



Diligent Market Intelligence

Shareholder Activism Annual Review 2024

In association with
Olshan Frome Wolosky

O L S H A N



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About Diligent Market Intelligence

Diligent Market Intelligence is the leading provider of corporate governance, shareholder engagement and investor stewardship data. Trusted by advisors, investors and issuers globally, the Diligent Market Intelligence platform equips firms with the necessary information to proactively manage shareholder pressures, mitigate governance risks, and maintain a competitive edge in the market.

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Editor's foreword



Josh Black

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Activist investors continued to stage more campaigns in 2023, coming within a whisper of the first year targeting more than 1,000 companies since 2019.

How should companies feel about this increasing assertiveness? Diligent data suggest that many see it as a risk – more than 530 companies in the Russell 3000 disclosed activism as a risk factor in their annual reports last year.

At the same time, the Diligent Institute's annual survey, *What Directors Think*, found that 41% of board directors surveyed said shareholder activism highlighted the need for good governance, compared to roughly a quarter that considered activism a distraction or a reinforcement for short-termism.

In real-world engagements, some form of compromise is often the outcome of an activist campaign. That might mean a settlement for board seats, a promise to increase transparency in return for the withdrawal of a shareholder proposal or simply agreement on a strategy.

Last year, many high-profile campaigns ended with investors and management teams agreeing to see how operational and strategic shifts played out.

Some of those campaigns were subsequently marked resolved. Others have escalated to become the backbone of this proxy season.

Diligent Market Intelligence exists to help investors and issuers alike better understand trends in the market for influence to better reach these forms of compromise. That might involve studying voting trends to understand the likely reaction of a company's shareholder base to ESG proposals, or analyzing the governance and financial vulnerabilities that could develop into full-blown risks.

Our rich datasets cover all aspects of a company's profile and many unique perspectives on shareholders, including their track record, strategy and key personnel. If you've enjoyed our focus on activism in this report, you may also enjoy our recent reports on compliance, proxy voting, ESG, or compensation trends.

We're excited to be hosting our first investor summit where we'll be launching the report you're currently reading, *The Proxy Season Preview*, in New York City this February. The day's panels will highlight many of the issues investors hope to address with boards during the proxy season and our reporters will be on hand to capture the key takeaways and ensure that boards and investor relations teams are kept well-informed and well-prepared to engage with their shareholders.

We're grateful to our friends at Olshan Frome Wolosky for helping make both this report and the *Proxy Season Preview* a reality.



An eventful year for activism

Andrew Freedman

Chair, Shareholder Activism
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With 2023 playing host to a rise in global activism and interesting universal proxy dynamics, 2024 is shaping up to be a memorable year, writes Andrew Freedman, Chair, Shareholder Activism Practice Group, Olshan Frome Wolosky.

“ Any way you look at it, 2024 is already shaping up to be an eventful year for shareholder activism. ”

Despite a robust 2023 for shareholder activism in the U.S., we fell just short of a breakout year in terms of the number of activist engagements. As we expected, many activists, particularly would-be first-time activists, took a “wait and see” approach on what a full season under the universal proxy card (UPC) rules would look like and whether the Securities and Exchange Commission (SEC) would follow through on its proposed overhaul of the Schedule 13D reporting system.

Nevertheless, shareholder activists continued to hold companies to account and push for value creation. 550 U.S. companies were publicly subjected to activist demands in 2023, a 7.8% rise compared to a year prior. This flurry of activity included the announcement of high-profile repeat engagements by Trian Partners at Walt Disney and Elliott Management at Crown Castle.

Global shareholder activism in 2023, despite extraordinary macroeconomic and geopolitical uncertainty, was just as robust as in 2022, with the number of companies subject to activism in Canada and Asia increasing by 25% and 13.4%, respectively, compared to 2022.

More than a full year into UPC, we can finally put to bed all the false narratives about how the new universal voting card would severely lessen the costs of running a proxy contest and spark a wave of campaigns by so-called “gadfly activists.” The real impact we have seen from UPC is more of a willingness by boards and their advisers to reach cooperation agreements in the face of activists targeting the most vulnerable “weakest link” incumbents with highly qualified nominees.

Shareholder activists breathed a collective sigh of relief on the SEC’s decision not to go “all-in” on its proposed revamp of the beneficial ownership reporting framework. When it was all said and done, the impact of the new rules proved to be minimal. The deadline for filing an initial Schedule 13D was shortened to five business days (from the current 10 calendar days) after crossing the 5% ownership threshold. The deadline for filing any required amendments to a Schedule 13D is now a more certain two business days (from the current “promptly”) after a triggering “material change.”

“The real impact we have seen from UPC is more of a willingness by boards and their advisers to reach cooperation agreements in the face of activists targeting the most vulnerable ‘weakest link’ incumbents with highly qualified nominees.”

The SEC showed restraint in choosing not to codify certain rules governing group activity, as originally proposed, and instead issued guidance regarding the appropriate legal standard for determining when a group is formed. The SEC also stopped short of adopting substantive amendments on when to deem certain holders of cash-settled derivative securities as beneficial owners of the reference security, as originally proposed, and instead issued guidance on circumstances in which the reference security will be deemed to be beneficially owned.

While the SEC’s guidance provides helpful insight, a vast majority of our activist clients had long ago adopted the salient principles of group formation and swap-related beneficial ownership underpinning this guidance in their compliance procedures. Therefore, net-net, we do not expect the new rules to have any meaningful impact on the way these activists communicate with other shareholders or build their swap positions on a go-forward basis.

The mass adoption by companies of amendments to their advance notice nomination bylaw provisions (ANBs) during the 2023 proxy season continued to be an issue. Even after the backlash endured by Masimo for attempting to weaponize their ANBs in the face of Politan’s activist campaign, too many companies continued to abuse their ANBs in order to frustrate nominations and stymie shareholder democracy.

On this front, we closed out 2023 on a triumphant note when the Delaware Chancery Court in *Kellner v. AIM ImmunoTech* struck down four of six amended ANBs, including a troubling “stockholder associated persons” definition, for being “overbroad, unworkable and ripe for subjective interpretation by the board.” I was pleased to be asked to prepare an expert report on behalf of the plaintiff and provide rebuttal expert testimony at trial regarding whether certain of the ANBs in question were commonplace or consistent with market practice.

In rendering her opinion in *Kellner*, Vice Chancellor Will stated that this case “hints at what coming activism disputes may bring” – we could not agree more. Expect an influx of similar lawsuits to be filed in 2024 by shareholder activists seeking to enforce nomination letters rejected by entrenched boards for purported noncompliance with indecipherable, ambiguous and subjective ANBs. We would also not be surprised to see an influx of shareholder proposals this proxy season designed to shine a light on offensive ANBs.

Any way you look at it, 2024 is already shaping up to be an eventful year for shareholder activism.

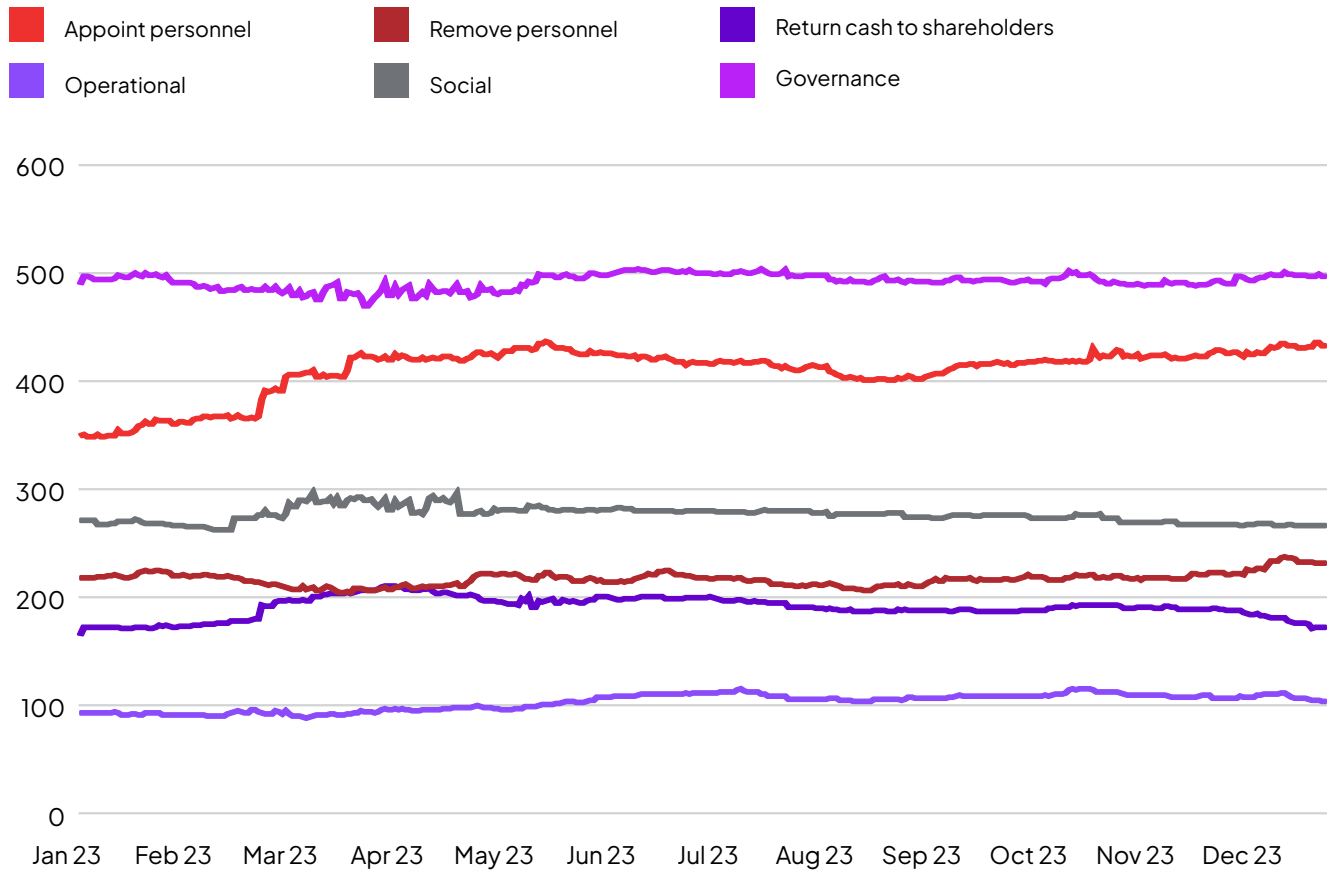
Executive summary

Key shareholder activism trends to emerge from 2023.

1. An increasing number of U.S. companies are identifying activism as a risk in their corporate disclosures. In 2023, 23.4% of Russell 3000 companies disclosed shareholder activism as a risk in their 10-K reporting, up from 21.4% a year prior.
2. Activism levels remain high in many markets, with shareholders looking further afield for value creation opportunities. In 2023, 981 companies were subject to activist campaigns globally, a 4% rise compared to a year prior and the highest level since 2019. 2023 played host to a 25.5%, 13.4% and 7.8% increase in the number of companies subject to campaigns in Canada, Asia and the U.S., respectively.
3. Activists are increasingly focusing on corporate remuneration policies, looking for companies to be prepared to weather the challenges brought on by rising costs and slowing economic growth. In the U.S., 81 companies faced remuneration-related demands last year, a 37.3% increase compared to the 59 seen in 2022 and the highest increase of any demand type. Shareholder proposals concerning pay are also winning increased backing, with investors keen to understand policies governing severance and clawback payments.
4. In a period of rising costs, some of the most high-profile campaigns were a result of what activists deemed to be costly M&A transactions. 2023 saw a 20.8% increase in the number of U.S.-based companies subjected to oppose M&A demands. 14 (48.3%) of resolved oppose M&A demands were at least partially successful in the U.S., compared to 11 (37.9%) in 2022.
5. 2023 saw the first increase in the number of activist short campaigns recorded globally for four consecutive years, increasing 14.6% on 2022 levels to 110. Of these, 17 (15.5%) of campaigns were launched at large-cap companies, up from eight (6.5%) and 11 (11.5%) in 2021 and 2022, respectively.

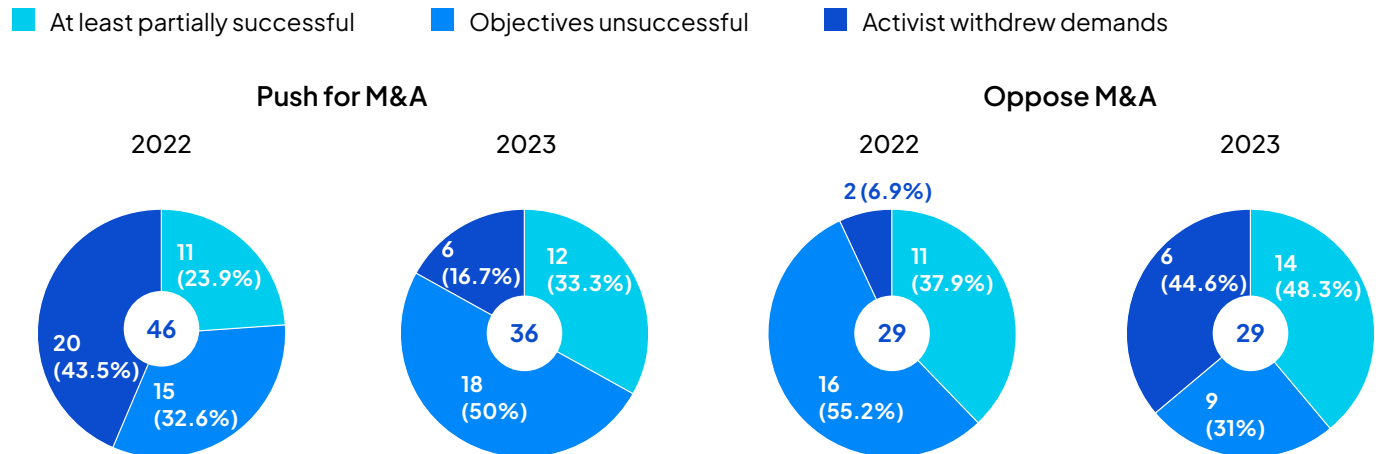
Activism infographics

Rolling 365-day total of public activist campaigns globally by demand type



Source: Diligent Market Intelligence / Activism

M&A-related demands made at US-based companies where the activist was at least partially successful, by outcome year and demand type



Source: Diligent Market Intelligence / Activism

Demand type breakdown of global companies publicly subjected to activist demands

Demand group	2021	2022	2023	22-23 % change
Appoint Personnel	295	315	338	↑7.3
Capital Structure	37	56	65	↑16.1
Divestiture	65	76	70	↓7.9
Environmental	84	137	135	↓1.5
Governance	393	419	438	↑4.5
Operational	73	88	104	↑18.2
Oppose M&A	77	53	63	↑18.9
Push For M&A	72	76	82	↑7.9
Remove Personnel	158	191	202	↑5.8
Remuneration	92	115	151	↑31.3
Return Cash to Shareholders	107	153	174	↑13.7
Social	118	150	159	↑6
Total	1,571	1,829	1,981	

Source: Diligent Market Intelligence / Activism

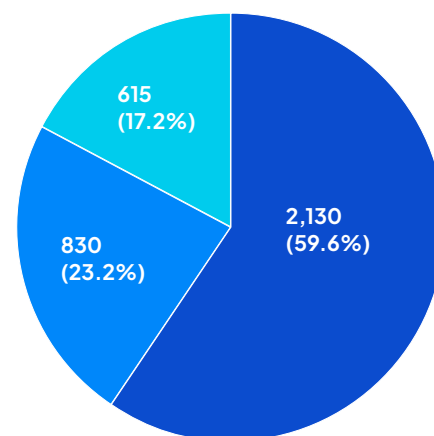
Sector breakdown of global companies publicly subjected to activist demands

Sector	2022	2023	22-23 % change
Basic materials	99	77	↓22.2
Communication Services	30	29	↓3.3
Consumer Cyclical	142	144	↑1.4
Consumer Defensive	75	71	↓5.3
Energy	52	49	↓5.8
Financial Services	117	124	↑5.9
Funds	19	43	↑126.3
Healthcare	97	121	↑24.7
Industrials	144	156	↑8.3
Real Estate	45	38	↓15.6
Technology	126	132	↑4.8
Utilities	30	37	↑23.3
Total	976	1,021	

Source: Diligent Market Intelligence / Activism

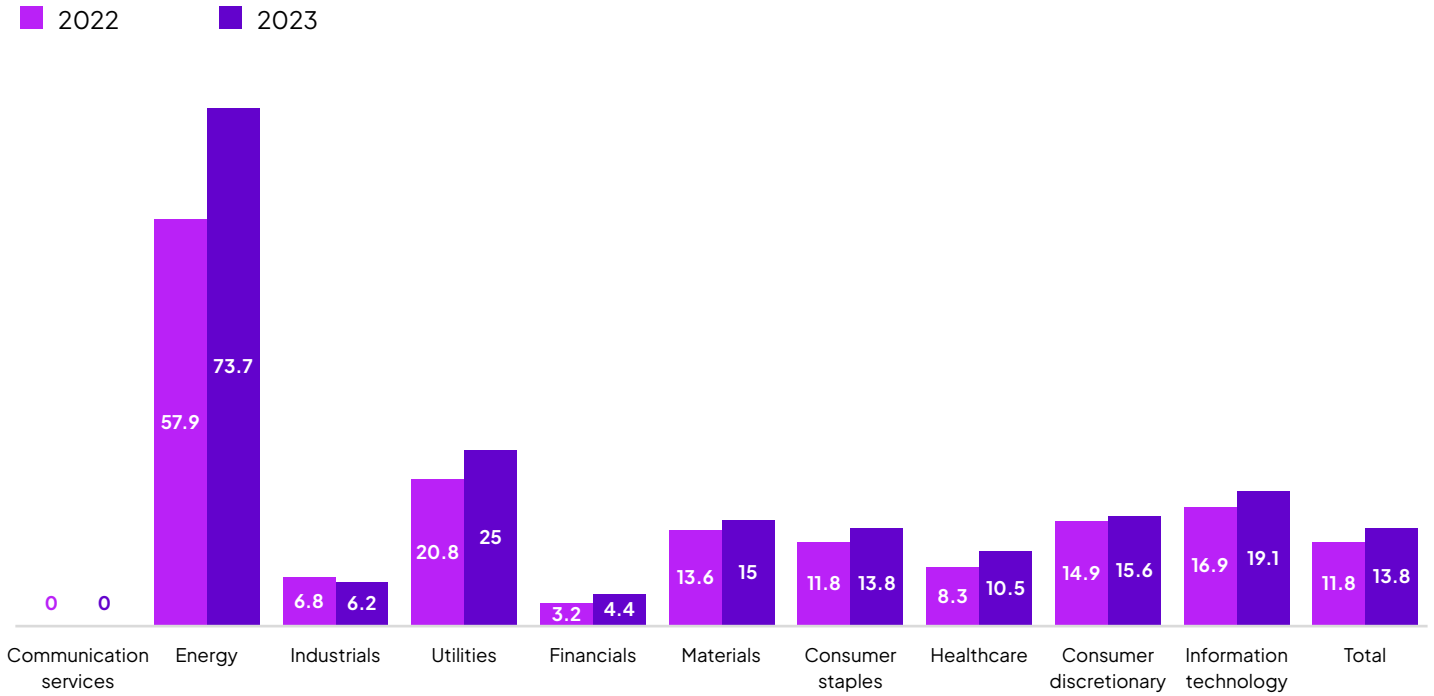
Global shareholder activist-related news sentiment in the past 12 months (no. stories)

■ Positive ■ Neutral ■ Negative



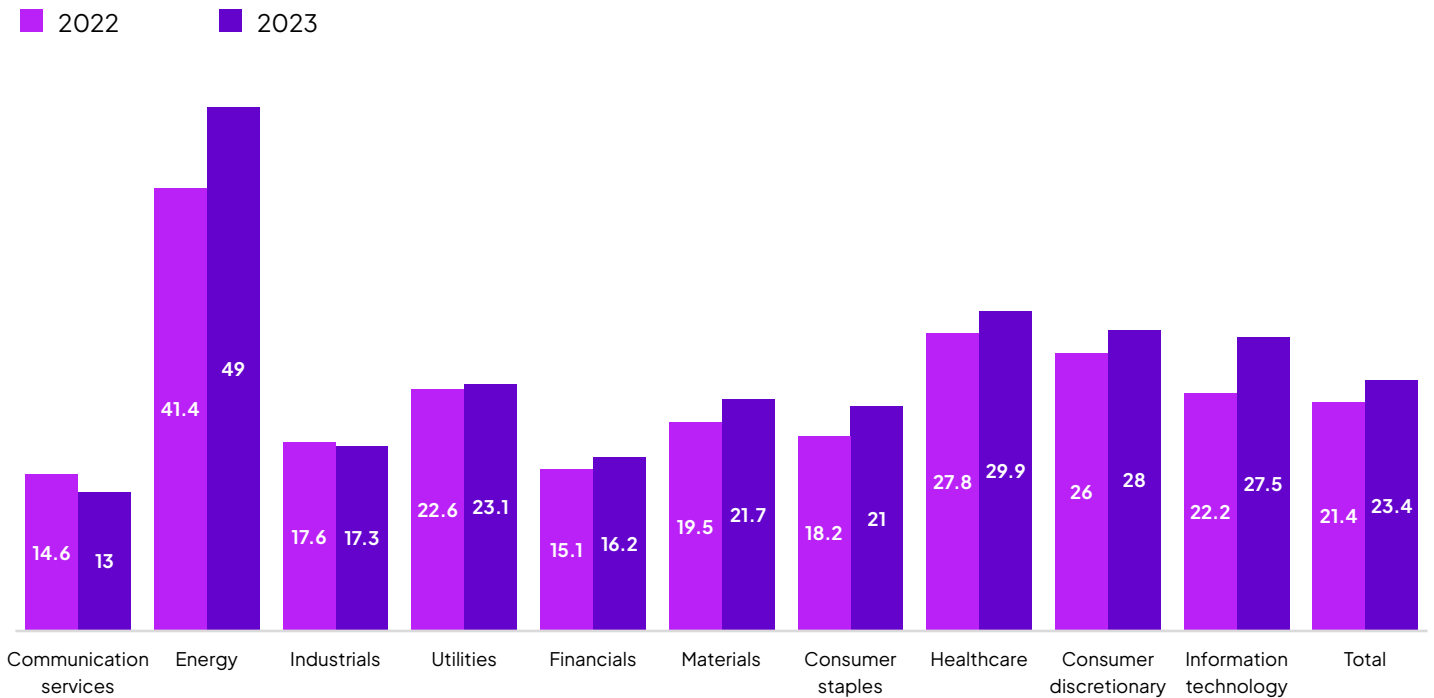
Source: Diligent Market Intelligence / Manzama

Proportion of S&P 500 companies to disclose “shareholder activism” as a risk by sector (%)



Source: Diligent Market Intelligence

Proportion of Russell 3000 companies to disclose “shareholder activism” as a risk by sector (%)



Source: Diligent Market Intelligence



Activism goes global

Shareholder activism flourishes worldwide, driven by valuation gaps, governance reform and M&A, writes Jason Booth.

Shareholder activism has largely recovered from COVID-19. In 2023, 982 companies were subject to campaigns globally, ranging from green funds calling for Scope 3 emissions reporting, to multibillion dollar hedge fund managers demanding boards seats. That marks a 4% rise in companies targeted on last year, compared to 938 in 2022 and 879 in 2021, according to Diligent Market Intelligence's (DMI) *Activism* module.

"Activism levels have remained high in many markets, reaching pre-pandemic levels, and we expect to see such levels again during the upcoming proxy season," Cas Sydorowitz, global CEO at Georgeson, told DMI.

Yet the activism world has changed since the pandemic. Deep valuation gaps, empty office buildings and high interest rates have fuelled a rise in activism related to mispriced mergers and acquisitions, especially in the U.S. and Canada. Conversely, a dearth of deal making in Europe resulted in a continued decline in activist campaigns. Cheaper valuations, combined with governance improvements in Japan and Korea, have helped make Asia the second hottest activism market after North America.

“2023 saw a 20.8% increase in the number of U.S.-based companies subjected to oppose M&A demands.”

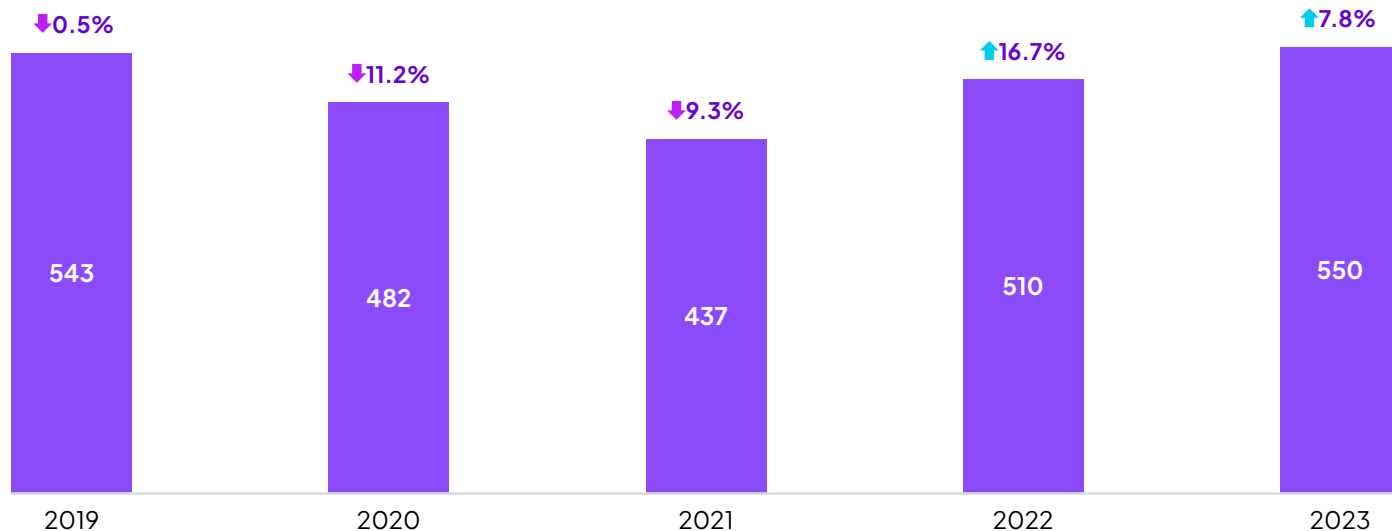
North American activism centers on M&A

Activism levels saw a 7.8% increase in the U.S. in 2023, with 550 companies publicly subject to demands, compared to 510 in 2022. Engagements were not as successful when compared to previous years, however, with 189 (21.1%) of resolved campaigns at least partially successful, down from 234 (27.1%) a year prior. Activists also won fewer board seats, 160 compared to 2022's 176.

Some of the most high-profile campaigns were a result of what activists deemed to be costly M&A transactions. 2023 saw a 20.8% increase in the number of U.S.-based companies subjected to oppose M&A demands.

One such campaign saw Carl Icahn argue that Illumina's acquisition of cancer detection company Grail should be unwound. In December, Illumina revealed its intention to divest from Grail. The merger between Canadian auction house Ritchie Bros. and IAA also attracted a number of activists, including Ancora Advisors, Starboard Value and Luxor Capital, which were divided over whether the plan would unlock new opportunities or "destroy" shareholder value.

No. US-based companies publicly subjected to activism campaigns



Source: Diligent Market Intelligence / Activism

“We see a lot of opportunities in Canada,” Patrick Sweeney, portfolio manager at Ancora Advisors told DMI. “Shareholders with very targeted universes or rifle shot approaches can find really interesting, cheap stocks that are quality businesses across the border.”

Indeed, Canada saw a 25.5% jump in the number of companies subjected to activism last year, the fastest growth rate of any country, with roughly a quarter of the 89 resolved campaigns focused on M&A.

Europe goes slow

In contrast, shareholder activism in Europe stagnated. In 2023, 123 European companies were publicly subjected to campaigns, down from a high of 177 in 2021. 49 (31.3%) of resolved demands were at least partially successful in 2023, down from 89 (43.4%) a year prior.

M&A has historically been a catalyst for local campaigns, noted Ben Fackler, a partner at on Arnold & Porter’s activism defence team. Economic uncertainty and the ongoing war in Ukraine have combined to put a damper on dealmaking, and a comparable slowdown in activism.

“It’s been a relatively muted environment with inflation, interest rates and the war in Ukraine all working to reduce the animal spirit of investors,” he told DMI.

The U.K. and Germany, traditionally Europe’s biggest activist markets, saw less activist activity in 2023. In the U.K., 35 companies were targeted, down from 43 the prior year, while Germany was equally subdued, with 21 companies subject to campaigns, compared to 33 in 2022 and almost one-third of the 60 seen in 2020.

In contrast, France had its busiest year since 2019, with 13 campaigns launched, up from 10 in 2022. IT company Atos caught the attention of several activists, surviving a proxy fight from U.S. fund manager Sycamore Partners in June and facing opposition from CIAM to sell its outsourcing business.

Activists look to Asia

Shareholder activism has gained prominence in Asia, with 220 companies subject to public demands last year, up from 194 in 2022 and marking the third consecutive year of increasing campaigns.

“I think Asia, and Japan in particular, are so active because the value gap is still so large over there,” said David Hunker, who leads Ernst & Young shareholder activism defense practice. And having recently visited Japan, he noted that “senior manager teams are more receptive than I’ve ever seen them.”

103 Japan-based companies were subject to campaigns in 2023, holding steady to 2022 levels and making up 46.8% of all campaigns in Asia. The Tokyo Stock Exchange's decision to call on listed companies trading below their book value to map out and announce measures to shore up their figures may have helped activists identify potential targets.

2023 saw Elliott Management bolster its activism practice in Japan by hiring Aaron Tai from Cornwall Capital. Shortly after, it amassed a 5% stake in Dai Nippon Printing and called for stock buybacks, as well as the sale of cross-shareholdings. Dai Nippon subsequently announced a series of governance and operational initiatives.

South Korea also played host to a rise in activism, with 77 public campaigns launched last year, 57.1% more than the 49 seen a year before and seven times more than the 10 launched in 2020. Improvements in governance regulations have leveled the playing field for shareholders, with local regulator the Financial Services Commission (FCS) outlining plans to increase protections for minority investors by boosting executive accountability, implementing stricter disclosure rules for large shareholders and introducing electronic voting.

Elsewhere in the region, Singapore, saw a 37.4% increase in campaigns, to 11. Israel, meanwhile, saw five campaigns launched, the highest level on record, with U.S. activist Donerail Group opposing Nano Dimension's proposed merger with Stratasys.

No. resolved board representation demands by method and company region

Region and method	2019	2020	2021	2022	2023	22-23 % change
U.S.	147	113	89	116	105	↓ 9.5
Settlement	120	91	67	92	89	↓ 3.2
Went to vote	27	22	22	24	16	↓ 33.3
Europe (including U.K.)	85	50	48	51	30	↓ 41.2
Settlement	23	16	18	9	4	↓ 55.6
Went to vote	62	34	30	42	26	↓ 38.1
Asia	45	45	50	68	69	↑ 1.5
Settlement	13	8	4	9	9	0
Went to vote	32	37	46	59	60	↑ 1.7
Canada	18	21	11	11	22	↑ 100
Settlement	11	11	6	7	15	↑ 114.3
Went to vote	7	10	5	4	7	↑ 75
Australia	41	41	39	33	36	↑ 9.1
Settlement	11	8	12	10	4	↓ 60
Went to vote	30	33	27	23	32	↑ 39.1
Total	336	270	237	279	262	

Source: Diligent Market Intelligence / Activism

No. board seats gained by activists globally, by method and region

Region and method	2022	2023	% Change
U.S.	176	160	↓ 9.1
Settlement	145	145	0
Went to vote	31	15	↓ 51.6
Europe (Including U.K.)	38	36	↓ 5.3
Settlement	14	11	↓ 21.4
Went to vote	24	25	↑ 4.2
Asia	90	93	↑ 3.3
Settlement	14	17	↑ 21.4
Went to vote	76	76	0
Canada	30	43	↑ 43.3
Settlement	15	24	↑ 60
Went to vote	15	19	↑ 26.7
Australia	33	23	↓ 30.3
Settlement	18	5	↓ 72.2
Went to vote	15	18	↑ 20
Total	367	355	

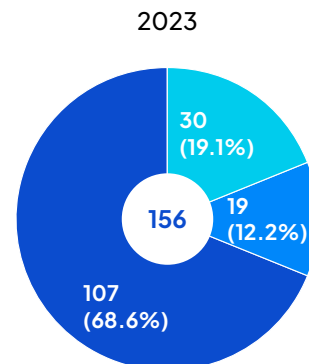
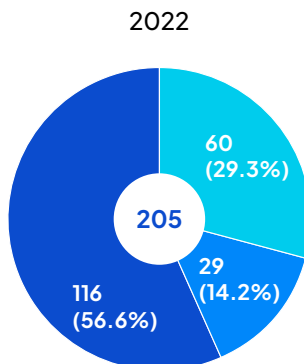
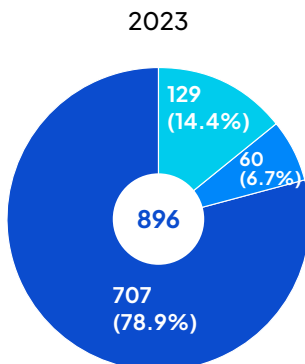
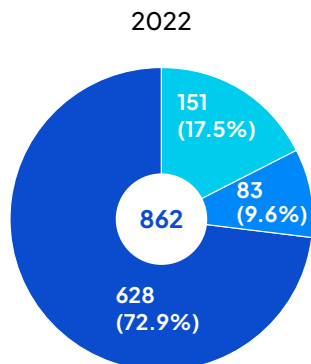
Source: Diligent Market Intelligence / Activism

No. and success rate of activist campaigns resolved in 2022 and 203, by region

Objectives successful At least partially successful Objectives unsuccessful

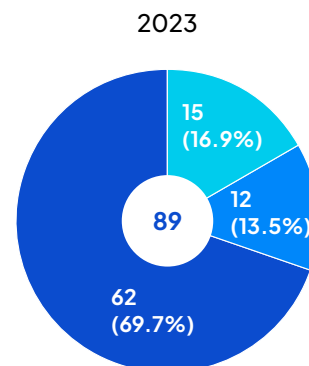
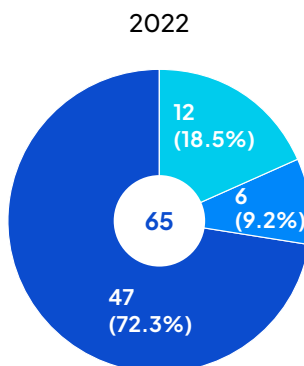
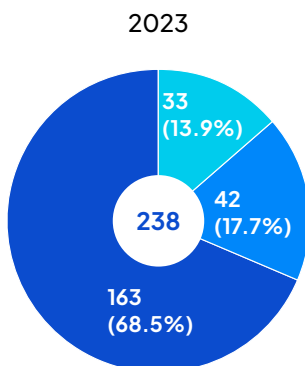
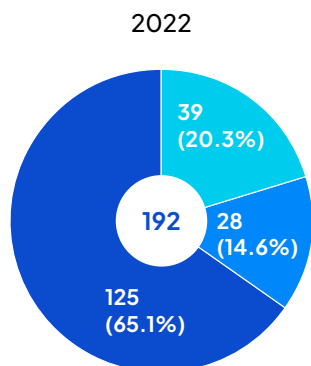
U.S.

Europe (including U.K.)

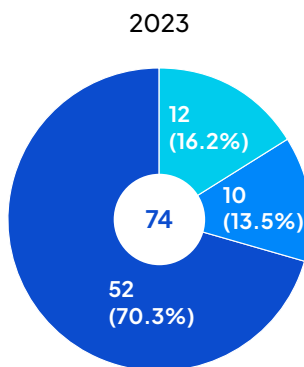
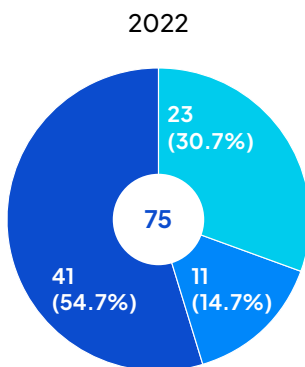


Asia

Canada



Australia



Source: Diligent Market Intelligence / Activism

Demand type breakdown of US-based companies publicly subjected to activist demands

Demand group	2021	2022	2023	22-23 % change
Appoint personnel	114	139	153	↑10.1
Capital structure	18	22	18	↓18.2
Divestiture	28	22	25	↑13.6
Environmental	42	73	87	↑19.2
Governance	246	262	253	↓3.4
Operational	45	40	53	↑32.5
Oppose M&A	25	24	29	↑20.8
Push for M&A	37	44	41	↓6.8
Remove personnel	41	59	52	↓11.9
Remuneration	52	59	81	↑37.3
Return cash to shareholders	31	35	34	↓2.9
Social	86	109	131	↑20.2
Total	765	888	957	

Source: Diligent Market Intelligence / Activism

Sector breakdown of US-based companies publicly subjected to activist demands

Sector	2022	2023	% change
Basic materials	25	16	↓36
Communication services	12	10	↓16.7
Consumer cyclical	81	83	↑2.5
Consumer defensive	41	44	↑7.3
Energy	25	23	↓8
Financial services	55	61	↑10.9
Funds	13	35	↑169.2
Healthcare	66	73	↑10.6
Industrials	74	79	↑6.8
Real estate	20	23	↑15
Technology	80	81	↑1.25
Utilities	18	22	↑22.2
Total	510	550	

Source: Diligent Market Intelligence / Activism

“Canada saw a 25.5% jump in the number of companies subjected to activism last year, the fastest growth rate of any country.”

Activism in Europe

European shareholder activism continued its steady decline in 2023, with 156 campaigns launched in Europe and the U.K., a 23.9% decrease compared to 2022 and the lowest level seen in five years.

Campaigns were less successful than seen in previous years, with 19 (12.2%) of resolved public activist campaigns at least partially successful, compared to 29 (14.2%) in 2022. Activists gained 36 board seats, compared to 38 a year prior. Of these, 25 were secured via a vote and 11 via settlements.

No. board seats gained by activists at Europe-based companies (including UK) by method

Method	2019	2020	2021	2022	2023	22-23 % change
Settlement	33	24	31	14	11	↓21.4
Went to vote	55	34	19	24	25	↑4.2
Total	88	58	50	38	36	

Source: Diligent Market Intelligence / Activism

No. Europe-based companies subjected to activist demands by company HQ

Company HQ	2019	2020	2021	2022	2023	22-23 % change
U.K.	56	41	47	43	35	↓18.6
Germany	41	60	44	33	21	↓36.4
France	13	12	12	10	13	↑30
Sweden	21	26	13	12	11	↓8.3
Denmark	11	9	9	3	7	↑133.3
Slovenia	5	8	5	2	5	↑150
Switzerland	10	6	5	5	5	0
Greece	1	1	1	1	4	↑300
Netherlands	3	7	7	3	4	↑33.3
Italy	5	4	7	2	3	↑50
Ireland	3	2	3	3	3	0
Spain	7	5	4	5	2	↓60
Total*	215	212	177	140	123	

*Total accounts for all Europe-based companies across all relevant countries

Source: Diligent Market Intelligence / Activism

Activism in Asia

Asia is becoming a hotbed for activist activity, with a 23.9% increase in the number of campaigns launched in 2023, at 238. Activists are also securing more wins, with 42 (17.7%) of campaigns launched at Asia-based companies in 2023 being at least partially successful, compared to 28 (4.6%) a year prior.

Activists secured 93 board seats in Asia in 2023, compared to 90 in 2022. Of these, 17 were secured via settlement and 76 went to a shareholder vote.

No. board seats gained by activists at Asia-based companies by method

Method	2019	2020	2021	2022	2023	22-23 % change
Settlement	30	19	9	14	17	↑21.4
Went to vote	45	62	63	76	76	0
Total	75	81	72	90	93	

Source: Diligent Market Intelligence / Activism

No. Asia-based companies subjected to activist demands by company HQ

Company HQ	2019	2020	2021	2022	2023	22-23 % change
Japan	68	67	66	108	103	↓4.6
Republic of Korea	8	10	27	49	77	↑57.1
Singapore	7	13	12	8	11	↑37.5
China	5	8	9	2	8	↑300
Hong Kong	14	10	10	8	8	0
Israel	4	2	3	4	5	↑25
Malaysia	11	5	2	4	5	↑25
Taiwan	4	3	1	1	1	0
India	2	5	4	4	1	↓75
Total*	126	126	137	194	220	

*Total accounts for all Asia-based companies across all relevant countries

Source: Diligent Market Intelligence / Activism

Activism in Canada

Canada saw an increase in shareholder activism in 2023, with 89 campaigns launched, up from 65 a year prior. 12 (13.5%) of campaigns at least partially resolved in the activist's favor, compared to six (9.2%) in 2022.

Activists were also more successful in obtaining board seats in 2023, with 43 seats secured, a 43.3% increase on the 30 won a year prior. 24 were secured via settlement, while 19 went to a vote.

“Canada saw an increase in shareholder activism in 2023, with 89 campaigns launched, up from 65 a year prior.”

No. Canada-based companies subjected to activist demands

	2019	2020	2021	2022	2023	22-23 % change
No. companies	63	56	45	55	69	↑25.5

Source: Diligent Market Intelligence / Activism

No. board seats gained by activists at Canada-based companies by method

Method	2019	2020	2021	2022	2023	22-23 % change
Settlement	24	22	7	15	24	↑60
Went to vote	22	31	13	15	19	↑26.7
Total	46	53	20	30	43	

Source: Diligent Market Intelligence / Activism

For more insights into global shareholder activism trends, download:

[Corporate Governance in Europe 2023](#)



[Corporate Governance in Asia 2023](#)



[Corporate Governance in Canada 2023](#)



Activism evolves

An interview with Elizabeth Gonzalez-Sussman and Ryan Nebel, vice chairs of the shareholder activism practice group at Olshan Frome Wolosky.



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Ryan Nebel
Vice chair of the shareholder activism practice
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With a full year to observe the impact of the new universal proxy card rules, what were some of your key observations?

Ryan Nebel (RN): As we predicted last year, the adoption of the new universal proxy card rules did not bring a flood of first-time activists despite the fear mongering from the defense bar. What we did see, however, was a wave of settlements that were reached more frequently and earlier in the process as compared to past years. This was likely driven by companies realizing that taking a situation to a full proxy fight would result in an activist winning one or more board seats, in light of the use of a universal proxy card, which has made it more difficult for companies to shield their weakest directors.

Elizabeth Gonzalez-Sussman (EG): In the lead up to 2023, we started to witness a concerning trend of certain companies, particularly smaller cap companies subject to less public scrutiny, taking aggressive and in some

instances, unlawful, positions to argue that a shareholder nomination was invalid for failure to comply with overly broad advance notice bylaw provisions, in order to avoid using a universal proxy card.

This trend continued in 2023, with a number of situations ending in litigation. Often, before the litigation action could be settled in the courts, the offending company backtracked, agreed to recognize the activist's nomination, and agreed to the use of a universal proxy card, mainly because the larger shareholder base and proxy advisory firms were critical of these tactics.

Recently, a Delaware court, in the case *Ted Kellner v. AIM ImmunoTech*, struck down several advance notice provisions that the court found were "overbroad, unworkable and ripe for subjective interpretation by the board." As a result, I hope we will see less use of these defensive measures.

“ Activists are looking to enhance value at underperforming companies and there is a finite number of potential targets, so it is not surprising to see multiple activists targeting the same issuer, and that is a trend that I expect we will continue to see. ”

The much anticipated 13D rules were finally adopted and go into effect in 2024. What was your reaction to the new rules and do you think they will have much impact on activism?

RN: Fortunately for our clients, the new 13D rules that were formally adopted were much more balanced than originally proposed and should not have much impact on activism. The new 13D rules do shorten the time to file an initial 13D from 10 calendar days to five business days, but such deadline is more reasonable than the originally proposed filing deadline of just five calendar days for initial 13Ds and one business day for subsequent amendments (as opposed to the two business day period for amendments that was adopted). Notably, the proposed rules on group activity were not adopted, which in my view could have chilled the shareholder communications that are essential to corporate democracy, nor were the proposed rules on when to deem certain holders of cash-settled derivative securities as beneficial owners of the referenced security, which could have significantly impacted the accumulation strategies of activists.

EG: The new deadlines for initial 13D filings went into effect on February 5, 2024, but should really not impact most of our clients in how they think about when to “go public”. We appreciated the Securities and Exchange Commission’s (SEC) measured approach to modernizing the 13D rules and considering our perspectives to the proposed rules on behalf of the investment community, before adopting the final rules. Now, we just need to wait for the final rules

on cash-settled swaps that were proposed in early 2022, to see whether the SEC will mandate an earlier disclosure of an activist’s economic interests in a company on a new proposed Schedule 10B.

What were the key priorities of activist campaigns in 2023?

EG: As M&A slowed this year, largely due to the slowing of financing markets, many of our clients focused on operational improvements, cost cutting and enhancing the board with relevant industry expertise. In many instances, the goal was to manage the business until such time as financing markets and general deal activity could rebound.

RN: The key priority for activists remained the same in 2023 as in the past – driving value at underperforming companies. Common themes included seeking to improve a target’s operations, capital allocation practices and governance. Interestingly, while the M&A market was generally cool in 2023, that did not stop activists from making M&A-focused demands in 2023, whether seeking break-ups or outright sales of companies.

There has been a growing anti-ESG movement in the U.S. Have you seen that movement change the way activist compile their board slates?

EG: Not really. Our clients have always focused on driving value and found that a lack of diversity of perspectives can often lead to a lack of accountability and an ineffective board. As a result, our clients continue to select candidates

“ I think it is possible that we see some repeat fights from last year if a company has continued to underperform following a settlement or contest that did not yield adequate change. ”

from many diverse pools, which has organically resulted in more diverse boards. The goals of ESG, when tied to the financial bottom line, can continue to improve a company's performance and I don't see that really changing in 2024.

We saw some interesting situations with multiple activists targeting the same issuer this past year. Do you think this will be an increasing trend?

EG: There can often be multiple active investors invested in a stock. Many times, they are aligned in achieving the same goal – but not always. The current Disney fight shows some investors may disagree on a company's next steps, resulting in nominations from multiple investors. But clearly if a company is the recipient of multiple nominations, there's probably a good chance the board has not been doing its job effectively and the interests of all activists will need to be balanced.

RN: At the end of the day, activists are looking to enhance value at underperforming companies and there is a finite number of potential targets, so it is not surprising to see multiple activists targeting the same issuer, and that is a trend that I expect we will continue to see. Where things get interesting is when the activists have differing views, neither stands down and it results in a tri-party contest.

It will be interesting to see if any of these situations with multiple activist slates actually go all the way to a vote and the results thereof – the outcome may dictate future activist strategies in similar situations.

What do you expect to see in the 2024 proxy season?

RN: I think there will be an increased willingness for many of our clients to nominate more nominees and take things to a vote if settlement terms do not yield a meaningful amount of change. While we have already seen a number of settlements heading into 2024, we also expect a very busy season of nominations, including a willingness to propose control slates. I also think it is possible that we see some repeat fights from last year if a company has continued to underperform following a settlement or contest that did not yield adequate change.

EG: I think we also may see more activists willing to push for a sale of a company as financing markets begin to stabilize. In fact, I predict we will see a significant increase in our clients making unsolicited offers to acquire companies. Already we've seen that at Macy's. But there are a number of other vulnerable companies that may become targets of unsolicited offers who have persistently traded at a discount, have a long history of underperformance, low liquidity and shareholders looking for an exit.

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Investors focus on remuneration

2023 saw greater shareholder scrutiny on remuneration, with investors keen to ensure companies have robust policies and practices in place to weather market risks, writes Will Arnot.

Both activist shareholders and institutional investors alike are stepping up oversight of corporate remuneration policies, looking for companies to be prepared to weather the challenges brought on by rising costs and slowing economic growth.

In the U.S., 81 companies faced remuneration demands last year, according to Diligent Market Intelligence (DMI), a 37.3% increase compared to the 59 seen a year prior and marking the highest increase of any demand type.

Recent activism campaigns have showcased how activists can use remuneration as a tool with which to strengthen existing campaigns based on demands for board representation or broader governance changes. Institutional investors have also filed an increasing number of pay-related proposals, in a bid to enhance disclosure surrounding corporate pay policies.

“ In the U.S., 81 companies faced remuneration demands last year, a 37.3% increase compared to the 59 seen a year prior. ”

Another tool in the toolbox

The number of remuneration-related demands submitted by primary- and partial-focused activists at U.S. companies dropped to nine in 2023, down from 17 in 2022. Despite this, six campaigns which saw remuneration demands made were withdrawn in exchange for company commitments.

In an interview with DMI, Okapi Partner's Managing Director Bruce Kistler theorized that activists are focusing on incorporating remuneration demands into campaigns

when it is seen as a significant issue that can “create some traction,” as part of a wider campaign.

Jim Chadwick, president of alternatives at Ancora Advisors, echoed the sentiment. “I think from an activist standpoint, compensation is going to always be an accompaniment to a campaign, rather than the issue that causes it,” Chadwick said. “Activists’ main focus is a return on their investment, so by default there is going to have to be a primary objective that is linked to that, whether it be capital allocation [or] management changes.”

One such example is Trian Partners’ campaign at Walt Disney. While the hedge fund’s primary goal is to refresh the board to help remedy Disney’s declining earnings and bolster shareholder return, remuneration and management incentives have also formed part of the ongoing criticisms.

John Fichthorn’s Dialectic Capital Management similarly wove remuneration concerns into its campaign for board refreshment at Achieve Life Sciences, while also seeking board representation. In March, the activist secured three seats on the board via a settlement agreement.

Broadening pay discussions

Shareholder proposals concerning pay also gained increased backing, with investors keen to understand how companies are thinking about pay more broadly, such as severance payments and clawback policies.

In an interview with DMI, Julia Cedarholm, senior associate, ESG research and shareholder engagement at Arjuna Capital, said that inflation rates and cost of living concerns have led to investors wanting more of a say on pay more broadly.

“It’s where we’re at as a society and as a country right now, with the rising cost of living and inflation rates. Companies are really feeling the pressure,” Cedarholm said.

In 2023, the three proposals seeking clawback policy amendments won 36.5% average support at U.S.-based companies, up from five winning 27.5% support a year prior. Requests for companies to adopt/amend their

remuneration policies also won 27% average support compared with 21% the year previous.

“Executive compensation will be in focus for investors in a period of dispersed financial performance,” BlackRock said in a January 2024 whitepaper. “It will be important for companies to demonstrate – through their disclosures – that executive pay rewards realized achievements and is closely correlated with financial performance and returns to investors.”

Strengthening Asia pay practices

Almost 80% of remuneration demands by primary- and partial-focus activists made in 2023 were at Japan-based companies. As with other forms of activism in Japan, the

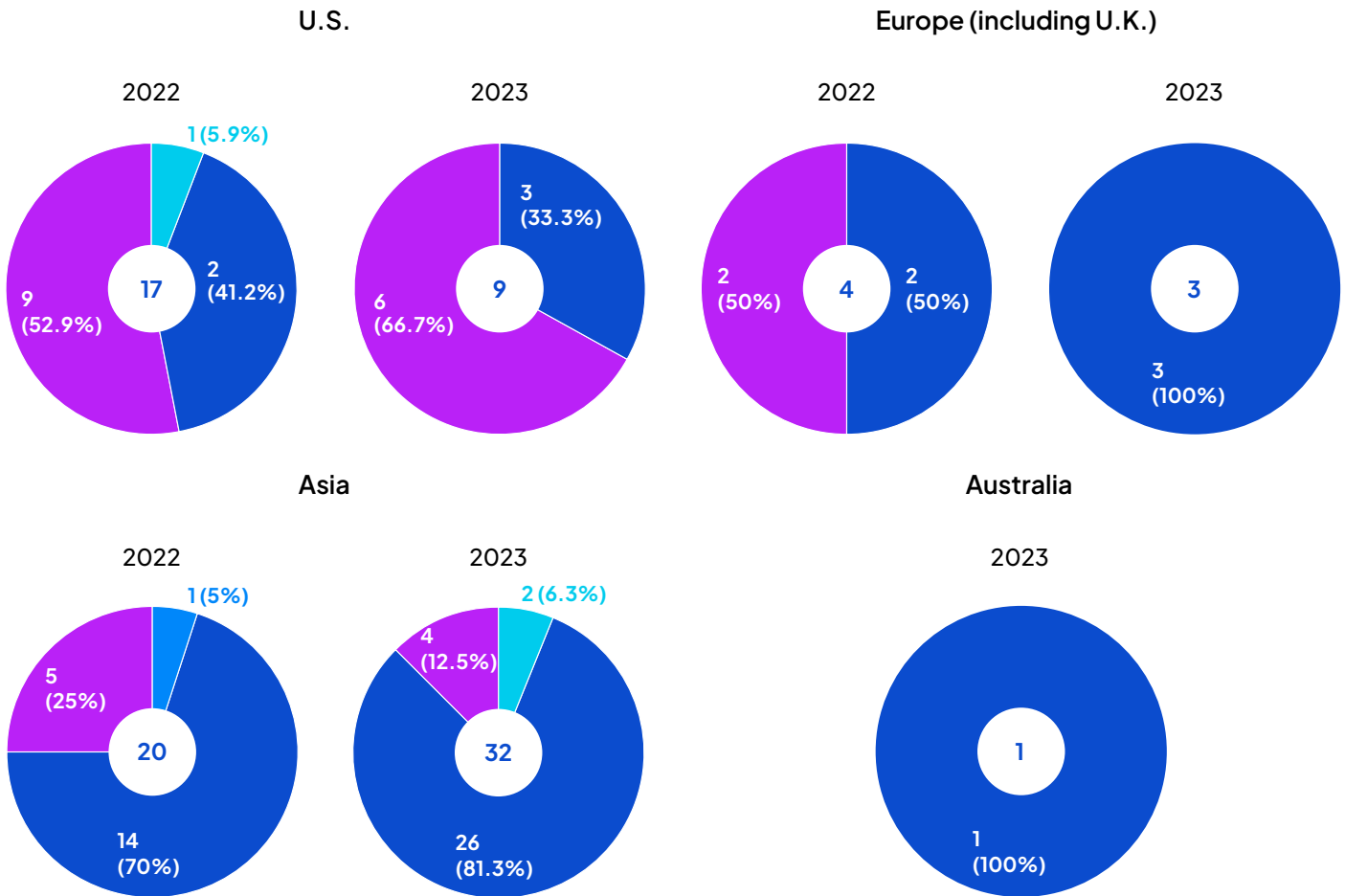
number of remuneration campaigns has increased from 16 launched between 2017 and 2021, to 27 in 2022.

Nippon Active Value Fund has asked multiple companies to strengthen their compensation policies and practices, making 22 remuneration-related demands in the last two years. Proposals asking Hokuetsu Corp. and Meisei Industrial to increase the proportion of director compensation made up of restricted stock awards received 36.2% and 15.8% support, at their 2023 annual meetings, respectively.

Elsewhere, Strategic Capital, which submitted the second-most remuneration demands in Asia, called for Japan Securities Finance (JSF) to sue its own management for what it described as “unjust enrichment” stemming from “inappropriate” accounting practices.

No. and success rate of remuneration-related demands made by primary- and partial-focus activists by region

■ Objectives successful ■ At least partially successful ■ Objectives unsuccessful ■ Activist withdrew demands



Source: Diligent Market Intelligence / Activism

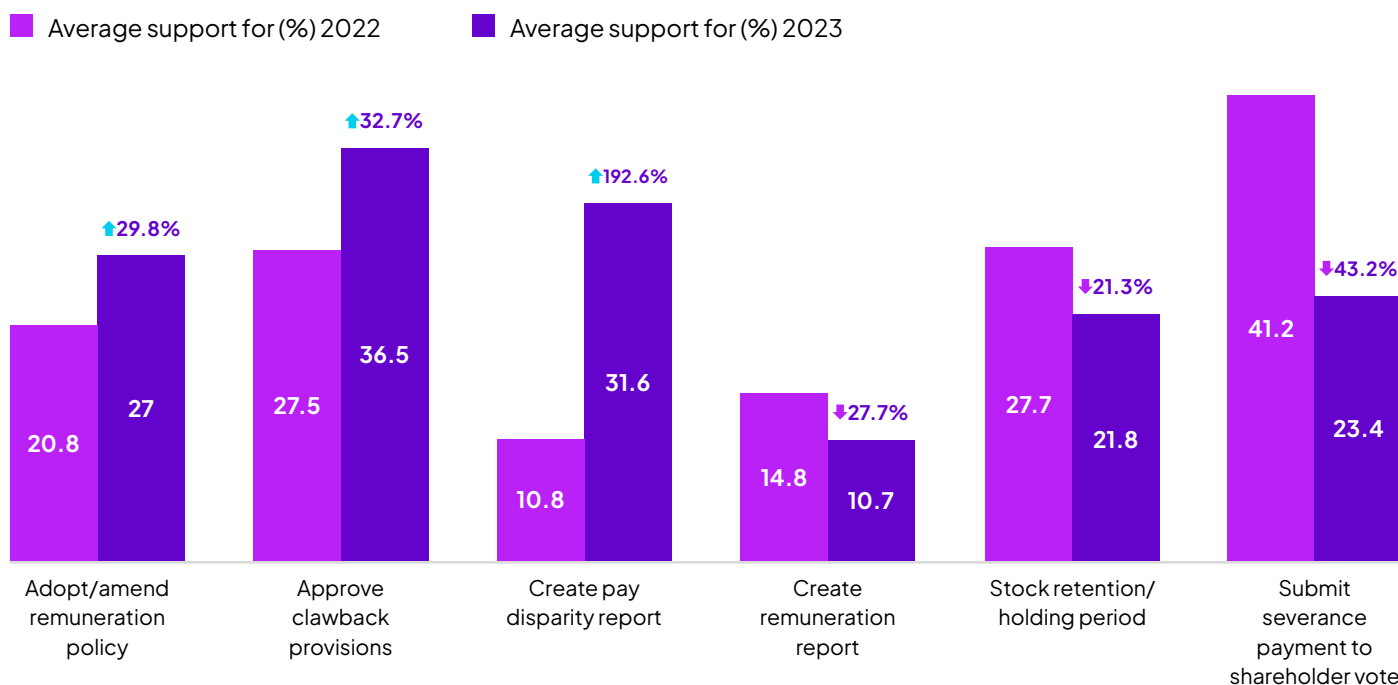
No. companies publicly subjected to remuneration-related demands by primary- and partial-focus activists by region

Region	2019	2020	2021	2022	2023	22-23 % change
U.S.	16	7	20	14	10	↓ 28.6
Europe (including U.K.)	6	4	3	2	2	0
Asia	5	0	8	25	26	↑ 4
Canada	0	1	0	0	1	-
Australia	0	1	1	0	2	-

Source: Diligent Market Intelligence / Activism

No. and average support for (%) remuneration-related shareholder proposals at US-based companies by proposal subcategory

Proposal subcategory	2022		2023	
	No. meetings	No. proposal results	No. meetings	No. proposal results
Adopt/amend remuneration policy	10	10	5	6
Approve clawback provisions	5	5	3	3
Create pay disparity report	2	2	2	1
Create remuneration report	3	3	5	4
Stock retention/holding period	1	1	11	10
Submit severance payment to shareholder vote	17	17	44	44



Source: Diligent Market Intelligence / Voting

Could universal proxy open the ESG activism floodgates?

The newfound freedom universal proxy offers when casting votes at proxy contests has the potential to encourage nontraditional activists to seek board composition changes to remedy ESG shortcomings, writes Rebecca Sherratt.

The introduction of the universal proxy card (UPC) in 2023 did not bring forth a surge of would-be ESG activists, like many predicted, but the first ESG activism campaign by a nontraditional activist is now underway amid a backdrop of increasing ESG demands being made.

Shareholder proposals foreshadowing activism

The number of ESG demands publicly made by primary- and partial-focus activists increased in 2023 to 132 demands globally, up from 114 demands a year prior, and almost double the 79 seen in 2021. Despite this, success rates halved, with 16 (12.1%) of demands at least partially successful, compared to 28 (24.6%) a year prior.

“The number of ESG demands publicly made by primary- and partial-focus activists increased in 2023 to 132 demands globally, up from 114 demands a year prior, and almost double the 79 seen in 2021.”

Among all investor focus types, social demands gained prominence, with 159 demands made globally, 6% more than the 150 issued in 2022 and a 34.7% increase compared to 2021. In comparison, the number of environmental demands made in 2023 decreased by 1.5% on 2022 levels, while governance demands saw a 4.5% increase.

Bruce Goldfarb, Managing Partner of Okapi Partners, told DMI that while 2023 “did not see the same level of support”

for environmental and social demands, compared to previous years, campaigns proved successful “where the risk to value was clearly understandable.”

Trade union coalition SOC is currently waging the season’s biggest ESG campaign, seeking three board seats at Starbucks on the basis of the coffee chain’s “severe human capital mismanagement.” Just eight months prior, a shareholder proposal asking the coffee giant to commission a workers’ rights assessment won 52% support.

Shareholder proposals also foreshadowed activist engagement at Santos. The Australian energy giant has faced annual requests to enhance its net-zero reporting, and more recently activist Snowcap Research launched a campaign urging the company to abandon its “reckless” fossil fuel-oriented growth strategy. In 2024, Santos remains under the watchful eye of Snowcap, alongside Atlas Funds Management, the latter of which has criticized a proposed merger with Woodside Energy due to Santos’ “inferior assets.”

A year of opportunity

The introduction of universal proxy in 2023 has significantly reduced the costs associated with launching proxy contests, as well as enabling investors to freely pick between incumbent and dissident director nominees when casting votes.

With this in mind, 2024 has the prospect for more would-be ESG activists to emerge, escalating shareholder proposals into battles for board representation.

“[In 2023], we certainly didn’t see the tsunami of activism many spectators expected. But we may have observed that it is easier for an activist to win at least one seat and drive some change,” Jonathan Salzberger, managing

director at Innisfree M&A, told DMI. “With the ability of shareholders to pick and choose nominees across slates, fights have become more personalized.”

Data also suggests that the lower a company’s ESG risk score compared to peers, the more vulnerable the company potentially is to shareholder activism. Corporate social risk scores, in particular, are where companies appear to be struggling to keep pace, compared to environmental and governance scores.

As of December 31, 2023, the average S&P 500 total ESG risk score was 63.4, with the average S&P 500 constituent scoring 51.7, specifically for social risk oversight. Recent ESG activism target Starbucks lags its peers, with an average total ESG risk score and social risk scores of 46 and 21, respectively.

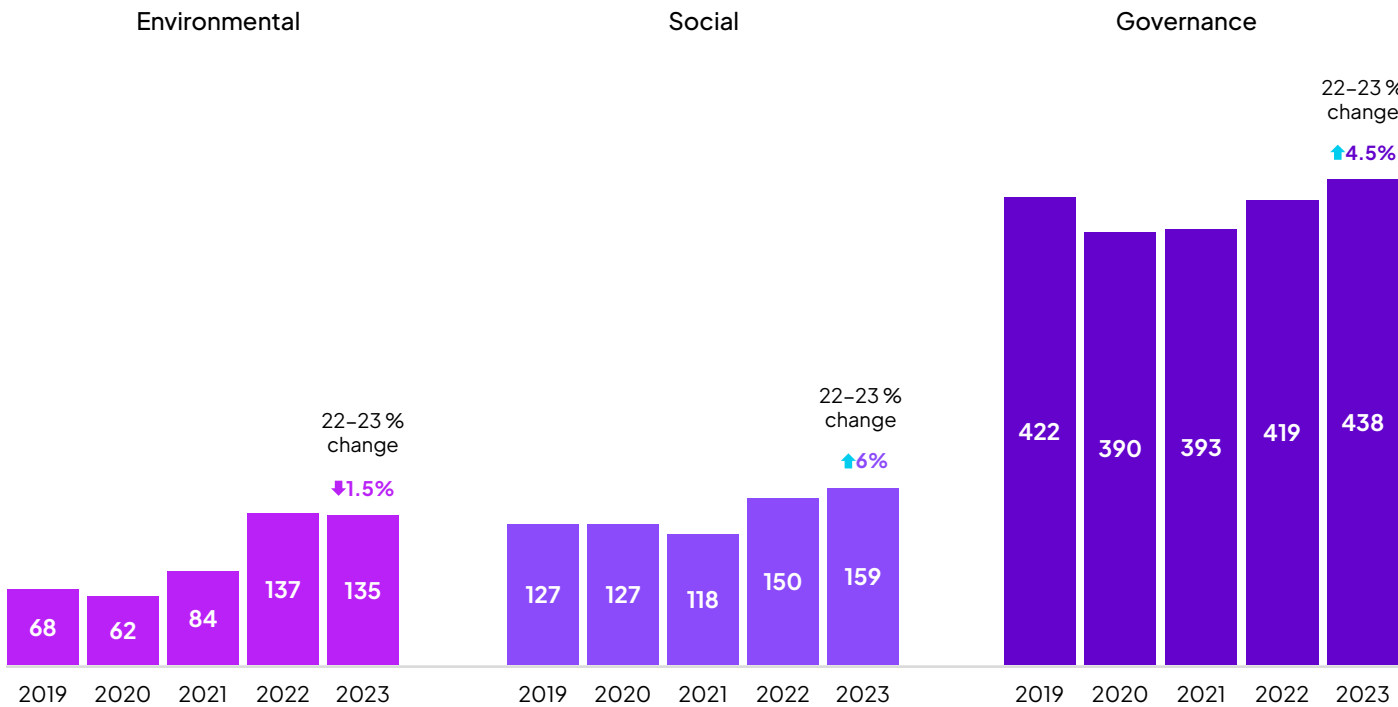
Strong ESG credentials can also prompt activists to rear their heads. One such example last year was Greenlight Capital’s opposition to Vitesco Technologies’ proposed sale to Schaeffler, on the grounds that the greener, faster-

“2024 has the prospect for more would-be ESG activists to emerge, escalating shareholder proposals into battles for board representation in order to hold companies to account on their ESG oversight, or lack thereof.”

growing company would lose its ESG premium in the acquisition.

“We strongly believe that [Vitesco’s] team should be capitalizing on the leading position it has won in the industry’s transition to electric vehicles,” the activist wrote in November. “Any distracting uncertainty is deeply unwelcome.”

No. companies publicly subjected to environmental, social and governance demands globally

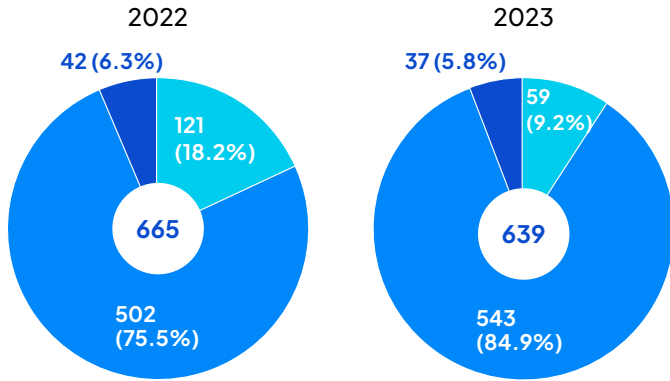


Source: Diligent Market Intelligence / Activism

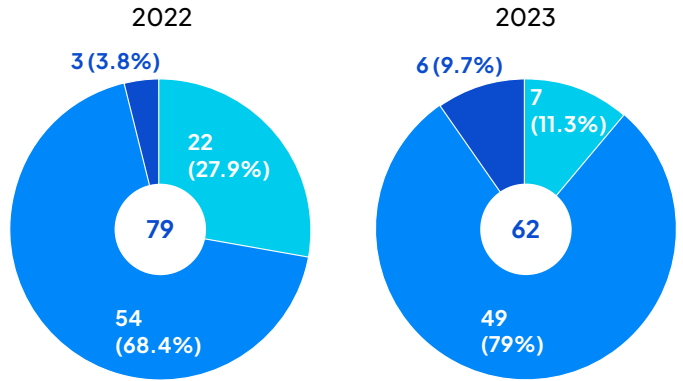
No. and success rate of ESG activism demands made in 2022 and 2023, by region

■ At least partially successful
 ■ Objectives unsuccessful
 ■ Activist withdrew demands

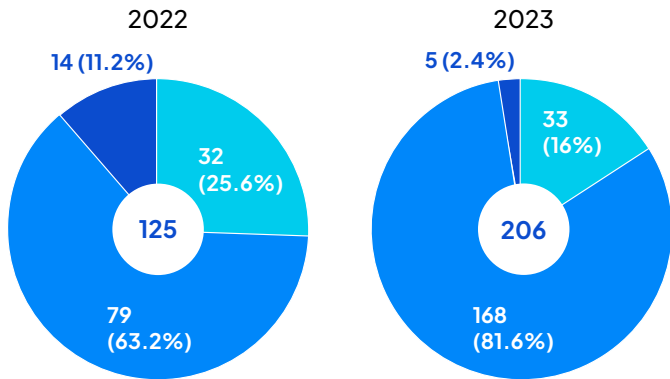
U.S.



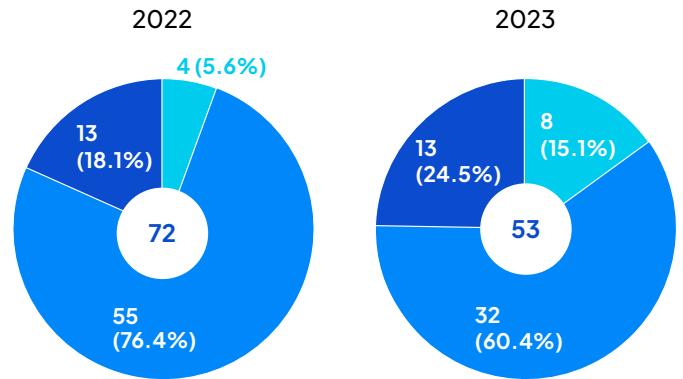
Europe (including U.K.)



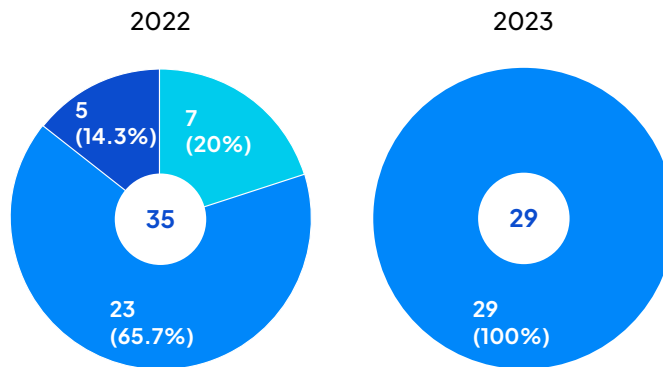
Asia



Canada



Australia



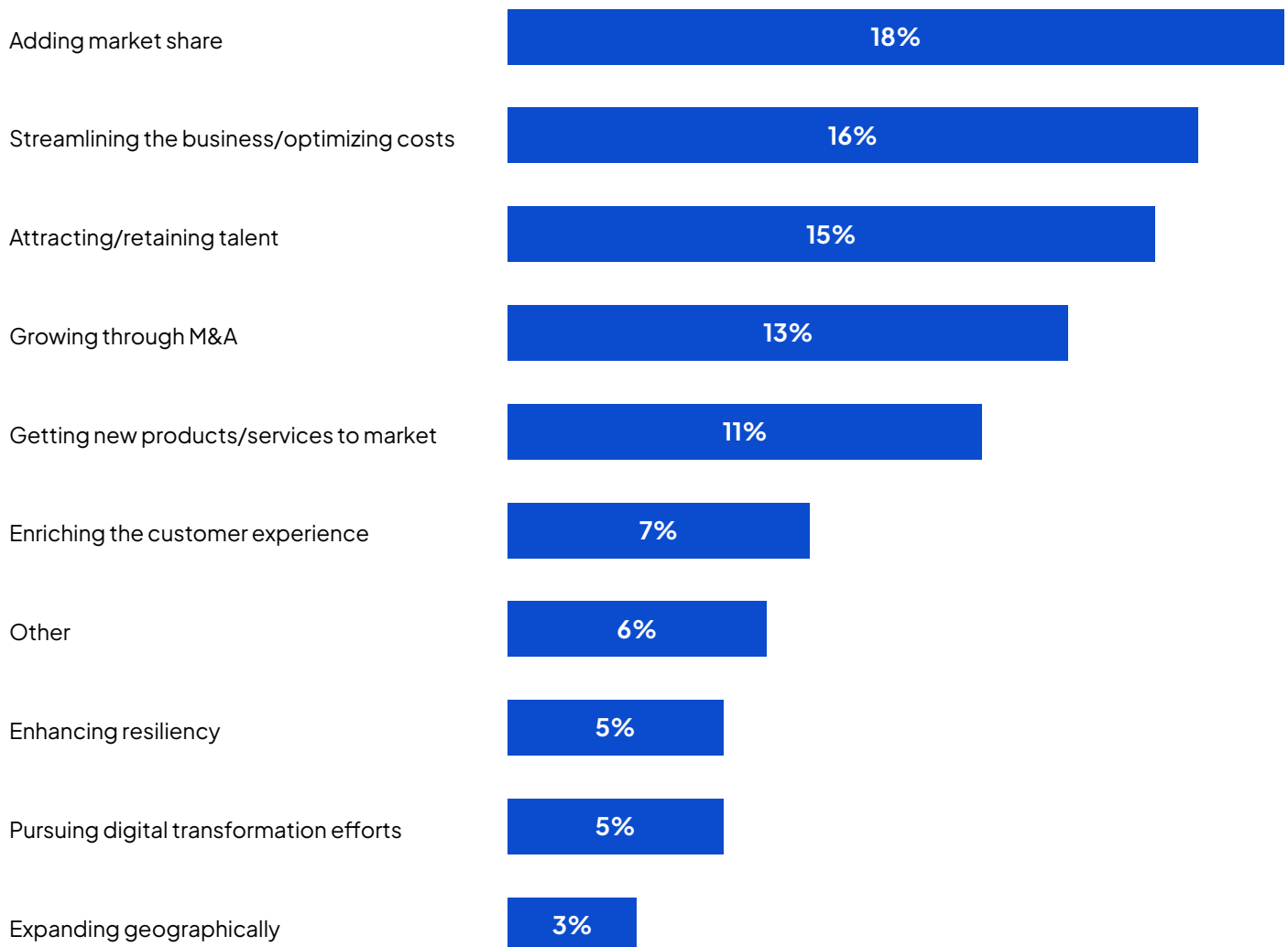
Source: Diligent Market Intelligence / Activism

What Directors Think 2024

The Diligent Institute, together with Corporate Board Member and BDO, asked 250 U.S. company board members from a wide range of backgrounds what was on their minds from the past year and what they see on the horizon for the year ahead.

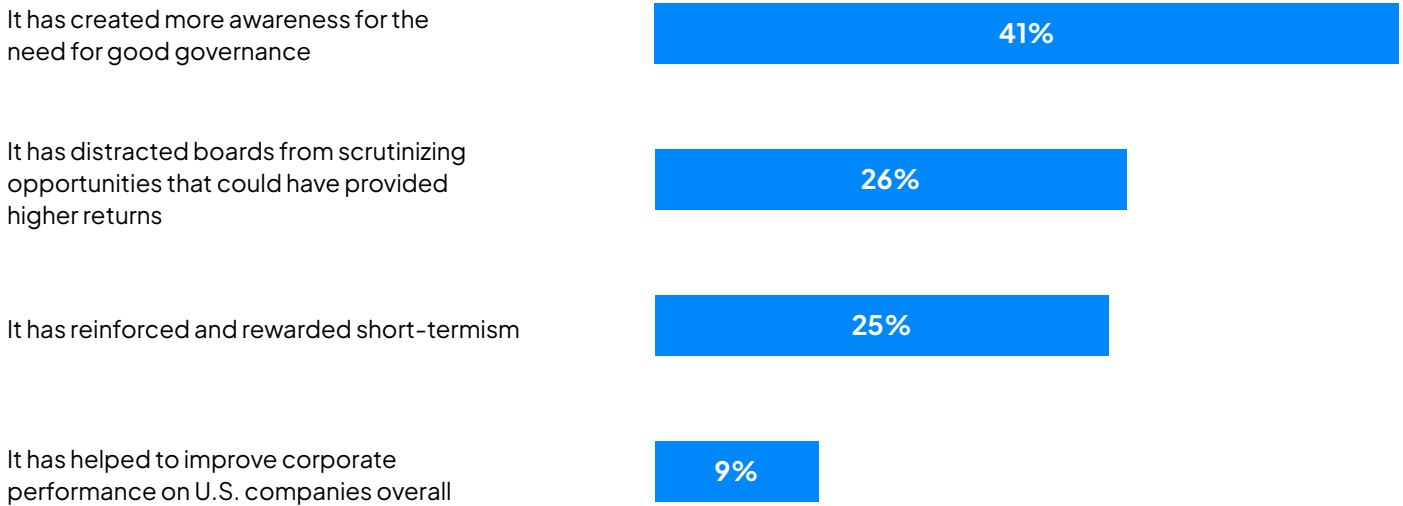
Opportunities and risks

What do you see as the top strategic priority for your company for 2024?

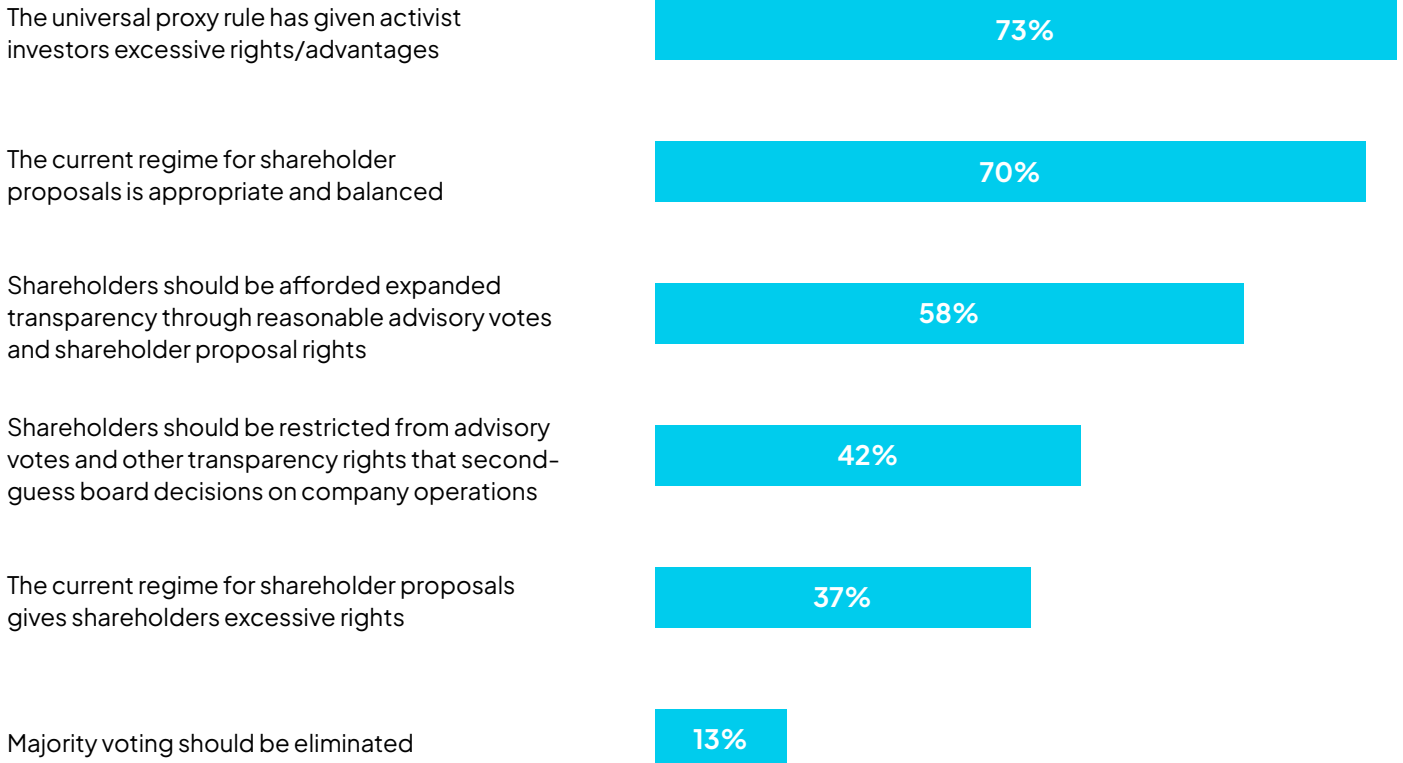


Shareholder engagement

Generally speaking, with which of the following statements regarding shareholder activism in the U.S. do you most agree:

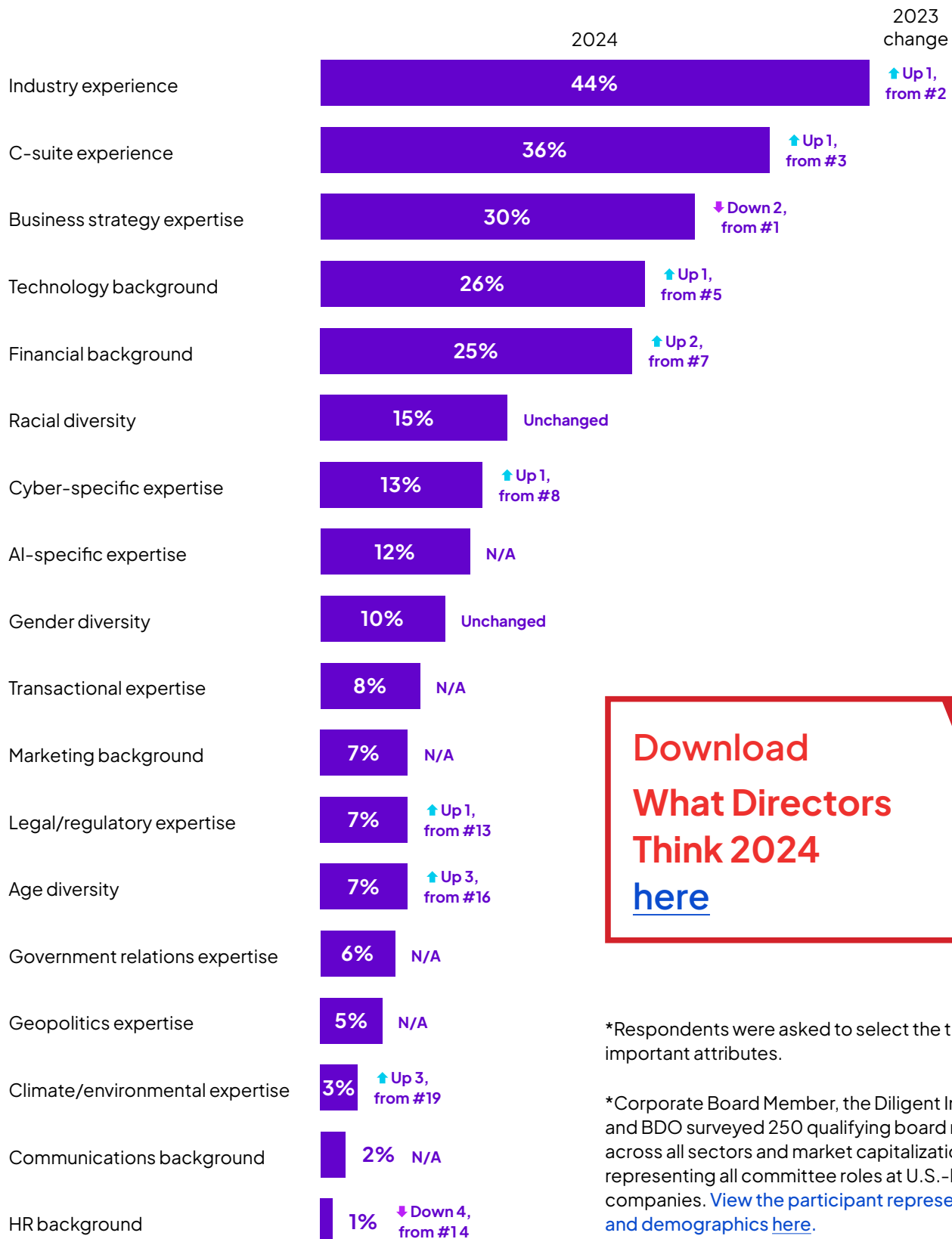


More specifically:



Board readiness

In your opinion, which of the following attributes is most important for the selection of your next board member?*



Download
What Directors
Think 2024
[here](#)

*Respondents were asked to select the three most important attributes.

*Corporate Board Member, the Diligent Institute and BDO surveyed 250 qualifying board members across all sectors and market capitalizations and representing all committee roles at U.S.-listed companies. [View the participant representation and demographics here.](#)

The 2023 activist watchlist

Each year, Diligent Market Intelligence (DMI) creates a ranking of the most prolific activists over the past year, based on the quantity, size and performance of their activist investments, comprehensively derived from the DMI 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, number of countries where campaigns were initiated, success of public demands and the depth of news coverage on the activist on DMI in 2023. The methodology excludes investors that do not regularly employ an activist strategy and have targeted fewer than three companies in 2023.

Saba Capital Management

No. companies publicly subjected to activist demands in 2023: 37
No. countries where campaigns were launched in 2023: 3

Average target market-cap: \$622.6B
DMI news stories: 108

Saba Capital Management, which specializes in targeting closed-end funds trading at a discount to their net asset value (NAV), targeted 37 issuers in 2023, up from eight a year prior.

Among its notable campaigns include recent legal victories at BlackRock, Nuveen and Eaton Vance. In December, a U.S. District Court ruled that 11 closed-end funds, including two managed by investment giant BlackRock, violated federal law when implementing defensive bylaw amendments.

"After filing a lawsuit against several closed-end funds over control share provisions last June, the U.S. District Court for the Southern District of New York ruled in our favor," Paul Kazarian, partner and portfolio manager at Saba, told DMI.

Saba gained board seats at ASA Gold and Precious Metals and Templeton Global Income Fund. Settlements were also secured with Kayne Anderson Capital Advisors and Center Coast Brookfield MLP & Energy Infrastructure Fund, the former of which agreed to sell shares at a substantial discount, while the latter agreed to sell assets and transform itself into an open-end fund.

As a comment on the closed-end fund industry, Kazarian said that "boards, rather than investment managers, should be engaging with investors. This is the best practice and needs to be the standard at every closed-end fund in order to reduce potential conflicts of interest and protect the rights of all shareholders."

Ancora Advisors

No. companies publicly subjected to activist demands in 2023: 10
No. countries where campaigns were launched in 2023: 3

Average target market-cap: \$19.5B
DMI news stories: 42

Ohio-based Ancora Advisors targeted nine companies with public demands in 2023, compared to 10 a year prior. The hedge fund was a vocal supporter of Ritchie Bros. Auctioneers' acquisition of U.S. vehicle auction company IAA, a proposition which divided multiple investor groups, but ultimately received approval in March.

"It's not very often that we find ourselves on the side of defending the company against another activist," Ancora Portfolio Manager James Chadwick told DMI. "We believed in the upside on the IAA side, so we felt like we had no choice but to defend it."

Outside of its more recent public backing of Trian Fund Management's campaign at Walt Disney in early December, Ancora renewed a number of settlements, including agreements for board composition changes at water infrastructure company Mueller Water Products and transport company C.H. Robinson.

Looking ahead to 2024, Ancora expects a busy start to the year, with two major campaigns underway which, at time of writing, have yet to be made public. "I'm excited about this year. The markets are kind of an unknown. I think that's the big question," said Chadwick.

Starboard Value

No. companies publicly subjected to activist demands in 2023: 8
No. countries where campaigns were launched in 2023: 3
Average target market-cap: \$9.4B
DMI news stories: 44

Starboard Value took the third-place spot in 2023, launching public campaigns at eight companies across the U.S., Canada and the U.K.

The New York-based hedge fund, headed up by Jeff Smith, helped Ritchie Bros. Auctioneers sweeten its takeover bid for IAA with a \$500 million investment agreement, in exchange for a board seat.

Starboard also formed part of the five hedge fund swarm at Salesforce, urging the U.S. software company to "better balance" growth and profitability. The company responded by posting better than expected fourth-quarter 2022 results and pledging to improve profits.

CEOs at both LivePerson and Algonquin Power & Utilities stepped down in 2023, after facing criticism from the activist for failing to maximize shareholder value.

More recently, the activist pushed News Corp. to break up, arguing that separate news and real estate assets could unlock \$7 billion in value.

Elliott Management

No. companies publicly subjected to activist demands in 2023: 9
No. countries where campaigns were launched in 2023: 2
Average target market-cap: \$50.7B
DMI news stories: 55

In 2023, Elliott Management gained 12 board seats and other concessions at companies in the U.S. and Asia without a proxy fight.

Elliott's campaign at NRG Energy saw the utility giant name four new board members and undergo a corporate review. CEO Mauricio Gutierrez stepped down shortly after.

In July, Constellation Brands agreed to appoint two new directors and give Elliott access to company information in a settlement deal. A week later, following engagement with the activist, Goodyear Tire & Rubber revealed its intention to add three new board members and set up a strategic and operational review panel.

While Elliott declined to comment, a source close to the firm noted that 2023 was "business as usual" for Elliott, doing "mostly constructive settlements, working behind the scenes."

Internationally, Elliott made steps to bolster the firm's activism practice in Japan, which Elliott sees as "an emerging area of opportunity," according to sources close to the hedge fund. In January 2023, Elliott amassed a 5% stake in Dai Nippon Printing, reportedly pushing the Japanese conglomerate to boost stock buybacks and sell cross-shareholdings. Dai Nippon subsequently announced a series of governance and operational initiatives.

Sachem Head Capital Management

No. companies publicly subjected to activist demands in 2023: **3**
 No. countries where campaigns were launched in 2023: **3**

Average target market-cap: **\$8.5B**
 DMI news stories: **6**

Sachem Head Capital Management targeted three companies in 2023, up from one the year before. Together with Greenwood Investors, Sachem Head secured four board seats at Italian aerospace and defense company Leonardo, defeating a rival shareholder-nominated slate from investor association Assogestioni.

“When we evaluate a potential activist investment, we make sure we like the quality of the business and the fundamental risk/reward— we want to make sure that we can still realize an attractive return, even if we don’t get everything we want as an activist,” Sachem Head founder and Portfolio Manager Scott Ferguson told DMI. “We focus on companies where the board needs a ‘push’ from the outside to make a hard decision.”

In March, reports emerged that Sachem Head had called on Arconic to end its strategic review in a sale. Two months later, the U.S. aluminium company announced a take-private agreement with Apollo Global Management, at a 36% premium over its unaffected share price.

“Despite the market run in 2023, we still see many opportunities, particularly in Europe, but also in the U.S. We think that M&A will come back to life in 2024 and will provide additional opportunity.” Ferguson said.

Carl Icahn

No. companies publicly subjected to activist demands in 2023: **3**
 No. countries where campaigns were launched in 2023: **1**
 Average target market-cap: **\$15.5B**
 DMI news stories: **42**

Carl Icahn may have just turned 88, but the veteran activist launched three campaigns in 2023.

At Illumina’s May annual meeting, Icahn nominee Andrew Teno was elected to the gene sequencing company’s board, in a campaign criticizing Illumina’s acquisition of cancer detection company Grail. CEO Francis deSouza, a key target of Icahn’s criticism, resigned ten days later.

In December, Illumina revealed it would be selling Grail. Icahn has since unveiled plans to launch a new campaign to remove the company’s “legacy conflicted” directors.

Icahn gained a second board seat at International Flavors & Fragrances (IFF), a year after Icahn Enterprises Portfolio Manager Gary Hu was appointed. Hu also joined the board of Newell Brands in a February settlement, only to step down in December after the activist’s stake in the consumer goods company slipped below 5%.

Engine Capital

No. companies publicly subjected to activist demands in 2023: **6**
 No. countries where campaigns were launched in 2023: **3**
 Average target market-cap: **\$3.8B**
 DMI news stories: **23**

Engine Capital launched public campaigns at six companies in the U.S., Canada and Germany in 2023, the same number as in 2022 and three times as many as in 2021.

Among Engine’s recent campaigns are its push for Canadian fuel distributor Parkland to add new directors, sell off its non-core assets and modify its compensation plan.

“Three of the legacy board members have left, the company announced that it would sell \$500 million of non-core assets and focus on organic growth, as opposed to M&A. The stock was up almost 50% in 2023. So, in terms of stock performance, Parkland was probably our best winner in 2023,” Engine founder Arnaud Ajdler told DMI.

2023 also saw Engine gain three seats on Orthofix’s board. Ajdler stated that the investor enjoyed “a very positive settlement. We were able to establish a strategy committee, which will be led by one of our nominees, and the next chairperson has to be one of our nominees.”

Align Partners Capital Management

No. companies publicly subjected to activist demands in 2023: 8
No. countries where campaigns were launched in 2023: 1

Average target market-cap: \$6.5B
DMI news stories: 33

Korean activist Align Partners Capital Management kicked off its work in 2023 as soon as the markets opened, writing to the boards of seven of the country's largest financial institutions, calling for improved disclosure related to shareholder returns. All seven banks responded to the activist, promising to strengthen returns.

Align's CEO Changhwan Lee told DMI that, despite the success of its engagements with the financial services sector in 2023, he thinks most people will remember the fund manager for its work at SM Entertainment.

In a continuation of a campaign first launched in 2022, Align managed to gain board representation at the media

company, with Lee himself joining the board as part of a governance and capital allocation reform plan – a first for a South Korean company with a principal shareholder.

Align's 2023 campaigns may have targeted businesses in varied industries and sizes, but the activist noted it approaches all campaigns with the same mindset.

"We are a value investor," Lee affirmed. "With the entertainment business, we liked it because it was undervalued compared to its cash flow and M&A value. With the banks, they were trading below their price-to-book value."

Third Point Management

No. companies publicly subjected to activist demands in 2023: 3
No. countries where campaigns were launched in 2023: 3
Average target market-cap: \$73.3B
DMI news stories: 9

Daniel Loeb's Third Point Partners launched three campaigns in 2023, down from six a year prior.

In a settlement with Bath & Body Works, former ILG director Thomas Kuhn was added to the board. This appointment marked the second time that Bath & Body Works has appointed a director recommended by Third Point, with Lucy Brady of Conagra Brands and Steve Voskuil, chief financial officer at The Hershey Co., appointed to the board earlier in the year, in an attempt by the board to avert a proxy fight.

Elsewhere in 2023, Third Point entered into a standstill agreement with Bermuda-based specialty insurer Sirius Point, in a conclusion to what was described as "exploratory discussions related to a potential acquisition." As part of the agreement, Third Point founder Daniel Loeb agreed to refrain from making takeover or purchase proposal for the company or acquire more than 9.5% of its outstanding shares.

Oasis Capital

No. companies publicly subjected to activist demands in 2023: 7
No. countries where campaigns were launched in 2023: 2
Average target market-cap: \$3.2B
DMI news stories: 47

Hong Kong-based Oasis Capital, founded in 2002 by Seth Fischer, launched public campaigns at seven companies in 2023, compared to two the year before.

The activist focussed primarily on engagements with Japan-listed companies, renewing its long-running battle for board refreshment at Fujitec. In February, Oasis secured four board seats in a proxy contest urging the company to cut ties with former CEO Takakazu Uchiyama.

In March, Oasis succeeded in dethroning Uchiyama as chairman and later defended against his bid for eight board seats in a June special meeting.

Oasis told DMI that a trend of investors increasingly voting against management at Japanese companies' shareholder meetings had caught its eye during 2023, and that in the coming year it "plans on holding management teams accountable in private and public engagements."

On the international stage, U.K. restaurant chain The Restaurant Group also faced a withhold campaign from Oasis, which expressed "deep concern" regarding CEO Andy Hornby's pay packet.

The 2023 short seller watchlist

Following years of declining short activity, 2023 saw short sellers kick into action, marking the first time since 2019 where the number of campaigns initiated increased compared to the previous year and played host to a number of high-profile campaigns.

This list is compiled based on data from Diligent Market Intelligence (DMI), including the number of short campaigns, average campaign returns, average target market-cap and news stories covering the investor.

Hindenburg Research

Hindenburg Research launched a string of short campaigns in 2023, targeting issuers in the U.S., India and China.

In January, Hindenburg alleged that Adani Group was engaged in market manipulation and accounting fraud. The company, which was once the largest India-based conglomerate, lost roughly half of its market value. The report also sparked a probe into Adani by the Securities and Exchange Board of India (SEBI) and much political debate.

“We make some efforts to avoid politics because I think politics is where truth and evidence goes to die,” Hindenburg Founder Nate Anderson told DMI in an interview. “But politics will sweep into the equation just by the virtue of how big the company is.”

In the U.S., Hindenburg took aim at Icahn Enterprises, headed up by activist veteran Carl Icahn. In June, Hindenburg estimated that Icahn Enterprises shares were trading at a premium of more than 200% to the reported value of its assets and said the company was using a “Ponzi-like” economic structure to support its dividend. The stock fell sharply on that news and fell further in August after the company cut its quarterly dividend in half.

Activist short campaigns launched in 2023: **8**
Average one-month campaign returns: **42.3%**
Average target market cap: **\$13.7B**
DMI news stories: **30**

Meanwhile, December saw Trevor Milton, former CEO of electric truck company Nikola, sentenced to four years in prison for defrauding shareholders, a case highlighted by a 2022 Hindenburg report.

“ It’s quite encouraging that regulators have been more active on prosecuting fraud. ”

“It’s quite encouraging that regulators have been more active on prosecuting fraud,” Anderson stated, in reference to the Nikola case. “There have been several high-profile examples of that this year.”

Capybara Research

2023 was Capybara Research's first foray into short selling, issuing reports on three different nano- and micro-cap companies in the U.S.

"This is a golden age of grift. The amount of fraud is staggering, and we admire the activists who've been doing amazing work to expose it," Capybara Research told DMI.

Capybara's first report, issued in July, alleged that U.S. security company Knightscope was struggling due to its autonomous security robots being ineffective. Knightscope shares dipped by more than 20% within 24 hours of the report, prompting the company to sue the short seller in December.

Activist short campaigns launched in 2023: **3**
 Average one-month campaign returns: **21.6%**
 Average target market cap: **\$155.7M**
 DMI news stories: **5**

Capybara also went on to short telecom service provider FingerMotion, claiming its stock price was the result of an "aggressive" promotional campaign. Just weeks later, another Capybara report taking aim at Safety Shot's product claims led to the company's share price losing 25% of its value that same day.

White Diamond Research

Puerto Rico-based White Diamond Research had a quieter year in 2023, publishing three public reports, compared to seven a year prior.

However, White Diamond Head Analyst Adam Gefvert told DMI in an interview that his goal was not to be prolific. "It doesn't matter if you write once a year or once a month, what's important is the information you found from your due diligence is powerful enough that people really care about it," he said.

The short seller's report on Greenwich LifeSciences alleged that trial data for the U.S. biotechnology company's main asset, drug GP2, suggested the product was a failure. The company's share price has fallen nearly 25% since the report was published in April.

Activist short campaigns launched in 2023: **4**
 Average one-month campaign returns: **12.3%**
 Average target market cap: **\$214.8M**
 DMI news stories: **6**

In August, White Diamond found itself again reporting on a medical sector-adjacent company, arguing that Pulse Biosciences was "too late in the game for any chance to be competitive" with its surgery clamp and catheter concept products.

December also played host to a report on Direct Digital Holdings, which saw its share price drop 11% within a week of the report's publication.

Ningi Research

In its second year of business, Ningi Research issued four short reports, targeting companies in the U.S. and Germany.

In November, Ningi shorted AerSale Corp., accusing the aircraft engineering company of misleading investors about its technology, claiming the company should only be valued based on its “volatile” core business and not the new products touted by management.

“In terms of returns, our AerSale campaign yielded positive results of 25% since November 2023,” Niklas Ningi, founder of Ningi Research, told DMI in a January interview.

In March, the short seller also launched a campaign at Arbor Realty, accusing the real estate investment trust (REIT) of hiding a portfolio of mobile homes with liabilities of \$582 million in shell companies that would have rendered it insolvent until 2017.

Activist short campaigns launched in 2023: **6**

Average one-month campaign returns: **5.5%**

Average target market cap: **\$73.9B**

DMI news stories: **5**

“Arbor Realty Trust garnered attention from two additional research firms delving into the company. Moreover, investors concurred with our analysis as evidenced by the short interest. The short interest surged from single digits when we released our report to 32% by December 2023,” Ningi said.

Viceroy Research

Viceroy Research issued five short reports in 2023, up from three a year prior, targeting companies in the U.S., Sweden and Japan.

In January, Viceroy shorted Medical Properties Trust (MPT), describing it as a business built on a “debt-fuelled roll-up strategy.” By March, the stock had lost approximately one-third of its value. Shares dropped again in August, amid news that regulators blocked a deal with Prospect Medical Holdings.

“We’re in the midst of litigation with them right now, but this isn’t our first rodeo,” Viceroy co-founder Gabriel Bernarde told DMI of the campaign.

Viceroy also issued a report on Hexagon AB, alleging that the Swedish technology company’s management was front running through a fraudulent undisclosed third-party investment vehicle. Within a month of the report’s release, the stock was down 10%.

Activist short campaigns launched in 2023: **4**

Average one-month campaign returns: **6.1%**

Average target market cap: **\$10.3B**

DMI news stories: **25**

“Viceroy is looking to expand our team in 2024 to help us tackle more ideas.”

“Viceroy is looking to expand our team in 2024 to help us tackle more ideas,” Bernarde said. “We had to leave a lot of opportunities on the table in 2023 because of capacity and it’s important for us to follow through with research cases, so this will help us work on various projects at the same time.”

The bears are back in town

The number of activist short attacks increased in 2023, with investors taking advantage of market volatility to target larger companies, writes Miles Rogerson.

Last year saw the first increase in the number of activist short campaigns recorded for four consecutive years, according to Diligent Market Intelligence (DMI) *Shorts* data, increasing 14.6% on 2022 levels to 110.

“From a short seller’s perspective, it is a highly volatile market,” Soren Aandahl, founder of Blue Orca Capital, told DMI in an interview. “There’s a huge swathe of the market whose model was just ‘growth at any cost’.” Many businesses that remain a long way from profitability will struggle to get there, he added.

Large-cap companies faced more reports than seen in years past. The majority of short campaigns also targeted U.S.-listed companies, with 86 campaigns made public in 2023, a 24.6% increase on the 69 seen a year prior. Asia also experienced an increase in short activity, with 13 campaigns launched, more than double the six seen a year prior.

Bringing out the big guns

2023 demonstrated that large-cap companies are susceptible to short campaigns. Globally, 17 (15.5%) of campaigns were launched at large-cap companies, up from eight (6.5%) and 11 (11.5%) in 2021 and 2022, respectively.

Market volatility and rising inflation have made companies of all stripes more susceptible to short sellers, with all businesses struggling and having to change tact to weather increasing costs and the challenges that come with them.

Among the most high-profile campaigns of 2023 was Hindenburg Research’s campaigns at conglomerates Adani Group and Icahn Enterprises. Adani, which was once the largest India-based conglomerate, faced allegations of market manipulation and accounting fraud which caused group companies to lose roughly half their market value. A decision in November by India’s main securities regulator not to request more time for its probe sparked a rally that made up some of the losses.

Icahn Enterprises shares similarly lost 24% of their value when Hindenburg issued a May report, alleging the company, founded by activist veteran Carl Icahn, had inflated valuations and would need to cut its dividend due to “limited financial flexibility and worsening liquidity.” In August, Icahn Enterprises cut its quarterly dividend in half, prompting another stock slide.

As balance sheets “start to slim,” companies are “haemorrhaging cash, even at the best of times,” Aandahl said.

Regional nuances

Outside of the U.S., short campaigns also gained prominence in Asia. Eight short sellers launched campaigns in the region, up from five a year prior.

“ Last year saw the first increase in the number of activist short campaigns recorded for four consecutive years, increasing 14.6% on 2022 levels to 110. ”

Within three months of one another, both Hindenburg Research and Citron Research issued reports on Freedom Holdings, criticizing the Kazakhstan-based brokerage company for evading sanctions and stock trading misconduct. Hong Kong-based Techtronic Industries also faced two separate reports from Jehoshaphat Research last year.

“Generally speaking, Asian corporate governance is steps behind the U.S. or Europe,” Viceroy Research co-founder, Gabriel Bernarde, told DMI. “That means the risk of fraud is much higher but also that the regulators are not equipped to do anything about it.”

“Of all countries, India probably has the most transparency among its corporate records and just about any jurisdiction,” Hindenburg founder, Nate Anderson, told DMI. “So, as far as research, it’s much easier to really go to deeper levels at an Indian company than a company in Delaware, for example, which is actually one of the most opaque jurisdictions in the world.”

Regulatory developments

Whether the rise in short selling continues into 2024 remains to be seen, with recent regulatory developments increasing the reporting burden on companies looking to engage in short selling.

In October 2023, the U.S. Securities and Exchange Commission (SEC) adopted Rule 13f-2, requiring money managers with a monthly average of daily gross short

positions in a company of \$10 million or more, or a median dollar value of a position of 2.5% of shares outstanding, to report short position and activity data. For investors taking a short position in smaller non-reporting companies, the threshold is a \$500,000 average daily gross short position.

“On a practical level, it does not change the way that short sellers operate. But at a symbolic level, this rule represents something far more dangerous – this regulation originates from the era where investors and management teams made short sellers pantomime villains,” Aandahl of Blue Orca told DMI. “Regulators and lawmakers must respect the important role that short selling plays in the effective functioning of an efficient market, from everything to detecting and deterring fraud to facilitating proper price discovery.”

No. short campaign launched by company region

Region	2019	2020	2021	2022	2023	22-23 % change
Asia	28	31	21	6	13	↑116
U.S.	123	95	81	69	86	↑24.6
Europe (including U.K.)	8	13	7	10	6	↓40
Canada	7	14	11	9	5	↓44.4
Australia	4	2	4	2	0	↓100
Total	170	155	124	96	110	

Source: Diligent Market Intelligence / Activist Shorts

Average global one-week short campaign returns

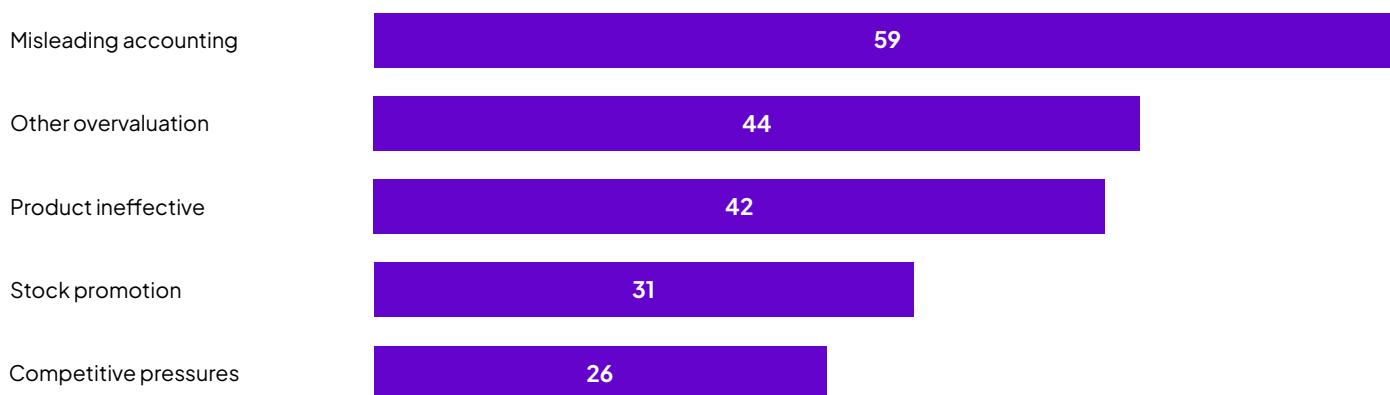
	2019	2020	2021	2022	2023
Average one-week returns	7.20	7.83	4.68	8.95	7.56

Average global one-month short campaign returns

	2019	2020	2021	2022	2023
Average one-month returns	5.51	8.44	11.94	7.82	6.15

Source: Diligent Market Intelligence / Activist Shorts

Most common allegations made by short sellers against global companies in 2022 and 2023, combined



Source: Diligent Market Intelligence / Activist Shorts



About Diligent

Diligent is the global leader in modern governance, providing SaaS solutions across governance, risk, compliance, audit and ESG. Empowering more than 1 million users and 700,000 board members and leaders with a holistic view of their organization's GRC practices so they can make better decisions, faster. No matter the challenge.

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