

The “New” Shareholder Activism

A Western Perspective

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I. INTRODUCTION

In its most general form, shareholder activism means nothing more than an active, engaging shareholder who does not simply consider the investment made as purely financial, but as strategic. In reality, however, activism comes in many different shapes and has developed significantly over time. During the 1980s, it appeared in the form of “corporate raiders” dictating company policies, or as leveraged buyout funds taking public companies private to change corporate policy. Also, some pension funds like California Public Employees’ Retirement System (CalPERS) have exerted pressure on management in publicly listed companies, often in the form of behind-the-scene negotiations. Since the turn of the century, hedge funds have discovered corporate activism as their business model and have evolved to the forefront of activism. Current activist campaigns are noticeably affected by global macroeconomic events such as the climate crisis, the Covid-19 pandemic, and the 2022 Russian invasion of Ukraine. In this context, many activists turned towards impact investing, with an increased focus on im-

* The provided links were last checked on 4 November 2025.

proving environmental, social, and governance (ESG) policies¹ as well as towards coalition-building between different stakeholders.²

In any case, it is important to bear in mind that each shareholder activist pursues their own style of trading and methods for engaging with the corporate management, within the relevant legal and regulatory environments.³ Without doubt these varying facets accord a degree of complexity to the meaning of shareholder activism. This short contribution traces the evolution of activism over time and illustrates how it has changed character over and over again.

II. SHAREHOLDER ACTIVISM IN REGULATORY CONTEXT

In general terms, early forms of shareholder activism encompassed all forms by which shareholders engaged with targeted corporations on matters of company policy. This broad meaning was subsequently broken down into formal and informal activism.⁴ Shareholder activism of a formal nature takes place in the public domain, for example at annual general meetings. Gillan and Starks consider there to be three residual categories to formal shareholder activism: namely, “transacting” shareholders, whereby shareholders voice their views on the performance of the targeted corporation by purchasing or selling shares; “activist blockholders” who focus on influencing decision making by gaining a minority control in the targeted corporation and voicing their views; and finally shareholders who seek to implement their changes by gaining control of the company, availing themselves of a (hostile) takeover.⁵ Informal shareholder activism, in contrast, occurs in private, behind closed doors, and away from the prying eyes of the public. It therefore rarely attracts any media attention, rendering it near impos-

1 C. HOWARTH, Pension funds join impact investing campaign for a better world, *Financial Times*, 8 July 2019, <https://www.ft.com/content/ecfc64c0-ae66-3458-b9d7-bbcc7895ab96>; M. SAWYER/L. BOEHMKE/S. LINDSAY, 2022 U.S. Shareholder Activism and Activist Settlement Agreements, Harvard Law School Forum on Corporate Governance, 5 January 2023.

2 W.-G. RINGE, Investor-Led Sustainability in Corporate Governance, *Annals of Corporate Governance* 7 (2022) 93, 121 ff.

3 S. L. GILLAN/L. T. STARKS, The Evolution of Shareholder Activism in the United States, *Journal of Applied Corporate Finance* 19 (2007) 55.

4 L. TALNER, *The Origins of Shareholder Activism* (1983), quoted in R. F. BALOTTI/J. A. FINKELSTEIN/G. P. WILLIAMS, *Meetings of Stockholders* (1996), at para. 5.4; H. SCHÄFER/C. HERTRICH, *Shareholder Activism in Germany: Theoretical Considerations and Empirical Evidence* (2011), at 5.

5 S. L. GILLAN/L. T. STARKS, A Survey of Shareholder Activism: Motivation and Empirical Evidence, *Contemporary Finance Digest* 2 (1998) 10.

sible to prove unless one has access to an activist’s private database.⁶ Although the above goes some way in defining the generalist traits of shareholder activists, the evolution of shareholder structures, regulatory regimes, and stock markets in the UK, US, and continental Europe have played a crucial role in influencing activist engagements. Shareholder activism in other parts of the world has been less pertinent and will be discussed in this paper only occasionally.⁷

1. *US: Influence of Regulation*

The enactment of regulation by lawmakers and market conditions have often had a twofold impact on shareholder activism; namely either acting as a deterrent, by, for example, erecting obstacles with the purpose of hindering investors from gaining majority holdings in companies, or alternatively facilitating shareholder activism, by for example, deregulating fixed commission rates and thus increasing the incentives for fund managers to maximize returns for investors. If one takes the US as an illustration, it becomes evident that regulation has often been enacted in response to developments on the stock market.⁸ For example, the Buttonwood Agreement of 1792⁹ was a response to a market crash at the time and the virtual cessation of credit, trading, and liquidity. The agreement itself set minimum stockbroking commissions and was in force until the 1970s upon which commission rates became fully negotiable as fixed commission rates were abolished completely.¹⁰ It has been argued that a combination of the deregulation and the technological advances at the time, such as the arrival of the personal computer, facilitated the ease in which stocks were traded on the stock market for the first time.¹¹

6 See, e.g., W. T. CARLETON/J. M. NELSON/M. S. WEISBACH, *The Influence of Institutions on Corporate Governance Through Private Negotiations: Evidence from TIAA-CREF*, *Journal of Finance* 53 (1998) 1335; M. BECHT et al., *Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes U.K. Focus Fund*, *Review of Financial Studies* 22 (2009) 3093.

7 For a broader perspective, see R. V. AGUILERA/R. FEDERO/Y. PONOMAREVA, *Gone Global: The International Diffusion of Hedge Fund Activism*, in: Cumming/Johan/Wood (eds.), *The Oxford Handbook of Hedge Funds* (2021) 318.

8 R. J. GILSON/J. N. GORDON, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, *Columbia Law Review* 113 (2013) 863.

9 The Buttonwood Agreement in essence led to the investment community on Wall Street and the creation of the New York Stock Exchange.

10 B. R. CHEFFINS/J. ARMOUR, *The Past, Present, and Future of Shareholder Activism by Hedge Funds*, *Journal of Corporation Law* 37 (2011) 51, 72.

11 *Id.* at 71–72.

The enactment of the Glass–Steagall Act in 1933¹² was furthermore a response to market events and in this particular case a direct response to the 1929 stock market crash, a nationwide commercial bank failure, and the Great Depression. The Act itself led to a clear demarcation between the activities of investment and commercial banking as it was considered that the overzealous investment strategies of commercial banks were directly responsible for the 1929 stock market crash. In particular, it has been argued that the Glass–Steagall Act contributed towards a rapid decline in shareholder activism.¹³ However, subsequent legislation such as codification of shareholder entitlement by the Securities and Exchange Commission (SEC) in 1942 yet again facilitated shareholder activism. This instance marked the advent of the first shareholder proposal rule.¹⁴ The rule enabled shareholders to submit proposals for vote at (annual) general meetings and facilitated the predominant means by which shareholders could actively participate in postwar company life. The rationale behind the rule was to reincarnate the widely attended meetings that were characteristic of the times when companies were geographically limited and locally owned.¹⁵ This arguably paved the way for shareholder engagement and activism, which is illustrated by the fact that a mere 50 proposals were recorded annually in the 1940s whilst an average of 220 proposals were recorded by 1969, and circa 650 proposals were recorded annually by 1979.¹⁶

The abolition of the Glass–Steagall Act in 1999 and subsequent deregulations played a prolific role in fueling competition in the American financial landscape and arguably triggered an increase in the exploitation of investment banking opportunities by, inter alia, engaging in risk-averse investment strategies during mergers and acquisitions.¹⁷ However, the Bull Market of the late 1980s and early 1990s saw a downturn in shareholder

12 The Glass–Steagall Act, also known as the Banking Act of 1933, inter alia created the Federal Deposit Insurance Corporation (FDIC) and imposed conditions on the banks that received its protection.

13 P. SANTELLA/E. BAFFI/C. DRAGO/D. LATTUCA, *Legal Obstacles to Institutional Investor Activism in the EU and in the US*, *European Business Law Review* 23 (2012) 257, 258.

14 For (sparse) data on shareholder activism between 1900 and 1950, see J.H. ARMOUR/B. R. CHEFFINS, *Origins of “Offensive” Shareholder Activism in the United States*, in: Koppell (ed.), *Origins of Shareholder Advocacy* (2011) 253.

15 B. LONGSTRETH, SEC Commissioner, in a speech entitled *The S.E.C. and Shareholder Proposals: Simplification in Regulation*, 11 December 1981, www.sec.gov/news/speech/1981/121181longstreth.pdf, at 3.

16 *Id.*

17 M. GALANIS, *Vicious Spirals in Corporate Governance: Mandatory Rules for Systemic (Re) Balancing?*, *Oxford Journal of Legal Studies* 31 (2011) 327.

activism as investors took a step back and relied on the gadflies to uphold shareholder rights.¹⁸ Nevertheless, subsequent financial disasters, such as those seen at Enron and Tyco, in addition to the credit bubble of the mid-2000s, presented the ideal platform for a re-emergence of shareholder activism as hedge funds took center stage.¹⁹ With an availability of cheap debt, market conditions were ripe for activists to lobby their targeted corporations for the distribution of cash to shareholders or for the sale of the corporation itself.²⁰ Paradoxically, the financial crisis that plagued the global economy from 2007 to 2011 marked a downturn in shareholder activism. This also stands in contrast to the more recent macroeconomic developments, including the continuing impacts of Covid-19 such as global supply chain issues and the 2020 stock market crash.²¹ In this environment, activists saw depressed stock prices and struggling companies as an investment opportunity.²²

2. *UK and Germany: Impact of Ownership Structures*

As we saw above, ownership patterns may prompt the emergence of rather different types of activism. If one takes the UK as an illustration, it becomes apparent that a dispersed ownership structure and an emergence of shareholder activism were in essence driven by policy. In contrast, the domination of controlling shareholders in corporate Germany fueled shareholder activism as minority shareholders rebelled against their controlling influence.

In the first instance, the dispersion of ownership in England only emerged after World War II as families began to unwind their controlling stakes in companies to benefit, inter alia, from tax incentives that favored diversification and the managerial revolution.²³ Furthermore, legal reforms gave minority shareholders a voice for the first time.²⁴ However, despite being relatively groundbreaking in nature as they represented the first statutory remedy for shareholders in England, they proved relatively inadequate

18 J. SUROWIECKI, To the Barricades, *The New Yorker*, 9 June 2003, <http://www.newyorker.com/magazine/2003/06/09/to-the-barricades>.

19 J. ARMOUR/B. CHEFFINS, The Rise and Fall (?) of Shareholder Activism by Hedge Funds, *The Journal of Alternative Investments* 14(3) (2012) 17, 20.

20 CHEFFINS/ARMOUR, *supra* note 10, at 91–92.

21 World Bank, World Development Report 2022, Finance for an Equitable Recovery, <https://openknowledge.worldbank.org/bitstream/handle/10986/36883/9781464817304.pdf>.

22 SAWYER/BOEHMKE/LINDSAY, *supra* note 1.

23 BRIAN R. CHEFFINS, *Corporate Ownership and Control: British Businesses Transformed* (2008), chs. 2–4.

24 In particular, the Companies Act 1948.

in reality.²⁵ Lord Hoffman shed further light on the matter by stating that it was not until 1980 that Parliament gave the unfairly treated minority shareholder the power to “slay the dragon” by passing into law the “unfair prejudice” remedy, which is now found in section 994 of the Companies Act 2006.²⁶ Thus, despite reforms occurring in 1948 it was only in 1980 that minority shareholders finally gained a voice in the UK stock market. For various reasons, however, they did not take up the legal instruments that were available to them. The “unfair prejudice” remedy ultimately only really applies to small, quasi-partnership companies, and is unsuitable for large public companies.²⁷ The other minority shareholder activism tool, the derivative claim, suffered a setback in the famous decision *Prudential Assurance v Newman*, the only reported case where a UK institutional investor brought a derivative suit against directors of a portfolio company.²⁸ Despite the codification and extension of this remedy in the 2006 Act,²⁹ it has not gained great prominence for activist investors to date.

So, in sum, although shareholder rights became enforceable by law, many investors, and especially institutional investors, were cautious about engaging in activism. This was also due to fears of either being found guilty of market abuse because of potentially being privy to insider information or being considered to be acting in concert within the definition of the UK Takeover Code.³⁰ As such, activism per se did not materialize in full

25 Lord Hoffman as cited in the foreword to the first edition to R. HOLLINGTON, *Shareholders’ Rights* (now 10th ed., 2024). Section 459(1) Companies Act 1985 (now section 994 Companies Act 2006) enables a shareholder to apply to the court by petition for an order on the ground that the company’s affairs were being or had been conducted in a manner which was unfairly prejudicial to the interests of some members of the company.

26 Lord Hoffman as cited in the foreword to Hollington. See *supra* note 25.

27 Academic studies show that there are only six unfair prejudice petitions involving publicly traded companies that resulted in a judicial decision between 1998 and 2006, three of which involved allegations of misfeasance by the company’s directors. See J. ARMOUR, *Enforcement Strategies in UK Company Law: A Roadmap and Empirical Assessment*, in: Armour/Payne (eds.), *Rationality in Company Law: Essays in Honour of D.D. Prentice* (2009) 71.

28 *Prudential Assurance Co. Ltd v. Newman Industries Ltd* [1982] Ch 204. See on this B. R. CHEFFINS/B. BLACK, *Outside Director Liability Across Countries*, *Texas Law Review* 84 (2006) 1385, 1407; ARMOUR, *supra* note 27, at 115; also G. P. STAPLEDON, *Institutional Shareholders and Corporate Governance* (1996) 132.

29 The derivative claim is now restated in ss. 260 ff. Companies Act 2006.

30 I. CHIU, *The Foundations and Anatomy of Shareholder Activism* (2010) 29. The aim of the Takeover Code is to ensure fair and equal treatment of all shareholders during takeovers and furthermore provide a framework for the manner in which takeovers are to be conducted.

until the UK's 2008 banking crisis led to a call on institutional investors to take a more proactive approach in the enforcement of corporate governance. Consequently, shareholder activists began to gain a reputation for overcoming apathy and actively engaging in the strategies of their targeted corporations.

In the second instance, the ownership structure of the "Germany AG," which was characterized by a concentration of ownership due to extensive cross-shareholding networks, and long-term relational financial ties between banks, insurance companies, and institutional firms, guaranteed not only ownership stability and continuity but also acted as a shield against hostile takeovers.³¹ With blockholders dominating the shareholder community and, to a degree, the supervisory board, minority shareholders were left with no other option but to engage in activism in order to maximize the returns on their investments. In any case, the abolishment of the capital gains tax on the sale of cross-shareholdings in early 2002 marked a pivotal change in Germany's former low-liquidity insider market.³² The removal of capital gains tax on the sale of cross-shareholdings opened the floodgates to foreign investors who had previously only held circa 18% of German stocks.³³ As foreign investors arrived on the German market so too did shareholder activists. This pivotal change undermined the ownership networks that had shielded German corporations from takeovers for decades.

In summary, it becomes evident that regulatory changes have not only been influential on the extent of shareholder activism but that developments in global markets and ownership structures have played an equally influential role on the commonality of shareholder activism.

III. THE PLAYERS: WHO ARE THE ACTIVISTS?

Turning to the identity and characteristics of the activists themselves, these have also undergone dramatic changes over time. The takeover wave of the 1980s in the US became synonymous with corporate raiders buying shares to gain control of their targeted corporations. However, the primary goal of

31 J. CIOFFI, Corporate Governance Reform, Regulatory Politics, and the Foundations of Finance Capitalism in the United States and Germany, *German Law Journal* 7 (2006) 533, 540; A. ONETTI/A. PISONI, Ownership and Control in Germany: Do Cross-Shareholdings Reflect Bank Control on Large Companies?, *Corporate Ownership and Control* 6 (2009) 54, 72; W.-G. RINGE, Changing Law and Ownership Patterns in Germany: Corporate Governance and the Erosion of Deutschland AG, *American Journal of Comparative Law* 63 (2015) 493.

32 N. HOLLOWAY, The End of Germany AG, *Forbes*, 11 June 2001, <http://www.forbes.com/global/2001/0611/024.html>. See in more detail RINGE, *supra* note 31.

33 HOLLOWAY, *supra* note 32.

gaining control of their targeted corporations was not in pursuit of making returns from the corporation's operational profits but to raise the firm's listed value to maximize the returns as shares were subsequently sold at peak prices.³⁴ Buying or selling businesses, or threatening to do so, became more lucrative than actually running a company, and consequently led to the takeover wave of the 1980s.

1. *Corporate Raiders and the Takeover Wave of the 1980s*

The takeover wave of the 1980s was characterized by daring takeover bids that were engineered by corporate "raiders" on the basis of aggressive and innovative financial techniques.³⁵ An activist cohort subsequently established itself in the US which specifically targeted underperforming corporations in the hope of improving operational performance before exiting. Amongst others, the operating performance of a targeted corporation was often improved by initiating changes to the firm's strategy. However, despite their apparent success, it remains undisputed that the purchase of these shareholdings was financed predominately out of debt with limited equity which generated short-term gains and left no company safe from a hostile bid.³⁶ In consequence of their aggressive strategies, opposition to corporate raiders soon mounted, not only on the part of the targeted corporations themselves via the implementation of defense strategies but also on the part of the government, which took action to protect the interests of targeted corporations. Although takeover defense strategies became plentiful, the most successful was colloquially known as the "poison pill" defense.³⁷ The "poison pill" strategy can either come in the form of a flip-in or flip-over but fundamentally allows the target corporation to reduce the value of or dilute its stock in order to ward off a hostile bid.³⁸

34 A. D. BOYER, *Activist Shareholders, Corporate Directors, and Institutional Investment: Some Lessons from the Robber Barons*, *Washington and Lee Law Review* 50 (1993) 977, 978.

35 CHEFFINS/ARMOUR, *supra* note 10, at 75–76.

36 M. R. PATRONE, *An International Comparison of Corporate Leeway to Ward Off Predators*, *Butterworths Journal of International Banking and Financial Law* 25 (2010) 355, 355.

37 The "poison pill" defense was developed by Martin Lipton, a New York attorney, in order to help El Paso Co. fend off a hostile takeover bid. See *id.*

38 A flip-in poison pill is the more frequently used out of the two and enables existing shareholders to purchase further stock at a discount when the poison pill is activated by a hostile bidder. This has the effect of diluting the would-be acquirer's stock in the target and thus deters a hostile acquisition. In contrast, a flip-over enables shareholders to purchase the acquirer's shares at a discounted price but only after

By the early 1990s, however, the reception of the poison pill made classical “raider” tactics unworkable. The pill had fundamentally changed the distribution of hostile takeovers in favor of target shareholders, at the expense of returns to acquirer shareholders. While they remained socially efficient (this is just the slicing up of the pie), a business model of engaging in “raiding” by acquiring companies, implementing changes, and then exiting, became less appealing. Moreover, once a takeover attempt became public, event-driven traders would rapidly bid the price up to the highest expected price that will be offered in the tender offer, reverse engineering any gains from the transaction. This means that the acquirer really only made money on the first toehold of 5%, before the initial disclosure obligation is triggered.

2. *Institutional Investors*

The decline of the classical “raider” was paralleled by the rapid growth of institutional investors during the 1980s. This was primarily a response to an increased proportion of household savings being invested directly in equity and corporate bonds via private-funded pension schemes and life-insurance policies as the longevity of the aging population increased.³⁹ Larger portfolios meant that many institutional investors could no longer dispose of large blocks of stock on the market at any one time and were thus forced to alter their strategies from one centered on exit to one that advocated activist engagement in pursuit of profit maximization.⁴⁰ Additionally, the disposal of large stocks on the market at any one time was no longer an option as it risked triggering sharp falls in stock valuation, a market crash, and a probable reduction in the value of portfolios.⁴¹

Although the rapid growth and subsequent increase in institutional investor portfolios forced investment strategies to be altered, the rise of institutional shareholder activism in the UK was predominantly driven by policy. Policymakers in the UK were the driving force in advocating that institutional shareholders engage in activism in response to wider corporate governance concerns and the social good.⁴² The policy-led drive for engagement in the UK was more in keeping with a shareholder’s responsibility

the merger has taken place. In the last 15 years the poison pill has only been triggered intentionally twice. *Id.*

39 *Id.*

40 J. M. LORING/C. K. TAYLOR, Shareholder Activism: Directorial Responses to Investors’ Attempts to Change the Corporate Governance Landscape, *Wake Forest Law Review* 41 (2006) 321, 324.

41 *Id.*

42 CHIU, *supra* note 30, at 18.

and accountability to the market at large as opposed to promoting investment strategies tailored towards profit maximization. Scholars further argue that this policy-led drive for activism in pursuit of greater corporate governance was also widespread in continental Europe and was subsequently embodied in regulation and corporate governance codes.⁴³ It is argued that institutional investors are best placed to enforce corporate governance as, unlike individual investors, they are operating within a professional capacity and thus have the necessary expertise to manage the investment funds within their portfolios.⁴⁴ Irrespective of the origins in the surge of activist engagements, it should be noted that institutional investors are often constrained in their ability to partake in shareholder activism due to their own conflicts of interests.⁴⁵ Moreover, institutional investors are also limited in their penchant towards activism by rules mandating certain diversification requirements of their holdings.⁴⁶ Both points distinguish them from hedge funds, to which we now turn.

3. *Hedge Funds*

Nearly two decades after corporate raiders dominated stock markets, hedge funds began to re-emerge, filling the gap that had been left by institutional investors due to their concerns over conflicts of interests and regulatory constraints.⁴⁷ Despite re-emerging in the 1990s it was only in the twenty-first century that hedge funds took center stage.⁴⁸ Their ability to take the

43 C. van der ELST, Revisiting Shareholder Activism at AGMs: Voting Determinants of Large and Small Shareholders, ECGI Finance Working Paper No. 311/2011, <http://ssrn.com/abstract=1886865>, at 12.

44 *Id.*

45 A. HAMDANI/Y. YAFEH, Institutional Investors as Minority Shareholders, *Review of Finance* 17 (2013) 691.

46 For example, European UCITS (mutual funds) are subject to the so-called “5/10/40 rule”, which means that a maximum of 10% of a UCITS fund’s net assets may be invested in securities from a single issuer, and that investments of more than 5 per cent with a single issuer may not make up more than 40 per cent of the whole portfolio. See Directive 2009/65/EC (as amended), Art. 52.

47 On hedge fund activism generally, see E. HELLEBUYCK, *Activist Hedge Funds and Legal Strategy Devices*, in: Masson/Shariff (eds.), *Legal Strategies: How Corporations Use Law to Improve Performance* (2009) 277; S. GERAGHTY/H. SMITH, *Shareholder Activism as a Strategy for Hedge Funds*, in: Astleford/Frase (eds.), *Hedge Funds and the Law* (2010) ch. 8; M. BUTU, *Shareholder Activism by Hedge Funds: Motivations and Market’s Perception of Hedge Fund Interventions* (2013); A. HAMDANI/S. HANNES, *The Future of Shareholder Activism*, *Boston University Law Review* 99 (2019) 971.

48 CHEFFINS/ARMOUR, *supra* note 10, at 80.

stock market by storm with currently over \$4 trillion under management,⁴⁹ a cutting-edge investment strategy which centered on corporate activism, and a cut-throat “do what it takes” mentality were arguably in part a result of their organizational structure and the subsequent lack of regulation governing their operations.⁵⁰ Many activist hedge funds are run by similar figures that had already been active as “raiders” during the 1980s, but now using different tactics: after full control contests had become too expensive, they felt able to achieve their goals just as effectively without actually following through with a full seizure of control. Today, they frequently take a small stake in their target, combined (potentially) with a proxy fight to deliver changes in corporate governance or operational strategy—very much along the lines of a classic disciplinary takeover. Alternatively, they could use the stake to agitate for a merger with a strategic partner that would unlock synergies—and a payday for target shareholders.

By comparing hedge funds with institutional investors, it is possible to shed some light on their unique business structure that has enabled them to pursue a strategy of corporate activism away from the prying eyes of the public and policy makers. Although hedge funds are commonly managed from the US or the UK, they are typically incorporated in offshore jurisdictions and are thus subjected to a minimal degree of public oversight and regulation.⁵¹ This has enabled hedge funds to increase their market power whilst diversifying their risks by benefiting, inter alia, from the use of derivatives contracts, from overweighing target stock, and from high levels of leverage.⁵²

Furthermore, unlike institutional investors, hedge funds are not constrained by potential and/or actual conflicts of interests in pursuing their investment strategies. This is predominately due to the fact that they avoid investing in large entities where wider interests can often conflict with a duty towards their investors.⁵³ By rather opting to invest in corporations that enable them to make trading-induced profits with a quick turnaround, hedge funds do not run the risk of being confronted with potential conflicts

49 J. COX, Hedge Fund Assets Soar to Record High Amid Boom in Trading Profits, CNBC, 2 June 2021, <https://www.cnbc.com/2021/06/02/hedge-fund-assets-soar-to-record-high-amid-boom-in-trading-profits.html>.

50 P. CROWNEY, Proxy Warriors, Institutional Investor, 31 December 2002, <https://www.institutionalinvestor.com/article/2btgjg8p0a1uihjxcf9xc/corner-office/proxy-warriors>.

51 EUROPEAN PARLIAMENT, The Economic Consequences of Large Shareholder Activism, Study No. IP/A/ECON/IC/2009-004, at 23.

52 Id.

53 European Parliament, Hedge Funds: Transparency and Conflict of Interest, Study No. IP/A/ECON/IC/2007-24 (2007), at 26.

of interest.⁵⁴ Targeted corporations are frequently undervalued, presenting the ideal opportunity for profit maximization via shareholder activism.

Their often aggressive tactics in the pursuit of profit maximization in the short term can be attributed to the performance-based compensation schemes for hedge fund managers which contrast greatly with the fixed compensation fees earned by institutional investors.⁵⁵ This compensation scheme typically comprises of an annual fixed fee that ranges from 1–2% of portfolio assets in addition to a performance-based fee ranging from 15–25% of the profits earned annually.⁵⁶ This arguably aligns the interests of fund managers and investors in generating maximum returns on investments. Thus, shareholder activism is purely an element of a hedge fund's investment strategy as opposed to the concurrent enforcement of corporate governance that is pursued by many other institutional investors today.⁵⁷

As such, markets fully anticipate that the engagement by a hedge fund in a targeted corporation will undoubtedly lead to an improvement in the target's operational performance.⁵⁸ It is therefore common to witness steep increases in stock prices as hedge funds make their initial stock purchase in the target. Empirical data from the US and Europe illustrate that hedge fund engagement mostly involves advantages for other target shareholders. According to these studies, the initial investment decision by an activist hedge fund is usually related to a substantial increase in their returns.⁵⁹ For what

54 Id.

55 M. MIETZNER/D. SCHWEIZER/M. TYRELL, Intra-Industry Effects of Shareholder Activism in Germany: Is There a Difference between Hedge Fund and Private Equity Investments?, *Schmalenbach Business Review* 63 (2011) 151, 156.

56 W. N. GOETZMANN/J. E. INGERSOLL, Jr./S. A. ROSS, High-Water Marks and Hedge Fund Management Contracts, *Journal of Finance* 58 (2003) 1685. The typical arrangement is a "2 and 20" standard. It consists of a 2% management fee on assets under management and a 20% performance fee; the latter of which is only charged when the fund's profits exceed prior levels. D. CUMMING/S. JOHAN/G. WOOD (eds.), *The Oxford Handbook of Hedge Funds* (2021), at 38.

57 M. KAHAN/E. B. ROCK, Hedge Funds in Corporate Governance and Corporate Control, 155 *University of Pennsylvania Law Review* 155 (2007) 1021, 1028. See also A. ENGERT, Transnational Hedge Fund Regulation, *European Business Organization Law Review* 11 (2010) 329.

58 See the overview provided by M. R. DENES/J. M. KARPOFF/V. B. MCWILLIAMS, Thirty Years of Shareholder Activism: A Survey of Empirical Research, *Journal of Corporate Finance* 44 (2017) 405.

59 A. BRAV et al., Hedge Fund Activism, Corporate Governance, and Firm Performance, *Journal of Finance* 63 (2008) 1729; A. KLEIN/E. ZUR, Entrepreneurial Shareholder Activism: Hedge Funds and Other Private Investors, *Journal of Finance* 64 (2009) 187; BECHT et al., *supra* note 6.

we know, these increased returns are apparently real long-term returns,⁶⁰ and they appear as a consequence of real improvements and reliable profits, and not a mere redistribution to the detriment of debtholders and other stakeholders.⁶¹ Also, research has documented a positive impact of hedge fund engagement on corporate innovation.⁶² Further, the holding periods of hedge funds are much longer than previously anticipated.⁶³

Regulatory strategies following the financial crisis targeted hedge funds in particular. It is notable, however, that none of these regulatory instruments targeted the implications of hedge fund activity for the functioning of traditional corporate governance mechanisms. It is clear that hedge funds' sophistication in exploiting the traditional categories and tools of corporate governance poses significant challenges for regulators and lawmakers.⁶⁴ For example, the EU AIFM Directive and the US Dodd-Frank Act limit themselves to certain rules on the registration and supervision of hedge fund managers, and do not pursue an activities-based approach.⁶⁵

4. *Private Equity*

The twenty-first century also marked the emergence of private equity funds which have frequently been compared with hedge funds due to their innate similarities. Nevertheless, despite their concurrent reputations for activist engagement and similar remuneration structures for fund managers, they arguably deploy different investment strategies. As opposed to the short-term investment strategies of hedge funds, private equity funds will typically focus on longer-term investments which are innate to closed-end funds. Investments of a closed-end fund in targeted corporations will usually last five years, at which point in time the fund will exit passing the proceeds to

60 L. BEBCHUK/A. BRAV/W. JIANG, *The Long-Term Effects of Hedge Fund Activism*, *Columbia Law Review* 115 (2015) 1085; E. DEHAAN/D. LARCKER/C. MCCLURE, *Long-Term Economic Consequences of Hedge Fund Activist Interventions*, *Review of Accounting Studies* 24 (2019) 536.

61 BRAV et al., *supra* note 59.

62 BRAV et al., *How Does Hedge Fund Activism Reshape Corporate Innovation?* *Journal of Financial Economics* 130 (2018) 237.

63 B. CHAKRABARTY/P. C. MOULTON/C. TRZCINKA, *Institutional Holding Periods*, Working Paper 2013, <http://ssrn.com/abstract=2217588>.

64 On this, W.-G. RINGE, *Hedge Funds and Risk-Decoupling: The Empty Voting Problem in the European Union*, *Seattle University Law Review* 36 (2013) 1027, 1033.

65 See HOUSE OF COMMONS, Treasury Committee, *Banking Crisis: International Dimensions*, HC 615 (2009) p. Ev 90f. There are just a few such abstract provisions, in particular on risk and liquidity management, see Arts. 12 ff. of the AIFM Directive.

their investors.⁶⁶ Adopting a long-term investment strategy with a corporation arguably implies that a private equity fund will be inclined to adopt a “hands-on approach” with the board as they are of the opinion that this method is the most effective in generating value before the firm is either sold or rejoins the market.⁶⁷ This contrasts greatly with the strategies deployed by hedge funds as they typically avoid majority or sole ownership, preferring to reap rewards as minority shareholders.⁶⁸ With a long-term outlook, it is more common for private equity funds to actively engage in the strategy and management of their targets; an engagement policy which is argued to be pivotal in generating shareholder wealth and enabling a fund to exit with profit.⁶⁹ A study conducted by Acharya and co-authors revealed that private equity funds play an active role in the strategy of the targeted firm, with 89% of interviewees citing value creation and 56% of interviewees citing exit as their principal priorities.⁷⁰

IV. NEW GROUND: ESG, CYCLICALITY, AND MORE

Over the past several years, activists have demonstrated remarkable flexibility and adaptability to shifting trends. Not only did they emerge from the 2008 financial crisis stronger than before, but they also capitalized on subsequent crises. They leveraged the climate crisis and the ESG investing boom of the late 2010s and early 2020s just as effectively as they exploited the Covid-19 pandemic and the oil crisis following Russia’s attack on Ukraine. This ability to align with the prevailing zeitgeist underscores their exceptional skill in seizing business opportunities under all conditions.

1. Overcoming the Financial Crisis

During the financial crisis, the outlook for activists, in particular hedge funds and private equity firms, was bleak. A reduction in available liquidity, private companies seeking a quick exit from their private equity shareholders, and potential targets shying away from listing on the main markets due to costs and regulatory obligations seemed to create the advent of a “buyer’s strike” or the end of the locust era.⁷¹ Faced with higher startup costs

66 EUROPEAN PARLIAMENT, *supra* note 51, at 25.

67 CHEFFINS/ARMOUR, *supra* note 10, at 59.

68 *Id.*

69 CHIU, *supra* note 30, at 98 ff.

70 V. V. ACHARYA et al., Corporate Governance and Value Creation: Evidence from Private Equity, *Review of Financial Studies* 26 (2013) 368.

71 *The Kay Review of UK Equity Markets and Long-Term Decision Making*, February Interim Report (2012) at 26. For evidence on the decline of shareholder activism

and an increasingly competitive market, private equity and hedge funds were perceived to be finding it ever more difficult to amass sufficient returns to remain profitable.⁷² Some scholars even heralded the near “eclipse” of private equity.⁷³

However, it is now evident that shareholder activism has not just survived but dramatically prospered over the years since the crisis. During crisis times, falling profits and dividends will force boards to be more responsive to demands for disposals by shareholders.⁷⁴ For example, Chris HOHN, the founder of TCI, gained notoriety in 2005 after having succeeded in removing two directors from the board of Deutsche Börse and in stopping attempts to acquire control of the London Stock Exchange.⁷⁵ Following heavy losses in 2008, and the departure of various founding partners, little was heard of the fund on the market. However, recent figures on the global hedge fund industry indicate that activist hedge funds have doubled their assets under management from \$ 66 billion in 2013⁷⁶ to an estimated sum of more than \$ 130 billion in 2021, after years of macroeconomic turbulences and record profits in 2021.⁷⁷ As a note of caution, however, the future success of shareholder activism looks likely to be constrained with new regulations coming into force over the next few years and the support of large asset managers.

The 2007–2009 global financial crisis has intensified the debate about the role that investors play or should play in corporate governance. To some, increasing shareholder influence and facilitating shareholder intervention when necessary is part of the essential reforms; activism in particular is often hailed as the solution for effectively monitoring management. To others, activism by shareholders who potentially have short-term inter-

during the financial crisis, see M. BECHT et al., Returns to Hedge Fund Activism: An International Study, *Review of Financial Studies* 30 (2017) 2933.

72 FINANCIAL SERVICES AUTHORITY, *Hedge Funds: A Discussion of Risk and Regulatory Engagement*, Discussion Paper DP 05/4, June 2005, at 34.

73 B. R. CHEFFINS/J. ARMOUR, The Eclipse of Private Equity, *Delaware Journal of Corporate Law* 33 (2008) 1.

74 “Long Live Activism”, *Financial Times*, 4 November 2008, at 8.

75 I. SIMENSEN, *Activist Investors Seek Success in Germany*, *Financial Times*, 6 December 2007, <https://www.ft.com/content/11940e52-a440-11dc-a28d-0000779fd2ac>; W. HUTCHINGS, *Where are They Now? Chris Hohn*, *Financial News*, 9 July 2010, <https://www.fnlondon.com/articles/fn100-where-are-they-now-chris-hohn-20100709>.

76 S. FOLEY, *Activist Hedge Funds Increase Corporate Bond Risk*, says Moody’s, *Financial Times*, 10 March 2014.

77 S. KLEMASH/D. A. HUNKER, *What Boards Need to Know about Shareholder Activism*, 16 March 2021, <https://corpgov.law.harvard.edu/2021/04/03/what-boards-need-to-know-about-shareholder-activism/>.

ests is part of the problem, not a solution. Lawmakers are still undecided to what extent (and when) shareholder activism can improve firm value and performance or to what extent (and when) shareholder activism can produce distortions that make matters worse.

In any case, following the struggle of hedge funds and private equity funds during the financial crisis, the ensuing recession and more market developments have undoubtedly played a role in the rise of more targeted and more focused shareholder activism.⁷⁸ For many investors, voting their shares has become a legitimate method to express dissatisfaction with the performance of a specific board member. In addition, the weak stock market performance since 2007 has increased the clout of activist investors, and low interest rates have given hedge funds record investment volumes. At the same time, the economic recovery since 2009 has given companies time to reduce debt and to build cash piles which make them interesting targets for activists.⁷⁹ This may help explain why shareholder activists have also begun targeting larger and blue-chip companies such as Apple, Procter & Gamble, and Sony, generating a profound echo in the corporate world and in the media.⁸⁰ It is said that activism has outpaced any other hedge fund strategy performance over the past years.⁸¹

Advances in technology have surely helped foster this development. The rise of information technology, along with greater disclosure obligations, has made it easier to access information about target companies, board members, and financial data.⁸² It has further encouraged greater shareholder collaboration. Shareholder activism can therefore be said to have become more targeted in character.⁸³

78 D. MCCRUM/D. GELLES, *Stirrers and Shakers*, Financial Times, 22 August 2012, at 7; “Anything You Can Do, Icahn Do Better”, *Economist*, 15 February 2014, at 51.

79 Paul PARKER, head of global corporate finance and M&A at Barclays Capital, is cited as saying “The percussive theme song is unmistakable; use it or lose it. Excess capital must be used or returned to shareholders.” See MCCRUM/GELLES, *supra* note 78.

80 S. F. ARCANO/R. J. GROSSMAN, *Activist Shareholders in the US: A Changing Landscape*, Skadden, Arps, Slate, Meagher/Flom LLP Insight, 17 June 2013, <https://corpgov.law.harvard.edu/2013/06/28/activist-shareholders-in-the-us-a-changing-landscape>.

81 S. FOLEY, *Activist Investors’ Success Owes Much to Wider Bull Run*, Financial Times, 2 March 2015.

82 J. FOX, *Ackman, Icahn and their Pals Are Keepers*, Bloomberg View, 12 January 2015.

83 D. PRIAL, *Shareholder Activism More Focused, Targeted*, Fox Business, 25 May 2012, <https://www.foxbusiness.com/features/shareholder-activism-more-focused-targeted>.

2. *Sustainability and ESG*

Around the late 2010s, when the climate crisis was in full swing, ESG investing (for environmental, social, and governance criteria) and sustainability in capital markets became an important policy concern.⁸⁴ Activists were quick to sense the potential in such sentiment and adjusted accordingly. Therefore, recent years have seen a rise in specific activism for sustainability and ESG objectives. On the face of it, such activism seemed to differ markedly from classical activism which is pursued mostly for financial gains. Instead, campaigns put environmental goals such as curbing climate change or social issues like racial equity center stage. Asset managers may even pick up very recent phenomena such as the ethical use of artificial intelligence.⁸⁵ However, hedge funds and other activists were and still are profit-seeking vehicles that put financial returns above everything else: ESG investing and other green and social policies were nothing else than a golden business opportunity at the time.

There were mostly two distinct types of players in this area: newly set-up vehicles that were expressly created for activist campaigns; and secondly, traditional hedge funds that turned their attention towards sustainability goals.

As an example for the first category, the most prominent story of ESG activism was that of Engine No. 1, an “impact-focused fund” which launched an activist campaign at US oil giant ExxonMobil. Starting in December 2020, the tiny hedge fund initiated a proxy contest at ExxonMobil for its alleged failure to adequately respond to evolving energy needs and emissions standards. The following months saw increasingly strong pressure from Engine No. 1, which had urged Exxon to cut capital spending and to focus on accelerating rather than on deferring the transition to cleaner energy. This culminated in an epic shareholder meeting in May 2021, where Engine No. 1 was successful in installing three of its director nominees on the Exxon board—which, in effect, was a major defeat for the incumbent management.⁸⁶

As an example for the second type of activist, the hedge fund TCI also shifted its attention to ESG objectives. In 2020, TCI launched a “say on climate” campaign, calling for a shareholder vote on climate policy.⁸⁷ They

84 See RINGE, *supra* note 2.

85 K. BRYAN, Asset managers pressure tech companies over possible AI misuse, *Financial Times*, 20 June 2023.

86 D. BROWER, ExxonMobil Shareholders Hand Board Seats to Activist Nominees, *Financial Times*, 26 May 2021, <https://www.ft.com/content/da6dec6a-6c58-427f-a012-9c1efb71fddf>.

87 T. HUMAN, TCI Goes Global with “Say On Climate” Campaign, 2 December 2020, <https://www.corporatesecretary.com/articles/esg/32358/tci-goes-global-%E2%80%99say-on-climate%E2%80%99-campaign>.

filed resolutions at several US-listed issuers to annually disclose their greenhouse gas emissions, to produce a plan to manage those emissions, and to hold an annual advisory vote on the plan. In the case of Spanish airport operator Aena, TCI was successful in pushing for the introduction of the world's first "say on climate" vote.⁸⁸ This push for an advisory vote on the climate plan was supported by BlackRock, which said in a voting bulletin it would be "beneficial at Aena given the material risk to its business model and its need to accelerate its efforts."⁸⁹

The motivations for such ESG activism follow very heterogeneous patterns. They may be either motivated by the traditional pursuit of financial gains, as sustainable business decisions may be considered as a more profitable long-term strategy, or may at least provide a hedge against social and, in particular, climate change-related long-term risk.⁹⁰ Seen from this perspective, climate change was viewed as a significant source of financial risk, reflected in a return premium on assets with high climate risk exposure.⁹¹ Relatedly, activists also cared about the transition risks of stranded assets in individual firms.

In the alternative, ESG activism may simply follow other, non-financial preferences and be motivated by the nonpecuniary goal of pursuing social, not necessarily profit-driven preferences. For example, the motivation of activists may be intrinsic, such as the pursuit of sustainability goals, frequently reflected in the preferences of specific wealthy individuals, pressure groups, NGOs, and other interest groups.

Both strategies may come under pressure in market turmoil or uncertainty: for example, 2022 saw the Russian invasion of Ukraine, soaring oil and gas stocks and many green stocks underperforming—accordingly, the success rates of many ESG campaigns declined as shareholder support for them dropped.⁹² Instead, ESG activism may morph into so-called "trojan horse" campaigns, where an ESG initiative is combined with traditional

88 T. HUMAN, Aena Adopts Annual Advisory Vote on Climate Plan, IR Magazine, 5 November 2020, <https://www.irmagazine.com/reporting/aena-adopts-annual-advisory-vote-climate-plan>.

89 BlackRock Investment Stewardship Group, Voting Bulletin: Aena S.M.E. SA, <https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-aena-oct-2020.pdf>.

90 P. KRUEGER/Z. SAUTNER/L. STARKS, The Importance of Climate Risks for Institutional Investors, *Review of Financial Studies* 33 (2020) 1067.

91 R. ENGLE et al., Hedging Climate Change News, *Review of Financial Studies* 33 (2020) 1184; S. GIGLIO/B. KELLY/J. STROEBEL, Climate Finance, *Annual Review of Financial Economics* 13 (2021) 15.

92 R. SHERRATT, Tough Times for ESG Activism, *Insightia/Olshan Shareholder Activism Annual Review* (2023) at 15.

activism objectives such as a breakup or sale of a company, or the replacement of corporate directors.⁹³ By combining both issues, a campaign can appeal to a larger group of supporters, including those who are increasingly growing wary of ESG matters. A recent example of this is Third Point’s campaign against Shell, where the fund called for the breakup of the oil company into two stand-alone companies, one of which, Third Point argued, could make more aggressive investments in renewables and other carbon-reduction technologies.

The ESG orientation may also come under pressure for purely political reasons. Whereas the Biden administration sought to facilitate ESG investing,⁹⁴ the SEC under new President Trump has moved quickly to implement new rules that seek to rein in the power of large fund managers and to “crack down on ESG.”⁹⁵ These reforms aim at larger and more traditional fund managers and not directly at hedge fund activism. They may nevertheless herald a new, broader political backlash against the industry. In fact, few things have become so politicized in corporate America in recent years as ESG investing.⁹⁶

One thing is clear, however: ESG activism is often nothing else than the pursuit of financial gains. Firms like Engine No 1 and TCI are not environmentalists, nor would they ever “sacrifice profit for the planet.” Nowhere is this more evident as is the case of Engine No 1. Just one year after its widely celebrated “climate victory” against Exxon, it voted against a resolution proposed by climate advocacy group Follow This, which called on Exxon to reduce its so-called scope 3 emissions. Then, in 2023, all three of its board picks supported Exxon’s acquisition of hydrocarbon explora-

93 R. J. GROSSMAN et al., *Activism Landscape Continues To Evolve*, Skadden’s 2022 Insights, 19 January 2022, <https://www.skadden.com/insights/publications/2022/01/2022-insights/corporate/activism-landscape-continues-to-evolve>.

94 For example, the US Department of Labor (DOL) under Biden clarified the ability of retirement plan fiduciaries to invest in ESG funds in the retirement plans that they sponsor under the US ERISA framework. See Department of Labor, Employee Benefits Security Administration, *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, 29 CFR Part 2550, 87 Fed. Reg. 73,822 (1 December 2022).

95 See, for example, SEC, *Compliance and Disclosure Interpretations*, Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting (11 February 2025); and SEC, *Staff Legal Bulletin No. 14M* (12 February 2025), which addresses an issuer’s ability to exclude shareholder proposals under Rule 14a-8. See P. TEMPLE-WEST/A. POLLARD/E. PLATT, *BlackRock and Vanguard Halt Meetings with Companies After SEC Cracks Down on ESG*, *Financial Times* 19 February 2025).

96 D. A. CIFRINO, *The Politicization of ESG Investing*, 24 January 2025, <https://www.sir.advancedleadership.harvard.edu/articles/politicization-of-esg-investing>.

tion firm Pioneer Natural Resources Co.—a deal that propelled Exxon’s oil production to the highest in 140 years.⁹⁷ This unanimous support underscores how significantly the ESG investing movement has changed under different circumstances, and how little Engine may genuinely care about climate change.

These developments vividly illustrate activists’ chameleon-like nature and their remarkable talent to “reinvent themselves.” Depending on the political zeitgeist, they adopt the role of either aggressive capitalists, saviors of the planet, or both. During the 2024 election campaign, numerous activist investors openly endorsed Trump, contributing tens of millions of dollars to his campaign and affiliated political action committees.⁹⁸ By the start of Trump’s second administration in early 2025, little was left of ESG activism (except, perhaps, NGOs and pressure groups), while hedge funds refocused on their “true” mission of pursuing financial returns above everything else; many are moving back to traditional M&A.⁹⁹ Today, activist investors are buoyant about the potential for increased opportunities in their traditional domains under an economic landscape shaped by Trump’s signature mix of tax cuts, deregulation, lighter antitrust scrutiny, and pro-business rhetoric.¹⁰⁰ Ironically, many secretly continue to use ESG factors or sustainable investing, but are now changing their rhetoric, officially framing investment decisions on “risk, opportunities and profitability” instead.¹⁰¹

3. *Portfolio Engagement*

Traditional institutional investors, such as pension funds, mutual funds,¹⁰² and index funds, are historically more passive vis-à-vis their investee companies, for the most part due to a lack of resources, incentives to free-ride,

97 K. CROWLEY/S. KISHAN, *Why One-Time Exxon Adversary’s Board Picks Backed Mega Deal*, Bloomberg, 12 October 2023, <https://www.bloomberg.com/news/articles/2023-10-12/exxon-s-one-time-adversary-engine-no-1-unanimously-backed-deal>.

98 K. H. E. LIEKEFETT/D. ZABA, *Shareholder Activism under Donald Trump*, Harvard Law School Forum on Corporate Governance, 8 November 2024, <https://corp.gov.law.harvard.edu/2024/11/08/shareholder-activism-under-donald-trump/>.

99 Diligent Market Intelligence, Olshan/Sidley, *Shareholder Activism Annual Review 2025*, at p. 3.

100 CRYSTAL PARTNERS, *Why Activist Investors Are Excited for Four Years of Trump*, 31 January 2025, <https://www.crystalpartners.com/insights/why-activist-investors-are-excited-for-four-years-of-trump/>; A. GIBLIN, *Shareholder activists pivot to focus on CEOs and M&A*, Diligent, 20 February 2025, <https://www.diligent.com/resources/blog/shareholder-activists-pivot-to-focus-on-ceos-and-m-and-a>.

101 M. SCOTT, *ESG Watch: New SEC rules under Trump turn up the heat for sustainable investors*, Reuters, 17 March 2025.

102 Regulated by the UCITS Directive in the EU.

and the remuneration of their fund managers. Recent years have seen a tremendous growth of passive investing. The “Big Three” institutional investors, BlackRock, Vanguard, and State Street Global Advisors now control about 80 percent of all global indexed money, making them a dominant force in the governance of public companies around the world.¹⁰³ Despite their traditionally passive role, these funds do play an important role in the engagement and activism context.

The most important reason for this lies in the phenomenon of “universal” or “common” ownership. Over the past several years, this term has come to describe the phenomenon where a number of large diversified institutional investors dominating today’s corporate landscape, such as the Big Three, are holding significant stakes in the vast majority of firms in many economies.¹⁰⁴ This trend has given universal owners greater incentives to favor policies and initiatives that support are “systemic” or affect the system as a whole, rather than the fate of one single isolated company. The reason is that funds that have invested in virtually every firm in the market are less concerned with the performance of individual portfolio companies, and more interested in the state of whole economies, if not the world economy. Against this backdrop, scholars have argued that the trend towards universal ownership would increase their incentives to push for example for greater ESG commitment in investee firms, or at least favor general policies that support such efforts.¹⁰⁵ Seen in this light, funds that “own the market” appear to be the ideal conduits for the internalization of a large fraction of the negative externalities caused by environmental damage and social disparities. This prospect is even more promising in the ESG field than in the context of traditional corporate governance engagement, which predominantly relies on firm-specific analysis.¹⁰⁶

As I discuss elsewhere, activism benefits from collaboration between different institutional investors who engage in coalition-building.¹⁰⁷ Likewise, portfolio-oriented institutional investors lend their support to cam-

103 J. C. COATES IV, *The Future of Corporate Governance Part I: The Problem of Twelve*, http://www.law.harvard.edu/programs/olin_center/papers/pdf/Coates_1001.pdf. See also D. MCLAUGHLIN/A. MASSA, *The Hidden Dangers of the Great Index Fund Takeover*, *Bloomberg Businessweek*, 9 January 2020.

104 See, e.g., L. BEBCHUK/S. HIRST, *The Specter of the Giant Three*, *Boston University Law Review* 99 (2019) 721, 735, fig. 1.

105 See, e.g., M. CONDON, *Externalities and the Common Owner*, *Washington Law Review* 95 (2020) 1, 17–18.

106 See M. BARZUZA/Q. CURTIS/D. WEBBER, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, *Southern California Law Review* 93 (2020) 1243.

paigms that they believe will be system-stabilizing.¹⁰⁸ First observed in the context of traditional shareholder activism, the collaboration model has become increasingly important in the context of green activism.¹⁰⁹

To illustrate, Engine No. 1 when taking on ExxonMobil was only successful due to coalition-building with institutions such as US pension funds CalSTRS, CalPERS, New York State Common, and the Church of England. Blackrock and Vanguard, two of the largest Exxon shareholders, also voted to support at least three of the four director nominees on Engine No. 1's slate.¹¹⁰ Together, this alliance proved critical in the campaign's victory and may herald a new era for shareholder activism.¹¹¹ The coalition of investors was therefore not only successful in shaking up ExxonMobil, but it also handed a major victory to the ESG movement as a whole. Other pertinent examples of shareholder team-building abound. They have been documented in campaigns against Evergy¹¹² or Procter & Gamble.¹¹³ Even IT giants

107 See W.-G. RINGE, *Adaptive Advocacy: The Reinvention of Shareholder Activism*, forthcoming in the *Oxford Handbook of Corporate Law and Governance* (2nd ed. 2025), section 4.5.

108 W. MCNABB, Vanguard Chairman and CEO, stated that "To understand the full picture, we often also engage with other investors, including activists and shareholder proponents": see "An Open Letter to Directors of Public Companies Worldwide", Vanguard, 31 August 2017, <https://global.vanguard.com/documents/investment-stewardship-mcnabb-letter.pdf>.

109 For shareholder proposals with a focus on environmental issues, see R. MONKS/A. MILLER/J. COOK, *Shareholder Activism on Environmental Issues: A Study of Proposals at Large US Corporations (2000–2003)*, *Natural Resources Forum* 28 (2004) 317; G. MICHELON/M. RODRIGUE, *Demand for CSR: Insights from Shareholder Proposals*, *Social and Environmental Accountability Journal* 35 (2015) 157; E. EDING/B. SCHOLTENS, *Corporate Social Responsibility and Shareholder Proposals*, *Corporate Social Responsibility and Environmental Management* 24 (2017) 648; V. RAGHUPATHI/J. REN/W. RAGHUPATHI, *Identifying Corporate Sustainability Issues by Analyzing Shareholder Resolutions: A Machine-Learning Text Analytics Approach*, *Sustainability* 12 (2020) 4753.

110 A. MARSH/S. KISHAN, *Engine No. 1's Exxon Win Provides Boost for ESG Advocates*, Bloomberg, 27 May 2021, <https://www.bloomberg.com/news/articles/2021-05-27/engine-no-1-s-exxon-win-signals-turning-point-for-esg-investors>; B. NAPACH, *BlackRock and Vanguard Played Key Roles in Exxon's Shareholder Proxy Vote*, ThinkAdvisor, 27 May 2021, <https://www.thinkadvisor.com/2021/05/27/blackrock-and-vanguard-played-key-roles-in-exxons-shareholder-proxy-vote/>.

111 M. PHILLIPS, *Exxon's Board Defeat Signals the Rise of Social-Good Activists*, *New York Times*, 11 June 2021.

112 D. FRENCH, *US Utility Evergy Adds Directors in New Agreement with Activist Firm Elliott*, Reuters, 26 February 2021, <https://www.reuters.com/article/us-evergy-elliott-idUSKBN2AQ294>.

such as Apple have become the target of shareholder coalitions, led by activist fund Jana Partners.¹¹⁴

Coalition-building in this field has extended way beyond just bilateral or ad-hoc coalitions, though. The ESG field, which is rich in advocacy groups, NGOs, and other specific vehicles, sees many institutionalized platforms which support activism. For example, the initiative Climate Change 100 + brings together more than 570 investors, responsible for over \$54 trillion in assets under management. The United Nations operates its own platform known as “Principles for Responsible Investment,” promoting the integration of ESG issues within the investment industry and coordinating engagements.¹¹⁵ Such networks allow for easier interaction between investors, identifying lead investors, spreading information, and helping to share the costs of engagement.¹¹⁶

V. CONCLUSION

This paper paints a largely positive picture of activist investors’ engagement in corporate governance while highlighting their exceptional flexibility and adaptability. I argue that shareholder activism has continuously reinvented itself, responding to the shifting political climates and industry dynamics under which it operates. Activists rebounded from the financial crisis stronger than before; they not only survived, but positioned themselves at the forefront of the climate crisis by capitalizing on ESG and sustainable investing. Today, they are readily adapting to a new zeitgeist, which is shaped by climate denial, protectionist politics, and deregulation. None of this should be surprising. Activists, particularly hedge funds, have repeatedly shown their ability to navigate evolving market conditions and to exploit shifting regulatory landscapes.

On a positive note, the growing trend of coalition building and collaborative engagement is emerging as an important market practice. It increases engagement opportunities and enhances investor influence, while at the

113 A. GRAY/P. TEMPLE-WEST, *Investor Rebellion at Procter/Gamble over Environmental Concerns*, *Financial Times*, 14 October 2020, <https://www.ft.com/content/1dd92502-e95b-4c21-be1c-c18a598acfla>.

114 R. G. ECCLES, *Why an Activist Hedge Fund Cares Whether Apple’s Devices Are Bad for Kids*, *Harvard Business Review* (January 2018), <https://hbr.org/2018/01/why-an-activist-hedge-fund-cares-whether-apples-devices-are-bad-for-kids>.

115 See <https://www.unpri.org/>.

116 For a detailed analysis, see E. DIMSON/O. KARAKAŞ/X. LI, *Coordinated Engagements*, ECGI Finance Working Paper No. 721/2021, http://ssrn.com/abstract_id=3209072.

same time serving as a built-in screening mechanism, helping to filter out abusive campaigns.

In sum, there is still plenty of life in the old dog. Whilst some predicted the end of hedge funds and private equity a few years ago, they have instead emerged from successive crises stronger than ever. Having honed their tactics and enhanced their credibility, they are here to stay—constantly reinventing themselves. “Locust” was the wrong animal to describe them. A “chameleon” would have been more accurate.

SUMMARY

This paper explores the evolution of shareholder activism in Western markets, tracing its transformation from the corporate raiders of the 1980s to today's geopolitical allrounders, incorporating both aggressive hedge fund activism and ESG-driven engagements. It situates activism within its shifting regulatory and ownership contexts in the United States, the United Kingdom, and Germany, showing how legal frameworks, market structures, and macroeconomic crises have repeatedly reshaped activist strategies. The analysis identifies the distinct roles played by corporate raiders, institutional investors, hedge funds, and private equity, highlighting their changing methods and motivations. Recent developments—such as the rise of sustainability-focused “ESG activism”, coalition-building among institutional investors, and the cyclical adaptation of activist tactics to political and economic climates—illustrate the remarkable flexibility of modern activism. The paper argues that shareholder activists have consistently reinvented themselves to exploit new market and regulatory conditions, evolving from “locusts” into “chameleons” capable of blending profit-seeking motives with broader governance and sustainability agendas.