: Activist Insight Online

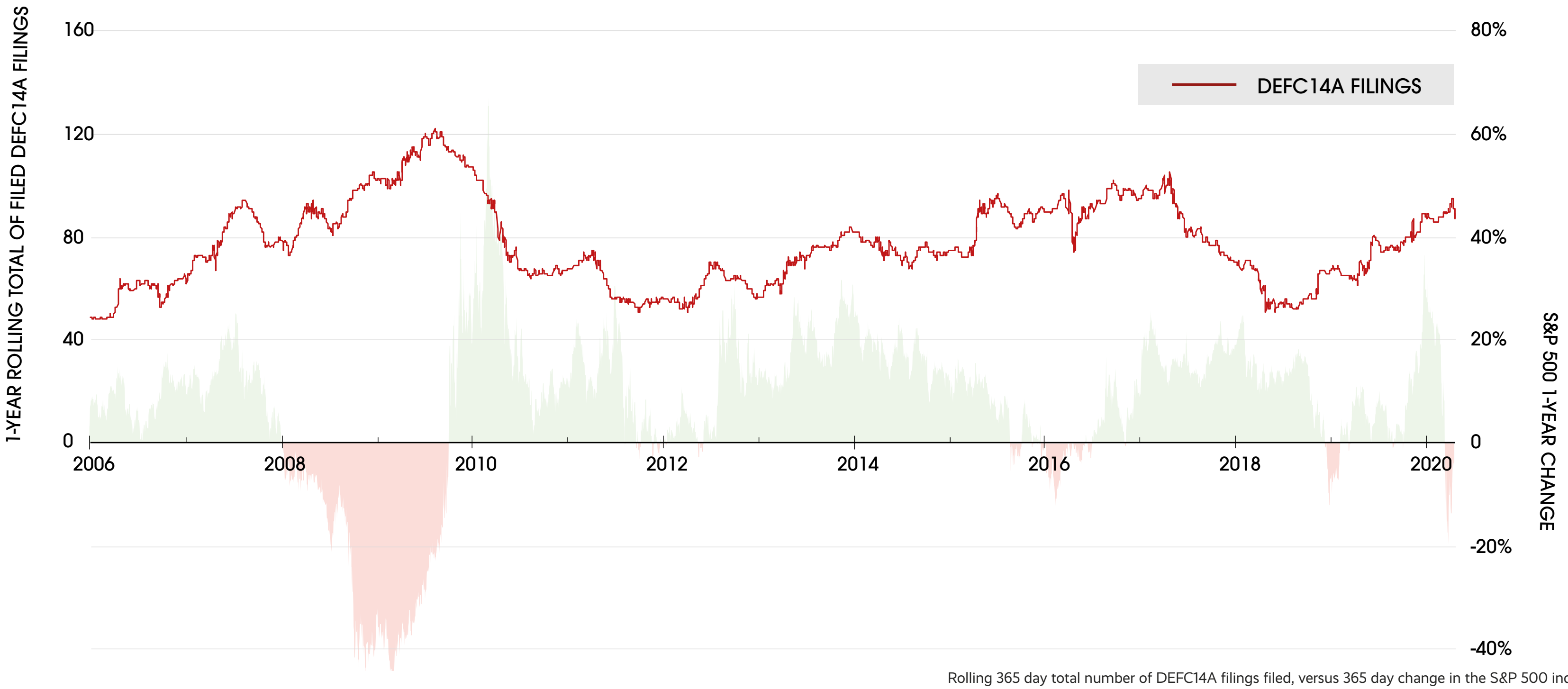
"2019 ALSO SAW A SPIKE IN CONTESTED SOLICITATIONS AFTER THE VOLATILITY AT THE END OF 2018."

To an extent, both are true. Activist Insight calculates that the number of initial 13D filings, which disclose a new stake of over 5% for an investor with intent to influence the company, remained stable in 2007 and then fell quite quickly.

But 13D filings contain a lot of "noise" – all shareholders owning more than 20% of a stock file them, some activists file them even on passive trades, and influence is a broad term that encompasses everything from control to a board seat or a financing agreement. Perhaps most persuasively, initial 13D filings have continued to fall dramatically so that 2019 represented only 40% of 2007's total. *Activist Insight Online* demands data suggest that activism has grown significantly in recent years – a trend that might not show up in the 13D filings because 5% stakes have become less important as activists have targeted larger companies or wielded influence with smaller positions.

A better measure might be definitive contested proxy statements (form DEFC14A) filed with the Securities and Exchange Commission (SEC). DEFC forms are filed on behalf of the management and dissident slates in proxy contests for board seats, and occasionally by activists in withhold campaigns and contested M&A solicitations. That leaves out some kinds of campaign and plenty of situations that settled, not to mention activist campaigns abroad. But it does provide a reference point we might call contested

1-YEAR ROLLING TOTAL OF DEFC14A FILINGS



Rolling 365 day total number of DEFC14A filings filed, versus 365 day change in the S&P 500 index.
Source: Activist Insight Online

situations with a couple of big asterisks. Several activist lawyers confirmed that DEFCs should be a useful proxy for contested situations (pardon the pun).

These data suggest a few conclusions. First, DEFC filings spiked in the first half of 2009 beyond anything we've seen since – so, a post-crisis spike in contested situations does bear out. Second, 2019 also saw a spike in contested solicitations after the volatility at the end of 2018 but only after a slow start to the year (slower in the first quarter, in fact, than in the first three months of 2020).

Third, 2020 is off to a fairly slow start, although this is partly due to a very busy second half of 2019 for DEFC filings. Of the 14 years from 2007 to 2020, just two first-quarter periods saw fewer DEFCs filed than in 2020. Though 2019 rebounded quickly and ended up a busy year for contested situations, that doesn't look as likely this year.

This may just be a short-lived trend, however, as the market and activists alike adjust to the new normal. Many advisers expect activism to come roaring back once the uncertainty is over. That may be the case, but if 2021 is a repeat of 2009, there could be leaner years to follow.

"MANY ADVISERS EXPECT ACTIVISM TO COME ROARING BACK ONCE THE UNCERTAINTY IS OVER."

LISTEN TO A SPECIAL EPISODE OF THE ACTIVIST INSIGHT PODCAST ON THE IMPACTS OF COVID-19 ON SHAREHOLDER ACTIVISM.

LISTEN NOW

EPISODE 36

A TIME OF WORRY

WHIPSAWING STOCK MARKETS LED TO MAJOR CHANGES IN ACTIVIST INSIGHT'S RANKINGS OF U.S. COMPANIES LIKELY TO APPEAR ON THE SCREENS OF ACTIVIST INVESTORS.

FINANCIAL SERVICES AND INDUSTRIALS SECTORS WERE AMONG THOSE THAT SAW A GREATER SHARE OF SIGNIFICANTLY VULNERABLE COMPANIES, WHILE THE HEALTHCARE SECTOR EXPERIENCED THE OPPOSITE EFFECT.

WHILE EACH VULNERABILITY CLASSIFICATION CATEGORY CONTAINS AN EQUAL SPLIT OF COMPANIES, THEIR COMPOSITION HAS UNDERGONE SOME NOTABLE CHANGES, WITH SOME COMPANIES EVEN GOING FROM LOW TO HIGH VULNERABILITY IN JUST TWO MONTHS.

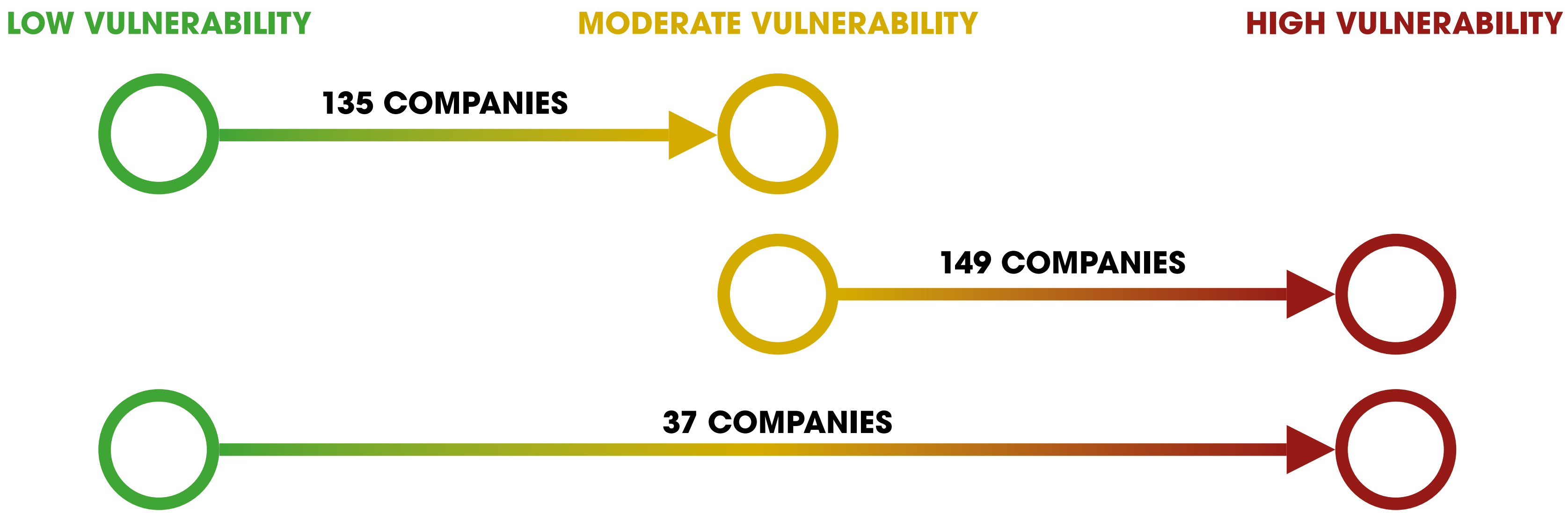
DATA COLLECTED FROM ACTIVIST INSIGHT VULNERABILITY

SELECT COMPANIES WITH SIGNIFICANTLY INCREASED VULNERABILITY*

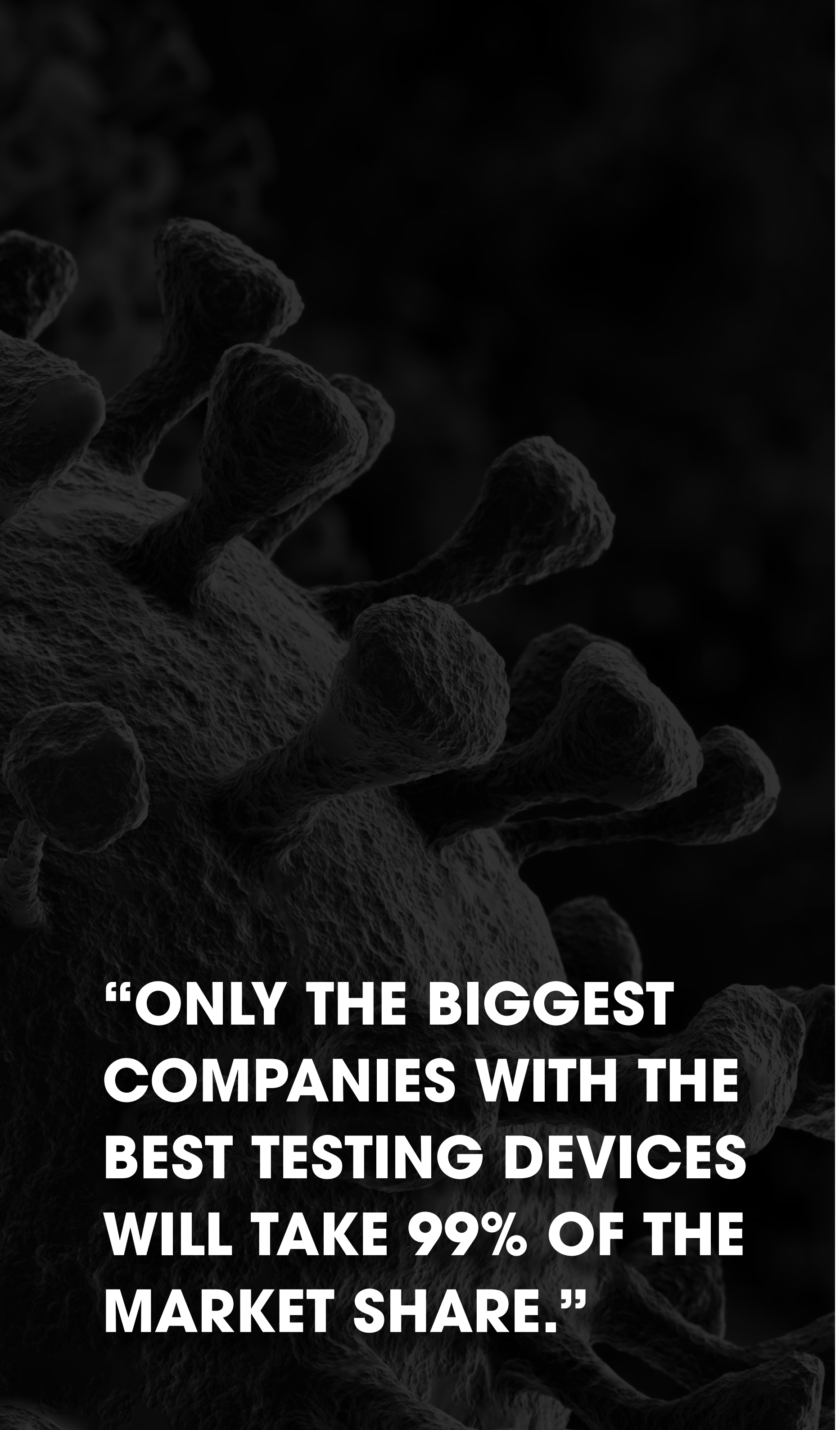
COMPANY	TICKER	VULNERABILITY**	RED FLAGS		
STERLING BANCORP	STL	HIGH	PERFORMANCE	PROFITABILITY	DIRECTOR TENURE
NMI HOLDINGS	NMIH	HIGH	PERFORMANCE	OWNERSHIP	EXECUTIVE CHAIRMAN
EVERI HOLDINGS	EVRI	HIGH	PERFORMANCE	VALUATION	BALANCE SHEET
HUDSON PACIFIC PROPERTIES	HPP	HIGH	OWNERSHIP	DIRECTOR SUPPORT	ACTIVIST OWNERSHIP
INVITAE	NVTA	HIGH	PERFORMANCE	VALUATION	PROFITABILITY

**The highly vulnerable classification category is comprised of the highest scoring 33.3% companies profiled on *Activist Insight Vulnerability*,

NUMBER OF COMPANIES WITH SIGNIFICANTLY INCREASED VULNERABILITY*



*Refers to the 455 companies with a minimum of a five point increase in vulnerability between February 18, 2020, and April 22, 2020.



"ONLY THE BIGGEST COMPANIES WITH THE BEST TESTING DEVICES WILL TAKE 99% OF THE MARKET SHARE."

PANDEMIC SHORTS

FIRST PUBLISHED ON MARCH 27, 2020 BY IURI STRUTA ON ACTIVIST INSIGHT SHORTS.

The COVID-19 pandemic has presented an opportunity for some companies to engage in pump-and-dump schemes and for short sellers to call them out.

Activist Insight Shorts has counted six campaigns launched at drug companies claiming to have developed either tests for coronavirus or vaccines for COVID-19. Adam Gefvert's White Diamond Research has been the most enthusiastic with three to date.

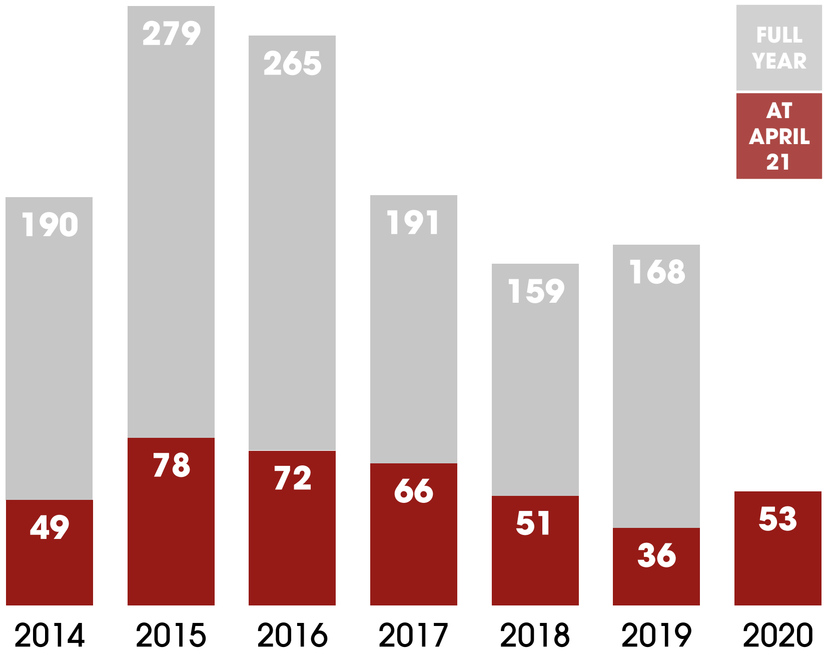
"The sector is being overloaded right now, too many companies are involved in testing and making vaccines," Gefvert told *Activist Insight Shorts*. "Only the biggest companies with the best testing devices will take 99% of the market share."

White Diamond's shorts in Dyadic and NanoViricides, two companies touting vaccines for COVID-19, have delivered high returns since the campaigns were launched in March and February, respectively.

However, Co-Diagnostics, a company boasting to have developed a test for the novel coronavirus, is proving a tougher nut to crack, with a campaign return of negative 183%.

Inovio Pharmaceuticals advanced as much as 330% when the company claimed it designed a COVID-19 vaccine but shed some gains after Andrew Left's Citron Research called it a stock promotion scheme.

ACTIVIST SHORT CAMPAIGNS BY YEAR



Number of activist short campaigns launched by year, and by April 21 of each year. *Source: Activist Insight Shorts.*

Continues...

All in the same boat

While the first market correction induced by the COVID-19 pandemic was welcomed by activist short sellers, it does not change the industry's outlook. A long bull market has made the environment difficult for short sellers that make fundamental calls.

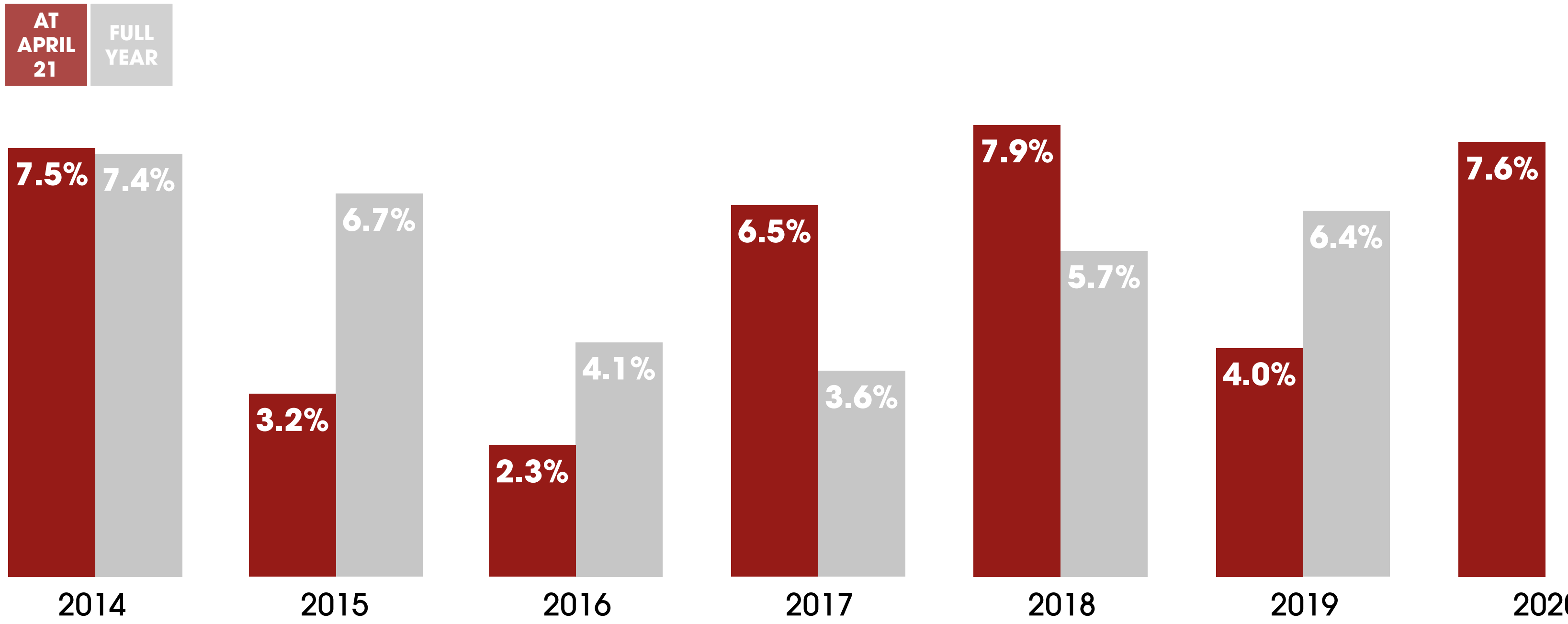
"The macro environment has been lifting or sinking most boats — every day we wake up to news like entire countries being shut down or trillion dollar easing and stimulus programs," Nathan Anderson of Hindenburg Research told *Activist Insight Shorts*.

Hindenburg has already launched five short campaigns this year, the most of any activist, followed by Spruce Point Capital Management and White Diamond with four each.

With short sellers often arguing the market is disconnected from fundamentals, many have increasingly focused on accounting frauds, which are less correlated with benchmarks. According to *Activist Insight Shorts* data, 15 short campaigns this year [March 27] primarily alleged accounting irregularities, the highest level since counting started in 2013.

"Targeting companies that we believe are egregious frauds is still highly effective - and helps clean up the market in the process," Anderson said.

AVERAGE ONE-WEEK CAMPAIGN RETURN



Average one-week activist short campaign return by year, and by April 21 of each year. *Source: Activist Insight Shorts.*