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Activism: The State of Play

As we approach the start of the 2018 proxy season, developments since January 2015 prompt a brief review of the state of play.

- There has been no slowdown in the U.S.; there has been a significant increase in other countries.
- Perhaps the most cogent description of what can be expected is contained in a must-read Bloomberg article, "[The World's Most Feared Investor](#)". "Aggressive, tenacious and litigious to a fault, Paul Singer may be the most feared activist investor in the world—by hedge fund rivals, companies and even countries. Singer's Elliott Management Corp., which manages \$34 billion of assets, has rarely been out of the headlines in the past 18 months. There's little indication that will change soon."
- Substantial new capital has been raised by activist hedge funds and several activists have created special purpose funds for investment in a single target.
- Attacks on large successful companies have increased.
- While an activist attack on a large successful company to force acceptance of a financial engineering strategy has generally failed, e.g., GM's resounding defeat of Greenlight Capital's attempt to get shareholder approval of converting common stock into two classes, there has been an increase in attacks to obtain a change in a company's CEO.
- There has been an increase in attacks designed to force the target into a merger or a private equity deal with the activist.
- There has been a significant increase in "bumpitraging"—buying a block of stock in a merger partner seeking shareholder approval to use the block to defeat approval, unless the merger price were increased.
- Several major funds have converted from classic activism to a form of merchant banker approach of requesting board representation to assist a company to improve operations and strategy for long-term success.
- BlackRock, State Street and Vanguard have continued to express support for sustainable long-term investment and set forth their governance and engagement expectations in letters to CEOs, speeches, annual reports and statements of policy.

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- Comprehensive principles of corporate governance, investor stewardship and engagement were published, e.g.: [*Commonsense Corporate Governance Principles*](#); [*The New Paradigm: A Roadmap for an Implicit Corporate Governance Partnership Between Corporations and Investors to Achieve Sustainable Long-Term Investment and Growth*](#); Investor Stewardship Group's [*Stewardship Principles and Corporate Governance Principles*](#). I created a synthesis of these and others, [*A Synthesized Paradigm for Corporate Governance, Investor Stewardship, and Engagement*](#), and circulated it in the hope that companies and investors would agree on a common approach.
- A number of academic studies and articles pointed out the defects in the “empirical studies” that had been used to promote short-termism and justify attacks by activist hedge funds. Of special note was a collection of articles in the Harvard Business Review, [*Spotlight on Managing for the Long Term*](#).
- Legislation to promote long-term investment was sought and initiated in the U.S. and the U.K., and actually adopted in the E.U.
- Failure to have successfully engaged with major investors and understand their opinion of the company's operations and strategy has, resulted in proxy fights that were lost, or won by such a narrow margin that management change quickly followed.
- The Investor Forum was founded in the U.K. to provide an intermediary to represent the views of its investor members to investee companies in the hope of reducing activism. It appears to have achieved a successful start. [*The Investor Forum Review 2015 and 2016*](#).
- The Coalition for Inclusive Capitalism is undertaking a study to support long-term sustainable investment by showing there is value beyond financial results. [*Press release, Global business leaders and investors unite to develop framework that measures long-term value creation for all stakeholders*](#).

Activism continues to grow and change. It is unlikely that in the near term it will be curbed by legislation or regulation. Companies will have to follow closely activist developments and the opinions of their major investors. Companies should perfect and maintain their engagement activities. Companies should regularly review and adjust their plans designed to avoid an activist attack and to successfully deal with an activist attack if one should occur.

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