2021

THE ACTIVIST INVESTING ANNUAL REVIEW

THE EIGHTH ANNUAL REVIEW OF TRENDS IN SHAREHOLDER ACTIVISM

insightia
INTELLIGENT ANALYTICS
Activist Insight
Proxy Insight

Schulte Roth & Zabel

SCHULTE ROTH & ZABEL FOREWORD

Marc Weingarten, Ele Klein, and Brandon Gold.

The enduring coronavirus pandemic and political and social upheaval during the course of the 2020 presidential campaigns and election have brought about a seismic shift in activism and market focus in 2021 that we expect to continue throughout the year. We believe that, as activists have stepped back and refocused their efforts, a "new normal" has emerged that will guide the tenure of activism for years to come.

THERE WILL BE BLOOD

The market crash of March 2020 deflated asset prices for a brief period, in turn revealing which companies, boards, and management teams were underperforming. Given that the crisis has stretched for longer than many expected, investors will expect competent companies to have adapted their business models to a touchless, socially distanced, and mostly virtual marketplace. We expect that those companies that have failed to reduce costs, and manage liquidity and capital allocation to address a new business environment — especially compared to peers that may have fared better — will make for especially ripe targets for activists.

Moreover, those companies that are perceived to be lavishing their executives with bonuses or options grants untethered to market performance will almost assuredly face the ire of shareholders who demand meaningful value-creating incentives for executives.

ENVIRONMENTAL ACTIVISM IN SHARP FOCUS

For years, market analysts and commentators have predicted the rise of ESG activism. Though activists have focused on good governance for decades, the latter parts of 2020 saw a dramatic introduction of environmental large-cap activism with Engine No. 1's campaign against Exxon Mobil Corporation, in which Engine No. 1 called on Exxon to, among other things, invest in net-zero emissions energy sources and clean energy infrastructure. Engine No. 1's rallying cry was echoed by large institutional investors such as the California State Teachers' Retirement System (CalSTRS) and the Church Commissioners for England, as well as by respected active players such as D.E. Shaw, signaling that corporate environmental responsibility will no longer be taken lightly by institutional investors and heavyweight market players.

This sentiment was also expressed in TCI Fund Management's "say on climate" campaign, where it submitted proposals to major institutions such as Moody's Corp, Union Pacific Railroad, Charter Communications, and Alphabet, to adopt procedures through which shareholders can cast advisory votes on annually disclosed plans to manage greenhouse gas emissions.

Given the support these campaigns have generated, and with a new presidential administration that is expected to increase incentives for companies to adopt green initiatives and business plans, we only expect continued large-cap ESG inroads to be made in 2021 and further into the future.

THE SPAC PACK

Special purpose acquisition companies (SPACs) surged in 2020 and we see no signs of investors losing interest in them this year. Several high-profile private companies, such as DraftKings and Nikola, have completed business combinations with SPACs and high-profile investment firms, such as Bill Ackman's Pershing Square (for the second time) and Jeff Smith's Starboard Value, have sponsored SPACs of their own.

Though SPAC investments do not necessarily have the same tenor as the drawn-out, bloody activist fistfights of previous campaign seasons, they can still provide for a high-profile vehicle for activists to play active roles in major investments, in turn, representing a new path to driving value for those activist funds that might have simply launched PR campaigns to push for business combinations just a few years ago.

* * *

Though the number of activist campaigns decreased from 2019 with the onset of the pandemic, the likely decline in the pandemic, resurgence in the economy and a new administration in Washington D.C. may provide for an exciting new era of activist engagement.

CONTENTS

The Activist Investing Annual Review 2021

"We are grateful for the support of our clients and advertisers during a challenging year for everyone. In particular, we thank **Schulte Roth & Zabel**, **Georgeson**, **D.F. King**, **FTI Consulting**, **Spotlight Advisors**, and **Greenbrook** for helping us produce this, our eighth *Activist Investing Annual Review*. We look forward to bringing you more coverage of these exciting topics in the year ahead.

We at Insightia want to wish all of our readers and clients a safe and healthy year ahead. We look forward to seeing you soon."

JOSH BLACK

JBLACK@INSIGHTIA.COM

Image credits (all Shutterstock.com):
p9, Disney+: AFM Visuals; p12, BlackRock: Gary Yim; p16 Merit Medical: Michael Vi; p19, Citigroup: Willy Barton; p20, SunCorp: Marlon Trottman; p48, Inovio: Ascannio; p49, Luckin Coffee: Keitma;

DEFINITIONS:
Primary focus: An investor which allocates most, if not all of its assets to activist strategies
Partial focus: an investor which frequently employs activist investing as part of a more diversified strategy.
Occasional focus: an investor which employs an activist strategy on an infrequent basis.
Engagement focus: Typically large institutions and individuals that rally for change to promote good corporate governance.
Concerned shareholders: An individual or group of individuals who collectively form a group of shareholders to enforce change, typically as a 'one-off' situation.
Total Follower Return: Total Follower Return is a calculation of stock price change plus dividends paid from the later of the first close in 2020 or the close on the date an activist's first involvement is disclosed until the sooner of the last close in 2020 or the date an activist discloses that they have exited the position.
Total Campaign Return: Total campaign return is a calculation of the stock price change percentage, minus any dividend payment obligations, of campaigns initiated in 2020 from the close prior to the campaign's announcement until the last close on the defined period.
Impactful campaigns: Campaigns launched by investors with either a primary, partial, or occasional focus on activism.

2020: AN OVERVIEW

A year dominated by the coronavirus showed activist investors can adapt but not all will be beneficiaries of a shakeup in the market, writes Josh Black.

> "CHOOSING THE RIGHT TARGETS, ADVANCING CREDIBLE SOLUTIONS, AND DISPLAYING TACTICAL NOUS WILL BE MORE IMPORTANT THAN EVER FOR DISSIDENTS."

At the peak of proxy season 2020, many activists halted or dialed back campaigns where they feared a sudden change of shareholder perspectives or of irrecoverable value destruction. That led to a sluggish year – a 10% decline in companies publicly subjected to activist demands, a median Total Follower Return of 2%, and about a 16% decline in board seats won worldwide thanks mainly to fewer settlements.

Since then, however, activists have acted ruthlessly to shake up both their own operations and the management of portfolio companies. If 2019 was the year that ended the secular expansion of activist investing, 2020 was a reminder to focus on first principles – subpar valuations due to fixable problems with a quick path to change. All would agree; leadership matters in a pandemic.

HINDSIGHT 2020

Chiding activists for their lack of optimism is easy after the fact. Central bank support leading to a broad market recovery helped put a shine on activist portfolios. The market's response to stocks in a process of transition has since become exuberant and funds that doubled down on their convictions were rewarded handsomely.

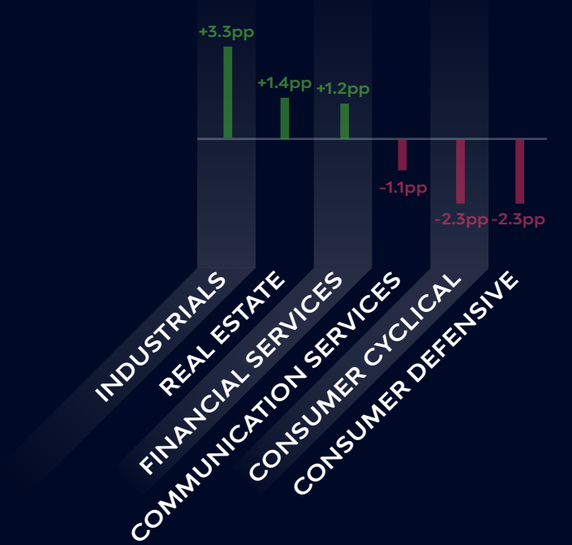
Also unexpected, control slate victories for Starboard Value and Bow Street Capital helped the number of board seats won at contested meetings in the U.S. to the highest level for at least six years. There were shareholder meetings in Europe and Japan that were so unexpectedly close that rematches against weakened incumbents are inevitable. By the fourth quarter, activists had started to think big about ways of demonstrating underperformance and about whole industries that need to adapt, including media, energy, and active fund management.

Impatience could set the stage for a busy proxy season. COVID-19 has created new laggards and left some CEOs that might have been the right choice a year ago ill-suited to their roles. Experienced activists have started to identify those discrepancies and, if they are not distracted by innovations such as special purpose acquisition companies (SPACs), their example will inspire others to join the fray. Opportunistic M&A could also heighten confidence in activist investing, by giving investors more ways to win.

ACTIVISM HOTSPOTS IN 2020

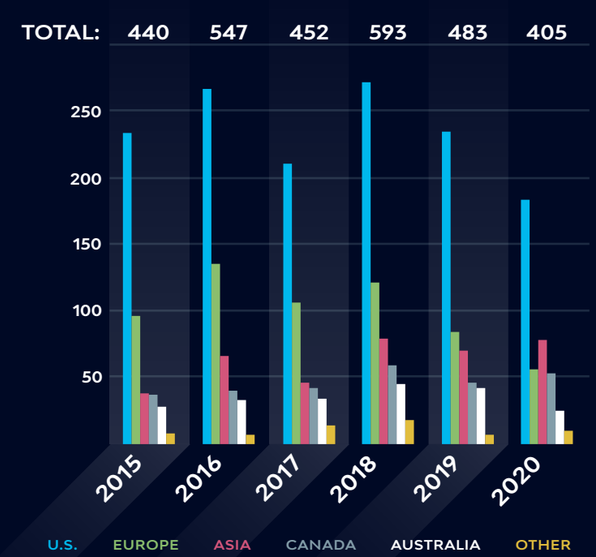
Busiest countries for activism in 2020 based on the number of companies publicly subjected to activist demands by company HQ.
Source: Insightia | Activist Insight Online

ACTIVISM CHANGE BY SECTOR



Percentage point change between 2019 and 2020 of proportion of companies publicly subjected to activist demands globally, by selected sectors.
Source: Insightia | Activist Insight Online

ACTIVIST BOARD SEATS



Number of board seats gained by activists by year and company HQ.
Source: Insightia | Activist Insight Online

REASONS TO BE CAUTIOUS

Each year we ask whether activism will continue to make inroads into relatively new markets, most recently with a focus on Europe and Asia. Activity was down sharply in 2020, particularly in the U.K. But the relatively strong showing of France and Japan indicated that there is life in these markets yet. Even if persistent restrictions on travel hinder activism's rebound outside of the U.S. in 2021, the long-term trend does not appear to have changed.

A bigger structural challenge is ESG. A wide swathe of activists has now demonstrated the ability to incorporate environmental and social issues into their campaigns. Fewer have scaled the practice into a working business model and Jeff Ubben's Inclusive Capital Partners and Chris James' Engine No. 1 will be scrutinized in 2021 on precisely this objective. Given the pace of change in the stewardship community, which not long ago lagged active managers but is now setting the agenda and priorities of public companies, activists will have to be smart not to look like relics.

Activists could choose to take their time exploring new markets and sectors before investing, in case the recovery starts to falter. Fundraising for single-purpose vehicles and time-consuming takeover attempts could limit the number of campaigns some funds can undertake.

More likely, companies themselves will warn their investors that the recovery is too fragile and the situation too grave, while playing hardball by keeping activists off ballots through invalidated nominations or more restrictive poison pills. Proxy season 2021 may be attritional, especially for newcomers or inexperienced activists. Choosing the right targets, advancing credible solutions, and displaying tactical nous will be more important than ever for dissidents.

FOR MORE STATISTICS ON SHAREHOLDER ACTIVISM IN 2020, CLICK HERE.

THE NEW NORMAL

Companies got off lightly in 2020 as activists dialed back the aggression. But evidence from the last quarter shows activists are becoming less tolerant of underperforming managements, writes Jason Booth.

COVID-19 had a profound effect on the way activism was conducted in 2020, including a softer offense from activists and stronger defense from management. While some of these changes are likely to be reversed in 2021, depending on the success of the vaccine rollout, others are expected to remain a part of the activism universe.

The pandemic slowed the volume of activism worldwide, with 810 companies targeted by activist investors, down around 10% from 2019. The number of companies targeted in so-called "impactful" campaigns, i.e. by dedicated and occasional activists, were down 13% to their lowest level since 2014.

"The cadence at which we made board changes really slowed down in 2020," said Chris Kiper, managing director of Legion Partners. The fund made over 50 board changes in recent years, he said, but only one in 2020, via a friendly settlement at Landec.

The slowdown was due in part to a flurry of poison pills adopted by companies afraid that activists and other unwanted acquirers might take advantage of temporarily depressed share prices to take controlling stakes. In total, 60 pills were put in place by Russell 3000 companies in 2020, up from just 15 the year before and the highest number in at least a decade.

Most activists didn't have a problem with pills, which were typically for a relatively short one-year lifespan. They did, however, object to that fact that 23 were implemented with lower trigger point for active investors, typically 10% of outstanding shares, compared with 15% or 20% for passive shareholders. Among them was The Chef's Warehouse, where the pill was enough to ward off a campaign by Legion Partners.

VIRTUAL ONLY

The other big change saw the adoption of virtual-only shareholders meetings. Given social distancing restrictions, proxy advisory firms like Institutional Shareholder Services and Glass Lewis suspended their typical opposition to such meetings and history was made April 30, when the proxy fight between Tegna and Standard General became the first to be decided at a virtual-only shareholder meeting.

Rather than hurting activists, virtual meetings are seen by many as a benefit. Attending a shareholder meeting in person had traditionally been a full day affair, or more for companies based in more remote locations. Besides saving time and costs, virtual meetings enable funds to "attend" more shareholder meetings than they previously would have. That's especially important in Japan, where annual meetings have traditionally been held on the same day or close cluster of days, and shareholder proposals have to be submitted in person.

GLOVES OFF

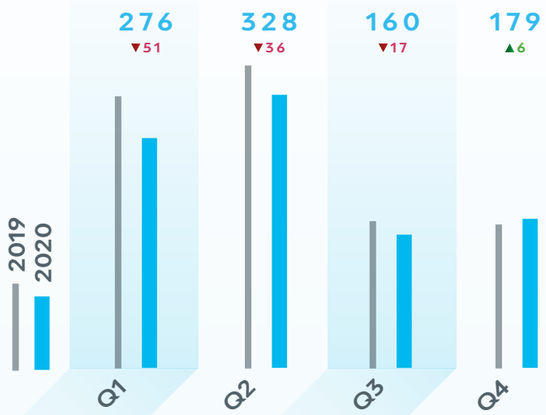
Many expect the 2021 proxy season to return to or exceed pre-pandemic levels. And having held their fire in 2020 due to the pandemic, activists may be less willing to compromise.

"This year our outlook is totally different, we are not going to be looking for simple settlements, it's going to lot of change on the boards we are talking to," said Kiper, who anticipates running as many as three proxy fights this year.

But rather than target companies directly affected by the pandemic, activists look more likely to go after management teams that failed to take advantage of the opportunities it presented, or those over which investors have more lingering doubts. "With the market having come back like it has, under-performing companies will be good targets for activists," predicted Glenn Welling at Engaged Capital.

Third Point Partners has already scored two big wins using that tactic. Disney cut its dividend and increased its focus on streaming service Disney+ after Dan Loeb's fund noted that rival Netflix had profited handsomely from increased viewership during the pandemic. It then convinced Intel's board to replace the company's CEO by highlighting how the tech giant had fallen behind rival AMD, which has benefited from increased online gaming.

ACTIVISM BY QUARTER IN 2020

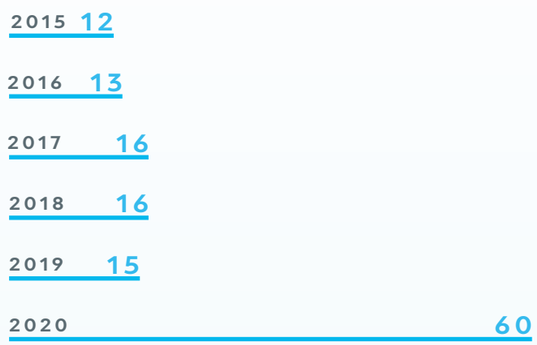


Number of companies publicly subjected to activist demands globally by quarter in 2020, and absolute change versus 2019.

Note: The sum of the quarters within each year do not total to equal the number of companies publicly subjected to activist demands each year as a company may have been subject to public demands in more than one quarter within the same year.

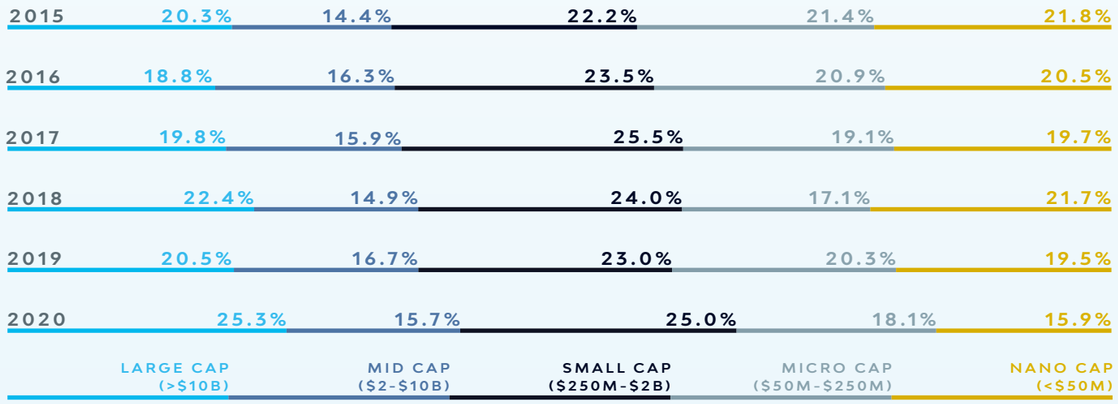
Source: Insightia | Activist Insight Online

POISON PILLS ADOPTED



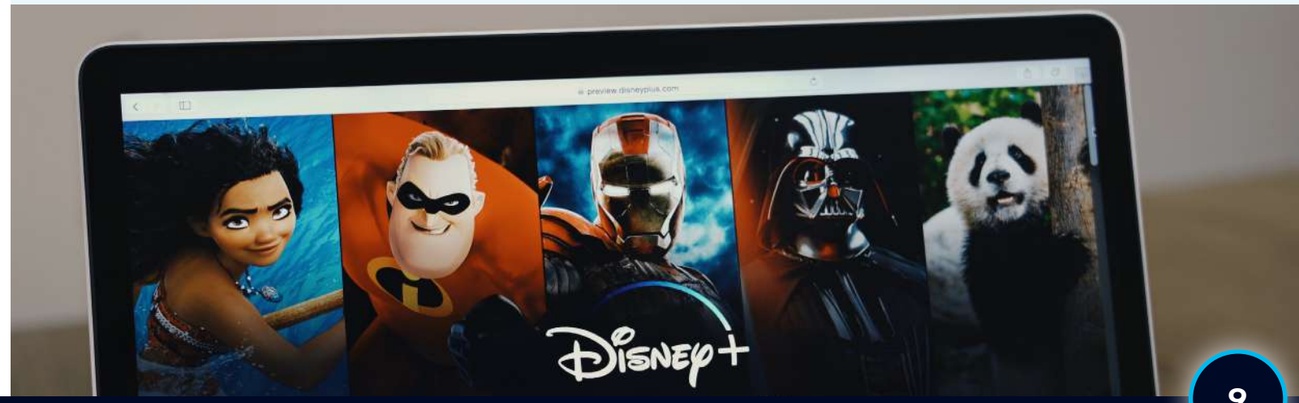
Number of rights plans adopted by Russell 3000 companies, by year.
Source: Insightia | Activist Insight Governance

ACTIVISM BY MARKET CAP



Market cap breakdown of companies publicly subjected to activist demands, by year.

Source: Insightia | Activist Insight Online



M&A, MIA?

M&A activism was muted in 2020 as COVID-19 pushed activists to look to operational changes instead – though some took advantage of the slowdown, and M&A in 2021 may look vastly different as a result, writes John Reetun.

The year was unkind to activism of all sorts but none more so than the M&A variety; in the first half of 2020, only 90 M&A-related public demands were made worldwide, accounting for 9.1% of all activist demands, compared to the 130 made in the same period of 2019, according to *Activist Insight Online* data.

PRIORITY SHIFT

"At a high-level, the slowdown is almost all COVID-related, but there are multiple mechanisms by which COVID impacted activity," Qatalyst Partners' Head of Activism and Shareholder Advisory Peter Michelsen told Insightia, adding that a hesitation among hedge funds was driven somewhat from fear of being cast in a negative light.

Michelsen said another factor at play was activists looking to protect their own investments before looking at targets; he noted that "in the initial phase of the crisis, funds were trying to assess which investments they could hold over the long-term so they could engage in activism."

"There was a lot of dealing with your own portfolio... in some ways, activists were viewing themselves as consultants," Daniel Kerstein, head of strategic finance at Barclays, said in response to the slowdown of M&A in H1.

The decline in overall public demands was softened by increases in business strategy demands – which jumped from 65 public demands in 2019 to 78 in 2020, and balance sheet-related public demands, up to 186 in 2020 from 182 in 2019.

"We saw a lot more acting behind-the-scenes, and a lot more operational focus," Kerstein said.

Another 94 M&A-related public demands were made worldwide in H2, representing a little over 15% of all public activist demands in that period.

Kerstein suggested that M&A activism may not have fully returned as market recoveries came quicker than some activists anticipated. "In some cases, because the recovery happened so quickly, activists did not get to make investments they were looking at – or certainly didn't get them at the size they wanted to, because the market beat them to the punch." he said.

ACTIVISM TO ACQUISITIONS

For those M&A campaigns that did persist, consolidation was the name of the game. Almost all types of M&A-related demands were down in 2020, with the exception of activists calling for an acquisition of a third party, which climbed from three public demands in 2019, to five.

> "IN SOME WAYS, ACTIVISTS WERE VIEWING THEMSELVES AS CONSULTANTS."

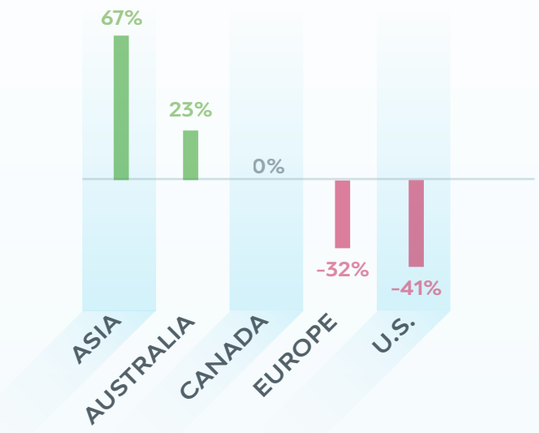
Among those were Trian Partners' apparent interest in a merger between asset managers Invesco and Janus Henderson, while Cat Rock Capital Management also voiced support for a merger between Just Eat Takeaway and GrubHub, with a $7 billion acquisition approved by Just Eat Takeaway shareholders in October.

Other activists looked elsewhere, moving from catalyzing sales to playing the role of buyer. "2020 represented the first year when we saw a significant number of direct partnerships between activists and financial buyers, suggesting that private equity might be more willing to cross the Rubicon in the future." Michelsen said.

Indeed, Senator Investment Group teamed up with Cannae Holdings and Hudson Executive Capital with private equity firm Apollo Global Management to launch buyout offers at CoreLogic and Cardtronics, respectively, while Elliott Management pursued a takeover of Cubic with Veritas Capital.

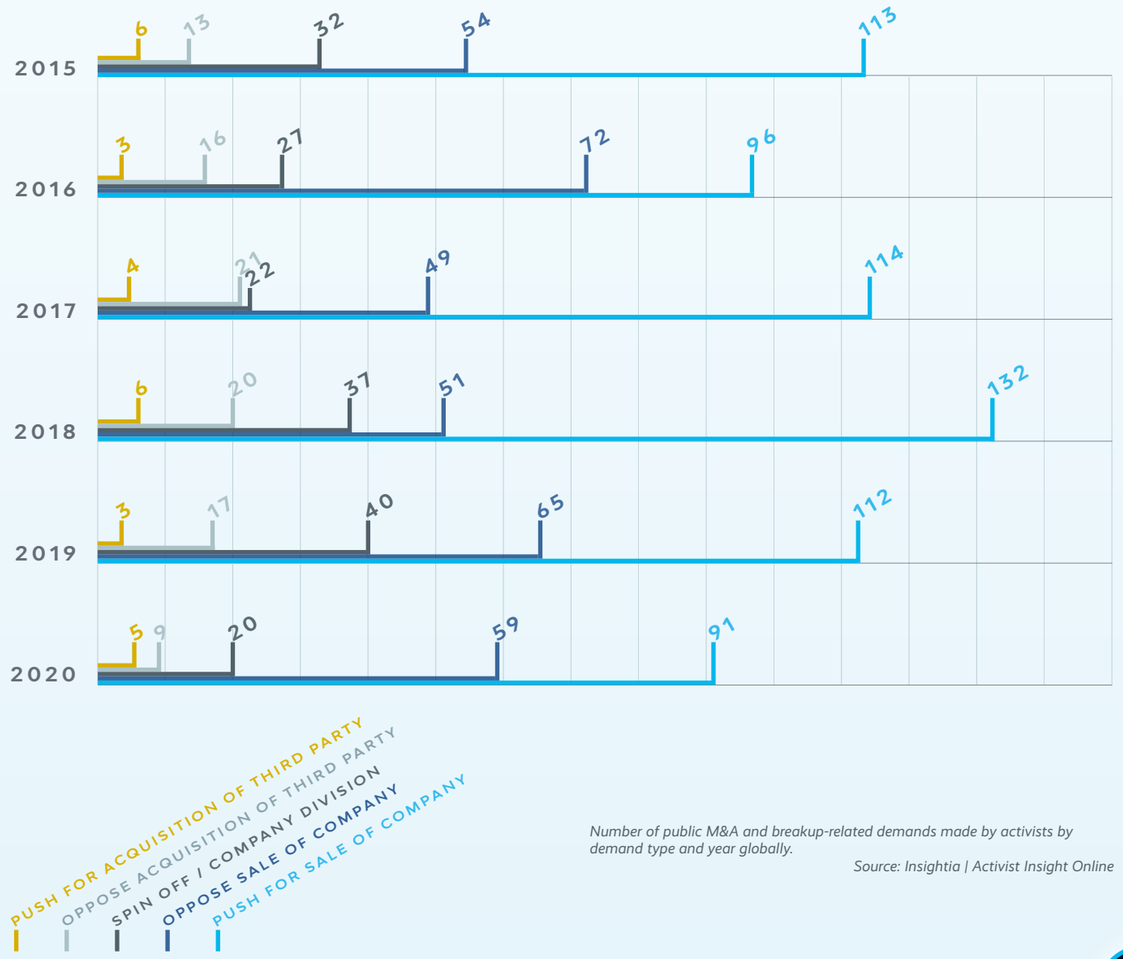
However, Michelsen warned that activists may have a tougher time playing buyer as market valuations in some sectors grew exponentially. "For sectors that performed well, public valuations have escalated significantly as well – which makes the outlook for 2021 a little bit fuzzier."

CHANGE IN M&A AND BREAKUP ACTIVISM BY GEOGRAPHY



Percentage change in the number of public M&A- and breakup-related activist demands made by company HQ in 2019 and 2020.
Source: Insightia | Activist Insight Online

M&A AND BREAKUP ACTIVISM



Number of public M&A and breakup-related demands made by activists by demand type and year globally.
Source: Insightia | Activist Insight Online

STAYING IN THE FIGHT

Support for activists holds up in a smaller universe of proxy contests, giving encouragement to 2021's crop of dissidents, writes Rebecca Sherratt.

The number of proxy contests held in the past year globally exhibited a subtle drop compared to previous years, with 88 proxy contests that went to a vote taking place in 2020 after a record 99 in 2019, according to *Activist Insight Online*.

> "PROXY CONTESTS THAT WENT TO A VOTE RECEIVED A BOOST FROM MAJOR INDEX FUND PROVIDERS, WHICH INCREASED THEIR SUPPORT FOR DISSIDENTS IN 2020."

"Many negotiations have taken place behind the scenes," said Steve Balet, a managing director of Strategic Governance Advisors, an adviser to companies. "These engagements may not have evolved into massive campaigns, but still resulted in significant corporate changes."

ACTIVIST-FREE EUROPE

One change in 2020 was the sharp decline of proxy contests that went to a vote at Europe-based companies, which also suffered a big overall decrease in activist activity, while other regions remained relatively unchanged. Ten proxy contests were held in Europe in 2020, down from 27 the year before, with the U.K. experiencing the biggest decline.

INSIDE THE BLACK BOX

Proxy contests that went to a vote received a boost from major index fund providers, which increased their support for dissidents in 2020, according to *Proxy Insight Online*.

Vanguard and State Street Global Advisors (SSGA) supported, on average, one-third of dissident nominees in the first six months of 2020, a subtle year-on-year increase.

BlackRock, meanwhile, delivered a sharp increase in backing for dissident nominees, supporting 25% of dissidents in 2020 compared to 10% the previous year. BlackRock supported dissidents at GameStop, Aryzta, and Sanyo Shokai in the 2020 proxy season.

Both Vanguard and SSGA votes were in line with proxy adviser recommendations in 80% of 2019 proxy contests and 60% in 2020. BlackRock votes matching proxy adviser recommendations decreased from 60% in 2019 to 50% in 2020, according to *Proxy Insight Online*.

BACK TO NORMALITY

Yet buoyed by surprisingly good results for activists in 2020, many expect an increase in proxy contests in 2021 as the world returns to normality. Although proxy advisers frequently recommended support for management (policy guidance by Institutional Shareholder Services noted significant board composition changes may be an unnecessary risk given instability triggered by COVID-19), activists were particularly successful when boards were deemed urgently in need of significant revisions to overcome challenges resulting from the pandemic and other financial complications.

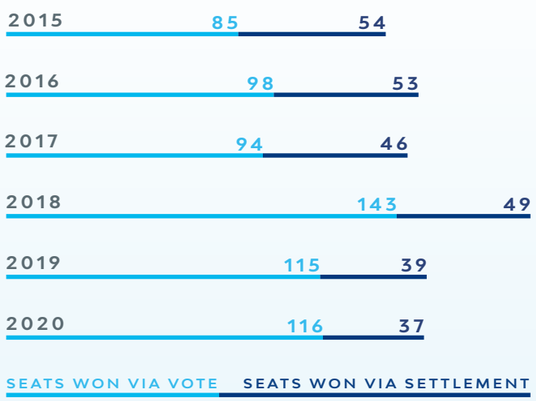
> "BUOYED BY SURPRISINGLY GOOD RESULTS FOR ACTIVISTS IN 2020, MANY EXPECT AN INCREASE IN PROXY CONTESTS IN 2021 AS THE WORLD RETURNS TO NORMALITY."

Starboard Value and Bow Street Capital each won eight seats at GCP Applied Technologies and Mack-Cali Realty in control-slate proxy contests, following concerns that both companies required urgent restructuring and had ignored prior warnings. As a result, seats gained in 2020 proxy contests that went to a vote increased by 57% in the U.S. according to *Activist Insight Online*, with Europe and Australia the only regions to experience a drop in number of seats won.

Meanwhile, ESG is fast becoming a major factor for activists to consider. At the end of 2020, newly-founded Engine No. 1 launched the first proxy contest based in part on ESG demands at Exxon Mobil.

"We expect to see heightened levels of proxy contests and activism campaigns in 2021," said PJT Camberview Managing Director, Lauren Gojkovich, in an interview. "Another key dynamic is that ESG is now a driving force in asset flows, stewardship, and increasingly activism, with impacts for companies and activists alike. Being able to engage effectively on how ESG is tied into your business strategy will be mission-critical for companies in the coming year and beyond."

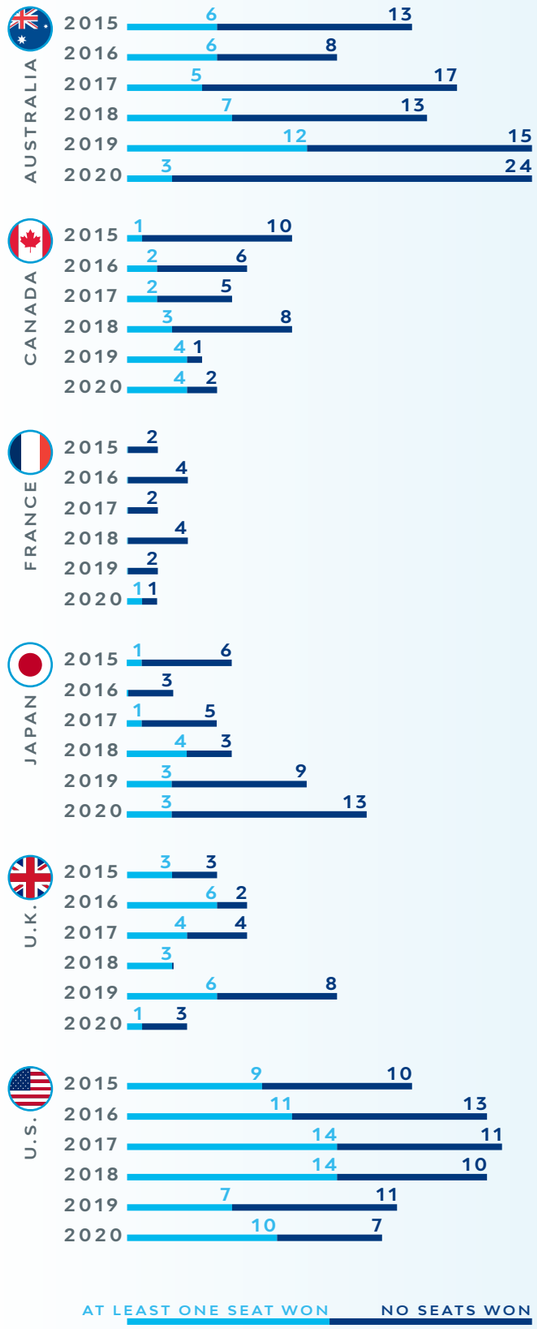
BOARD SEATS WON AT PROXY CONTESTS



Number of board seats gained by activists via proxy contests that went to a vote and settled globally.

Source: Insightia | Activist Insight Online

OUTCOME OF PROXY CONTESTS REACHING A VOTE



Outcome of proxy contests that went to a vote by year and company HQ.
Source: Insightia | Activist Insight Online

ON ESG, TIME IS UP

ESG will bring pressure from all sides in 2021, writes Cas Sydorowitz, global head of activism and M&A at Georgeson.

Companies will face unprecedented pressure from investors during the 2021 proxy season to address climate change and human capital management, during a period when the COVID-19 pandemic continues to rage.

Demands will likely focus on disclosure, transparency, and conscientious assessment of non-financial metrics for companies, their business, and stakeholders. Understanding the complex alphabet soup of ESG terms, rating agents, and reporting frameworks for stakeholder risks is a tough agenda for companies preparing for the upcoming proxy season. Understanding one's shareholder base and how one's investors use ESG data and the subsequent ratings will determine what metrics companies need to focus on.

FOCUS ON CLIMATE

Last year saw The Children's Investment Fund (TCI) win a landmark victory at Aena, the Spanish airport group, as part of its "say on climate" campaign, which aims to introduce an annual vote on climate policy at a range of issuers.

TCI founder Chris Hohn said of the plans, "This accountability mechanism is essential for ensuring that companies take the climate issue seriously and are both transparent and accountable to shareholders for their climate plans."

Shortly after, Unilever became the first major company to let shareholders vote on its climate transition plans voluntarily. Unilever CEO Alan Jope said, "climate change is the most pressing issue of our time."

OLD INVESTORS, NEW AGENDAS

Even more important will be the role that these traditional investors play to hold boards accountable. Investors' commitment to responsible investment has grown, as evidenced by the total assets signed up to the UN's Principles for Responsible Investment – $103.4 trillion by 2020. ESG funds are expected to grow quickly for at least several years.

As the focus on ESG issues continues to grow, there will likely be a further consolidation among the largest investors with BlackRock, Vanguard, and State Street continuing to hold disproportionate influence among the asset managers. The Forum for Sustainable and Responsible Investment's 2020 trends report from November last year found that $17.1 trillion, or 33% of total U.S. assets under management, are focused on sustainable investments for institutional and retail clients.

However, there will be heightened pressure on these top investors to be more supportive of ESG resolutions, including those put forward by other investors. Their voting track records highlight a disconnect between their own efforts to attract more ESG dollars and how they vote on climate resolutions. 2021 could be the year traditional asset managers cross the line to becoming more activist on ESG matters as they race to attract more investments in their own ESG products for both institutional and retail clients.

MEET THE ACTIVISTS

Other activist funds besides TCI are focussing on ESG issues, with a longer-term view on their investment horizons. Clearway Capital, founded by Gianluca Ferrari, will launch later in 2021 with a focus on ESG laggards in Europe. Jeff Ubben left ValueAct Capital Partners last year to form Inclusive Capital Partners, a socially responsible investment firm. The firm's mission statement stresses it will own the very companies that sustainable funds tend to avoid. Impactive Capital, founded by Lauren Taylor Wolfe and Christian Alejandro Asmar has the ability to be patient and work with management because anchor investor California State Teachers' Retirement System committed $250 million with a six-year investment horizon. Expect more from these ESG-focused investors and others in the coming year, as they look to corral support from traditional asset managers.

CAS SYDOROWITZ
CAS.SYDOROWITZ@GEORGESON.COM

THE ACTIVIST TOP TEN

Starboard Value returns to the top of the heap after a six-year wait, while Asian investments are a common theme among many of this year's notables.

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 2020 Total Follower Return*; and and the depth of news coverage on the activist on *Activist Insight Online* in 2020. To qualify, an investor must regularly employ an activist strategy and have publicly targeted three or more companies in 2020.

**Total Follower Return is a calculation of stock price change plus dividends paid from the later of the first close in 2020 or the close on the date an activist's first involvement is disclosed until the sooner of the last close in 2020 or the date an activist discloses that it has exited the position. Investments are limited to those that had a live activist campaign during 2020.*

01

STARBOARD VALUE

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	8
AVERAGE TARGET MARKET CAP:	$9.28B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	26.49%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	95

Starboard Value didn't let COVID-19 get in the way of its strategy. Jeff Smith's fund targeted eight companies in 2020 and gained 22 new board seats, two more than its 2019 tally and more than any other activist.

"We have long held the belief that leadership matters, and in times of stress leadership matters more than ever," Starboard Partner Gavin Molinelli told Insightia when asked if the pandemic made the fund think twice about launching campaigns.

Starboard started fast out of the gate, nominating eight candidates for the board of GCP Applied Technologies. Given Starboard's track record for winning proxy fights (it hasn't lost at the ballot box since it took on AOL in 2012, or even gone to a vote since 2014) most companies are quick to settle with the activist. GCP's management seemed to think the odds were in their favor, possibly calculating that COVID-19 would convince Jeff Smith to back off. But on May 28 shareholders elected Starboard's entire slate. Four months later, GCP CEO Randy Dearth was fired.

Given the rout at GCP, other companies targeted last year were quick to accommodate the activist. Merit Medical Systems gave Starboard three seats rather than risk a fight for seven. That position, which Starboard disclosed in January 2020, has already generated a Total Follower Return of over 60%. Mednax, Box, and CommVault quickly followed suit with settlements together giving Starboard an additional 11 seats.

The only company where Starboard voluntarily withdrew its board nominations was eBay, but only after the company named a new chief executive and promised to consider Starboard's nominees the next time it needed a new independent director. Rather than wait to see if that would happen, Starboard exited its eBay position in August, just 18 months after disclosing its initial investments and with the stock up a hefty 80%.

The quick and profitable exit is typical of Starboard's activist investment strategy. The firm has an average holding period of just 14 months, according to *Activist Insight Online* data, versus around two years for "Top 10" runner up Elliott Management. And while some other activists sought stability by diversifying into debt and derivatives, Starboard maintained a focused equity portfolio. In fact, according to the activist's 13F filings, as of September 30, the fund had stakes in just 14 public companies, versus 10 at the end of 2019.

Like other activists, Starboard took advantage of the popularity of special acquisition vehicles to raise $360 million by listing a "blank-check" company, Starboard Value Acquisition Corp. (SVAC), on October 30. Starboard will use the vehicle to target "established businesses" that it sees as "fundamentally sound" in sectors already familiar to the activist fund, such as technology, healthcare, hospitality, consumer, and industrials.

Starboard Value started 2021 as aggressively as it started 2020, following the same "leadership matters" philosophy, nominating eight director candidates at agricultural science company Corteva, aiming for a leadership sweep that includes the appointment of a new CEO.

ELLIOTT MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	14
AVERAGE TARGET MARKET CAP:	$22.70B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	14.98%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	168

Although it remained prolific in 2020, Elliott Management was dethroned from the Activist Top 10 after five consecutive years as the one to beat.

Elliott certainly seemed to have a quieter year during the pandemic, featuring in just 168 news stories on *Activist Insight Online*, compared with 240 a year ago. However, it subjected 14 companies to public activist demands, down from 18 in 2019. Its haul in 2020 included Twitter, Crown Castle, and Public Storage in the U.S., NN Group, Sampo, and Alkermes in Europe, and SoftBank in Asia – an unlikely but lucrative bet as the tightening of debt markets hastened many of the changes the activist asked for. F5 Networks was another campaign that aided the fund's respectable 15% Total Follower Return.

The fund, which is moving its head office from Manhattan to Florida and exiting Hong Kong, continued to explore different approaches to activism. It has partnered with a private equity firm to bid for Cubic and dipped its toe into environmental activism by arguing that utility company Evergy could grow faster by exploring renewables, although a strategic review is another key demand.

Ultimately pipped by Starboard's 100% record at successfully satisfying its public demands, Elliott conceded defeat in 2020 on its plans to alter AT&T's direction as John Stankey took over as CEO. The activist also accepted that Jack Dorsey would continue to lead Twitter when the executive was backed by private equity firm Silver Lake Capital.

SABA CAPITAL MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	17
AVERAGE TARGET MARKET CAP:	$319M
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	5.48%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	58

Saba Capital Management has done well by doing what it does best – targeting closed-end funds (CEFs). What surprised many, and gained Saba a place in our Top 10 for the first time, was the speed and aggressiveness with which it has ramped up its activism in that space, making demands at 17 funds.

Saba continued its strategy of going long on CEFs trading below their net asset values and pushing for liquidity events such as tender offers or converting them into open-end mutual funds, along with demands for board seats and more traditional governance changes. 2020 brought a twist, however, as the activist called on 17 different CEFs to terminate their investment advisory agreements, typically arguing that management charged excessive fees for poor performance. In October, it took advantage of Morgan Stanley's acquisition of Eaton Vance to oppose the renewal of management agreements at four separate Eaton Vance CEFs.

Saba's chief investment officer, Boaz Weinstein, told Insightia last January that "the closed-end fund structure has protected underperforming high-fee funds from the rigors of the marketplace, and the lack of genuine independence from boards has left fund investors without an advocate."

While the strategy has attracted complaints from the CEF industry and regulatory interest, there is no doubt that it generates steady profits: Saba averaged a 5.5% Total Follower Return on its targets in 2020, according to data from *Activist Insight Online*. Agitating at CEFs is just one way Saba makes money. During the market disruption caused by COVID-19, Weinstein's fund reportedly used a hedging strategy designed to benefit from severe volatility to deliver record profits through the first quarter.

VALUEACT CAPITAL PARTNERS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	5
AVERAGE TARGET MARKET CAP:	$19.54B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	-3.27%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	31

ValueAct began 2020 focused on its succession plan, with founder Jeff Ubben stepping down from the CEO role to focus on the ValueAct Spring Fund – one of the first ESG-focused activist funds – and Mason Morfit taking charge. Buoyed by the Spring Fund's penchant for joining boards, ValueAct took four board seats in 2020, all via settlements.

By the end of the year, Ubben had left ValueAct completely, launching impact fund Inclusive Capital Partners, and taking a number of positions with him. That included controversial electric vehicle company Nikola, which helped weigh on ValueAct's total average follower returns after a series of short attacks. Another personnel change saw global affairs chief Allison Bennington leave to join bank PJT Partners. Things changed in the portfolio too, with ValueAct exiting a five-year investment in Rolls-Royce Holdings after struggling to make a turnaround stick.

However, ValueAct had better luck at Citigroup, reportedly playing a pivotal role in forcing Citigroup's CEO Michael Corbat into an early retirement after the bank missed several performance targets and attracted regulatory scrutiny. The activist also continued its foray into Japan with new stakes in Nintendo and JSR, formally Japan Synthetic Rubber.

AMBER CAPITAL

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	4
AVERAGE TARGET MARKET CAP:	$11.36B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	-2.09%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	49

Amber Capital stepped up its assertiveness in 2020, causing two groundbreaking developments in the world of European activism. For the first time in its history, Amber launched a proxy contest for a majority of the board. The campaign, at Lagardère Group, was a rarity not only in France but in Europe as a whole. Powerful allies of CEO Arnaud Lagardère cost Amber the fight but the saga could see a replay this year with famed industrialists Vincent Bolloré and Bernard Arnault playing supporting roles.

In another groundbreaking fight, Amber achieved success in removing the chairman of Spanish education and media group Prisa. Amber founder Joseph Oughourlian replaced Javier Monzon at the top of the board, the first time an activist has been voted in as chairman of a publicly listed company in Spain.

At the crux of the dispute at Prisa was Oughourlian's fears that Monzon's asset sale strategy would have led to a fire sale. "I'm not against the separation of the group's media and education businesses, as such a strategy could highlight the true potential value of these assets. However, it is necessary first to complete the restructuring of the media business and accelerate the group's digital transformation," Oughourlian said.

SACHEM HEAD CAPITAL MGMT.

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	3
AVERAGE TARGET MARKET CAP:	$7.12B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	50.05%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	18

The number of public companies Sachem Head Capital Management subjected to public demands fell from five in 2019 to just three in 2020. However, that included Sachem's $1.2 billion position in Elanco Animal Health – the activist's largest position to date – which led to Scott Ferguson's fund being awarded three seats. Another campaign, at Olin, ended with Sachem settling for two board seats. Elsewhere, the activist opposed a sale of British security company G4S to Canada's GardaWorld, arguing that the $3 billion offer undervalued the target company.

Sachem, like many activists, reshuffled its portfolio amid the COVID-19 impacted market, exiting its position in Comcast – where Trian Partners later disclosed a position – and its holdings in videogame developer 2U, Salesforce.com, and Sysco, where Trian has two board seats. In their place, third-quarter portfolio filings show the fund took stakes in Dell and Facebook. Media reports suggested the fund returned 45% in 2020.

OASIS MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	8
AVERAGE TARGET MARKET CAP:	$2.46B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	28.10%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	32

Oasis Management scored a landmark victory in Japan when Sun Corp. shareholders voted out five of the electronics maker's directors and replaced them with candidates nominated by the Hong Kong-based activist. The win was as lucrative for Seth Fischer's fund as it was notable, so far generating a Total Follower Return of 78% during 2020.

Oasis had less luck at Japanese elevator maker Fujitec, whose board rejected a call to cancel treasury shares, calling them a low-cost tool to fund future mergers and acquisitions. But its shares are up 36% during 2020 all the same.

Much of Oasis' activism, however, has been via behind-the-scenes discussions rather than public campaigns, Fischer told Insightia in a recent interview. And much of those talks were about M&A. Oasis suffered a small setback in October when portfolio company Itochu moved forward with plans to take convenience store chain FamilyMart private at a lowball price. Fischer's team did better with a deal to sell its 9.6% stake in Tokyo Dome to Mitsui Fudosan, locking in a 22% Total Follower Return during 2020 even though the arena's business has collapsed due to COVID-19.

THIRD POINT PARTNERS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	3
AVERAGE TARGET MARKET CAP:	$157.52B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	6.61%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	32

Third Point Partners had a dramatic year that ended well, with its publicly listed offshore fund up 23.7% after ending June down 6.6%. Founder Dan Loeb took sole control of the portfolio in May, parting ways with colleague Munib Islam and refocusing its strategy.

The activist swapped out its M&A demands, which fell from three in 2019 to just one in 2020, for operational changes. Even 2020's M&A demand took place before the pandemic, a call for a breakup of Prudential in February. And although the U.K. financial services company is acting on the suggestion, its stock remains lower than before the pandemic hit.

Notably, Third Point has become more convinced of the value of large-scale activism and took several high-profile stances late in 2020, successfully prompting Disney to continue its dividend suspension and focus on streaming while many of its other businesses are restricted, and calling for Intel to consider a breakup. The chipmaker announced the departure of CEO Bob Swan in January.

CEVIAN CAPITAL

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	3
AVERAGE TARGET MARKET CAP:	$14.17B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	-11.04%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	37

Cevian Capital, the largest homegrown activist investor in Europe, patiently pushes portfolio companies to make changes and can stay in stocks for more than a decade.

"Despite the unprecedented challenges faced by companies and the volatile markets, 2020 was a satisfying year, particularly in terms of portfolio activity, the extent of improvements we drove at our portfolio companies, and the value that this created," Harlan Zimmerman, a senior partner at Cevian, told Insightia for this report.

Cevian made a large investment in education publishing house Pearson, backing the new CEO despite opposition to his compensation. Cevian also cashed in on a six-year investment in RSA Insurance Group after the British insurer was acquired by Zurich Insurance for 7 billion pounds. Elsewhere, ABB concluded the sale of its power grids unit and announced an $8 billion share buyback, while Ericsson's stock continued to appreciate thanks to the rollout of 5G. Cevian Senior partner Jonas Synnergren also joined the board of Finnish bank Nordea.

ASSET VALUE INVESTORS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2020:	3
AVERAGE TARGET MARKET CAP:	$24.80B
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	54.71%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	10

New to the Top 10 list is London-based, Japan-focused Asset Value Investors (AVI) which targeted three companies in 2020. Only one of those campaigns was partially successful, with SoftBank Group (also targeted by Elliott Management) agreeing in May to sell assets and repurchase shares. But it was a huge win for AVI, generating a 114% Total Follower Return during 2020. Largely because of that win, AVI posted a follower return of almost 55% on its activist targets last year, higher than any of its peers on this list.

AVI's chief executive Joe Bauernfreund attributes the success to AVI's two decades of relationship building in Japan, and a Tokyo-based team of professionals who can interface with companies while Bauernfreund remains grounded in the U.K. In April, AVI hired Japan veteran Jason Bellamy to head its activism efforts in Tokyo and added another local analyst this January in anticipation that ongoing governance reforms will create more opportunities. "COVID might have delayed some aspects of corporate reform in Japan, but it has by no means derailed it," Bauernfreund said at the time.

YOU'RE GOING TO NEED A BIGGER BOAT

An interview with David Chase Lopes, managing director EMEA at D.F. King.

COULD YOU TELL US A LITTLE ABOUT THE WORK YOUR TEAM DOES IN ACTIVISM?

Generally, why we get chosen is that the client knows that we have a strong reputation of staying in the fight. We're there to win. We're not there to just participate. And we meld well into the rest of the defense team with a keen focus on "doing our job" and the modesty not to pretend to do theirs. We know that we're a tactical support team that's very effective in turning an idea into reality and how to implement it. We bring a very strong game and can commit to a lot of different areas of expertise, whether it be effective shareholder communications, corporate governance, strong activist experience, M&A, or simply securing shareholder support.

IS ACTIVISM HERE TO STAY IN EUROPE?

Yes, I think it's always been here but started to pick up with the end of the M&A boom in 2018 and the growth of Elliott Management in Europe. Now that these campaigns play out over time and it's meaningful for activists today to be long-term investors, you can judge a win by the level of progress you make.

HOW WILL COVID-19 AFFECT ACTIVISM IN 2021?

I think the debt issue will be really, really troubling. For example, for years we have talked a lot about balance sheet optimization, and usually we mean lever-up or do a share repurchase. However, post-pandemic, where leverage has become a major concern, if a company were to examine its balance sheet and conclude that it needs sorting by finding a way to reduce the debt or alternatively implement a series of connected actions, including a capital rights issue, there's a limited audience for that because investors are pain-averse. We've seen several very public situations where investors have actively resisted a highly dilutive event such as a rights issue. In such a time of market resistance to a company's wishes, an activist can find a ripe opportunity for impactful action, that might prevent the rights issue, shake-up the board, or both.

> "LIKE WITH A SHARK ATTACK, AN ACTIVIST APPEARS OUT OF NOWHERE. SADLY, IN MOST SITUATIONS, SIMILARLY TO SHARK ATTACKS, BY THE TIME THE COMPANY REALIZES THAT THEY HAVE AN 'ACTIVIST PROBLEM,' THEY ARE ABOUT TO BE BITTEN."

HOW SHOULD COMPANIES BE PREPARING FOR THE 2021 PROXY SEASON?

Preparedness is key. Companies need to know what things they would fix if they had a clear schedule for three months, because in an activist campaign, it's often the most visible things that investors want to change. Companies also need to know more precisely what might constitute a win for a majority of their investors, and how management can deliver that. One could compare an activist event to someone yelling "shark" from the shore line. Like with a shark attack, an activist appears out of nowhere. Sadly, in most situations, similarly to shark attacks, by the time the company realizes that they have an "activist problem," they are about to be bitten.

For an activist, especially a newcomer, you have to have your next six steps planned out on the day you launch. You have to have your game together, because you can have strong ideas and still not unite the right coalition of investors. Know the custodial chain, know how the vote works, know what other shareholders want. Don't drink your own Koolaid!

DAVID CHASE LOPES

DAVID.CHASELOPES@DFKINGLTD.CO.UK

+33 6 72 54 69 79

DIVERSITY MATTERS

While gender diversity has made progress in the boardroom, 2020 saw more market participants weighing in and a wider definition of diversity adopted, writes Eleanor O'Donnell.

In 2020, the line between social justice issues and corporate governance blurred, as investors looked to corporate boards and called for reform at the highest level. Arguably the hottest governance topic was diversity as a wide range of market players including activist investors, stock exchanges, institutional investors, and regulators weighed in on the debate.

Thanks in part to better data and less sensitivity around disclosures, as well as close scrutiny, gender diversity has seen significant progress in recent years. According to *Activist Insight Governance* data, 23.5% of Russell 3000 directors were female in 2020, up from 18% in 2018. But attention is now turning to ethnic and racial diversity.

With at least one female director on every S&P 500 board, Agility Executive Search President Patricia Lenkov explained to Insightia that there is momentum and awareness regarding gender diversity, and improvements have been made. "With ethnicity, people woke up and saw they forgot about it," Lenkov noted. "So, I think it is taking a precedence because more work has to be done and there is much more underrepresentation."

DISCUSSION AND DISCLOSURE

The bigger push toward minority representation on corporate boards, particularly after the Black Lives Matter protests in the summer, has put boardrooms under greater scrutiny and not all investors are falling for feeble attempts to appease the movement.

According to *Proxy Insight Online* records, The Comptroller of the City of New York's proposal to adopt a policy on board diversity was approved at Expeditors International of Washington's May 2020 annual meeting. Many investors noted that the board lags its peers regarding diversity. DWS Investment explained a vote for the proposal by saying the company's steps to rectify its lack of diversity are not clear enough.

> "WITH ETHNICITY, PEOPLE WOKE UP AND SAW THEY FORGOT ABOUT IT."

Karla Bos, an associate partner at Aon, says there is work being done behind the scenes to improve disclosure between boards and shareholders. "These types of discussions are becoming a regular part of the board's agenda at companies of all sizes and will continue to be better communicated by them," she explained to Insightia.

LAW OF THE HAMMER

While proxy advisory firm Egan-Jones incentivizes diverse boards through its governance ratings and resulting director vote recommendations, Vice President Kevin McManus believes there is a narrow window for boards to act before change is mandated from above. "We fear the least desirable outcome, new laws which force the change, is going to occur because of the intransigence of a few boards."

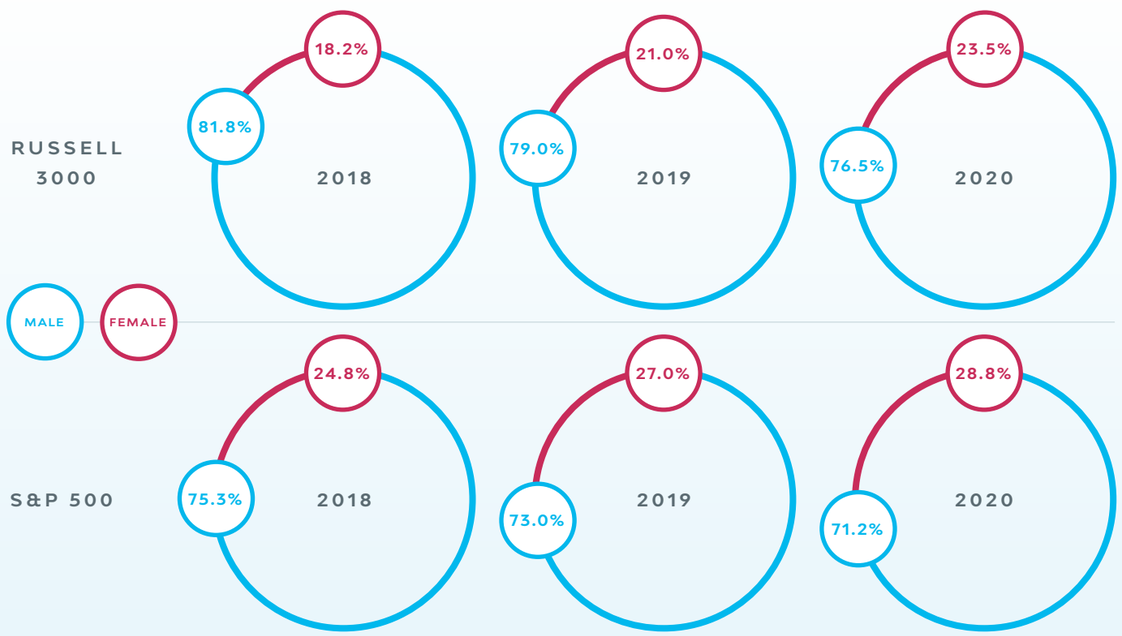
As with gender diversity in 2018, California was the first state to mandate racial quotas for corporate boards. In September, California Governor Gavin Newsom signed a law to require California-headquartered public companies to appoint at least one director from underrepresented communities to their boards by the end of 2021. Companies that do not comply could face large fines

Another active participant is exchange provider Nasdaq, which filed a proposal with the U.S. Securities and Exchange Commission (SEC) at the end of 2020 requesting permission to adopt listing rules that would require all Nasdaq-listed companies to disclose board diversity statistics and include at least two diverse directors, including a self-identifying female and a self-identifying underrepresented minority or LGBTQ+. Companies would not be subject to delisting, but would have to comply or explain.

> "THESE TYPES OF DISCUSSIONS ARE BECOMING A REGULAR PART OF THE BOARD'S AGENDA AT COMPANIES OF ALL SIZES AND WILL CONTINUE TO BE BETTER COMMUNICATED BY THEM."

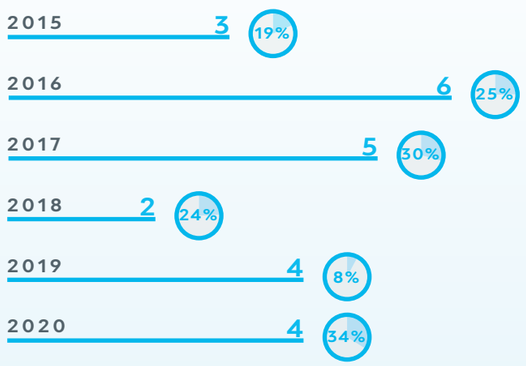
It is expected that with the new Biden-Harris administration, diversity will continue to be a hot topic into the new year. While Lenkov does not see a federal version of the Californian mandate coming to fruition, she believes there will be a lot of discussion around it. "It's not going away, and I hope it will evolve into something more sophisticated," she noted. "Basic work needs to be done and that's what's happening now."

BOARD DIVERSITY BY YEAR



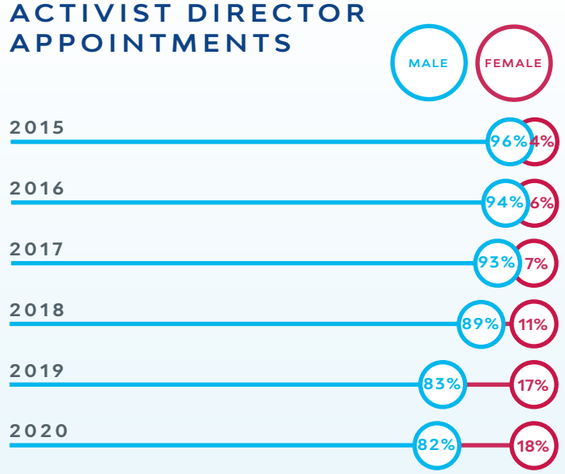
Proportion of male and female directors in the Russell 3000 and S&P 500 Indices as of December 31 in each year. Note: Rounding may lead to summation errors.
Source: Insightia | Activist Insight Governance

DIVERSITY REPORT PROPOSALS



Number of create diversity report proposals and average shareholder support, by year.
Source: Insightia | Proxy Insight Online

ACTIVIST DIRECTOR APPOINTMENTS



Gender breakdown of activist director appointments by year as a proportion of the year total.
Source: Insightia | Activist Insight Online & Activist Insight Governance

BACK TO FUNDAMENTALS

An interview with Marc Weingarten and Ele Klein, co-chairs of Schulte Roth & Zabel's shareholder activism group.

NOW THAT VACCINES PROMISE AN END TO THE PANDEMIC, IS ANYTHING STOPPING ACTIVISM FROM ROARING BACK?

Ele Klein: Activism has started to roar back already. The pandemic started at the crunch time for last year's proxy season. Campaigns had to be more focused, more targeted, more necessary, so to speak. This year, we are back to the freedom to analyze companies and identify which ones have underperformed — and a number of companies showed their true colors by being unable to navigate comparably to their peers. So, fundamental activism is poised to surge. As is M&A activism, with a number of deals that people are objecting to noisily. Those are two parts of the market and you're seeing both right now.

> "I THINK THE WAY PEOPLE DO BUSINESS, INCLUDING ACTIVISTS, REALLY MAY BE CHANGED FOREVER BY MORE REMOTE INTERACTIONS."

WHAT LESSONS SHOULD ACTIVISTS TAKE FROM THE CAMPAIGNS OF 2020? ARE VIRTUAL CAMPAIGNS AT ALL CHEAPER OR MORE EFFICIENT?

Marc Weingarten: I think the way people do business, including activists, really may be changed forever by more remote interactions. People found remote meetings with investors and proxy advisers to be perfectly efficient and less expensive, in some ways even more efficient than traditional roadshows, because you're able to get a lot of people from a lot of different locations on without having to fly them all around. So, that may be a permanent change.

EK: Time will tell if virtual shareholder meetings are advantageous to both shareholders and companies in terms of allowing more shareholders to participate, making it easier, avoiding a lot of the travel problems people have. They have great potential for everyone, but they can also be subject to trickery and gamesmanship.

CLIMATE CHANGE HAS BECOME A PROMINENT CONCERN FOR HEDGE FUND ACTIVISTS. DO YOU EXPECT THE ENVIRONMENT TO CONTINUE TO OVERSHADOW SOCIAL ISSUES?

MW: Environmentalism has always had very broad support among institutional and other investors, whereas views have been somewhat more divided on social and even governance issues. Presumably, the focus on environmental issues will only become more prominent under the Biden administration, which has campaigned actively on these issues. So, I do expect that environmental issues will predominate.

It may also be that you see fewer settlements in the ESG fights because those are issue-based campaigns that, in some cases, involve very fundamental business strategies that are hard to compromise. Although ESG proxy contests against a large or mega-cap may be too expensive for issue-oriented activists.

EK: TCI has been at the forefront of pushing companies to alter how they view climate change. We are seeing novel shareholder proposals from a new class of investors with real stakes, including state pension funds, which is leading to more pushback and ink spilled for the reasons Marc just gave.

IS LARGE-CAP ACTIVISM BACK IN A BIGGER WAY?

EK: It did feel like a strong end to last year for large-cap companies. Because of the nature of these campaigns, you don't have hundreds of them each year and so a small change in the number can look like a big swing. But it does feel like it comes in waves and we're seeing more life in the large- and mega-cap space.

MW: It has been demonstrated over time that an activist can be successful at mega-cap companies owning only a small percentage of the stock because so much is owned by institutional investors and their vote can be dispositive. And, over time, that strategy has moved down the spectrum to smaller-cap companies. We've seen a number of our clients wage campaigns where they had under 1% of the target's stock and were successful.

WHAT WAS THE WORST ENTRENCHMENT DEVICE YOU SAW IN 2020?

EK: This has carried over into 2021 but the situation at Enzo Biochem, where you had the board refuse to recognize a nomination from a shareholder as valid and ignoring the votes at a shareholder meeting, is the first that comes to mind.

DO YOU EXPECT MORE LIMITED BUSINESS TRAVEL TO SLOW THE GLOBALIZATION OF ACTIVISM?

MW: To the contrary, I think it will accelerate. Activists can operate remotely on a global basis, and not having to travel should be a plus. And, as you know, the pandemic has been disruptive to the economies in many, many countries, and their stock markets and the value of their companies have not come back the way they have in the United States. And I think that the pandemic, having disrupted those economies, will only further differentiate companies that perform well and adapted well to the pandemic and those that did not. So, there should be a lot of vulnerability for activists to pursue.

WHAT ELSE MIGHT WE SEE FROM ACTIVISTS IN 2021?

EK: Our PIPE [private investment in public equity] practice is red hot as most SPAC [special purpose acquisition company] combinations are happening in conjunction with a PIPE. There are so many SPACs that have to get deals done and raise further capital for their acquisitions, and the PIPE is the favored method for how to proceed. Activists are in this market with their own SPACs, investments in the SPAC sponsor vehicles, and participation in the PIPEs and public markets. It's another sign of the convergence of activism and private equity, and of the ability of activists to make bids and put companies in play.

Owen Schmidt, Schulte Roth & Zabel investment management partner.

SHOULD NEWCOMERS OR FIRST-TIME ACTIVISTS BE WARY OF WAGING PUBLIC CAMPAIGNS BECAUSE OF THE PANDEMIC?

Not at all. There will be some additional nuances to account for in a post-pandemic campaign, but the larger trends supporting increased shareholder engagement have not changed. Both seasoned and first-time activists will continue to focus on governance and accountability. How companies responded to managing the pandemic, including dilutive capital raises and other potentially value destructive decisions, will factor into the decision of whether to engage with company management.

WILL WE SEE MORE CONVERGENCE BETWEEN PRIVATE EQUITY AND ACTIVISM THIS YEAR?

We expect that we will. In fact, this is one of the most exciting developments in activism in recent times. Private equity is facing steep competition for returns. Activists have ever-growing piles of capital and the executive capabilities to run the acquired targets. Activists and private equity have both the incentives to borrow from each other's strategies and the capacity to do so.

DO ACTIVISTS NOW HAVE MORE OPTIONS FOR PRESSURING COMPANIES OUTSIDE OF THE TRADITIONAL PROXY SEASON?

Undoubtedly. The effectiveness of technical defenses like eliminating shareholders' right to act by written consent or call special meetings outside the traditional proxy season has been eroding. Pressure has risen for companies to refrain from such barriers to shareholder rights which are largely viewed as poor corporate governance. Even where companies choose to isolate themselves with such measures, shareholder pressure for change off-season is proving more effective than ever before.

MARC WEINGARTEN
MARC.WEINGARTEN@SRZ.COM

ELE KLEIN
ELE.KLEIN@SRZ.COM

OWEN SCHMIDT
OWEN.SCHMIDT@SRZ.COM

BUSINESS ABNORMAL

An interview with Jim McNally, London-based partner in Schulte Roth & Zabel's global shareholder activism group.

WERE THERE ANY NOTABLE CHANGES IN CORPORATE GOVERNANCE EXPECTATIONS IN 2020?

The lens through which we look at governance issues in 2020 was heavily tinted by COVID-19 and its impact, and investors have to the larger part been understanding of the resulting difficulties and disruptions, which are by and large similar to those they themselves have been experiencing. Whilst we have seen shareholder meetings being postponed or held as a "virtual-only" meeting, activists' and regulators' expectations on ease of direct interaction between shareholders and the board at those meetings is by and large the same.

However, the reaction of some U.S. corporates in seeking to introduce short-term defensive measures or poison pills to alleviate the threat of opportunistic attacks in the wake of price volatility has not been seen in the U.K. Many boards are looking at their compensation and incentive structures and, depending on what the outlook is later this year, may be bringing to 2021 annual meetings (virtual or otherwise) adjusted incentive metrics and goals, or proposals for option repricing. Issuers will be under pressure, where they cancelled or deferred distributions in 2020, to provide clarity on expectations for 2021. Those which accepted government financial support in 2020 are of course under increased public scrutiny as regards their future distribution plans.

DOES BRITAIN'S EXIT DEAL WITH THE EU AFFECT ACTIVIST OR PASSIVE INVESTMENTS IN THE U.K.?

Financial services (or indeed services generally) were not included in the exit deal to any great degree. Yes, there is a non-discrimination provision but the most-favored nation (MFN) does not apply to financial services, so there is much to work out. As regards existing investments however, we do not expect significant change resulting from the U.K. being a "third country" vis-a-vis the EU.

An interview with Gayle Klein, Co-Chair of Schulte Roth & Zabel's litigation group

WERE THERE ANY MAJOR ADVANCES IN ACTIVISM CASE LAW DURING 2020?

I would not say there were major advances, but a recent decision continues the trend in Delaware that companies cannot avoid providing stockholders access to books and records when the request is made for a proper purpose. Specifically, in *AmerisourceBergen Corporation v. Lebanon Retirement Fund, et al.*, decided on December 20, 2020, the Delaware Supreme Court, sitting en banc, eliminated two defenses that companies have used in the past to deny stockholders information sought under Section 220 of the Delaware General Corporation Law.

First, the court found that when a stockholder seeks inspection of books and records for the purpose of investigating wrongdoing, it need not specify how it might use the documents uncovered in the investigation. Second, the court expressly removed the hurdle of a stockholder demonstrating that any suspected wrongdoing or mismanagement would also be actionable to obtain information.

DO YOU EXPECT ESG ISSUES TO START TO SHOW UP IN LITIGATION STRATEGIES?

Absolutely. COVID-19 has shifted investor perception of social factors. A BNP Paribas study from July of last year indicated that nearly one in four investors said that ESG is more of a focus and more important as a result of the COVID-19 crisis. The heat on companies to focus on ESG, not only to positively impact society, but reduce risk, is turning up. I think that we will see lawsuits if companies do not heed the investor focus and take steps to mitigate ESG risk.

LAISSEZ-FAIRE NO MORE

The Biden-Harris administration, through its appointees and nominations, will see the U.S. return to a stricter financial regulatory environment, writes Sayer Devlin.

President Joe Biden and Vice-President Kamala Harris's economic agenda has one item at the top: controlling COVID-19 and stimulating an economy ravaged by the virus. The new administration's ability to control the pandemic will be the most important factor affecting financial markets. While reform specifically tailored to address the activism space is unlikely, the new administration will look to implement a stricter regulatory regime in stark contrast to the hands-off laissez-faire attitude of the previous four years.

"UNDER THE TRUMP ADMINISTRATION AND CHAIRMAN JAY CLAYTON, THE SEC UNLEASHED A SLEW OF MEASURES SEEN AS HOSTILE TO SHAREHOLDER ACTIVISTS."

GOLDMAN TO GOD'S WORK

Aside from the virus, much of the Biden administration's Wall Street policy will come from the office of Gary Gensler, who was nominated by Joe Biden to head the Securities and Exchange Commission (SEC) pending confirmation by the Senate (until then, Democrat Allison Herren Lee will serve as acting chair of the SEC). Gensler led the Biden transition's financial policy team, where the former chairman of the Commodity Futures Trading Commission (CFTC) was tasked with reviewing the Federal Reserve as well as banking and securities regulators.

Gensler rose to regulatory prominence under Barack Obama's presidency as the head of the CFTC, where he pushed hard for the government's new oversight of the over-the-counter swaps market, confronted financial institutions, and levied billions of dollars in fines. Despite his strong stance against banks, Gensler got his start in finance at Goldman Sachs, where he rose to the rank of partner at the age of 30, making him the youngest-ever partner in the firm's history at the time.

"Gensler is a terrific choice to head the agency," Barbara Roper, director of investor protection at the Consumer Federation of America, said. "He's as knowledgeable about the markets as anyone on Wall Street, so he can't be intimidated. He's a seasoned regulator who knows how to get things done."

CLAYTON'S CLAYMORES

Under the Trump administration and Chairman Jay Clayton, the SEC unleashed a slew of measures seen as hostile to shareholder activists. The SEC withdrew support letters for proxy advisers which, despite being legally non-binding, give significant cover from litigation and ushered business their way. The financial regulator also changed the threshold for advancing a shareholder proposal, imposing a higher stake and longer holding requirements.

Neither change has yet come into effect. Indeed, Institutional Shareholder Services is still in the midst of a legal battle with the SEC over new guidance that considers proxy adviser recommendations to be a solicitation of proxies, exposing the advisers to anti-fraud provisions. Compliance with this new rule will not be required until 2022, giving Gensler time to rescind or revise the change. Democrats remaining on the SEC will not object.

The Biden-Harris administration will also look to address issues of climate, diversity, and racial justice throughout all arms of the federal government. Notably, Gensler could force U.S. companies to disclose more on a swath of ESG issues. Companies may need to disclose more about the potential risks to their business by climate change while also reporting metrics of board diversity and increasing transparency around political contributions made by corporations – issues on which shareholders have previously taken the lead.

Share repurchases, a whipping boy for the Democratic party, could be another area for reform. In 2019, Senators Bernie Sanders and Chuck Schumer proposed legislation that would have slapped preconditions on share repurchases.

Other issues on the SEC's agenda include proxy plumbing and the universal proxy, although action remains far from certain. One thing is clear, however. Companies could be at risk of tougher enforcement actions over misleading or corrupt practices, creating risks and opportunities for investors.

ANIMAL SPIRITS

Japan and, to a lesser extent, South Korea, are emerging as the two markets most likely to see robust activist activity in 2021, writes Jason Booth.

Activism in Asia proved more resilient to COVID-19 in 2020 than in Europe, another developing marketplace for shareholder agitation. Indeed, across the region more demands for board seats went to vote, 35 versus 30 in 2019, and more seats were gained at shareholder meetings, 59 versus 40 in 2019.

The increases were partially due more to actions by amateur activists, such as concerned shareholder groups and engagement funds, while more dedicated activists stayed on the sidelines. The number of "impactful" campaigns (see page 4 for full definition) fell around 7% from 2019, with activists winning 30 board seats, versus 37 in 2019.

SPOONFUL OF SUGA

Most of those seats were in Japan, where shareholders of Sun Corporation replaced four incumbent directors with five nominees proposed by Hong Kong-based activist Oasis Management. In total, 66 Japanese companies received demands from activists of all stripes, just one less than in 2019 and more than in any other year on record. More had been expected.

"Investors planned to be very active (in Japan), but a lot of that fell by the wayside as many activists felt it was wrong in a time of great uncertainty," said Joe Bauernfreund, CEO of Asset Value Investors, which runs the AVI Japan Opportunity Trust. "Those that did proceed were watered down and done more as a message to companies that activists were still there and watching."

But there are signs, in Bauernfreund's words, of the "animal spirit coming back" in Japan, as recently appointed Prime Minister Yoshihide Suga is expected to maintain the shareholder friendly policies of his predecessor Shinzo Abe. In November, activist investor Rising Sun Management, headed by James Rosenwald of Dalton Investments, called on Japanese textile manufacturer Sakai Ovex to pursue a management buyout. Later the same month Yoshiaki Murakami disclosed a 10% stake in Japan Asia Group, challenging a management buyout backed by private equity firm The Carlyle Group.

Going forward, moves by the Tokyo Stock Exchange to force smaller companies to move to a secondary, less prestigious board, is expected to lead to a surge in merger and acquisition activity, according to activists who spoke with Insightia.

HOPE AND HANJIN

Elsewhere in Asia, South Korea saw a sharper slowdown in activism, especially campaigns waged by dedicated activists. Only three South Korean companies were targeted in such campaigns, two of which belonged to the same Hanjin group, versus five in 2019. Foreign activists were especially quiet, as regular agitators like Elliott Management and Dalton Investments stayed on the sidelines.

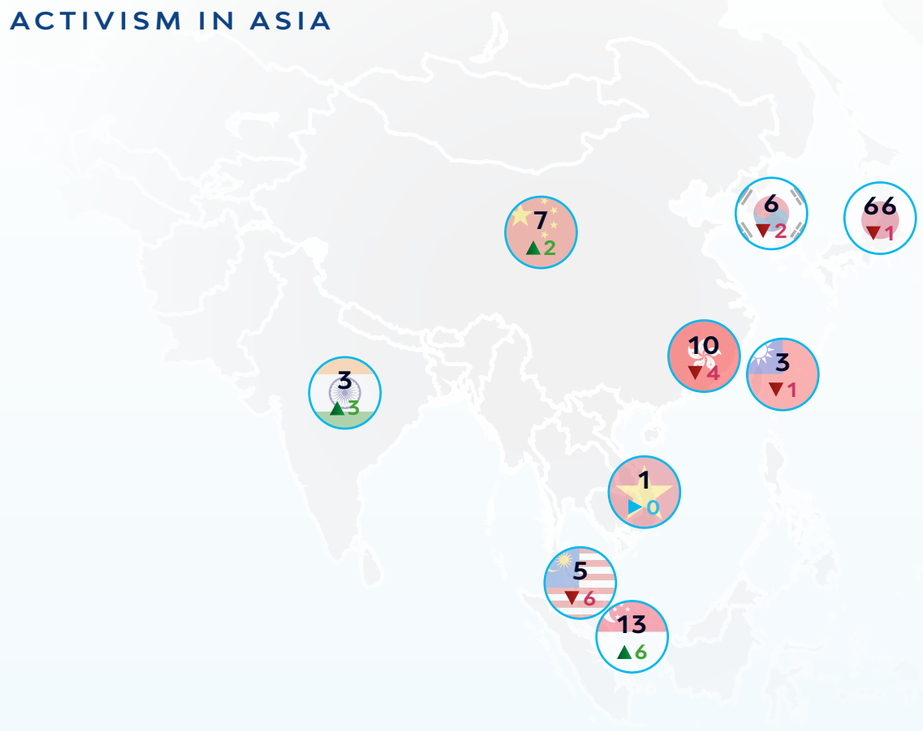
"We are very interested in Korea, but I'm just not sure they have crossed the Rubicon yet" in terms of embracing activism and improving corporate governance in general, said Seth Fischer of Oasis Capital Management in Hong Kong.

Yet like Japan, a flurry of late-year activity points to a busier 2021. In December, occasional activist Whitebox Advisors said it opposes LG's plan to spin off a collection of subsidiaries into a new holding company, saying LG was helping a member of the founder's family enrich himself instead of creating value for shareholders. And on December 9, a proposed amendment to the Korean Commercial Code strengthening shareholders' rights, particularly those of minority shareholders, passed the National Assembly.

Even normally staid Singapore saw increased late-year action when Quarz Capital and Black Crane Capital convinced other investors in a real estate investment trust Sabana to vote down a proposed merger with a larger rival.

Hong Kong, however, saw activism in 2020 limited to a handful of micro and nano caps. Despite ranking among the world's biggest markets, with a combined market capitalization more than seven times that of Singapore, Hong Kong will remain an activist backwater this year, activists predicted, given political instability and the fear of Chinese backlash against U.S. financial sanctions.

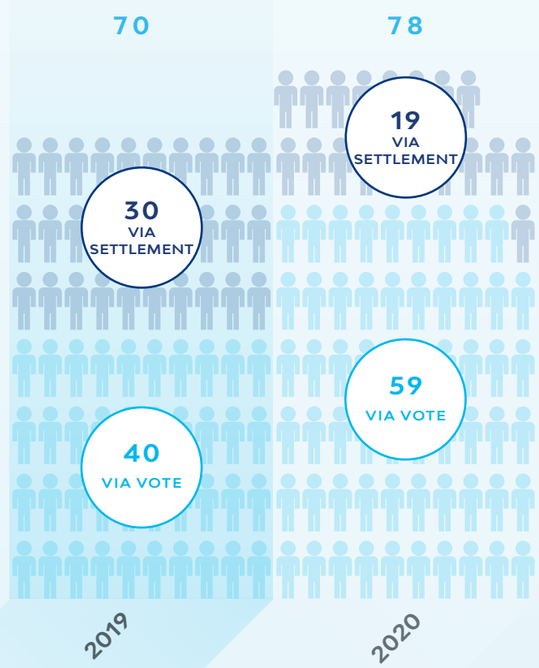
ACTIVISM IN ASIA



Number of Asia-based companies publicly subjected to activist demands in 2020, and absolute change versus 2019.

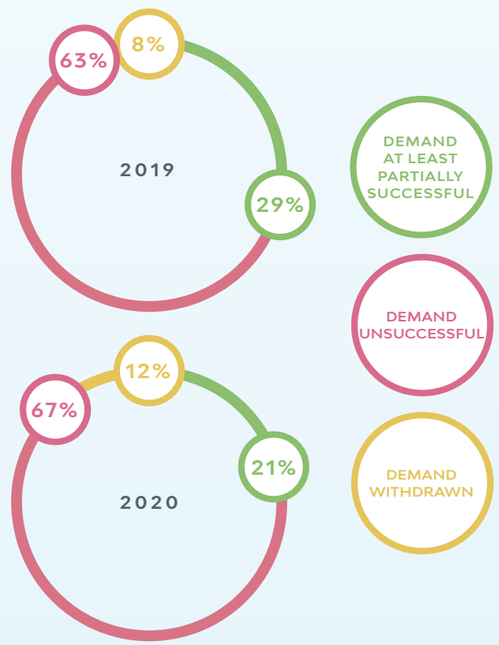
Source: Insightia | Activist Insight Online

ACTIVIST BOARD SEATS GAINED IN ASIA



Board seats gained by activists at Asia-based companies, by method and year.
Source: Insightia | Activist Insight Online

ACTIVIST SUCCESS RATE IN ASIA



Success rate of resolved public demands at Asia-based companies, by year.
Source: Insightia | Activist Insight Online

ROAD TO RECOVERY

European activism fell in 2020, but 2021 could be bountiful thanks to low valuations and the passing of Brexit and the pandemic, writes Iuri Struta.

Although Europe was the battleground for some of 2020's most notable campaigns, overall activist activity was down by double digits. Europe was the hardest hit region, as activism activity recovered slower from the COVID-19 pandemic than other parts of the world like the U.S. and Asia.

According to data from *Activist Insight Online*, the number of companies publicly subjected to activist demands fell more than 15% to 135 in 2020. Of the countries that typically see high levels of activism, the U.K. experienced the largest drop, around 33%, followed by Germany with 26%, while activity in Italy remained at very low levels.

France was the only bright spot, with the 11 companies publicly subjected to activist demands equaling last year's strong performance. Two major proxy fights, including between Amber Capital and Lagardère Group, and the dissident victory of Xavier Niel at real estate company Unibail-Rodamco-Westfield, suggested that the country's corporate citadels may be more vulnerable than previously thought.

REAL FINANCE

Unsurprisingly, some of the sectors that suffered most from the COVID-19 pandemic experienced the highest activity.

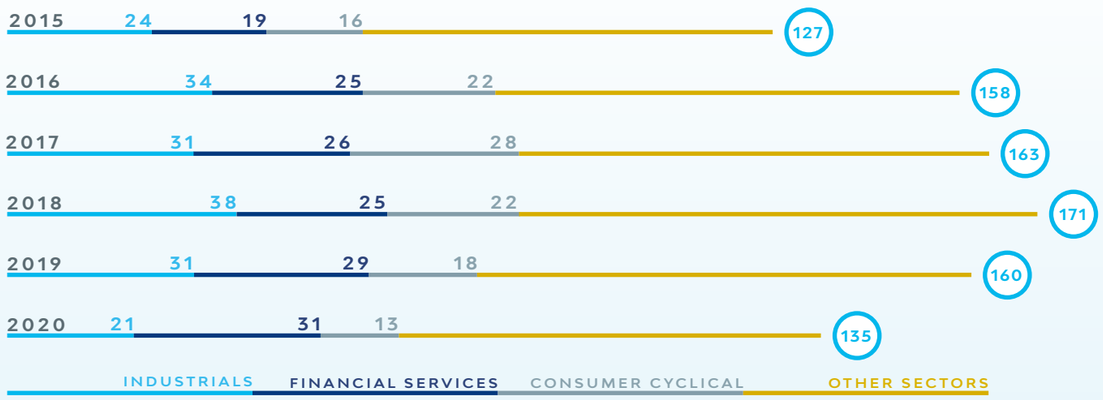
Activists targeted 31 companies in the financial services sectors, the highest number since counting started in 2013, as consolidation is expected to accelerate following the pandemic. Some of the largest campaigns in financials included Third Point Partners' breakup demands at Prudential, Trian Partners at Janus Henderson, and Cerberus Capital at Commerzbank.

Real estate, another embattled sector, saw 10 companies targeted this year, up from nine last year. The U.K. was responsible for nearly half of those campaigns, with Countryside Properties and Countrywide among the high profile targets.

FOCUS ON STRATEGY

The COVID-19 pandemic has created entry opportunities for some activists to launch campaigns on boards and managements that failed to move with enough urgency. "You see case after case where boards haven't taken the action that they must take in this kind of environment. If they haven't been doing it, there is a very receptive stakeholder audience to shareholder engagement," said Andrew Honnor, whose communications firm Greenbrook Communications worked on over 20 campaigns in 2020.

EUROPEAN ACTIVIST TARGETS



Europe-based companies publicly subjected to activist demands, by selected sectors and year.

Source: Insightia | Activist Insight Online

Indeed, demands falling in the category of business strategy, which includes management replacements, strategy changes and cost cuts, among others, more than doubled to 25 in 2020, the highest number in seven years bar 2018.

WHAT'S AHEAD

With Brexit finally over, stocks undervalued relative to the U.S. and a less crowded cohort of well-capitalized activists, Europe could be increasingly attractive for both home-grown and foreign activists. "We believe this is the 'golden age' of activism in the U.K.," Gatemore Capital founder Liad Meidar confirmed for this report, noting the growing acceptance from institutional shareholders and the market's "significant discount" creates opportunities for extracting shareholder value through engagement.

As stocks in some sectors have failed to recover to their pre-pandemic levels, one avenue to boost returns could be through M&A. Unlike in 2019, more companies were subjected to "push for M&A" demands than "oppose M&A" requests last year.

At the same time, ESG activism is expected to take off, as more funds include sustainability into their investment criteria and investors launch new ESG-focused funds. Bluebell Capital initiated an ESG campaign against Belgian chemicals maker Solvay late in 2020, while Gianluca Ferrari, a former director at Shareholder Value Management, is launching an ESG activist fund.

Catherine Berjal, of activist fund CIAM, told Insightia that asset managers were continuing to push ESG matters to the forefront. "We are confident that ESG will become an even bigger trend in 2021," she said.

THE ACTIVIST VIEW

"Continued strong M&A appetite and investor pressure for returns is likely to embolden those who push short-term, transactional moves. Some of that short-term activism is likely to encounter strong societal resistance in the pandemic environment."

Harlan Zimmerman, senior partner at Cevian Capital

"An uncertain macro backdrop will continue to put pressure on many listed companies, on one hand demanding capital discipline, and portending heightened deal-making on the other."

Adam Epstein, co-founder of Teleios Capital Partners

"Europe is likely to become more attractive to investors next year, as 2021 should bring us to the end of the tunnel on Brexit, and a rerating of European assets."

Catherine Berjal, co-founder of CIAM

"Those companies that have done the homework and have used the crisis will come out strong and take market share opening performance gaps to companies who have not been active enough."

Till Hufnagel, partner at Petrus Advisers

"Europe is still behind the U.S. when it comes to protection of minorities' interests, best governance practices, quality of management teams. And COVID-19 will oblige companies to re-engineer themselves, adapt the business model, compete in a generally harsher environment."

Marco Taricco, co-founder of Bluebell Capital Partners

"We believe the market backdrop in Europe looks attractive heading into 2021, both on an absolute basis as well as relative to the U.S."

Niklas Ringby, co-head of EQT Public Value

"We believe the promotion of positive change through implementing best practices across ESG initiatives can result in strong investment gains. However, activists must demonstrate clearly that they are actively pursuing this investment strategy for more than just 'box ticking' optical reasons, which will ultimately do little to enhance shareholder value."

Liad Meidar, founder of Gatemore Capital

"COVID-19 will present further opportunity post diligent valuation analysis, to buy strong companies which are suffering temporarily but trading below intrinsic value."

Paul McNulty, partner at Veraison Capital

LARGE-CAPTIVISM

Activists took refuge in large-cap companies in 2020 but doubts remain over whether smaller activists can make an impact at larger companies, writes John Reetun.

There were 204 large-cap companies publicly subjected to activist demands in 2020, according to data from *Activist Insight Online*, the first time that large-caps have been the most targeted group since records began.

Of those 204 companies, 43 were targeted by primary, partial, or occasional activists, categories which exclude corporate gadflies and low-impact activist campaigns, up from 39 in 2019 but short of 2018's record of 57.

Some activists made eye-catching moves at the height of the pandemic, Trian Partners invested in both Invesco and Janus Henderson, Trian's own Nelson Peltz and Ed Garden joining Invesco's board. Elsewhere, Third Point Partners urged media behemoth Disney to suspend its dividend and use the cash to further invest in its Disney+ streaming services.

MONEY IN MATTRESSES

As with much activism in 2020, the spike in large-cap activity was predominantly driven by the impact that COVID-19 had on markets. It was no coincidence that activists looked to large caps during such volatile market conditions, believing the space to be far safer than surrounding sectors. Peter Michelsen, head of activism and shareholder advocacy at investment bank Qatalyst Partners noted that while "large-cap and mega-cap activism has been a significant component of activism for the past several years," the "reason why that became more prominent in 2020 was because of the more limited downside risk of large- and mega-cap [companies], relative to the broader markets."

"There's a lot going in some of these companies and a lot of different things you can do, a lot of different levers you can push, and a lot of ways to create value," Daniel Kerstein, head of strategic finance at Barclays Investment Bank said, adding that activist interest grew partly because large caps are "just simply going to be less volatile plays."

NEW KIDS ON THE BLOCK

While the familiar names of large-cap activism were present and accounted for in 2020's surge, new players entered the space. Sachem Head Capital Management took out a $1.2 billion stake in Elanco Animal Health – its largest stake to date, before reaching a settlement with the $14.6 billion company for three board seats in December.

Elsewhere, new activist fund Engine No. 1 took a 0.02% position in Exxon Mobil, threatening a proxy contest for four board seats with a slate it says will realign management with shareholders and focus on expanding the company's renewable energy sector.

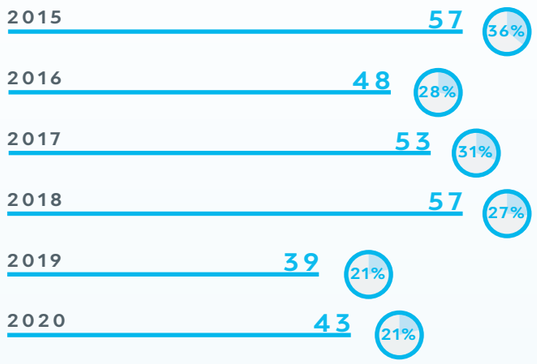
> "MOUNTING A CAMPAIGN FOR A LARGE OR MEGA-CAP IS VERY TIME-CONSUMING AND EXPENSIVE, AND IT'S HARD FOR SOMEONE WITHOUT A PROMINENT ACTIVIST BACKGROUND,"

On the other hand, neither is a complete newcomer. Sachem Head was already an established player with $3 billion in regular assets under management, and plucky Engine No. 1 recruited experienced activist Charlie Penner from Jana Partners. Yet their example could inspire more small funds to target large caps, particularly, as Kerstein notes, because a surge of co-investment vehicles available to smaller activists could lead to more targeting large-cap companies "as long as you have the track record."

In theory, Michelsen says, "the broader investor base looks to the quality of the thesis before the identity of the activists. So, there is an opening for smaller activists who have good ideas to target larger companies."

However, both Michelsen and Kerstein agreed that activists looking to break into the large-cap sector may find it difficult for practical reasons. "Mounting a campaign for a large or mega cap is very time-consuming and expensive, and it's hard for someone without a prominent activist background," Michelsen said.

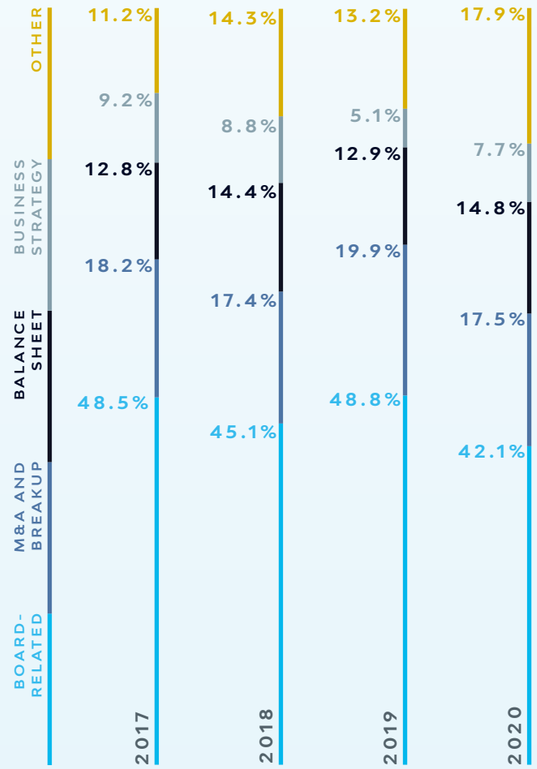
IMPACTFUL CAMPAIGNS AT LARGE-CAP COMPANIES



Number of large-cap companies publicly subjected to impactful campaigns, and as a proportion of all large cap companies publicly subjected to activist demands.*

Source: Insightia | Activist Insight Online

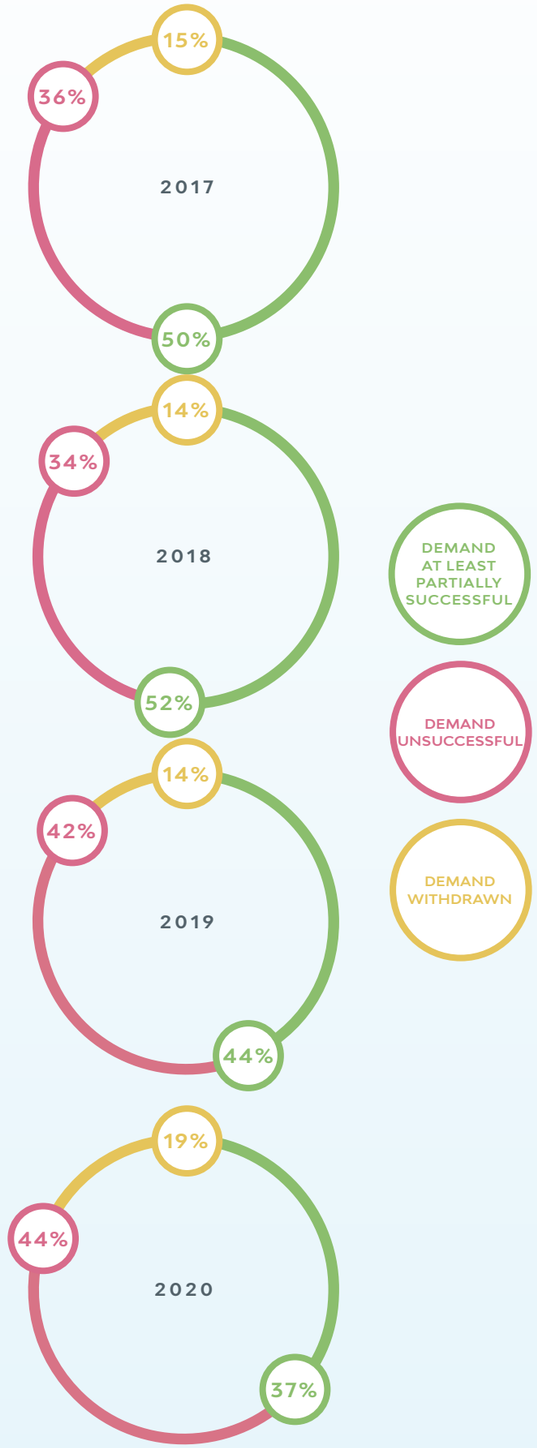
LARGE-CAP IMPACTFUL CAMPAIGN DEMAND TYPES



Demand type breakdown of public activist demands made in impactful campaigns at large-cap companies, by year.*

Source: Insightia | Activist Insight Online

LARGE-CAP IMPACTFUL CAMPAIGN SUCCESS RATE



Success rate of resolved public demands as part of an impactful campaign at large cap companies (>$10B), by year.*

Source: Insightia | Activist Insight Online

**Impactful campaigns are described by Insightia as those launched by investors with either a primary, partial, or occasional focus on activism. For full definitions of activism classifications, please see page 4.*

THE BEST AND THE REST

Activist performance diverged sharply in 2020, fracturing the image of a cohesive asset class, writes Sayer Devlin.

Activists were hit by historically unstable markets caused by the COVID-19 pandemic in 2020, even as markets enjoyed strong results over the full 12 months. The S&P 500 grew about 16.3% in 2020 while the MSCI World index gained 15.9%.

> "THIS YEAR OUR OUTLOOK IS TOTALLY DIFFERENT, WE ARE NOT GOING TO BE LOOKING FOR SIMPLE SETTLEMENTS."

Several activists enjoyed considerable success even as the overall economy contracted considerably. Scott Ferguson's Sachem Head Capital Management gained 45.6% last year, according to Reuters, more than double the return posted in 2019 after gaining five board seats at materials company Olin and animal health care company Elanco Animal Health, raising funds through a special purpose vehicle.

Bill Ackman's Pershing Square Holdings returned 70% in 2020, according to its website, breaking its previous record of 58% posted in 2019, helped by Ackman's late-February bet that credit default swaps, insurance in case a company defaults, would surge as COVID-19 spread across the globe. Ackman closed out the trade a month later, netting $2.6 billion in profit, most of which was then swiftly plowed into equities, which were trading at bargain prices and have since soared.

DIFFERENT GALAXIES

The average follower return in 2020 for dedicated activist investors was 9.3%, according to data from *Activist Insight Online*, a number propped up by the industry's best performers. The median activist's Total Follower Return was a more modest 2%, while nearly half of activists saw a negative Total Follower Return in 2020, highlighting the winner take all nature of the business.

> "THERE IS PENT UP DEMAND FOR ACTIVISTS TO COME AND DO SOMETHING."

"It's consistently hard to look at the total activism universe when judging the success of the strategy because there continue to be a leading class of outperformers and then the rest of the group," Patrick Tucker, who heads Abernathy MacGregor's M&A and activism division, said.

While COVID-19 had markets seesawing in March and April, allowing trading desks at big banks to post record returns, the impact on activism was muted. Many campaigns took a pause in the early months of the pandemic to give companies breathing room. The number of campaigns in the first quarter of 2020 was down around 16% compared to previous years. In practice, this meant that many activists didn't pour money into equity markets when prices were at their lowest, translating to more meager returns.

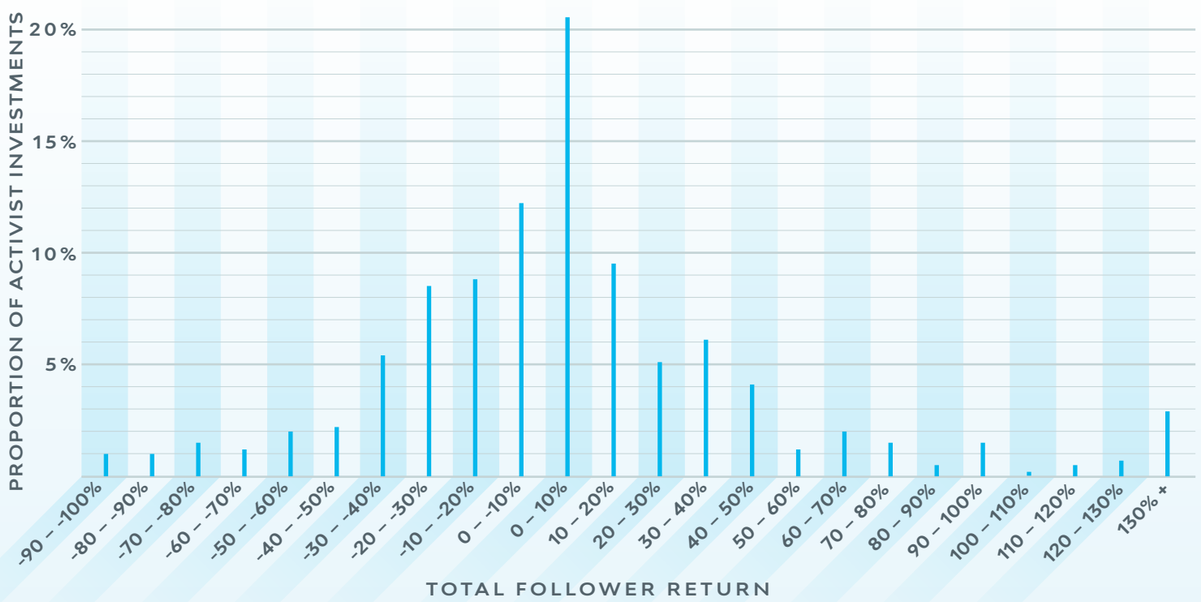
MONEY TO BE MADE

Still, there was money to be made in 2020. Dedicated activists' investments performed relatively well in the basic materials and consumer defensive industries, achieving positive Total Follower Returns of 32% and 30.1% throughout 2020 respectively. Campaigns targeting Canadian companies also saw significant success, returning 30.1% on average. U.K.-based companies were also ripe targets for activists, returning 15.9%.

Several of activism's biggest names saw negative follower returns. Carl Icahn's follower returns were –11.4% for the year while GAMCO Investors' activist positions finished down 14.3% to end 2020. Meanwhile, the energy sector, which Kimmeridge Energy said was borderline "uninvestable" at the start of 2020, continued to crater even after activist intervention, averaging a –27.5% Total Follower Return.

In 2021, Tucker continues to expect an activist's thesis and execution to be the most influential factor in any campaign's success.

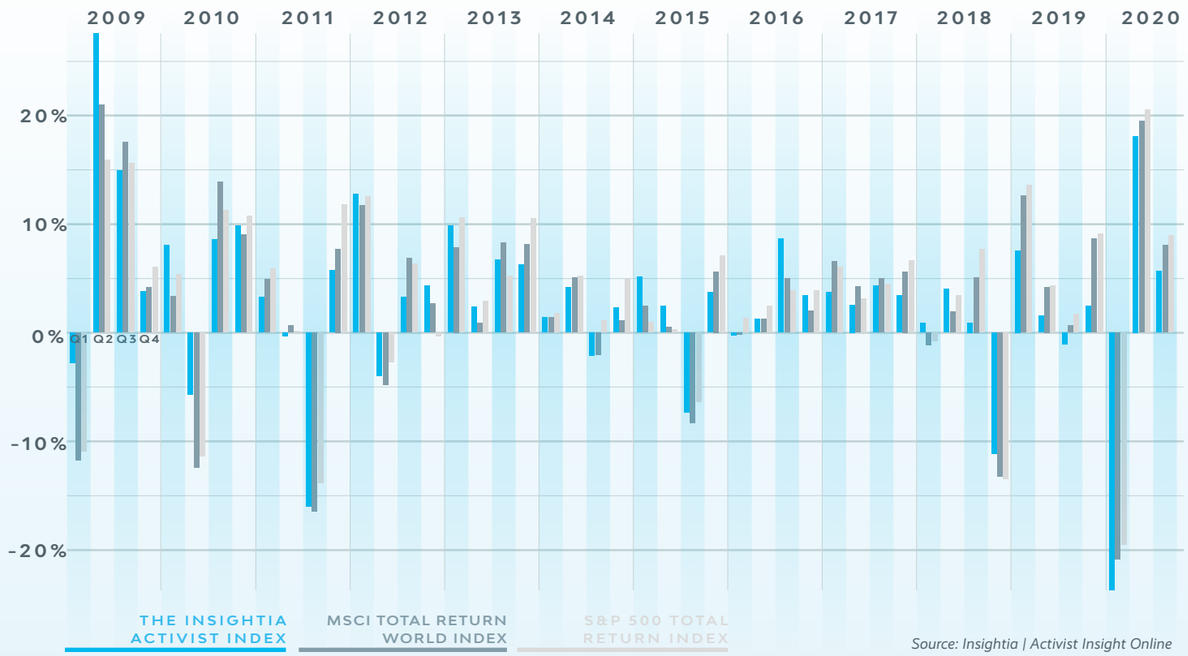
TOTAL FOLLOWER RETURN OF ACTIVIST INVESTMENTS IN 2020*



**Total Follower Return is a calculation of stock price change plus dividends paid from the later of the first close in 2020 or the close on the date an activist's first involvement is disclosed until the sooner of the last close in 2020 or the date an activist discloses that it has exited the position. Investments are limited to those that had a live activist campaign during 2020. The data is limited to activists with a primary or partial focus on activist investing as defined by Activist Insight Online (see page 4 for full definitions).*

Source: Insightia | Activist Insight Online

THE ACTIVIST INSIGHT VS. S&P 500 & MSCI WORLD INDEXES



Source: Insightia | Activist Insight Online

RIPPING UP THE PLAYBOOK

An interview with Rodolfo Araujo, head of corporate governance & activism at FTI Consulting.

HOW HAVE ISSUERS' VULNERABILITIES TO ACTIVISM SHIFTED OVER THE PAST 12 MONTHS?

In traditional financial activism, companies that benefited and saw rapid growth during the pandemic are facing greater scrutiny in their strategies, the sustainability of their growth, and their management of risks. At the same time, the pandemic intensified underperformance and exposure to risk for a significant share of the market, making those companies even more vulnerable, especially if they fail to control their narrative with shareholders.

In addition to financially driven activism, ESG management has become a more significant driver of shareholder dissent. Even well-performing companies face tough conversations. Early last year, some of the world's largest asset managers announced potential votes against directors if they found companies' management approaches to key ESG risks insufficient. Looking ahead to the 2021 proxy season, the response to the pandemic, concerns about human capital management and social inequities, and continued focus on climate change will feature high on investors' agendas.

HOW ARE ESG AND ACTIVISM CONNECTED?

Large institutional investors' willingness to hold boards accountable for environmental and social issues is a wakeup call for many companies. During the past decade, activist hedge funds have focused on perceived governance failures to justify why change at the board level was critical to drive value creation. Similarly, activists are beginning to add arguments about the management of material environmental and social issues to their arsenal of potential criticism against management. Statements about human capital management and climate change have already surfaced in 2021 campaigns. Issues will vary by company; however, expect underperformance in human capital management and the lack of a climate change strategy as prime potential drivers for dissent.

WHAT DO SHAREHOLDERS EXPECT FROM COMPANIES IN TERMS OF ESG MANAGEMENT AND COMMUNICATION?

They want to see clear indication that the company is safeguarding shareholder value by protecting against risk. Also, as a strong ESG program will likely give companies a competitive edge, shareholders want to see their companies positioned to take advantage of opportunities related to ESG issues. As many investors look to quantify their portfolio's exposure to ESG risks, they demand transparent reporting. As such, reporting frameworks such as SASB and TCFD have become very relevant, as they allow companies to report in a consistent, comparable manner.

HOW SHOULD COMPANIES TAILOR THEIR RESPONSES TO ACTIVISM?

A lack of attractive financial prospects or the perception that management cannot deliver on the current strategy are more relevant for the outcome of contested situations than historical operational or share price underperformance. Delivering a consistent and reliable message, setting expectations, as well as transparency and engagement help build trust with investors.

That said, every activism situation is unique, and the response should be tailored to address the underlying situation. We often hear about the "activism playbook." While there are certainly many best practices when engaging with different types of shareholders, including hedge fund activists, we do not believe that any playbook can really serve as a cure-all. In many campaigns, we were able to drive a win for our clients because we broke what are considered the "playbook rules."

RODOLFO ARAUJO
RODOLFO.ARAUJO@FTICONSULTING.COM

2021 TARGETS

Activist Insight Vulnerability **identifies nine companies each month that are vulnerable to an activist campaign. Iuri Struta and Rob Cribb highlight the industries expected to see increased activity in the new year, as well as some of 2020's picks that have yet to be targeted.**

The technology and healthcare industries are likely to remain among the most attractive in the U.S., as structural tailwinds create opportunities to make improvements at relative underperformers, especially those with poor managements and weak corporate governance. Around a third of the companies publicly subjected to activist demands last year were in these two sectors.

Unless there is a rally in commodity prices, energy and basic materials companies are likely to be shunned by traditional activists. However, some in these sectors could face pressure from ESG activists, as recent years showed the strategy could bring economic gains on top of social and environmental benefits.

An incessant bull market could make some activists wary of a sudden collapse, potentially prompting more investments in utilities. The number of such companies targeted last year was the highest since at least 2014. Depending on the evolution of the COVID-19 pandemic, embattled consumer cyclical stocks could present opportunities for activists, although the sector has been losing its attractiveness since 2018.

HEALTHSTREAM

VULNERABILITIES	PERFORMANCE	ACTIVIST OWNERSHIP	DIRECTOR SUPPORT
GOVERNANCE	CHAIRMAN TENURE	CEO TENURE	NO RIGHT FOR SHAREHOLDERS TO CALL SPECIAL MEETING
SECTOR	TECHNOLOGY	**TICKER**	HSTM
MARKET CAP*	$803M (SMALL CAP)	**1 YEAR TSR****	-3.06%

Underperformance relative to peers and a stagnant board are two key factors in gauging HealthStream's vulnerability. A strategy including multiple acquisitions since 2019 has yielded no clear returns for shareholders.

HealthStream peer Evolent Health was targeted in August by Engaged Capital, which sought different capital allocation strategies to unlock value as well as exploring a sale, showing that a precedent has been set in the space.

NUVASIVE

VULNERABILITIES	VALUATION	PERFORMANCE	DIRECTOR SUPPORT
GOVERNANCE	NO PROXY ACCESS	STAGGERED BOARD	NO ACTION BY WRITTEN CONSENT
SECTOR	HEALTHCARE	**TICKER**	NUVA
MARKET CAP*	$2.91B (MID CAP)	**1 YEAR TSR****	-26.33%

In October, our *Activist Insight Vulnerability* report highlighted that NuVasive is part of an industry with major tailwinds but its performance has lagged behind peers. An activist could call for corporate governance improvements and a strategic review. Given Ebitda margins are weaker than those of its competitors, an activist could also demand cost-cutting.

The company has three existing activists holding a combined 1% of stock, and sits in the 98th percentile* of companies most likely to be targeted over the next nine months.

SILICON LABORATORIES

VULNERABILITIES	PERFORMANCE	GROWTH	DIRECTOR SUPPORT
GOVERNANCE	CHAIRMAN TENURE	STAGGERED BOARD	NO RIGHT FOR SHAREHOLDERS TO CALL SPECIAL MEETING
SECTOR	TECHNOLOGY	**TICKER**	SLAB
MARKET CAP*	$6.23B (MID CAP)	**1 YEAR TSR****	18.84%

Silicon Laboratories is another company that operates in an industry with massive tailwinds, as seen by the strong growth rates of its semiconductor peers. Silicon Laboratories' high costs, low margins, and lack of growth could prompt an activist investor to ask whether the company needs to be shaken up.

An activist could ask for cost cuts (as Silicon Laboratories has high R&D and overhead costs), growth to be pursued more aggressively, or a sale. As the semiconductor industry has been experiencing a wave of consolidation, Silicon Laboratories' relative cheapness could make it appealing to a large peer.

ULTA BEAUTY

VULNERABILITIES	PERFORMANCE	GROWTH	DIRECTOR SUPPORT
GOVERNANCE	CHAIRMAN TENURE	STAGGERED BOARD	NO ACTION BY WRITTEN CONSENT
SECTOR	CONSUMER CYCLICAL	**TICKER**	ULTA
MARKET CAP*	$16.66B (LARGE CAP)	**1 YEAR TSR****	8.34%

Ulta Beauty has underperformed its peers over most relevant periods, as the company doubled down on its brick-and-mortar strategy instead of focusing more resources on e-commerce. With makeup products facing a secular decline, Ulta might be better served to focus on its skincare products.

An activist could ask the company to shrink its retail footprint and devote more resources to its online strategy, while focusing more on the high-growth skincare platform.

BAKER HUGHES

VULNERABILITIES	PROFITABILITY	BALANCE SHEET	DIRECTOR SUPPORT
GOVERNANCE	COMBINED CEO & CHAIRMAN	PLURALITY VOTE	PROXY ACCESS
SECTOR	ENERGY	**TICKER**	BKR
MARKET CAP*	$21.79B (LARGE CAP)	**1 YEAR TSR****	-4.77%

After significant volatility in 2020 for the oil sector, consolidation could be afoot in the oil services sector. Baker Hughes, one of these companies, shows signs of vulnerabilities and could see an activist push for a sale as the company's stock appears undervalued relative to peers. Since its merger in 2018 with General Electric's oil and gas unit, its share price has gone sideways.

A two-way split to increase shareholder value, focusing on its more profitable digital and turbomachinery services (rather than its legacy oilfield services), could be another viable campaign for an activist.

**Data as of January 25, 2021.*
***TSR (Total Shareholder Return): A calculation of stock price change plus dividends paid from January 26, 2020 to January 25, 2021.*
Source: Insightia | Activist Insight Vulnerability

2020 TRACK RECORD

Eleven companies that our *Activist Insight Vulnerability* journalists identified as vulnerable across 2020 in reports went on to be targeted. This covers companies that were subjected to a public demand, a new activist investment, or a 13D filing. Rob Cribb picks out some highlights.

ELANCO ANIMAL HEALTH

REPORT	JUNE 2020
ACTIVIST	SACHEM HEAD CAPITAL MGMT.
AIV THESIS	CUT COSTS, SALE OF ASSETS
DEMANDS	GAIN BOARD REPRESENTATION
TARGETED	OCTOBER 2020

Four months after our report highlighting potential avenues for value creation, activist Sachem Head Capital Management publicly targeted the company, making its largest investment to date. By December, the company struck an agreement with Sachem Head and added three new directors. *Activist Insight Vulnerability* reporters said Elanco was vulnerable because its margins badly lag key competitor Zoetis and its valuation had suffered.

F5 NETWORKS

REPORT	JANUARY 2020
ACTIVIST	ELLIOTT MANAGEMENT
AIV THESIS	COST CUTTING, RETURN CASH
DEMANDS	N/A
TARGETED	NOVEMBER 2020

Approximately nine months after *Activist Insight Vulnerability* identified F5 Networks as vulnerable, Elliott Management built a stake. The Wall Street Journal reported that Elliott was holding discussions with F5 over ways to improve shareholder value. Our report suggested that the company could be targeted for cost cuts or a sale, as well as noting underperformance relative to its close peers.

ON SEMICONDUCTOR

REPORT	FEBRUARY 2020
ACTIVIST	STARBOARD VALUE
AIV THESIS	OPERATIONAL CHANGES
DEMANDS	OPERATIONAL EFFICIENCY
TARGETED	OCTOBER 2020

Between our report in February and the end of 2020, ON Semiconductor's share price had risen by over 55%. Starboard Value said in October that the company was at "an inflection point that could lead to significant value creation." By December, Hassane El-Khoury replaced long-time CEO Keith Jackson, while discussions over assets and operational efficiency continue.

COMMVAULT SYSTEMS

REPORT	JANUARY 2020
ACTIVIST	STARBOARD VALUE
AIV THESIS	STRATEGIC REVIEW, SALE
DEMANDS	GAIN BOARD REPRESENTATION
TARGETED	MARCH 2020

Despite Elliott Management's successful push for board representation in 2018, our report brought to light issues that made Commvault vulnerable to activism once again. Two months after our report, Starboard Value built a 10% stake and later reached a board deal to add three new directors.

OTHER ACTIVIST INSIGHT VULNERABILITY PREDICTIONS: ROUNDUP

In November 2019, *Activist Insight Vulnerability* profiled **Intel** as vulnerable to activism due to its massive underperformance relative to key peers Nvidia and Advanced Micro Devices. By the end of 2020, Third Point engaged with management and shortly thereafter CEO Bob Swan announced his resignation. **Evolent Health** was targeted by Engaged Capital one year after our report from 2019. More than two years after we highlighted **Harley-Davidson**'s potential vulnerability to an activist in early 2018, Impala Asset Management targeted the company and settled in March. In November 2019, **Merit Medical** was featured as a viable target for an activist, and saw Starboard Value build an approximate 9% stake two months later in early 2020. Starboard sought discussions with management over ways to unlock shareholder value.

As part of our research on activism vulnerability, we find many companies that are potential M&A targets. Since 2019, 10 companies that were listed as vulnerable to M&A activism by our reporters were acquired without facing a public demand, including **Endurance International**, **National General Holdings**, **Coherent** and **Xperi**.

CRISIS AND OPPORTUNITY

An interview with Andrew Honnor, managing partner of Greenbrook.

ON WHAT ISSUES ARE U.K. ISSUERS MOST CLOSELY SCRUTINIZED AT PRESENT?

While most engaged shareholders paused campaigning at the start of the COVID crisis to ensure management teams could focus on the threats (and, in some cases, opportunities) thrown up by the pandemic without distractions, that changed in the second half of the year. Engaged shareholders have been understandably keen to ensure that fundamentally sound businesses have responded adequately, whether in terms of setting an appropriate strategy or delivering acceptable financial performance. During a crisis, companies don't have the luxury of time to grapple with these, and activists may find it necessary to exert their influence to focus boardrooms' minds.

WHAT SHOULD ACTIVISTS KNOW ABOUT HOW ESG IS TREATED IN THE U.K.?

In part, the increasing importance of ESG issues in the U.K. has been driven by long-only pension funds becoming increasingly vocal, while the launch of activist funds dedicated to ESG strategies has also ramped up pressure on boards. In the past, potential activist targets may have been able to get away with treating ESG as a mere box-ticking exercise designed solely to appease governance wonks but that will no longer wash. Company bosses know they have to be credible on ESG or it will earn them unwelcome attention.

ANY TIPS FOR AN ACTIVIST MAKING A FIRST U.K. INVESTMENT?

Any activist making its U.K. debut ought to bear in mind that, by definition, they will be an unknown quantity in the eyes of the target company, and that there will be fewer public reference points to help the board reach a view of the shareholder's credibility. In the event of a more "constructivist" style campaign, this will inevitably make it more challenging for a board to get comfortable with the activist or to accede to its requests. It will be incumbent on an engaged shareholder to offer fuller explanations and context around its own backgrounds, approach, and intentions.

HOW SHOULD ACTIVISTS VARY THEIR APPROACH BASED ON THE SIZE OF THEIR TARGETS?

A more pertinent metric than size is how well-known (and to a lesser extent, how well-liked) a target company is. The better-known a business, irrespective of its market cap, the more likely it is to attract third-party scrutiny. Large companies that don't figure on the media's agenda have been known to avoid attention when coming under criticism from an activist and vice versa. That being said, a smaller company may be more illiquid and therefore require a different approach – one that involves courting publicity – than a heavily traded large cap.

HOW IS ACTIVIST INVESTING NOW VIEWED BY THE U.K. MEDIA?

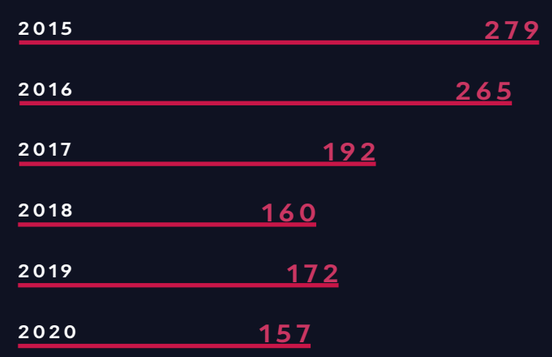
The U.K. is blessed with some of the most vocal and unashamedly forthright news media in the world and most publications are only too happy to weigh in on an activist campaign. But underestimate the media at your peril and don't confuse brashness with ignorance. The sheer volume of cases has ensured the U.K. press has become increasingly sophisticated at assessing activist campaigns and they are almost always willing to listen to a well-thought-through set of arguments. They may not always agree but they are prepared to give activists a fair hearing.

ANDREW HONNOR
AHONNOR@GREENBROOKPR.COM

ACTIVIST SHORTS IN 2020

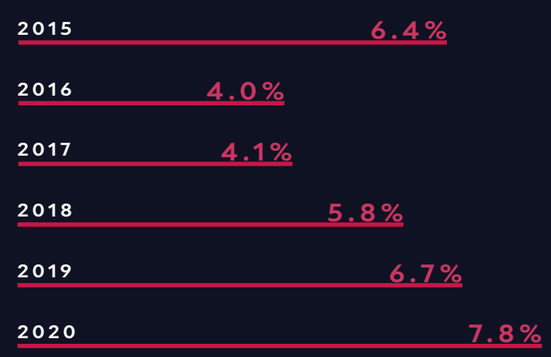
The year in numbers.

ACTIVIST SHORT CAMPAIGNS



Number of activist short seller campaigns launched, by year.
Source: Insightia | Activist Insight Shorts

ONE-WEEK RETURNS



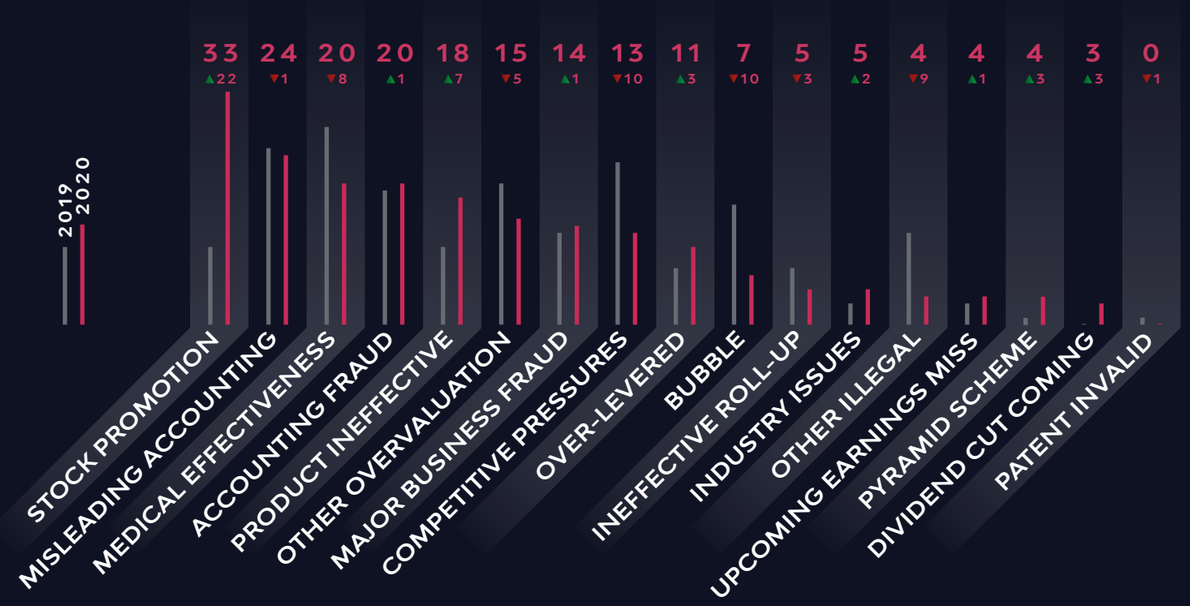
Average one-week activist short selling Total Campaign Return by year of campaign launch.*
Source: Insightia | Activist Insight Shorts

MOST POPULAR ACTIVIST SHORT SELLER TARGETS IN 2020

TECHNOLOGY	HEALTHCARE	CONSUMER CYCLICAL	FINANCIAL SERVICES
44	39	23	15
▲13	▼23	▲3	▲9

Number of activist short seller campaigns launched in 2020 by sector, and actual change versus 2019.
Source: Insightia | Activist Insight Shorts

ACTIVIST SHORT CAMPAIGNS BY ALLEGATION IN 2020



Number of activist short seller campaigns launched in 2020 by allegation, and actual change versus 2019.
Source: Insightia | Activist Insight Shorts

**Total Campaign Return is a calculation of the stock price change percentage, minus any dividend payment obligations, of campaigns initiated in 2020 from the close prior to the campaign's announcement until the last close on the defined period.*

THE ACTIVIST SHORT SELLER TOP FIVE

Activist short sellers faced no less unprecedented a market environment than long investors in 2020. While the pandemic initially created opportunities for profit, the injection of liquidity by central banks forced short sellers to be even more disciplined than in recent years. Nonetheless, some stood out – 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 2020 from the close prior to the campaign's announcement until the last close on the defined period.*

01 HINDENBURG RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2020:	24
AVERAGE TARGET MARKET CAP:	$1.6B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN:	28.3%

Hindenburg finally reached the top spot with a whopping 24 new campaigns in 2020. Moving away from its 2019 focus on the healthcare sector, Hindenburg zeroed in on consumer cyclicals and the technology industry, reaching nationwide renown with a thesis on Nikola that sent the stock down more than 60% as of the end of 2020. "The resignation of [Chairman] Trevor Milton and the collapse of the GM deal following the report were surreal moments for us," Hindenburg founder Nathan Anderson told *Activist Insight Shorts*.

Not completely leaving healthcare behind, however, Hindenburg targeted SCWorx early in the year, leading to the U.S. Securities and Exchange Commission's involvement. "We found that the CEO was a convicted felon and the CEO of the company selling the tests was a convicted rapist who had been alleged to have run previous scams," Anderson explained. "The stock was halted and [its coronavirus test deal] fell through."

Despite the bull market that 2021 has kicked off in, Anderson is positive about his firm's future. "We have more high-quality, multi-billion-dollar projects in the works than we have ever had before," he explained. "Our plan is just to stay focused and make this a great year. Expect some fireworks."

02 CITRON RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2020: 9
AVERAGE TARGET MARKET CAP: $19.5B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN: 11.0%

Citron was less busy in 2020 than in 2019 but still managed to launch nine new campaigns. With a healthy mix of technology and healthcare companies among its targets, Citron was not short of notable situations last year, Inovio Pharmaceuticals among them. The short seller lambasted the company as an alleged stock promotion after it claimed to have found a "viable candidate for a coronavirus vaccination." Initially, the stock rose while Citron stayed short. However, after it fell from $33 to $9, Left claimed victory.

"If you knew the company, what they do, and how they do it, a coronavirus vaccination was never even a consideration," founder Andrew Left explained to *Activist Insight Shorts*. "It's an asymmetrical risk-reward," he continued. "It could continue to go down but they could put out a stupid announcement tomorrow and send the stock up again."

Left told *Activist Insight Shorts* that there was no single major contributor to his short earnings and that the key to 2020 was to not get murdered on the short side. That lesson was learned again less than a month into the new year, when Citron was burned by a short squeeze at GameStop engineered by Reddit retail traders. Citron subsequently announced it would no longer publish short reports but would instead focus on long opportunities for individual investors – adopting the motto, if you can't beat them, join them.

03 J CAPITAL RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2020: 8
AVERAGE TARGET MARKET CAP: $3.3B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN: 6.1%

Fraud-buster J Capital had a busy year with eight new short positions, including stock promotion claims at Ideanomics and a Ponzi scheme allegation against data center operator GDS Holdings. It was also involved in one of the year's most celebrated collapses.

Early in the year, J Capital disclosed a short position in Luckin Coffee, backing an anonymous report questioning the Chinese beverage company's financial performance. Luckin initially denied the claims brought against it but later revealed it had found evidence of fabricated 2019 sales totalling more than $300 million, sending the share price cratering. The company was subsequently delisted from the Nasdaq and faced with a full-blown conflict between directors.

J Capital's Anne Stevenson-Yang told *Activist Insight Shorts* that markets in 2020 resembled those during China's boom years in 2012-2014 and the Federal Reserve's quantitative easing program that sought to stimulate the U.S. economy following the 2008 financial crisis and subsequent recession. "When money is free, weird things happen," she said. Far from that being bad for business, however, Stevenson-Yang expects a bumper year. "Frauds are quadrupling," she noted. "2021 should see the air come out. Happy hunting for us."

04 BLUE ORCA CAPITAL

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2020: 3
AVERAGE TARGET MARKET CAP: $9.1B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN: -2.8%

Continuing with its Asian and Australasian focus, Blue Orca released three new short theses through 2020. While its Australian target Seek has continued to grow in value, accusations of fraud levelled against China Feihe and China Medical System Holdings gave differing results. China Feihe's stock price recovered after a slight dip, while China Medical's spiralled downwards to end 2020 20% lower than the day the report was published.

For Blue Orca Chief Investment Officer Soren Aandahl, 2020 could have been an extinction event in the short space, with the potential to shake out the entire business. "Early on, when we identified the stimulus and the money in the system, it was about discipline and risk management," the short seller told *Activist Insight Shorts*.

Aandahl's buzz phrase for 2021 is that "valuations are perfectly situated for a short seller." As companies outstretch their true valuations and bubbles continue to grow, filled with investors piling into businesses they don't understand, the euphoria of the market is starting to crack, according to Aandahl. "The question is when the bubble will burst. For a short seller, not only do you have to be right, you have to be right right now."

05 MUDDY WATERS RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2020: 10
AVERAGE TARGET MARKET CAP: $4.9B
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN: -3.5%

Doubling its activity from 2019, Muddy Waters made 10 new bets against companies in 2020. After finding success at Inovio Pharmaceuticals and Luckin Coffee early in the year, the short seller used the second half of the year fighting to get back to its strong start, according to Muddy Waters founder Carson Block. "We adjusted our tactics to much more of a trading environment and hired a full-time trader," he told *Activist Insight Shorts*. "We were able to manage risk and move things around intraday."

While the start of 2021 has continued in much the same way as 2020, Block is hopeful that the environment will begin to improve for short sellers. Factors including a potentially calmer political news environment giving more space to market-focused stories, and the Biden administration's likely stronger enforcement against bad actors will weaken the worst equities, according to the short seller.

SHORT SELLING IN 2020

Short sellers started 2020 positioned for a market downturn but gradually unwound their bets as stock markets recovered from the March selloff, writes Iuri Struta.

Short sellers in Europe, Australia, and Canada started 2020 with large short positions – just as the COVID-19 pandemic was gathering speed. After the March selloff, their outlook began to brighten.

> **"IN EUROPE, THE ENERGY, REAL ESTATE, AND BASIC MATERIALS SECTORS WERE THE MOST-SHORTED – BOTH BEFORE AND AFTER THE PANDEMIC HIT."**

According to *Activist Insight Shorts*, the average reported short position across Europe gradually declined from 2.41% at the start of the year to 1.99% at the end. The decline was less steep in Canada and Australia, where the average short position fell from 0.84% in January to 0.67% in December. The largest drop occurred in the second quarter, as short sellers took profits and global markets started to recover from the selloff, and fourth quarter, as the global rally continued unabated.

All three regions covered in this report experienced declines, with the U.K. registering the largest drop in the average short position, followed by Continental Europe, Australia, and Canada. The reporting threshold for short positions in Europe is 0.2% and will fall to 0.1% in 2021. Australia requires short disclosures for positions of more than AU$100,000, unless they are smaller than 0.01%. Canada does not require short disclosures but it publishes data in aggregate from brokers. Some large markets, such as the U.S., do not require the reporting of short positions.

SECTORS

In Europe, the energy, real estate, and basic materials sectors were the most-shorted – both before and after the pandemic hit. While most sectors experienced declines in short interest as the year wore on, real estate and energy saw increases. Indeed, some of the largest mall operators were already in trouble, with U.K.-based Intu Properties and Netherlands-based Wereldhave among the single most-shorted names. In the U.K., four energy companies were among the top 10 most-shorted stocks at the end of the year versus two at the start.

In Australia and Canada, consumer defensive stocks, which include grocery stores and food manufacturers, were the most shorted at the beginning of the year, but interest declined through the end as many of these stocks benefitted from consumer stockpiling. At the end of the year, consumer defensive was the second-most shorted industry in Australia and Canada.

COMPANIES WITH THE LARGEST SHORT INTEREST

COMPANY	HQ	SECTOR	SHORT INTEREST
WERELDHAVE	NETHERLANDS	REAL ESTATE	17.71%
UNIBAIL-RODAMCO-WESTFIELD	FRANCE	REAL ESTATE	17.29%
FUGRO	NETHERLANDS	ENERGY	16.25%
AIR FRANCE KLM	FRANCE	INDUSTRIALS	14.86%
WEBJET	AUSTRALIA	CONSUMER CYCLICAL	14.69%
PEUGEOT	FRANCE	CONSUMER CYCLICAL	14.67%
K+S AKTIENGESELLSCHAFT	GERMANY	BASIC MATERIALS	14.67%
ENCAVIS	GERMANY	TECHNOLOGY	13.99%
CINEWORLD GROUP	U.K.	CONSUMER CYCLICAL	13.33%
PREMIER OIL	U.K.	ENERGY	13.31%

Companies in Europe, Australia, and Canada with the largest amount of short interest as of December 31, 2020.

Source: Insightia | Activist Insight Shorts

COVID-19 BEHAVIOR

The COVID-19 pandemic has certainly influenced short sellers' behavior. While short positions in airlines and related companies like easyJet, Air France KLM, and Webjet increased before and after the pandemic, short sellers stampeded out of bets against food delivery companies like JustEat Takeaway, which had a short interest of nearly 12% at the start of January. Despite the company having just completed a major acquisition, short interest abruptly declined in March and increased slightly through the end of the year to 7.6%.

In some cases, opportunity took a while to crystallize. German airline Deutsche Lufthansa saw its short interest spike in the second quarter, when it was Continental Europe's third most-shorted stock with 13.3% of shares shorted. By the end of the year, short interest stood at 10.6%, despite the German government agreeing to bail out the embattled airline. Short interest in Air France, which also received bailout money, remained high through the end of the year.

In Australia, lodging companies Webjet and Corporate Travel Management, which suffered from COVID-19 induced lockdowns, appeared among the top 10 most shorted companies in the third quarter, with the former remaining the most-shorted company through the end of the year. Corporate Travel faced an activist short seller in November 2018.

In the U.K., short interest in grocery retailers Sainsbury's and WM Morrison gradually increased throughout the year to 12% and 7.4%, respectively. Sainsbury's stock surged to a three-year high at the end of 2020 on the back of pandemic-fueled stockpiling, but short sellers now apparently expect a correction as the pandemic subsides.

Rich valuations are likely to make short sellers and investors alike keener to hedge their bets in the coming year, as continued monetary and fiscal stimulus in developed economies could fuel stocks' rallies to new highs.

SHORT INTEREST BY GEOGRAPHY AND SECTOR

Average short interest by company HQ and sector as of December 31, 2020.

Source: Insightia | Activist Insight Shorts

ESG: SAVIOR OR SHAM?

The continued focus on ESG has sent a flow of cash to market participants using buzzwords to attract investors, but short sellers are betting against the trend, writes Eleanor O'Donnell.

ESG investing grew to new heights in 2020, guaranteeing institutional and retail inflows that lead to higher valuations for companies that meet rating agency criteria.

Like any hot topic rich with cash, though, ESG has attracted its own range of bad actors. And where there are bad actors, there are short sellers.

KEEP ON ROLLING

2020 saw the first wave of activist short campaigns with an ESG angle, from exposing poor working conditions in the U.K.'s textiles industry, to fraudulent technology. The campaigns have had mixed results. Electric truck-maker Nikola has not recovered from allegations that it faked a demonstration of its batteries that involved rolling a truck down a hill, then making it appear as if it was moving of its own volition. Despite a series of governance changes and meeting most of its own milestones, Nikola lost business from General Motors as a result of the campaign.

Hindenburg Research founder Nathan Anderson, whose firm blew the whistle on Nikola, told *Activist Insight Shorts* that although he didn't deliberately focus on ESG in 2020, "the flood of capital into the style has attracted hordes of scam artists." Hindenburg also targeted MicroVision, a laser company seen as a play on autonomous and electric vehicles, that it called "a corporate husk."

"Perhaps one of the more painful ironies in a year filled with ironies has been the breadth and magnitude of deception purveyed by companies claiming to focus on ESG," Anderson noted.

IRONY OF FATE

Hindenburg was not the only short seller focusing on tech companies scamming their investors. According to *Activist Insight Shorts* data, technology was the most-shorted sector of the year and stock promotion the most-used allegation across all campaigns.

But not all were so successful at stopping moving vehicles. White Diamond Research argued that, although GreenPower Motor seemed to be doing great things for the environment by delivering the first EV Star electric bus in 2018, it was really only an importer buying its buses from China, making minor changes, and selling them at a price much higher than its rivals. Nonetheless, in the month following the short report, GreenPower's stock rose 40.3%.

"The company is fraudulent, and I thought that would be enough to take it down," Adam Gefvert, White Diamond's head of research, told *Activist Insight Shorts*. "But with the sector and the name of the company, it's staying up."

SHAM SPACS

A side effect of the ESG wave was a series of new Special Purpose Acquisition Companies (SPACs) specifically focused on ESG matters and Initial Public Offerings (IPOs) that launched them. But not all had good intentions. The Friendly Bear explained to *Activist Insight Shorts* that "many of these recent IPOs and SPACs are, for lack of a better term, sham companies." According to the anonymous short seller, a lot of the new issuances are not real companies with a proper business model but are just stock plays – "ways to skim money out of retail investors."

The bubbles protecting these companies as their stock skyrockets will eventually pop, as all bubbles do, and will likely force the ESG movement to become stricter. The future will likely see securities regulators holding companies accountable for the ESG claims they make in regulatory documents.

"But for now, these sham ESG companies are creating pockets of overvaluation and opportunity for short sellers," The Friendly Bear noted. "So, in 2020 we definitely dedicated more of our attention to the ESG theme."

INTELLIGENT

ANALYTICS

insightia

INTELLIGENT ANALYTICS

WHERE INTELLIGENCE MEETS ANALYSIS

GOVERNANCE · ENGAGEMENT · STEWARDSHIP