

# Shareholder Activism: *Investing in a Stronger Corporate America*

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with Bruce Goldfarb



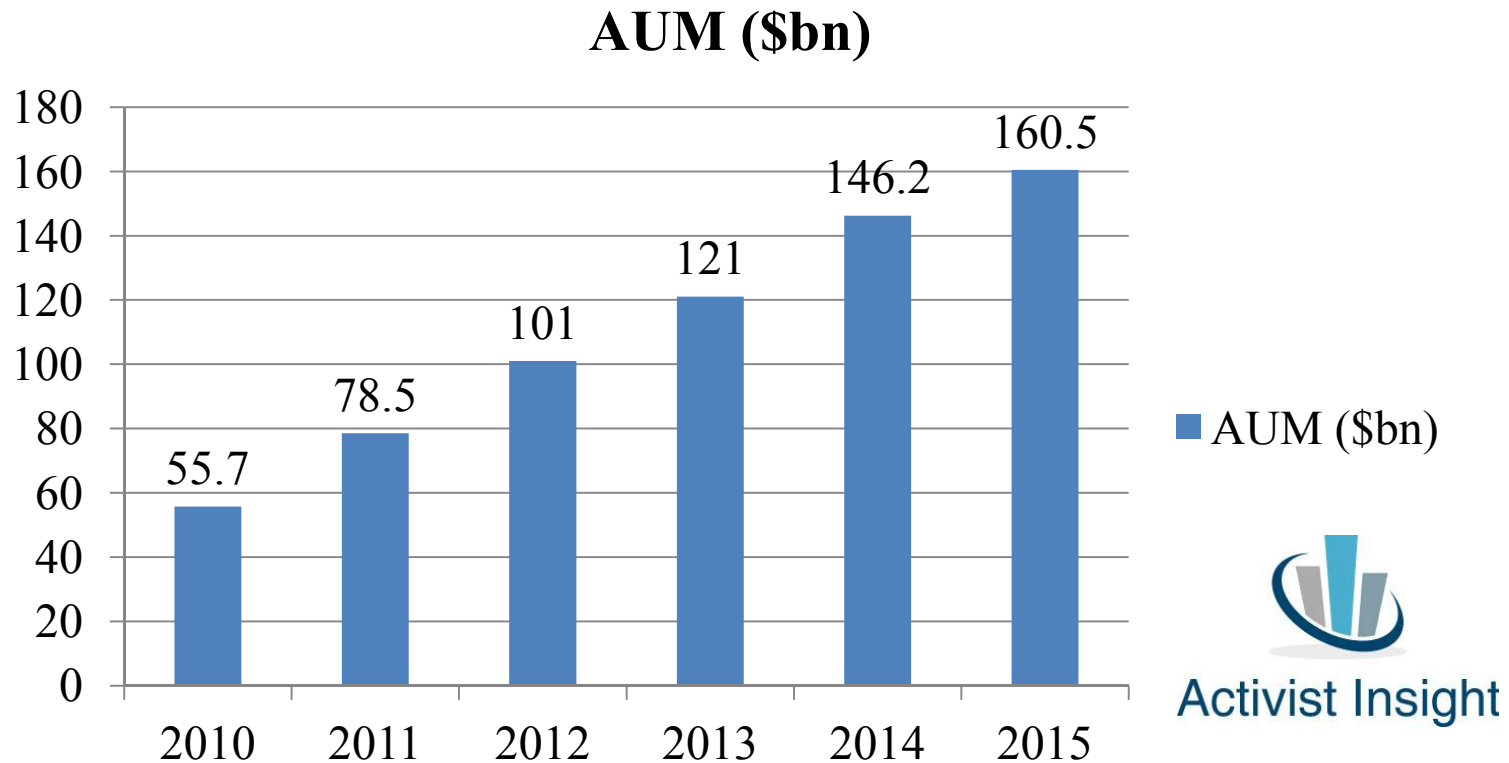
# TEMPUR+SEALY

## Continued Surge of Shareholder Activism

- Oversized returns
- Flow of capital into activist strategies
- Growing size of the market
- Rising number of campaigns
- Record success rates

Activist hedge funds have brought oversized returns; attracted more than \$160 billion in capital, invested close to \$308 billion; launched 417 campaigns in 2014 & 300 in the first half of 2015 and succeeded in 73% of those campaigns.

# Dramatic rise in capital: \$160.5 billion AUM & \$307.86 billion in investments

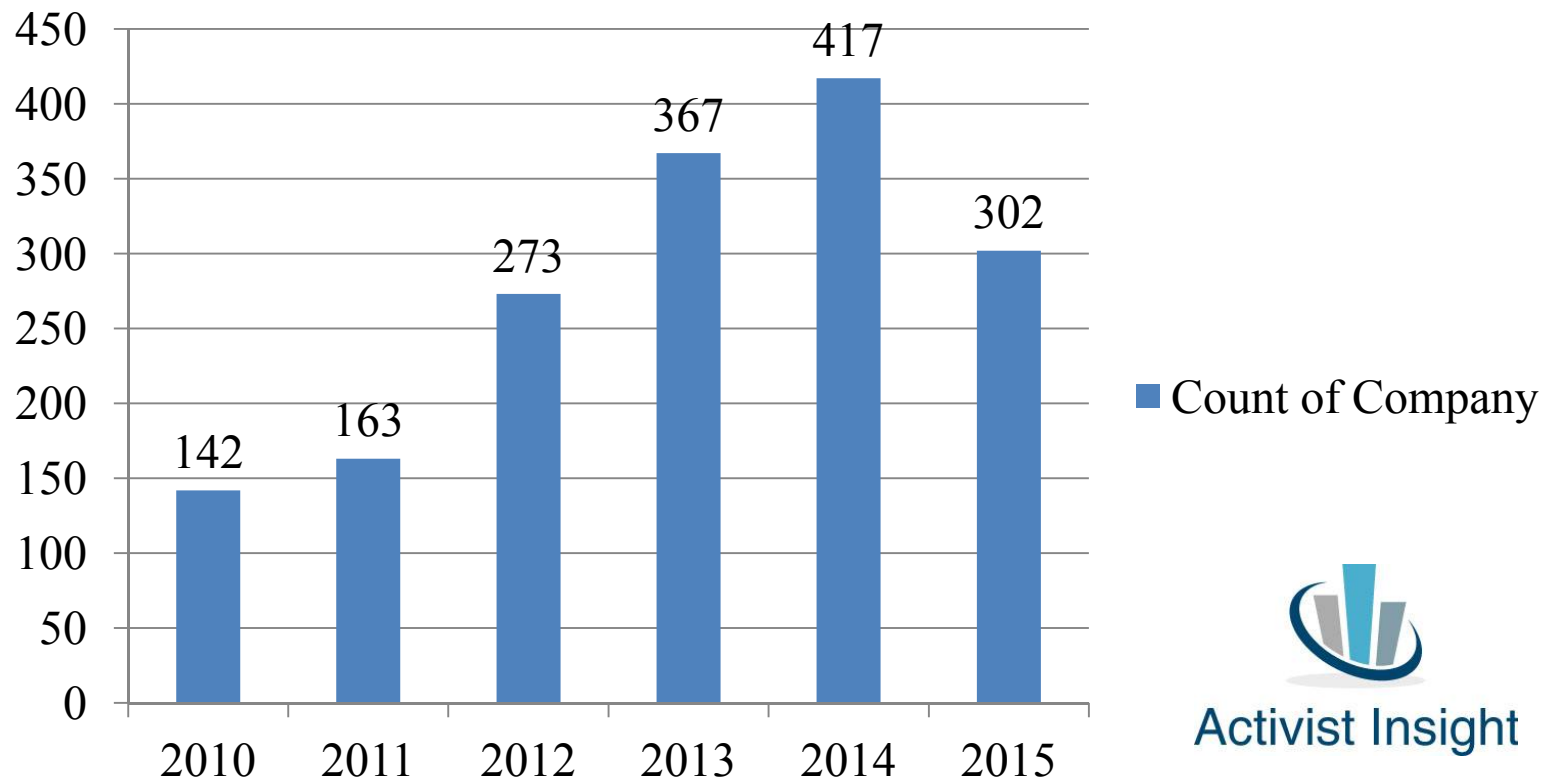


*Value of Investments in 2015 = \$307.86 Billion*

## Growing Size of the Market

- **New Entrants:**
  - Over 200 activists have launched campaigns in 2015, and of those, around 40% have no recorded history of activism as far back as 2010 (Activist Insight)
  - Between 2003 and May 2014, 275 new activist hedge funds were launched (PwC)
  - RDG Capital, Vertex Capital
- **Occasional Activists:**
  - In 2014, 52.5% of activist were “pure play” activists, 32% had a partial focus on activism and 15.5% were occasional activists (AIMA)
  - Broadfin Capital, CalSTRS, H Partners, Maglan Capital, Mangrove Partners, Marathon Partners
- **High Success Rates for New Entrants and Occasional Activists:**
  - Contrary to company claims of inexperience, new entrants and occasional activists have been very successful, on average even more successful than activists generally

# Companies Targeted by an Activist Campaign



## The Benefits of Shareholder Activism

- Long-term share price and operational improvements
- Higher profits, capital investment and R&D
- Improved alignment of interests and higher corporate governance standards
- Collateral impact on companies in anticipation of activist campaign

Activist engagement has improved share price and operating performance of target companies over the long term, enhanced corporate governance standards and alignment of interests, and has a positive collateral impact of driving proactive improvements at companies seeking to avoid an activist campaign.

# Offering Shareholders a Choice

- **Activists offer shareholders a choice**
  - bring to public light issues and alternative opportunities and deepen the public's understanding of particular corporate strategies
- **Activists offer ideas and stimulate possibilities for change**
  - may compel a reluctant board to sell the company or improve a business to allow it to remain independent
  - push management to evaluate options they may not otherwise consider or not as seriously or as urgently
- **Activists promote robust dialogue between corporate fiduciaries and shareholders**

Activist contests are not about activists vs. boards -- they are about ideas and choice and the opportunity to back a better-reasoned plan.



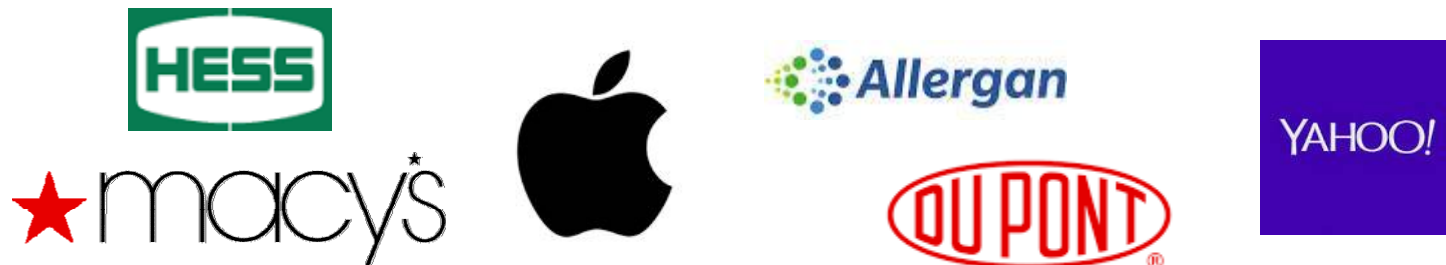
## Activists' Expanding Investment Horizons: Bolder Campaigns

- **Larger Targets**: Since 2009, 15% of the members of the S&P 500 index of America's biggest firms have faced an activist campaign. (FactSet)
- Activists have targeted in recent years: Apple, PepsiCo, Amgen, Walgreens, Yahoo!, Bank of New York, Hertz Global Holdings and Macy's.
- Larger targets generally require a more creative strategic plan for value-creation.

Activist are raising longer-term capital and stretching their investment horizons with more ambitious strategies at larger companies.

## Activists' Expanding Investment Horizons: Value-Creation Potential at Non-underperformers

- **Well-performing targets**: Campaigns increasingly involve companies that had outperforming share prices.
- The essential characteristic of an activists campaign is that the activist perceives some opportunity for increased value through some change
  - Icahn @ Apple; Elliot Management @ Hess; Starboard Value @ Yahoo!; Pershing Square @ Allergan & Trian @ DuPont



“Activists have replaced the management of the oldest firm on the New York Stock Exchange, Sotheby’s. They have won a board seat on Bank of New York Mellon, a too-big-to-fail bank at the heart of the global financial system. And they have attacked the world’s most valuable company, Apple.” *The Economist*

## Successful Campaigns from Under-5% Positions

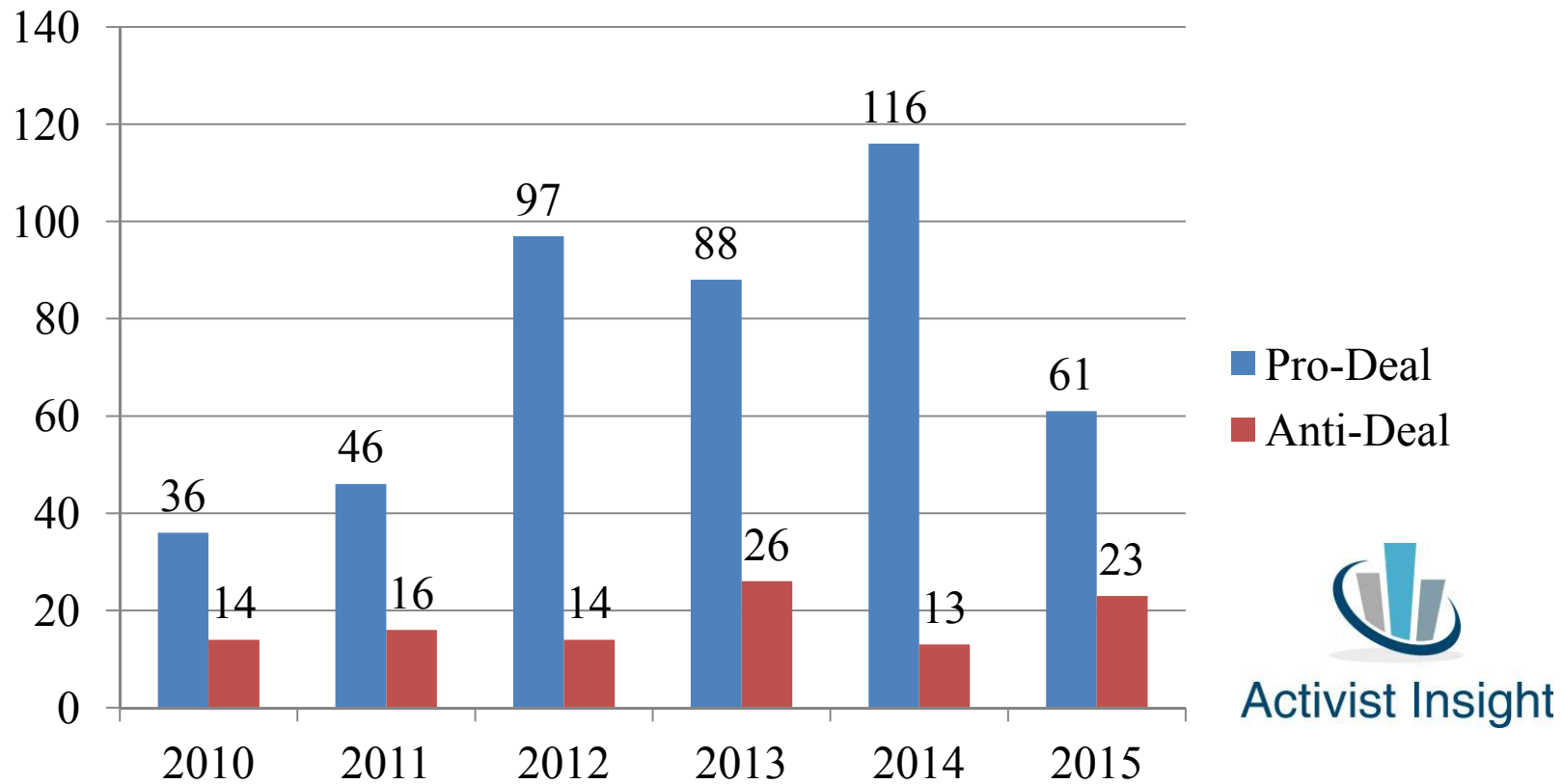
- Widespread success for activists with stakes under 5%
  - Engaged Capital @ Rovi Corp; Starboard @ Yahoo!; Barington Capital & Macellum Advisors @ The Children's Place
- Large investment value of modest stakes in large companies
- Impact on defensive measures – defensive barriers less relevant

Activists have been more successful than ever with smaller stakes. Boards should consider seriously thoughtful activist-driven strategies regardless of stake size.

# Changing Character of Campaigns

- *More* proactive M&A and activist-driven spin-offs
- *More* operational strategy activism
- *Less* governance campaigns
- *Less* focus on “balance sheet” activism

# Proactive vs. Reactive M&A Activism



# Rise in Proactive M&A Campaigns

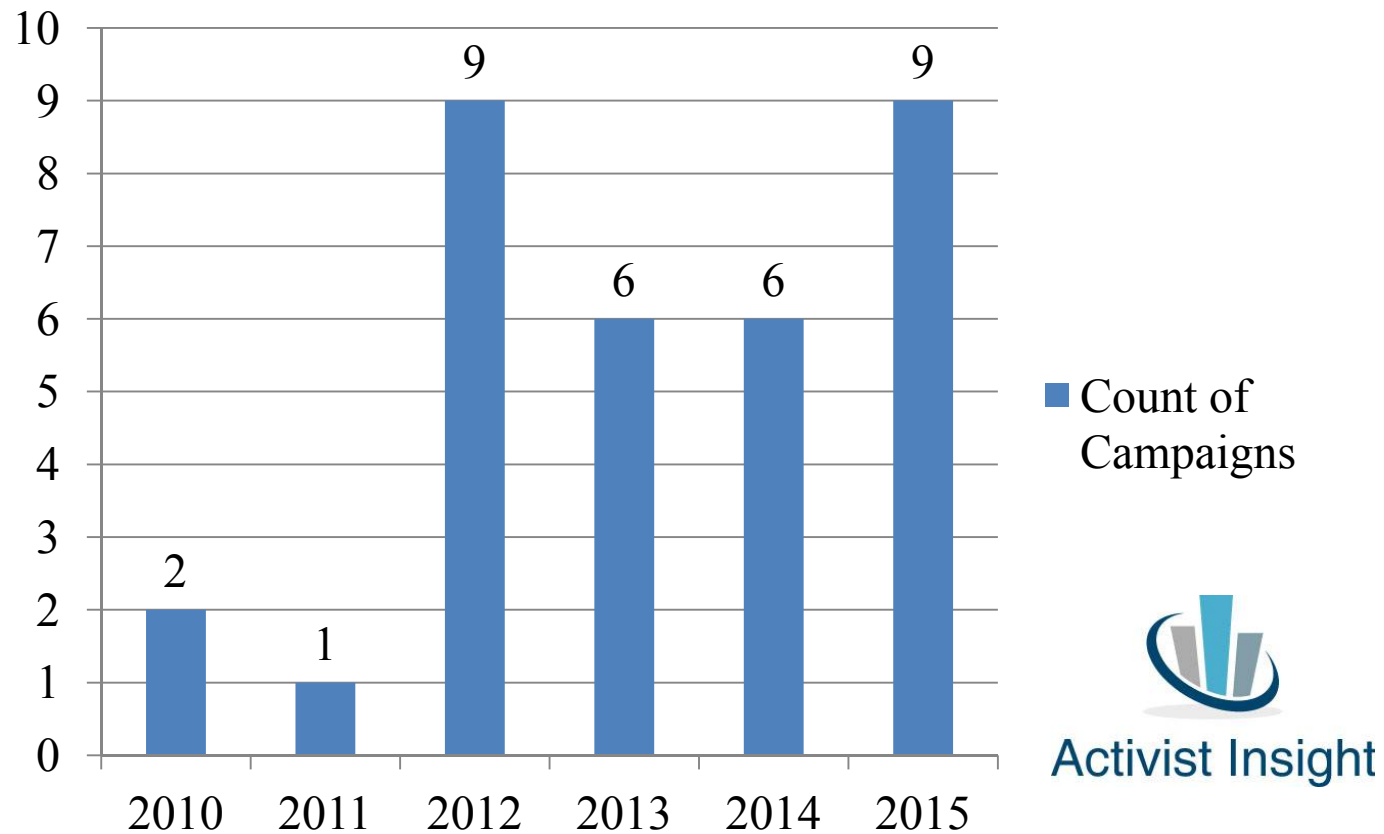
- Proactive M&A campaigns: activists as brokers
  - Starboard Value @ Office Depot + Staples
- Spin-offs: activists push to unlock trapped value
  - Starboard Value @ Yahoo!; @ Macy's; @ Darden; Elliott Management @ Citrix Systems; Corvex @ Yum! Brands; Carl Icahn @ Ebay/PayPal; @ Manitowoc
- More contentious M&A market
- PE-type activist campaigns

Activist campaigns have shifted strategic focus towards proactive strategy activism including proactive M&A activism and PE-type campaigns.

# The Role of Institutional Investors

- Converging objectives: institutional investors and activists
- Institutional investor campaigns
- Institutional investor/activist joint campaigns
  - CalSTRS & Legion Partners @ Perry Ellis
- Institutions investing in activist funds
- Institutional investors voting for activist campaigns
- Institutional investors as behind the scenes brokers for settlements

# Institutional Investor Campaigns





# Institutional Investors Supporting Activists



Rank	Investor	%Proxy Contests Where Voted Dissident Card	% Time Voted for All Dissidents	% of Dissidents Typically Voted For
1	BlackRock	36.4	29.2	62.8
2	Vanguard Group, Inc.	16.2	0.0	52.8
3	SSgA Funds Management, Inc. (State Street)	27.7	23.1	41.7
4	Fidelity Management & Research Co.	50.0	80.0	50.0
5	BNY Mellon	45.5	40.0	60.1
6	JPMorgan Investment Management, Inc.	51.5	64.7	56.9
7	Capital World Investors	53.8	57.1	55.6
8	Goldman Sachs Asset Management LP	65.2	46.7	56.3
9	Northern Trust Investments	26.7	58.3	51.3
10	Wellington Management Company	33.3	80.0	33.3
11	Franklin Advisers, Inc.	40.7	27.3	58.9
12	Deutsche Asset Management	67.7	33.3	54.1
13	TIAA-CREF Asset Management LLC	44.2	63.2	56.0
14	Invesco	43.3	53.8	53.6
15	AXA Investment Managers	51.4	50.0	59.8
16	T. Rowe Price Associates, Inc.	63.6	47.6	60.5
17	APG (Stichting PF ABP)	52.6	20.0	49.0
18	AllianceBernstein LP	63.4	42.3	52.2
19	MFS Investment Management, Inc.	50.0	44.4	51.7
20	Dimensional Fund Advisors, Inc.	51.7	63.3	50.4

# What's New in Activist Campaign Structures & Mechanics

- **Withhold campaigns:**
  - H Partners @ Tempur Sealy; TIG Advisors @ Altera
- **Increase in the number of group campaigns**
- **Focus on REITs:**
  - Land & Buildings @ MGM Resorts International; @ Associated Estates Realty; @ Mack-Cali Realty ; @ Pennsylvania Real Estate Investment Trust; @ BRE Properties
- **Digitizing & advertising in campaigns**
- **Deeper activist networks:** director nominees, financial advisors, expert consultants and experienced legal counsel

## Corporate Governance & Company Responses

- Board Refreshment and Composition:
  - Clubby boards and failure to self-assess
  - Low board turnover and lack of director independence
  - Updating boardroom skill set mix in response to changing corporate strategy
- Shareholder unfriendly governance profiles and defensive barriers are ineffective
- Entrenched boards are associated with economically significant reductions in firm valuations & large negative returns

Activists fill a corporate governance void that afflicts today's public companies.

# The New Context: Engagement

## *What has changed?*

- Shareholders have grown less willing to tolerate boards that simply ignore shareholder input.
- Activism is no longer the playfield of a few primary focus funds – shareholder engagement and intervention has become a broader and more encompassing phenomenon that affects all investors, all companies and all market participants.
- There has been a shift towards “constructive” activism – while high-profile, hostile campaigns tend to grab the headlines, most activism takes place behind the scenes and involves softer tactics and more collaborative private interventions.
- Institutional investors are monitoring boards more closely.
- Activism has spilled outside underperforming small-cap companies where it traditionally resided in mid-cap and large-cap corporations, which are not necessarily underperformers but where there is an alternative strategic path for value-creation.

# The New Context: Engagement

*How does the new context affect Board/Shareholder engagement?*

- Discussions start earlier
- Boards are more involved
- More numerous and earlier settlements
- Board awareness of activism has increased
- Engagement tactics have become more nuanced

## How to Best Navigate the New Context of Board/Shareholder Engagement

- Boards and management must realize that there is no formula for who is a potential target -- there is no one-size-fits-all
- Shareholder activism: a force for good
- Genuine discussions not just a veneer of courtesy
- Genuine “proactive” changes rather than patch-up solutions

## How to Best Navigate the New Context of Board/Shareholder Engagement

- Board structure and pre-set best practices are NOT a guarantee of board quality
- Enforce individual director accountability
- Board quality depends on attributes such as boardroom dynamics and the processes by which the board fulfills its duties

# Questions?

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