

THE REVIEW OF  
**SECURITIES & COMMODITIES  
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 50 No. 3 February 8, 2017

## 2016 SHAREHOLDER ACTIVISM REVIEW AND ANALYSIS

*Last year's shareholder activism season reflected more open lines of communication between companies and shareholders, the growing role of large institutional investors, and a shift toward activist campaigns by newer and less well-known investors at smaller companies. The author gives a statistical portrait of these changes with regard to institutional investors, target companies, types and objectives of activist campaigns, and proxy contests. He then addresses key provisions of settlement agreements, other activism developments, and steps companies should take in preparing for the upcoming season.*

By Glen Schleyer \*

Shareholder activism remained a major force in corporate decision-making in 2016 but was increasingly operating in an environment of robust, multifaceted shareholder engagement, particularly at large companies. The time and effort that companies and institutional investors have spent developing a mutual understanding of each other's concerns have narrowed the opportunities for activists at high-profile companies, and the returns of activist funds overall were down in 2016. The total number of activist campaigns nevertheless remained high, due in large part to newer and often smaller activists targeting small and mid-size companies.

Large institutional investors have long been an important constituency in any activist campaign, and the influence of these institutions has continued to grow, as share ownership becomes increasingly concentrated and as they express their views and concerns, both through direct engagement with companies and by public pronouncements of their priorities, including their skepticism over the impact of "short-termism" that activism can engender.

This article summarizes significant developments in proxy contests and other activist campaigns in 2016, as compared to the preceding years, including: developments in the institutional investor space; trends in activist hedge fund performance; trends in activism targets; an analysis of the frequency, objectives and outcomes of proxy contests and other activist campaigns; recent trends in settlement agreements; the potential implications for shareholder activism of the SEC's proposal to require universal proxy cards; the relationship between proxy access and proxy contests; and certain steps that companies should consider to enhance preparedness for a potential activist situation.

### I. GENERAL OBSERVATIONS ON THE STATE OF SHAREHOLDER ACTIVISM

The past decade has seen a seismic shift in the relations between companies and their shareholders. In an earlier era, when communication between companies and shareholders was less frequent and more formal, activist demands for strategic management or operational changes

---

\* GLEN SCHLEYER is a partner at Sullivan & Cromwell LLP. An earlier version of this article with additional quantitative data is available in a Sullivan & Cromwell LLP client publication, dated November 28, 2016, on the firm's website at <https://www.sullcrom.com/Corporate-Governance-Practices>. His e-mail address is [schleyerg@sullcrom.com](mailto:schleyerg@sullcrom.com).