Diligent Market Intelligence

Proxy Season Review 2024

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CAMPAIGN MANAGEMENT

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Editor's foreword

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Welcome to the *Proxy Season Review 2024*, a comprehensive analysis of the trends, outcomes and key developments that have shaped this year's proxy season.

One of the most notable trends this year has been the continued high rate of settlements since the introduction of the universal proxy card (UPC). This mechanism has fundamentally changed the dynamics of proxy contests, providing shareholders with greater flexibility in their voting choices and encouraging more negotiated outcomes.

In 2024, we have observed a significant number of settlements being reached faster and earlier in the process, reflecting a growing preference for avoiding the costs and uncertainties of prolonged proxy battles.

No wonder, since the 2024 proxy season was marked by positive indicators for both activists and companies. There were significant activist wins, significant company wins and situations in between. And, with many proxy fights early in the year, attention shifted to thorny corporate governance issues at the likes of Tesla, Paramount and ExxonMobil.

ESG issues have continued to gain prominence in both shareholder proposals and activist campaigns. This year, we witnessed a record number of environmental and social proposals being put to a vote, with a surprising number receiving substantial support from investors after the so-called "backlash."

Litigation by shareholders hoping to force companies to honor their commitments and by companies to deter ESG shareholder proposals has become more common, sparking discussions over the proper roles and responsibilities of regulators, courts and companies. The emergence of artificial intelligence (AI) governance as a new area of focus underscores the evolving nature of ESG considerations in the corporate world. For more information on these topics, check out our recent report, ESG Engagements in 2024.

As we reflect on the 2024 proxy season, the landscape of shareholder activism and corporate governance is becoming increasingly complex and dynamic. The depth and nuance of the Diligent Market Intelligence product, not to mention the dozens of articles produced by our editorial team on a daily basis, are an invaluable guide to navigating the stewardship challenges both companies and investors are facing.

I want to thank our sponsors, Olshan Frome Wolosky and Campaign Management, for supporting this report. The insights provided in this report will be invaluable for investors, companies and other stakeholders as they navigate this evolving environment.

Contributor's foreword

Andrew Freedman
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Shareholder activists enjoyed elevated success rates in 2024, spurred on by universal proxy and the rise of settlement agreements, writes Andrew Freedman, chair, shareholder activism practice group, Olshan Frome Wolosky.

> "Activists ran smaller slates while achieving historically elevated success rates."

Shareholder activism in the U.S. continued to ride the strong momentum it gained during the final few months of 2023, particularly among micro-cap companies. During the first half of 2024, 449 U.S. companies were subject to activist demands, representing a 9% increase in such demands compared to the first half of 2023, according to Diligent Market Intelligence (DMI) data.

In contrast, Europe saw a slowdown in shareholder activism during the same timeframe, with an 11.1% decrease in the number of companies subject to activist demands. Asia-Pacific countries also experienced a noticeable pullback in activity, headlined by an over 40% drop in the number of companies in South Korea subject to activist demands, after its most prolific activism season in 2023.

Shareholder activists entered the 2024 proxy season with a greater familiarity with the universal proxy card (UPC) rules. Requiring both companies and dissident shareholders to use a UPC that lists all candidates nominated for election has given activists the ability to craft their campaigns to surgically target directors they view as the most vulnerable. With this strategy unlocked, activists ran smaller slates while achieving historically elevated success rates.

Under the new UPC paradigm, settlement agreements between activists and companies are being reached faster and more often. In the first half of 2024, a total of 46 settlements were secured by activists at U.S.-headquartered companies, compared to the 70 that occurred in all of 2023. Additionally, the average time-to-settlement in this year's public campaigns has been approximately 110 days, representing a 25% compression of the settlement timetable compared to the 147-day average in the first half of 2022 before UPC.

The first-half highlights of 2024 also feature the conclusions of two landmark activist campaigns – one in the U.S. and the other north of the border.

Trian Fund Management launched a campaign at Walt Disney, in what became the most expensive proxy contest in U.S. history. Amid concerns that Disney failed to adapt to industry disruptions and endured chronic management succession failures, Trian ran a slate of two director nominees, including Nelson Peltz and former Disney Chief Financial Officer Jay Rasulo, seeking to "restore the magic" at the company. Despite shareholders ultimately voting to re-elect Disney's full board at the annual meeting, Trian's campaign can still be viewed as a success, with Disney's stock price rising by roughly 50% as of the date of the annual meeting from its 2023 low and the company's implementation of many of Trian's suggested financial and operational initiatives.

In Canada, Olshan client Browning West's historic campaign at Gildan Activewear to replace the entire board featured the rare unanimous recommendation of all three of Institutional Shareholder Services (ISS), Glass Lewis and Egan Jones in favor of the election of the activist's full slate. The nearly six-month battle concluded when, just days before the annual meeting, Gildan's entire board resigned, accompanied by the resignation of the CEO. This paved the way for the election of Browning West's full eight-member slate at the meeting and the restoration of Glenn Chamandy as CEO. The success of this landmark campaign evoked comparisons in the media to Starboard Value's storied full-board takeover of Darden Restaurants back in 2014.

The Delaware Chancery Court's recent decisions regarding the validity of certain provisions of shareholder agreements, most notably in the *Moelis* case, have not too greatly impacted the process by which activist investors reach agreements with companies to improve governance and a board's composition. Typical activist cooperation agreements are worlds apart from the sort of shareholder agreement giving one investor corporate control that concerned the court in *Moelis*, and there are clear ways to address the legal issues presented by the court's decision while keeping key cooperation agreement provisions intact. We are hopeful that Delaware will adopt proposed legislation that would have the effect of returning Delaware law to the pre-*Moelis* status quo.

> "Shareholder activism in the U.S. continued to ride the strong momentum it gained during the final few months of 2023."

As a reminder, many shareholder activists are now subject to the newly amended Form N-PX filing requirements applicable to Form 13-F filers. Under the amended rules, Form 13-F filers will be required to file their initial Forms N-PX by August 31, 2024, to report their voting records on "say on pay" proposals during the annual period from July 1, 2023, to June 30, 2024.

Executive summary

Key trends to emerge from the 2024 proxy season.

1. The first half of 2024 saw a 9% increase in activist campaigns targeting U.S.-based companies, with 449 U.S. companies subject to demands, a 9% increase compared to the 412 in 2023 and 11% higher than the 403 in H1 2022. More than half the campaigns launched in H1 2023 and H1 2024 targeted large-cap companies exceeding $10 billion in value.

2. The universal proxy card continues to give rise to more settlements between activists and companies, as investors' newfound freedom to pick and choose between management and dissident slates provides an easier path to board representation. As of June 30, 2024, activists have secured 101 board seats at U.S. companies, compared to 100 in the same period a year prior. 86.1% of seats secured in H1 2024 were secured via settlement, up from 80.5% in H1 2022 and 86% in H1 2023.

3. Litigation is becoming part of an increasing number of high-profile ESG campaigns, bringing into question the Rule 14a-8 no-action process. In the U.S., ExxonMobil's lawsuit against climate proposal proponents raised concerns regarding shareholder rights, while in Europe shareholders are filing suits to push companies to make good on their sustainability commitments.

4. The first half of 2024 saw a record 349 environmental and social (E&S) shareholder proposals subjected to a vote at U.S. companies, up from 319 in the first half of 2023 and the highest level in more than a decade. Proposals seeking enhanced emissions reduction targets and political spending congruency reporting won the favor of investors, with six (10.3%) climate proposals securing above 40% support and 18 (31%) of political spending proposals securing above 30% support.

5. For the first time this year, shareholders called on companies to enhance transparency surrounding the governance of artificial intelligence (AI). Six AI transparency/misinformation reporting proposals were subject to a vote at U.S.-listed companies in the first half of 2024, securing 23.6% average support, while one request for a company to establish an AI board committee won 9.7% support.

Infographics

No. companies publicly subjected to activist demands by region

Region	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
U.S.	362	405	414	456
Europe (including U.K.)	122	102	95	52
Asia	94	145	169	131
Canada	33	37	47	40
Australasia	30	27	23	23
Other	7	13	6	12
Total	648	729	754	714

*As of June 30

Source: Diligent Market Intelligence / Activism

No. demands made at global companies by region

Region	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
U.S.	565	674	679	758
Europe (including U.K.)	185	176	177	96
Asia	174	304	393	274
Canada	57	76	89	86
Australasia	44	57	48	45
Other	13	17	10	16
Total	1,038	1,304	1,396	1,275

*As of June 30

Source: Diligent Market Intelligence / Activism

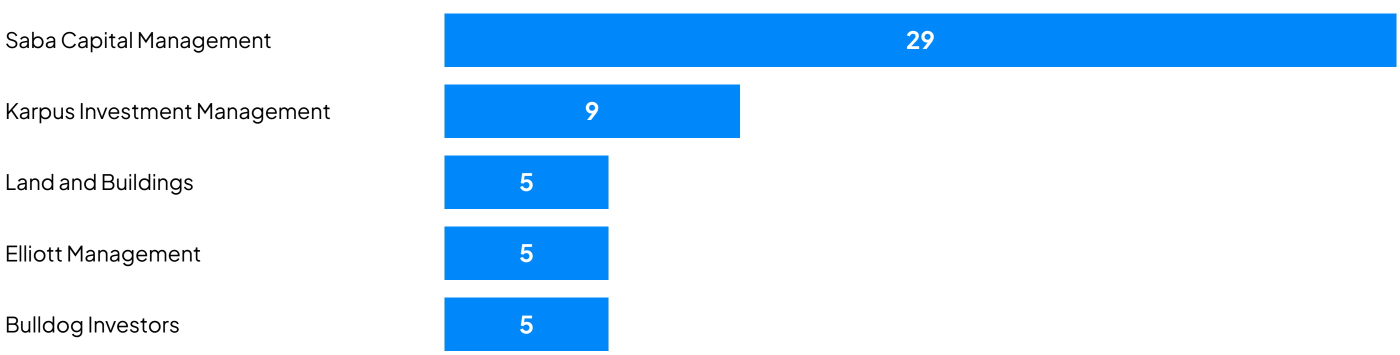
Average of anticipated total proxy contest costs ($) by category

Vote year	Average activist anticipated proxy cost ($)	Average activist anticipated proxy firm fee ($)	Average issuer anticipated proxy cost ($)	Average issuer anticipated proxy firm fee ($)
2020	660,944	165,452	3,124,041	441,666
2021	2,134,865	215,000	4,581,086	420,739
2022	941,500	289,482	3,958,596	780,954
2023	2,428,148	182,220	5,342,259	475,050
2024 YTD*	1,712,638	191,857	4,438,544	455,736

*As of June 4, 2024

Source: Diligent Market Intelligence / Activism

Top primary- and partial-focus activists by number of US-based companies targeted



*As of June 30

Source: Diligent Market Intelligence / Activism

Support (%) for director re/election proposals by year and company region

		No. proposals			
		2021 YTD	2022 YTD	2023 YTD	2024 YTD*
U.S.	<70% support for	479	628	641	555
	70–90% support	2,767	3,065	3,265	2,768
	>90% support	16,854	17,448	17,069	16,584
Europe (including U.K.)	<70% support for	62	66	73	56
	70–90% support	628	632	730	613
	>90% support	6,359	6,831	7,857	7,412
Asia	<70% support for	161	178	238	191
	70–90% support	2,019	1,993	2,201	2,204
	>90% support	27,060	25,928	26,632	28,105
Canada	<70% support for	83	104	114	69
	70–90% support	517	567	613	519
	>90% support	4,658	4,786	4,726	4,529
Australasia	<70% support for	4	6	8	3
	70–90% support	21	30	48	25
	>90% support	256	311	246	217

*As of June 30, 2024

Source: Diligent Market Intelligence / Voting

Support (%) for “say on pay”/remuneration report proposals by year and company region

		No. proposals			
		2021 YTD	2022 YTD	2023 YTD	2024 YTD*
U.S.	<70% support for	201	285	260	160
	70–90% support	542	625	770	543
	>90% support	2,207	2,180	2,295	1,858
Europe (including U.K.)	<70% support for	99	116	108	90
	70–90% support	290	408	449	424
	>90% support	1,284	1,655	1,636	1,452
Asia	<70% support for	1	1	8	3
	70–90% support	5	7	5	5
	>90% support	16	7	13	24
Canada	<70% support for	14	15	15	10
	70–90% support	44	46	52	43
	>90% support	191	190	182	187
Australasia	<70% support for	45	18	56	7
	70–90% support	109	35	138	15
	>90% support	647	177	544	84

*As of June 30, 2024

Source: Diligent Market Intelligence / Voting

Activism makes the headlines

Activist campaigns in 2024 came under heightened scrutiny as activists focused on prominent large-cap companies, and shifted tactics to seeking minority representation, writes Jason Booth.

The first half of 2024 saw a 9% increase in activist campaigns at U.S.-based companies, with 449 U.S. companies subject to demands, a 9% increase compared to the 412 in 2023 and 11% higher than the 403 in H1 2022.

While the 2024 proxy season may have played host to fewer activist campaigns going all the way to a vote, this year's campaigns rank among the most colorful, contentious and expensive.

Activist engagements were subject to enhanced media scrutiny this season, as more campaigns took place at high-profile large-cap companies. In H1 2024, 232 (51.7%) of U.S. companies subject to demands this year were valued at more than $10 billion, compared to 178 (49.7%) in H1 2021, 205 (50.9%) in H1 2022 and 215 (52.2%) in H1 2023.

The universal proxy card (UPC) also made it easier to secure minority representation. In the first half of the year, activists secured 101 board seats at U.S. companies, compared to 100 in the same period a year prior. Ancora Advisors' campaign at Norfolk Southern ranks among the big success stories of the season, with the $4.3 million asset manager securing three of the eight seats sought on the railroad operator's board.

Another consequence of UPC was activists taking a more thoughtful approach toward board refreshment, with many shifting tactics to seeking just one or two seats on the board.

The big leagues

Large-cap companies, exceeding $10 billion in market capitalization, found themselves subject to a significant percentage of activist campaigns this proxy season.

Among the headline campaigns of the season include Ancora Advisors' bid for eight board seats at Norfolk Southern, aimed at turning the U.S. railroad operator into a "safer, more sustainable railroad." Ancora secured three seats on the board. Other large-cap companies which offered activists board seats this year include Ventas, Phillips 66 and American Electric Power.

Elsewhere, Trian Fund Management and Blackwells Capital both launched campaigns at media behemoth Walt Disney. Although in this instance management's slate prevailed, some consider the campaign a victory for the activists.

"The campaign at Walt Disney highlighted a critical aspect of shareholder activism: even if an activist loses

Demand type breakdown of US companies publicly subjected to activist demands

Demand group	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
Appoint personnel	82	93	92	109
Capital structure	11	14	11	10
Divestiture	14	9	11	14
Environmental	37	64	74	84
Governance	208	221	204	192
Operational	33	19	24	26
Oppose M&A	15	14	7	8
Push for M&A	15	27	22	24
Remove personnel	23	46	30	38
Remuneration	38	54	66	67
Return cash to shareholders	18	17	18	38
Social	71	96	120	148
Total	565	674	679	758

*As of June 30

Source: Diligent Market Intelligence / Activism

the election, it can still win the campaign," Elizabeth Gonzalez-Sussman, vice chair of Olshan Frome Wolosky's shareholder activism practice group, told DMI. "In response to Trian's campaign, Disney announced a number of initiatives to address its performance issues, which ultimately helped improve the stock price and contribute to the election of all of Disney's candidates."

In many instances, these high-profile campaigns at well-known companies secured extensive media coverage. This increased media coverage has had far-reaching consequences, with the potential for campaigns to cause reputational harm and impact broader stakeholder behavior.

"This year, proxy contests have been big, front-page events, whereas in previous years they have taken place largely in the background," said Stephanie Hill, head of index at Mellon Investments at the NIRI Conference. "This means companies cannot ignore this space, there is the potential for an activist to target your company and make it onto the front page."

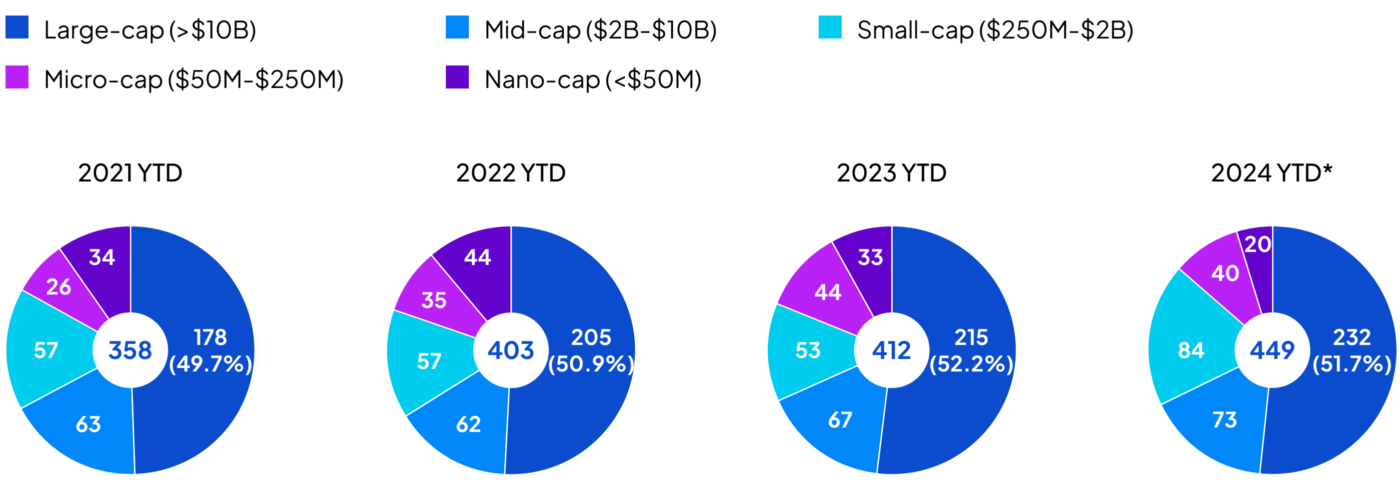
In a bid to drum up support, especially from retail shareholders, both activists and companies also leaned more heavily on social media this season. Disney released an animated video of cartoon character Ludwig Von Drake, rallying shareholders to support management, while at Norfolk Southern the activist's efforts were publicly supported by the former Governor of Ohio.

"Deeper pockets allow larger companies to utilize new and creative techniques to engage with shareholders to drive support, including social media and digital initiatives," Michael Fein, founder and CEO of Campaign Management, told DMI. "Larger companies typically have a more robust investor relations staff, dedicated to engaging and fostering relationships with top institutional shareholders well in advance of an activist threat, which may be crucial to gain support."

> "The best proxy contest wins are the ones where the winning party has clearly outlined how the background experience of its directors will best benefit the business."

These big campaigns also incurred hefty costs, with Disney estimating its total proxy contest expenditures at approximately $40 million, while Trian predicted its costs to be around $25 million. In the first half of 2024, proxy contests cost activists an average of $1.7 million and cost companies $4.4 million, compared to $660,000 and $3.1 million in 2020, respectively.

Market-cap breakdown of US companies publicly subjected to activist demands



*As of June 30

Source: Diligent Market Intelligence / Activism

Selecting the ideal board candidate

With a year of universal proxy under their belts, shareholder activists also shifted tactics away from majority representation to seeking just one or two seats on a board.

Primary- and partial-focus activists launched 113 gain board representation demands at U.S. companies in the first half of 2024, up from 90 in the same period a year prior. Of these, 62 (54.9%) demands resulted in at least one seat being won by an activist, compared to 55 (61.1%) in 2023.

"Activists are more carefully thinking about how many candidates to nominate and who to target for removal among incumbent directors," said Brianna Castro, senior director of U.S. research at Glass Lewis, at the NIRI Conference.

Campaigns seeking minority slates have proven effective, with many institutional investors supporting changes at the board level which do not pose too significant a shake-up yet offer valuable opportunities to strengthen the board. Bulldog Investors successfully appointed two of its three dissidents to BNY Mellon Municipal Income's board in a June proxy contest, while minority slates also saw success at ASA Gold and Precious Metals and Parks! America.

For companies revisiting their activism defense strategy, understanding and effectively communicating to shareholders about the key skills and experience each board director has is key.

"Companies should think about how to best disclose what makes each board member valuable and what they have to offer," Castro said. "The best proxy contest wins are the ones where the winning party has clearly outlined how the background experience of its directors will best benefit the business."

Regional trends

Outside of the U.S., shareholder activists were selective about which companies they targeted. In Europe, 52 companies were publicly subjected to activist demands in the first six months of 2024, compared to 102 and 95 in the first half of 2022 and 2023, respectively.

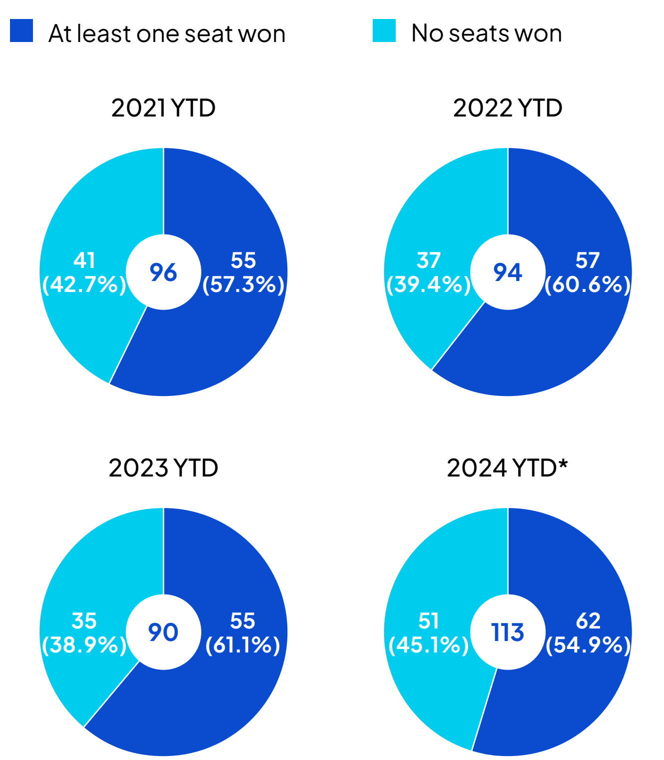
Telecom Italia defended CEO Pietro Labriola, after three separate investors submitted board slates and proposed changes to enhance the Italian telecom provider's share price, while in Germany Sachem Head Capital Management secured a board seat at Delivery Hero.

While Europe remained relatively quiet, there were signs of a resurgence in the coming months. When discussing Okapi Partners' new London office, Bruce Goldfarb, president and CEO of the proxy solicitation firm, told DMI that increased interest from its investor clients "promulgated us going to London."

In Asia, Japan in particular continued to see record levels of shareholder engagement, especially as major foreign activists reentered the market and domestic investors embraced activism. In the first half of the year, 131 companies were subjected to public activist demands, compared to 145 and 169 in H1 2022 and H1 2023, respectively.

"Until maybe two years ago, activism in Japan was largely about asset stripping, handing over dividends, or buying back a bunch of shares. But it has exploded into all kinds of issues about governance, boards, executive compensation and so on," said Alicia Ogawa, director of Columbia Business School's Center on Japanese Economy and Business.

No. US board representation demands made by outcome



*As of June 30

Source: Diligent Market Intelligence / Activism

Wildest campaigns of 2024

The first half of 2024 has been an eventful period for shareholder activists.

In this section, the Diligent Market Intelligence (DMI) editorial team reveals their picks for the wildest activist campaigns of the 2024 season.

So far this year, we've seen the first ESG proxy fight launched by a nontraditional activist, as well as several high-profile campaigns where companies were made to contend with conflicting demands from multiple activists. 2024 has also played host to directors turning dissident, with company founders and former executives pushing for new strategies and reforms.

1st place: Ancora Advisors at Norfolk Southern

For Ohio-based Ancora Advisors, its campaign at Norfolk Southern was about more than just financial returns. Following a series of train derailments, turning Norfolk Southern into a "safer, more sustainable railroad" was a top priority for the 0.4% investor.

Ancora launched its campaign in January, with an eight-person strong dissident slate consisting of former UPS Operations Chief Jim Barber and ex-Canadian National Railway executive Jamie Boychuck. The activist was particularly critical of Norfolk CEO Alan Shaw, criticizing his "tone-deaf" response to a 2023 train derailment in Ohio, alongside the company's "industry-worst" share price.

Multiple U.S. labor unions advocated for various parties ahead of the proxy contest. In the run up to the May 9 proxy showdown, two Brotherhood of Teamsters-affiliated unions came out in support of Ancora's slate, while another union advocated for Norfolk's incumbent directors.

The contest was one of the few to go all the way to a vote this year and see dissidents successfully elected, with Ancora securing

> "The campaign for change at this great American railroad will continue."

three board seats for William Clyburn, Sameh Fahmy and Gilbert Lamphere. Incumbent Chair Amy Miles, alongside Jennifer Scanlon and human capital management and compensation committee Chair John Thompson faced were unseated, after being opposed by between 53% - 70% of votes cast.

"This represents a loud and clear message to replace the company's unqualified CEO and reconsider its ineffective strategy, which has driven industry-worst customer delivery times, severe derailments and persistent share price underperformance," Ancora said shortly after the meeting. "The campaign for change at this great American railroad will continue."

Following the meeting, the company announced that Claude Mongeau would be taking over the role of board chair.

2nd place: Trian Fund Management and Blackwells Capital at Walt Disney

The proxy battle between Disney, Nelson Peltz's Trian Fund Management and Jason Aintabi's Blackwells Capital was perhaps the costliest in shareholder activism history. Trian shelled out around $25 million, while Disney's defense cost up to $40 million.

The dispute initially sparked in February 2023, when Peltz was nominated to Disney's board. After Disney showcased strong performance and announced governance reforms, Trian momentarily halted its campaign. However, it wasn't long before Trian returned, this time nominating Peltz and ex-Disney Chief Financial Officer Jay Rasulo.

The situation escalated as other activists joined the fray. Blackwells Capital criticized Trian's "lack [of] critical expertise," launching its own director nominations to support incumbent CEO Bob Iger's strategic vision. ValueAct Capital also endorsed Disney's current leadership, while Ancora Advisors claimed Peltz would make a "fantastic addition" to Disney's board.

The campaign also divided proxy advisors. Institutional Shareholder Services (ISS) advocated for Peltz and recommended withholding votes from incumbent director Maria Lagomasino, citing concerns over succession planning. Glass Lewis, however, backed the reelection of all Disney nominees.

The contest came to a head on April 3, with Disney announcing that its board nominees had prevailed "by a substantial margin" over those from Trian and Blackwells. Despite losing the fight, Trian claimed it made a handsome profit, exiting its Disney investment with an estimated $1 billion profit.

> "The company would have benefited from any one of our candidates to advance this iconic company."

"Blackwells' primary objective was achieved – keeping Peltz out of the Disney boardroom," a representative from Blackwells told DMI. "The company would have benefited from any one of our candidates for the hard work needed over the next few years to advance this iconic company, but we respect the will of the shareholders and the outcome. We will continue to pursue our litigation to ensure there is a resolution that benefits shareholders and enforces governance best practices."

3rd place: Browning West at Gildan Activewear

The dismissal of Gildan Activewear co-founder and CEO Glenn Chamandy in December ruffled feathers in the investment community, with Browning West being one of nine shareholders calling for Chamandy's reappointment.

When Chamandy was not reappointed, Browning West requisitioned a special meeting, seeking five seats at the Canadian apparel manufacturer. In the months leading up to the contest, Browning West also sought a court order preventing directors from entering into any binding sale agreements, following expressions of interest being floated. The 5% shareholder also increased its slate to eight seats.

"The Gildan campaign had a little bit of everything. Cross-border, a beloved ousted CEO, a beleaguered new CEO, a special meeting requisition, all sorts of litigation and more. You couldn't script a more dramatic proxy contest if you tried," Andrew Freedman, partner and chair of Olshan Frome Wolosky's shareholder activism practice told DMI.

Weeks before the shareholder meeting, both Glass Lewis and ISS endorsed Browning West's full slate. Five days before the meeting, Gildan revealed all its directors had resigned and named the activist's eight nominees to the board, saying "shareholders have made their views clear."

> "You couldn't script a more dramatic proxy contest if you tried."

"It's remarkable to think that over the course of its campaign, Browning West essentially replaced two different boards of directors, amounting to the removal of 17 directors in all, receiving full support from the key proxy advisory firms ISS and Glass Lewis in the process," Freedman said. "It's a proxy contest victory for the ages that will be the subject of business school case studies for years to come."

4th place: Ted Miller at Crown Castle

Just two months after Crown Castle reached a settlement with Elliott Investment Management, co-founder Ted Miller submitted a four-person dissident slate at the real estate investment trust (REIT), aimed at remedying what he described as a "decade long" value gap.

Miller, who served as Crown Castle Chairman from 1996 to 2001, sought to return to this role and give the company a "top-to-bottom reboot", while also urging the REIT to sell its fiber operations.

"The board's poor judgment has cost shareholders tens of billions of dollars in value, left you with a debt-fueled dividend policy and corroded employee morale and broader stakeholder trust," Miller argued in an April letter. "Shareholders deserve better stewards of their capital."

In response, the company argued that Miller was seeking "de facto control" of the board to execute a preconceived agenda.

Proxy advisors proved divided, with the REIT claiming the backing of ISS for its full management slate. In contrast, Glass Lewis recommended a vote for Miller and one of his nominees, former Crown Castle Finance Chief Charles Green.

> "The board's poor judgment has cost shareholders tens of billions of dollars in value."

At the May 22 proxy contest, shareholders elected management's entire 12–person slate. Following the vote, Crown Castle pledged to enhance shareholder value, in June unveiling a modified fiber strategy that the company claimed will save $275 million by the end of year.

5th place: Strategic Organizing Center at Starbucks

The Strategic Organizing Center's (SOC) campaign at Starbucks marked the first time a non-traditional activist has launched an activist campaign, thanks to the newfound freedom granted by universal proxy.

In November, the labor union nominated three directors for election at Starbucks' 2024 annual meeting, pointing to the U.S. coffee giant's alleged anti-unionization activities and "severe human capital mismanagement." Just eight months prior, a shareholder proposal seeking freedom of association reporting secured majority support at the company's 2023 meeting.

"Human capital management issues and business practices that may run afoul with international human rights law are not only of interest to investors, but they should be a focus for boards as they oversee management going forward," SOC executive director Tejal Patel told DMI.

Starbucks dismissed SOC's nominees as unqualified, instead opting to add three new individuals to its board that the company claimed were better equipped, while pointing to $9 billion of investments that fostered a 50% increase in worker's hourly wage since 2020.

Following both ISS and Glass Lewis endorsing Starbucks' full 11–person slate, SOC withdrew its candidates. In its communications, the activist cited Starbucks' commitment to establishing collective bargaining arrangements with its unionized workers, as well as the establishment of its new environmental, partner and community impact board committee.

> "SOC's campaign marked the first time a non-traditional activist has launched an activist campaign, thanks to the newfound freedom granted by universal proxy."

The labor union has indicated it will be keep a watchful eye on reforms at the coffee giant, however, stating it is "imperative that shareholders continue to monitor Starbucks' approach to labor relations issues."

Honorable mentions

The first half of the year featured several memorable ESG-oriented campaigns, including Wespath Investment Management's withhold campaign at ExxonMobil. Launched in response to the energy giant's decision to sue the proponents of a shareholder proposal, Wespath called for the removal of CEO and Chair Darren Woods and Lead Independent Director Joseph Hooley. At the May meeting, both directors were comfortably reelected, while the lawsuit was dismissed by a judge in June.

Inconsistencies in BlackRock's ESG strategy also prompted Bluebell Capital Partners to call for the separation of the roles of CEO and chair, positions currently held by founder Larry Fink. The proposal secured 13% support at the world's largest fund manager's May annual meeting.

Kimmeridge Energy Management's campaign at SilverBow Resources featured many twists and turns, with various sale and merger agreements proposed before the activist shelved the proxy contest in May, claiming it was satisfied with a pending sales agreement to Crescent Energy.

Focused Compounding's campaign for four board seats at Parks! America saw two proxy contests held in both February and June, with all four dissident nominees appointed at the latter meeting. Blackwells Capital also launched a campaign at Braemar Hotels & Resorts, taking aim to the real estate investment trust's declining performance and share price.

In July, Braemar struck a truce with Blackwells, with the hotel agreeing to add an independent director with input from the activist.

A season for settlements

Settlements between activists and companies are becoming a popular form of conflict resolution, with more engagements reaching a conclusion behind closed doors, writes Josh Black.

Companies worldwide have entered approximately 1,000 formal settlement agreements with activist investors in the past decade, according to analysis conducted using the new Diligent Market Intelligence (DMI) settlement tool.

And with settlements becoming more likely as a result of the universal proxy card (UPC) rules, negotiating the terms is increasingly the focus of activist campaigns.

UPC's ability to give shareholders freedom to pick and choose between both management and dissident director candidates has resulted in more shareholders supporting minority slates, with more contests resulting in activists securing one or two seats on boards.

"We continue to see a high level of settlements," Michael Fein, founder and CEO at Campaign Management, told DMI. "They are arriving faster, perhaps a function of opposing sides projecting vote outcomes sooner and preferring to avoid the expense and distraction of a drawn-out campaign if they can negotiate an acceptable outcome."

"As we expected to see, there [have been] more settlements, because I think companies know, in a minority campaign, it's going to be much easier now for someone to win," James Chadwick, portfolio manager at Ancora Advisors and president of Ancora Alternatives, told DMI. "It's much more of a pick and choose type approach, which I think is better for all investors."

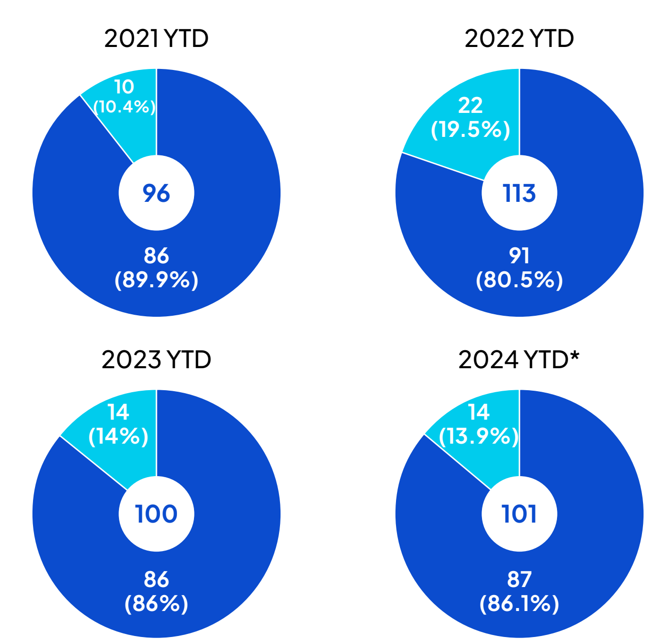
Settlements have also become common at companies in markets such as Canada, the U.K., Ireland and Israel, where disclosure of such an agreement is not always mandatory.

What constitutes a good settlement agreement?

One feature that almost certainly warrants inclusion in a settlement agreement is a non-disparagement clause. More than 80% of settlements at U.S. companies in the past 10 years have included one.

> "UPC's ability to choose between both management and dissident director candidates has resulted in more shareholders supporting minority slates."

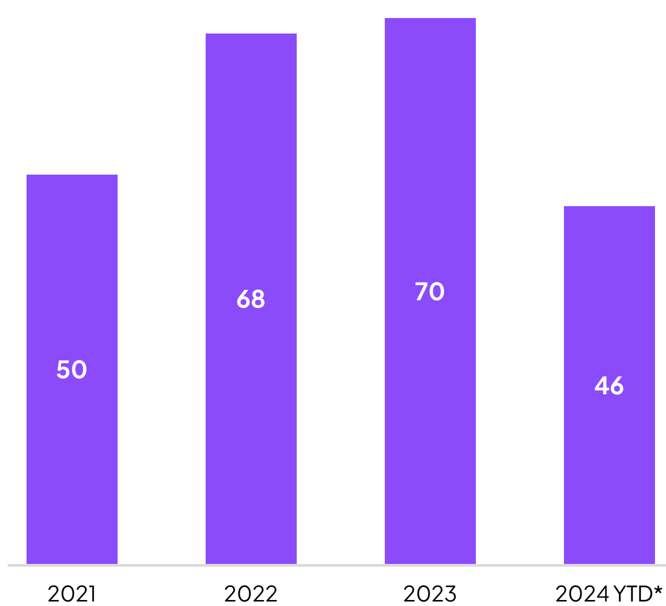
No. board seats gained by activists at U.S.-headquartered companies by outcome year



*As of June 30

Source: Diligent Market Intelligence / Voting

No. settlements secured by activists at U.S.-headquartered companies by outcome year



*As of June 30

Source: Diligent Market Intelligence / Voting

Reimbursing an activist the costs of their proxy fight, however, might prove more controversial. Smaller activists often seek reimbursement, claiming that their outlay has benefits for all stockholders and the cost of soliciting proxies comes out of their own investors' returns.

DMI data show that a greater proportion of companies were forced to reimburse activists from 2019, rising from an average of 52% between 2014 and 2018 to an average of 61% between 2019 and 2023. In the first five months of 2024, the reimbursement rate is 71%.

In the case of larger activists, claims for reimbursement are often less successful. Elliott Management, which has had at least one settlement every year up to 2023, hasn't been reimbursed since 2020.

Another trend becoming more popular is the creation of a special committee of the board. Between 2014 and 2018, 38 settlements included a new board committee. From 2019 to 2023, that number rose to 54, despite the number of formal settlements declining. As of June 30, 2024, four settlements have been secured at U.S. companies involving the formation of a special committee, up from one in the same period a year prior.

What type of committee will be established will be largely dictated by circumstances and the activist's thesis, but committees concerning "strategy" or "strategic reviews," terminology often associated with the sale of companies, were almost twice as popular as operational review committees. Succession planning, capital allocation and financial reviews formed a third tier.

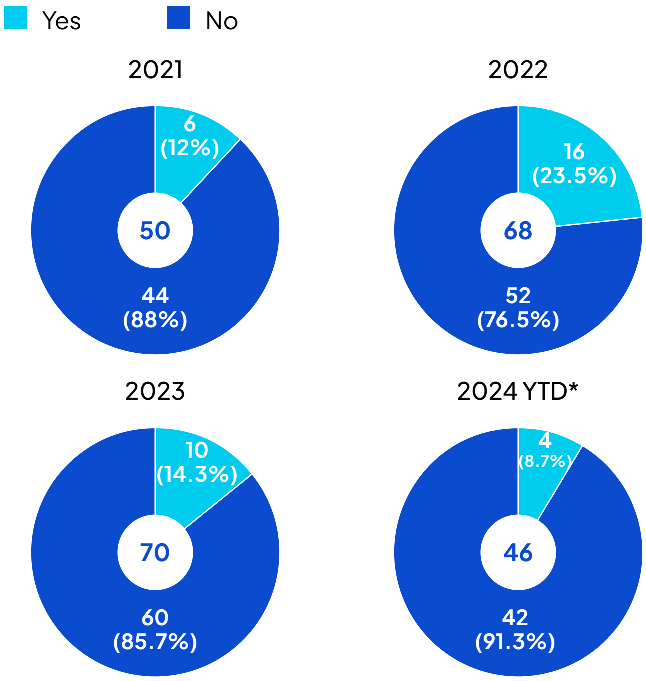
Maximizing chances of success

Activists might have better leverage if they look to settle early. Indeed, settlements without a public campaign have become more common. On average, 43% of settlements between 2019 and 2023 were announced on the same day as DMI recorded a public board representation demand, up from 33% in the preceding four years.

The vast majority of settlements in 2024 thus far took "zero days to settle," with Starboard Value, Carl Icahn, Engaged Capital and Sachem Head Capital Management among the activists to keep their business behind closed doors.

"What companies should care about most is being principled and consistent. If the most efficient and effective thing to do is to compromise and meet activists in the middle via a settlement, then that can be a win for everyone if done well," said Ned Segal, former Twitter chief financial officer, at NIRI.

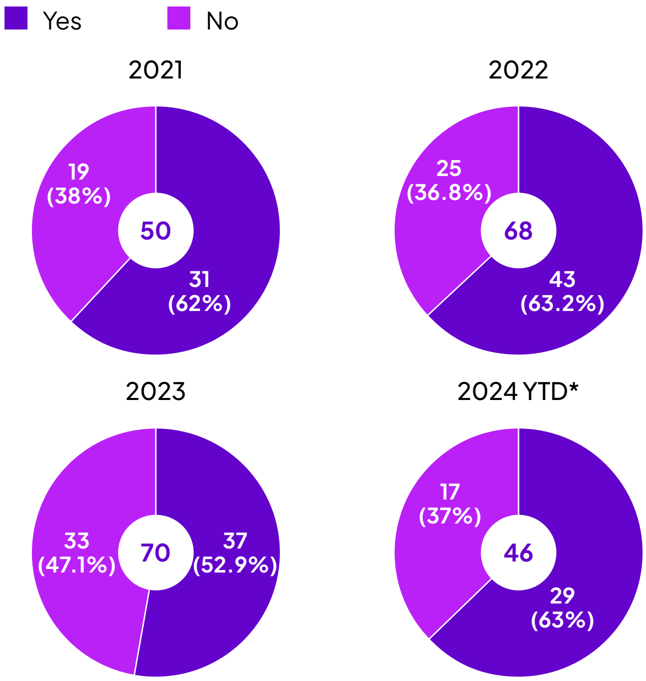
No. settlements secured by activists at U.S.-headquartered companies with an agreement on a formation of a special committee



*As of June 30

Source: Diligent Market Intelligence / Voting

No. settlements secured by activists at U.S.-headquartered companies with an expense reimbursement agreement



*As of June 30

Source: Diligent Market Intelligence / Voting

Lessons from the 2024 season

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
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> "Even if an activist loses the election, it can still win the campaign."

2024 has been a busy year for shareholder activism. What lessons did we learn from some of the big campaigns of the season?

Elizabeth Gonzalez-Sussman (EG): Shareholder activism thus far in 2024 has been particularly eventful and has provided several key lessons from some of the major campaigns we saw take place. The campaign at Walt Disney highlighted a critical aspect of shareholder activism: even if an activist loses the election, it can still win the campaign.

In response to Trian Fund Management's campaign, Disney announced a number of initiatives to address its performance issues, which ultimately helped improve the stock price and contribute to the election of all of Disney's candidates. Regardless of the immediate outcome of the election, the Disney campaign underscored the fundamental purpose of shareholder activism, to drive company improvements and enhance overall shareholder value.

While not an election contest, Tesla's success in seeking shareholder approval of two controversial proposals; to ratify the 2018 executive pay package for Elon Musk despite a Delaware court invalidating it, and to approve the reincorporation of Tesla from Delaware to Texas, highlighted the power retail investors can have in certain situations over the strong objections of large institutional investors to these proposals.

Ryan Nebel (RN): The fight of the year so far for activists, Browning West's eye-opening victory at Gildan Activewear, proved that successful change of control campaigns are not just a thing of the past. In perhaps the most notable change of control victory since Starboard Value's clean sweep at Darden Restaurants nearly a decade ago, Gildan's entire board and CEO resigned just days before the annual meeting once it became apparent that Browning West's entire eight-member slate would be resoundingly elected.

Browning West's campaign was launched in response to Gildan's unexpected decision to terminate its co-founder and CEO Glenn Chamandy, which was met with swift and widespread shareholder opposition. Browning West's change of control victory, which included the reinstatement of Chamandy as CEO, demonstrates the importance of directors listening to the shareholders they serve and shows what can happen if they fail to do so.

Both activists and companies went into the 2024 season more familiar with universal proxy. How did this impact the number of contests vs settlements, compared to a year prior?

RN: As both activists and companies entered the 2024 proxy season more familiar with the universal proxy card (UPC) rules, we saw an increase in settlements, which

> “When activists publicly pursue competing objectives and strategies, it can further divide the shareholder base, result in confusion and ultimately benefit the incumbent management slate.”

occurred faster and earlier in the process. According to Diligent Market Intelligence (DMI) data, in the U.S., there have already been 48 settlement agreements reached so far in 2024, outpacing the 40 agreements reached at this time last year. Not included in the figures above, we also saw a rise in the use of unofficial settlements this year, such as Engaged Capital at VF Corp, whereby activists and companies came to understandings providing for shareholder-driven change without papering agreements.

Contributing to the wave of early settlements this year was the success activists enjoyed in 2023 during the first full season of the UPC regime. The targeted approach taken by activists in 2023 resulted in a significant percentage of seats won relative to the total sought. With this in mind, many companies elected to quickly settle in 2024 when faced with an activist targeting one or two of the most vulnerable incumbents.

Another relevant factor is that we saw less scorched-earth tactics employed by companies this year. Last year, advance notice bylaws were weaponized by some companies to try to invalidate nominations and prevent the use of UPC and the holding of an election contest. However, the significant shareholder backlash that arose from these short-sighted tactics, many of which ended in litigation or the company relenting, likely brought companies to the table sooner.

2024 played host to several engagements where multiple activists targeted the same company. How might this impact campaigns?

EG: Multiple activists targeting the same company is nothing new, but for it to progress to a three-way election contest like it did at Disney, where both Trian and Blackwells ran competing slates, was extremely unique and will remain exceedingly rare in our view. When activists publicly pursue competing objectives and strategies, it can further divide the shareholder base, result in confusion and ultimately benefit the incumbent management slate. Conversely, if activists are pursuing a similar agenda, their combined efforts can significantly increase pressure on a company and improve the chances of success.

This year also played host to the first ESG proxy fight put forward by a non-traditional activist. Do you expect we will see more ESG advocates adopting activist tactics to push for change?

RN: Potentially, however, a key consideration for such non-traditional activists will be whether they have the resources to employ such tactics effectively and whether they prove to be successful will likely depend upon whether they can tie their ESG-centered concerns to shareholder value propositions.

> “Companies should not sue their shareholders, the true owners of the businesses.”

The Strategic Organizing Center (SOC), a coalition of labor unions, launched a campaign at Starbucks directed towards the company’s resistance to employees’ attempts to unionize. With its nomination of three highly-qualified candidates and team of experienced activist advisors, SOC sought to pressure Starbucks to address its human capital issues and the associated risks to shareholder value.

While SOC ultimately withdrew its slate prior to the annual meeting, its campaign is widely viewed as a success given Starbucks’ agreement to commence negotiations with Workers United (the union representing Starbucks employees) on a path forward to reach collective bargaining agreements for represented stores, resolve litigation and agree on a fair process for employees to organize. SOC’s efforts to hold Starbucks accountable for its labor relations policies helped bring it to the negotiating table with Workers United and may inspire other ESG-focused advocates to run similar campaigns. In order for such campaigns to resonate with shareholders, we believe they will need to have a clear value proposition.

Some investors have voiced concerns regarding litigation impeding the Rule 14a-8 shareholder proposal process. What are your thoughts on this?

EG: We find it concerning that certain companies have chosen to proceed with legal action against their own shareholders who submit proposals under Rule 14a-8. Companies should not sue their shareholders, the true owners of the businesses. When companies receive shareholder proposals under Rule 14a-8, they have the option of pursuing relief through the Securities and Exchange Commission (SEC), pursuant to a formal process that allows companies to challenge the validity or suitability of such proposals – courts are not the appropriate forum.

This year, we witnessed ExxonMobil’s decision to move forward with litigation against shareholder proponents of 14a-8 proposals, despite the fact that the shareholders withdrew their proposals. Exxon’s approach to handling this situation, even after the proposals were withdrawn, seems rather punitive and designed to chill shareholder engagement. This is not something we would like to see become a trend.

The rise of ESG litigation

The shift toward ESG engagements being debated in the courtroom has investors concerned about the future of the shareholder proposal process, writes Will Arnot.

The Securities and Exchange Commission's (SEC) Rule 14a-8 no-action process was brought into question this proxy season, as U.S. oil & gas giant ExxonMobil filed suit against the proponents of a climate change shareholder proposal.

The January lawsuit, directed toward U.S. institutional investor Arjuna Capital and Dutch climate advocacy group Follow This, initially sought the withdrawal of the proposal. Once this was achieved, however, Exxon pressed on, looking to restrict the filing of future ESG proposals.

> “This as an absolute failure in governance, and governance is the responsibility of the entire board.”

While the suit was ultimately dismissed by a U.S. judge in June, the engagement has received widespread attention, with investors questioning the broader impacts of the engagement.

"Exxon's approach to handling this situation seems rather punitive and designed to chill shareholder engagement. This is not something we would like to see become a trend," Elizabeth Gonzalez-Sussman, vice-chair of Olshan Frome Wolosky's shareholder activism practice, told Diligent Market Intelligence (DMI).

A controversial decision

Exxon's decision to sue Arjuna Capital and Follow This, instead of using the no-action process to potentially omit the proposal, was criticized by the investor community, especially given that the company filed several no-action requests ahead of its 2024 meeting.

According to DMI *Voting* data, in the first five months of this year, the SEC accepted 71% of no-action requests, while a further 25 were awaiting decision and 43 were withdrawn by the proponent. Exxon itself sought no-action relief on eight proposals in the period, with four granted – a success rate that has improved compared to 2023 when one such request was granted out of five advanced by the energy giant.

"The irony of the suit is that Exxon did not utilize the option of going to the SEC and yet one of their major arguments, which likely would have prevailed at the SEC, was that the resolution was too similar to previous resolutions that had been filed which didn't get an adequate vote last year," Timothy Smith, senior policy advisor at the Interfaith Center on Corporate Responsibility (ICCR), told DMI. "Instead of suing a shareholder, they could have appealed to the SEC with a very high percentage chance of success."

The lawsuit also prompted the launch of a withhold campaign against Exxon CEO Darren Woods and Lead Independent Director Joseph Hooley. Wespath Investment Management, which led the campaign, advocated for the removal of these directors "due to their oversight of the company's hostile treatment of shareholders" as well as the company's alleged climate oversight failings.

"Exxon's failure to manage climate risks is our primary reason for voting against those directors, but the lawsuit against shareholders for exercising their right to file a proposal is certainly another factor informing our decision," a spokesperson for the New York State Comptroller told DMI.

> “Litigation can double, even triple, the cost of a shareholder initiative and this can make engagement economically prohibitive except for the largest players.”

"The intention of creating transparency or putting a spotlight on this litigation wasn't really to unseat the Exxon board," California Public Employees' Retirement System (CalPERS) CEO Marcie Frost said in an interview. "It was more a very clear communication that we say this as an absolute failure in governance, and governance is the responsibility of the entire board."

A number of shareholders were vocal about their intention to oppose both directors, while Glass Lewis also recommended voting against both incumbents. Despite this, Woods and Hooley were reelected by 91.6% and 87.1% of votes cast, respectively, at the May annual meeting.

Is litigation the new normal?

The Exxon lawsuit isn't the only example of ESG engagements evolving into legal battles. In an interview, ShareAction CEO Simon Rawson noted that there is an emerging trend of shareholders using litigation to challenge companies who have "failed to address climate risk, for misleading statement or omissions in disclosures and filings."

One such examples is ClientEarth's 2023 lawsuit against U.K. energy company Shell. The suit was directed toward Shell's board of directors, alleging a breach of fiduciary duty for failures to align the company's energy strategy with Paris Agreement goals. In May 2023, the U.K. High Court dismissed the case.

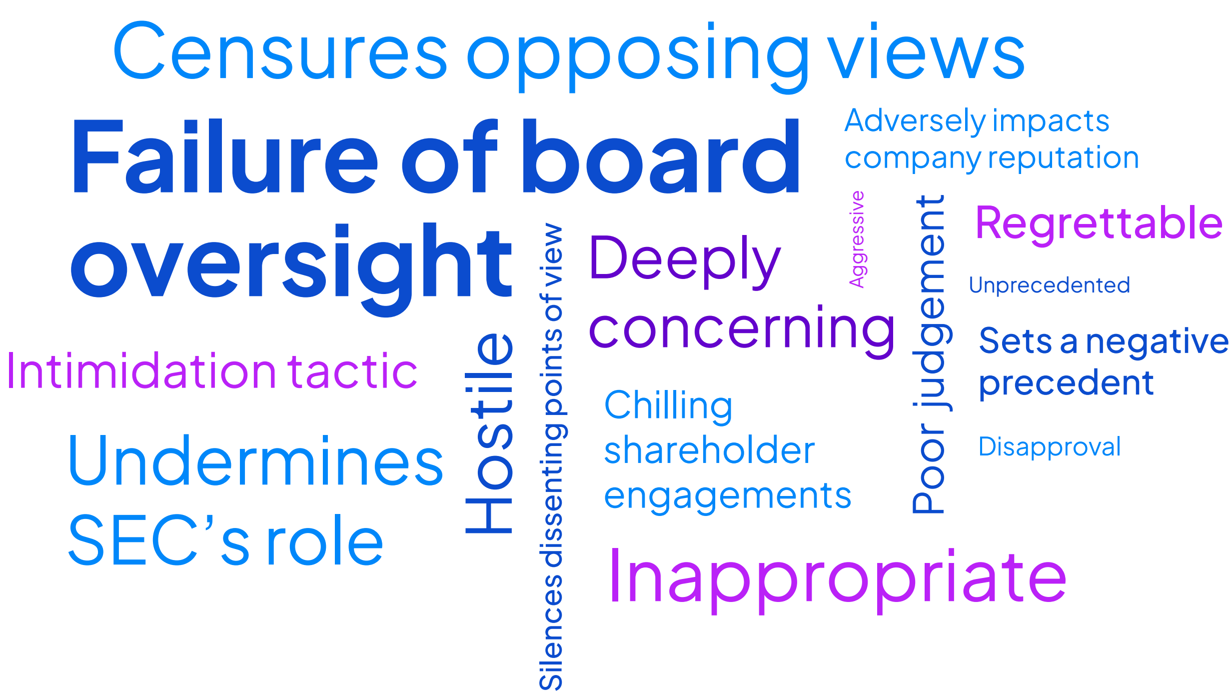
Earlier this year, Friends of the Earth Netherlands (Milieudefensie) also filed an ongoing suit at Dutch bank ING over its continued financing of the fossil fuel industry.

As shareholder proposal filings reach record highs, there is the potential for more ESG advocates to use the courtroom as a method to push companies to strengthen their ESG efforts. More companies may also follow in the footsteps of Exxon and file suits against proposal proponents.

In an interview with DMI, Olshan Frome Wolosky Partner Adrienne Ward warned that this kind of defensive litigation undertaken by Exxon has the potential to stifle future shareholder engagement and activism. "Litigation can double, even triple, the cost of a shareholder initiative and this can make engagement economically prohibitive except for the largest players," she said.

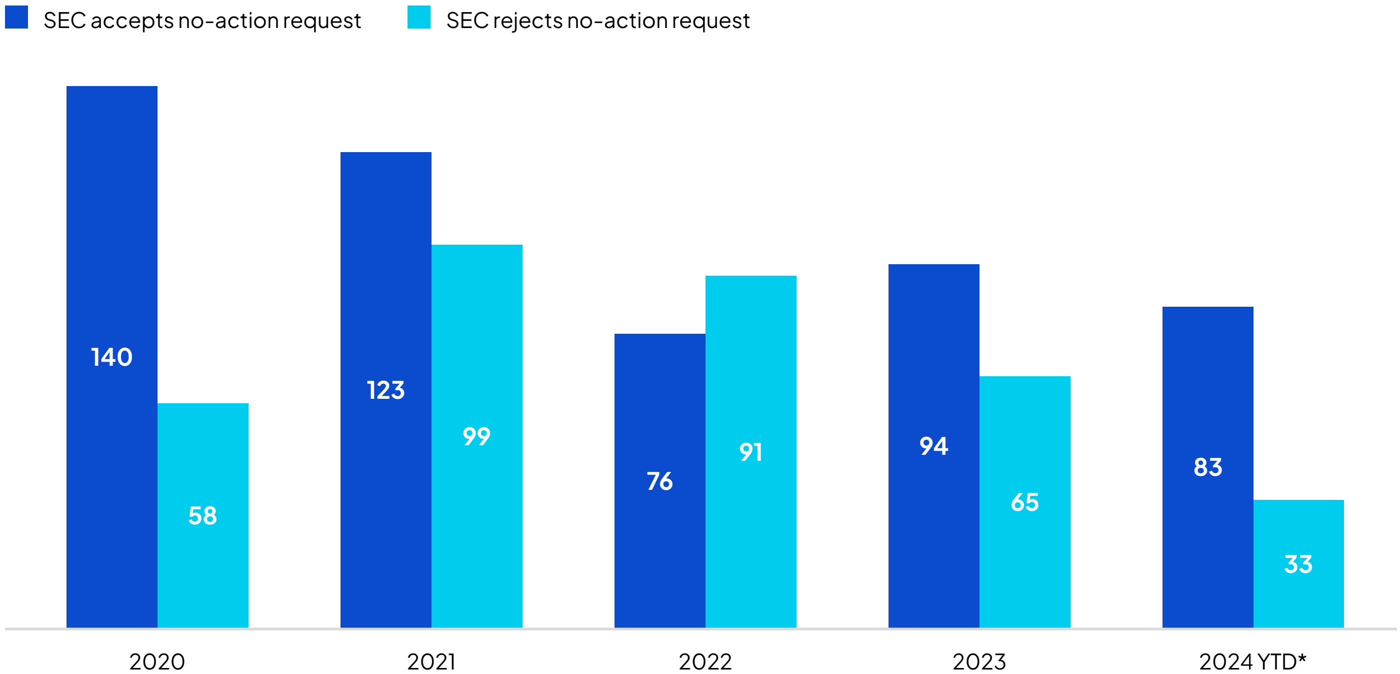
ESG litigation wordcloud

How have institutional investors described and responded to litigation concerning shareholder proposals?



*Sourced from public investor filings, vote rationales and press statements

Securities and Exchange Commission (SEC) no-action requests by outcome



*As of May 31, 2024

Source: Diligent Market Intelligence / Voting

For more insights into global corporate governance and investor stewardship trends, download:

ESG Engagements in 2024

Corporate Governance in Europe 2024

The Shareholder Activism Annual Review 2024

The evolution of proxy contests

An interview with Michael Fein, founder and CEO, Campaign Management.

Michael Fein
Founder and CEO
michael.fein@campaign-mgmt.com

"Activism in the U.S. remains alive and well."

“While companies may not agree with or adequately address each shareholder’s concerns, it is essential to be aware of any hot-button issues.”

How did shareholder activism evolve in 2024 compared to previous years?

2024 provided an opportunity to better assess the impact of the universal proxy cards (UPC) on contested director elections. While 2023 marked the first full proxy season with mandated use of UPC, activists and companies alike were reluctant to leave their campaign’s fate up to the will of shareholders under a newly implemented voting framework, opting instead for a negotiated and certain outcome. As a result, we saw a spike in settlements in 2023.

Observations thus far in 2024 reveal a number of interesting insights. We continue to see a high level of settlements, yet they are arriving faster, perhaps a function of opposing sides projecting vote outcomes sooner and preferring to avoid the expense and distraction of a drawn-out campaign if they can negotiate an acceptable outcome.

Yet, despite the relatively high level of settlement activity, companies and shareholders remain willing to take campaigns to a vote. Two notable campaigns ended with opposite outcomes, as Walt Disney turned away both Trian Fund Management’s and Blackwells Capital’s nominees, while Browning West replaced the entire board of Gildan Activewear. These two decisive victories may serve to embolden companies and activists, particularly when they have a strong conviction in their thesis.

How has UPC impacted the nomination process and how activists think about directors?

It will be interesting to see if we experience an increase in proxy contests involving multiple activists targeting the same company. The individual nominee comparisons enabled by the UPC put a premium on dissidents nominating the best candidates to not only unseat incumbent directors but to also defeat nominees potentially put forth by other shareholders.

We saw competing dissident slates at Disney this year and I can envision this trend continuing, although activists should be cautiously aware that competing dissident slates can potentially cannibalize votes for change, which may ultimately benefit a company’s defense.

We’re also seeing a trend towards self-refreshment of boards as many companies recognize the UPC enables precision targeting of their directors and proactively upgrade if vulnerabilities are identified. The ability of shareholders to vote for directors on an individual basis is undoubtedly driving improved board composition.

As a result, we have seen a substantial decrease in board seats won, with activists winning 11% of seats sought thus far in 2024, compared to 65% in the first half of 2023.

> “The ability of shareholders to vote for directors on an individual basis is undoubtedly driving improved board composition.”

Activist demands in the first half of 2024 experienced a 15% increase over the same period last year. With greater understanding of new dynamics introduced by the UPC, as well as an appreciation for the inclinations of shareholders and proxy advisors to support dissidents under the new framework, activism in the U.S. remains alive and well.

2024 has played host to a number of high-profile activist campaigns at large-cap companies. How might corporate defense tactics vary for larger companies, compared to smaller ones?

Although the majority of activism has historically occurred at smaller companies for a variety of reasons, activism at large-cap companies has steadily increased in recent years and accounts for roughly half of North American campaigns thus far in 2024.

While large and small companies have many common defensive tactics, implementation is often easier and more effective for large companies for the simple reason that they have substantially greater resources to fend off activists. Larger companies typically have a more robust investor relations staff dedicated to engaging and fostering relationships with top institutional shareholders well in advance of an activist threat, which may be crucial to gain support.

Larger companies also benefit from access to a cadre of top advisors (including attorneys, investment bankers, investor relations professionals and proxy solicitors) specializing in activist defense, so are generally better prepared for the challenge. Of course, deeper pockets also allow larger companies to utilize new and creative techniques to engage with shareholders to drive support, including social media and digital initiatives. In contrast, the more limited financial resources and management bandwidth of smaller companies can often constrain their defensive capabilities.

What is your biggest tip for companies going into the upcoming engagement season?

Listen to your shareholders. While it’s critical to articulate a cogent plan for long-term value creation and demonstrate the board’s qualifications, many companies seem more focused on pushing their own agenda than listening to the concerns of their shareholders. While companies may not agree with or adequately address each shareholder’s concerns, it is essential to be aware of any hot-button issues, especially when repeated by multiple shareholders, and develop effective messaging and an action plan to help alleviate them.

Successful E&S proposals in 2024

In 2024, investors lent their support to requests for enhanced disclosure concerning emissions reduction targets, political spending and artificial intelligence, writes Miles Rogerson.

The first half of 2024 saw a record 349 environmental and social (E&S) shareholder proposals subject to a vote, up from 256 and 319 in the same period in 2022 and 2023.

Requests for disclosure of targets and policies governing greenhouse gas (GHG) emissions won increased support, with investors keen to ensure companies are prepared for evolving regulatory requirements. Shareholders also supported disclosure requests surrounding emerging and hot-button issues such as artificial intelligence (AI) and political spending.

Emissions reporting

In the first half of 2024, six climate change shareholder proposals won north of 40% support at U.S. companies, with two securing majority support. Both of the successful proposals called on restaurant chains to establish and disclose Scope 1 and Scope 2 GHG emissions reduction targets and to commit to annual progress reports.

Two such proposals won majority support in the same period a year prior, while none passed in the first half of 2022.

Of the six climate proposals to secure upwards of 40% support so far this year, five called for enhanced reporting on greenhouse gas (GHG) emissions reductions. Four of the six were subject to a vote at companies in the consumer cyclical sector.

"Investors have increased expectations of companies reporting their GHG emissions now, especially as this ask is embedded in a number of mandatory reporting standards in other jurisdictions," Tracey Rembert, associate director of climate change & environmental justice at the Interfaith Center on Corporate Responsibility (ICCR), told DMI.

2024 has been a landmark year for emissions reporting, with the Securities and Exchange Commission (SEC) unveiling its Climate Rule, as well as regulations being advanced from the European Commission and the state of California.

Cognizant of these looming obligations, investors have supported proposals looking to ensure companies are prepared and have robust emissions processes in place. For companies looking to highlight to investors that their ESG programs are robust, they would benefit from providing disclosure in line with upcoming reporting requirements or sharing insight into steps being taken to prepare for new requirements.

"Investors are going to be getting the disclosures they need regardless of what California or the SEC does, because of other regulations," Rembert said, referencing looming reporting obligations from Europe that will also apply to U.S. companies conducting business in the region. "The companies that wait until California or the SEC rule becomes final are going to be way behind the curve."

Addressing emerging AI risks

The 2024 proxy season also played host to new proposals concerning AI. Six requests for AI transparency/misinformation reporting were subject to a vote in the first half of 2024, securing 23.6% average support, while one request for a company to establish an AI board committee won 9.7% support.

> "The companies that wait until California or the SEC rule becomes final are going to be way behind the curve."

"The goal of engagement is to support AI accountability and transparency by pressing companies to acknowledge where risks of algorithmic harms exist and to disclose their frameworks, processes and plans for identifying, mitigating and remediating harms," Meg Jones Monteiro, senior director for health equity at ICCR told DMI. "Beyond disclosures, companies should establish a governance framework to oversee and monitor activities related to the development and use of AI."

Requests for AI-related reporting are proving especially successful at technology companies. A proposal seeking such reporting at Apple secured 37.5% support, with Legal & General Investment Management outlining in a voting bulletin that the company should enhance its reporting, given its "outsized influence on the integration of AI into our economy."

At the NIRI Conference in June, California State Teachers' Retirement System (CalSTRS) Investment Officer Rekha Vaitla noted that the fund manager is more likely to support disclosure requests at technology companies, where companies have "likely already integrated AI into their operations and it poses a pressing risk."

Political spending disclosures evolve

In the U.S., one political activities proposal secured majority support so far this year and 18 (31%) proposals secured above 30% support, approximately the same as a year prior.

However, investors are increasingly seeking to marry the issue to more expansive statements companies have made about corporate purpose, asking for reporting on how donations align with a company's values on climate change and diversity.

"The fact that it's an election year has drawn investor attention to this topic, and it should be a prompt for companies to pay extra close attention to their election-related spending and disclosure and accountability policies," Dan Carroll, vice-president of the Center for Political Accountability's (CPA) programs and counsel, told DMI.

In part, the shift away from spending disclosure and toward congruency reporting is also a result of enhanced transparency. More companies are proactively disclosing their political spending and are open to holding meaningful dialogue on the topic, promoting shareholders to make more ambitious asks.

John Chevedden's requests for DexCom and Crown Holdings to commit to semi-annual reporting on political contributions and expenditures secured 51.9% and 48.9% support at their respective 2024 annual meetings, despite being opposed by management.

> "Companies should establish a governance framework to oversee and monitor activities related to the development and use of AI."

"We view transparency as a risk management feature. If you're trying to mitigate risk, it's not a smart strategy to rely on political spending that must stay secret to avoid a PR disaster because of the risks of inadvertent disclosure and compelled disclosure from legal action," Carroll said.

No. shareholder proposals subject to a vote by year and company region

	2021	2022	2023	2024 YTD
Region	No. proposals	No. proposals	No. proposals	No. proposals
U.S.	690	804	763	678
Europe (including U.K.)	1,043	855	929	492
Asia	1,923	2,094	2,427	791
Canada	42	93	102	109
Australasia	63	83	64	33
Other	101	68	52	45

*As of June 30

Source: Diligent Market Intelligence / Voting

2024 US E&S shareholder proposals

Proposal topic/keywords	Proposal sub-category	No. proposals	Average support (%)
Median gender/racial pay gaps	Fair pay	13	29.3
Artificial intelligence/AI misinformation	Social other	6	23.6
Freedom of association reporting	Human rights	10	25.7
Gestation crates	Social other	6	22.7
Create climate change report	Climate change	58	19.7
Political expenditures and values congruency	Political activities	9	17.6
Biodiversity	Other environmental	2	17.3
Plastic	Other environmental	7	15.8

*As of June 30, 2024

Source: Diligent Market Intelligence / Voting

No. and average support (%) for E&S shareholder proposals at US-based companies

	2021 YTD		2022 YTD		2023 YTD		2024 YTD	
Proposal category/type	No. proposals	Average support (%)	No. proposals	Average support (%)	No. proposals	Average support (%)	No. proposals	Average support (%)
Environmental & Social	153	37.1	270	27.4	335	19.5	343	16.2
Agricultural practices	0	0	0	0	4	11.4	3	16.2
Charitable donations	1	0.6	13	4.1	2	7	7	2.5
Climate change	27	47.9	44	33.8	68	21.5	57	19.7
Diversity & employment	33	44.1	51	29.9	27	17.3	9	14.7
Fair pay	0	0	0	0	12	33.2	13	29.3
Health	0	0	0	0	27	14.3	17	10.4
Human rights	15	29.5	17	32.9	29	21.9	42	15
Other environmental	14	28.2	25	34.9	27	23.8	29	17.1
Political activities	44	40.3	55	31.8	52	24.6	58	23.3
Social other	19	16.4	65	17.5	54	10	56	10.4
Sustainable governance	0	0	0	0	4	13.1	7	8.2
Working conditions & benefits	0	0	0	0	29	20.6	45	12.4

*As of June 30

Source: Diligent Market Intelligence / Voting

Activism in Europe

European activism levels almost halved in the first half of 2024, with 96 demands made by shareholder activists, compared to 176 and 177 in the first half of 2022 and 2023, respectively. Despite a lull in campaigns and demands, activists were successful in their bids for board seats. In H1 2024, activists secured 22 board seats, holding steady to the 21 and 25 in the same period in 2022 and 2023.

12 seats were won via settlement agreements, while 10 were secured via a vote.

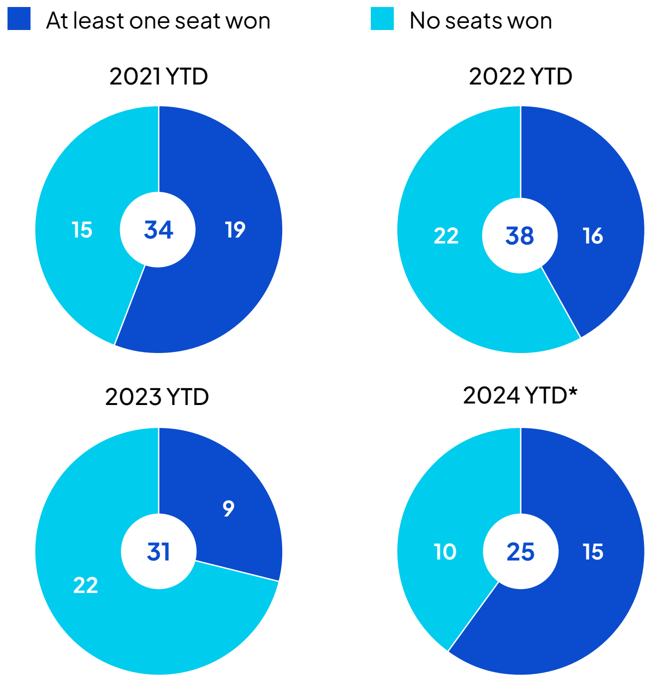
Demand type breakdown of European (including UK) companies publicly subjected to activist demands

Demand group	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
Appoint personnel	31	33	27	22
Capital structure	5	2	8	1
Divestiture	9	12	9	4
Environmental	9	12	14	3
Governance	31	23	28	11
Operational	3	6	13	7
Oppose M&A	16	10	6	3
Push for M&A	5	10	6	7
Remove personnel	19	23	25	18
Remuneration	18	16	10	3
Return cash to shareholders	29	20	21	14
Social	10	9	10	3
Total	185	176	177	96

*As of June 30

Source: Diligent Market Intelligence / Activism

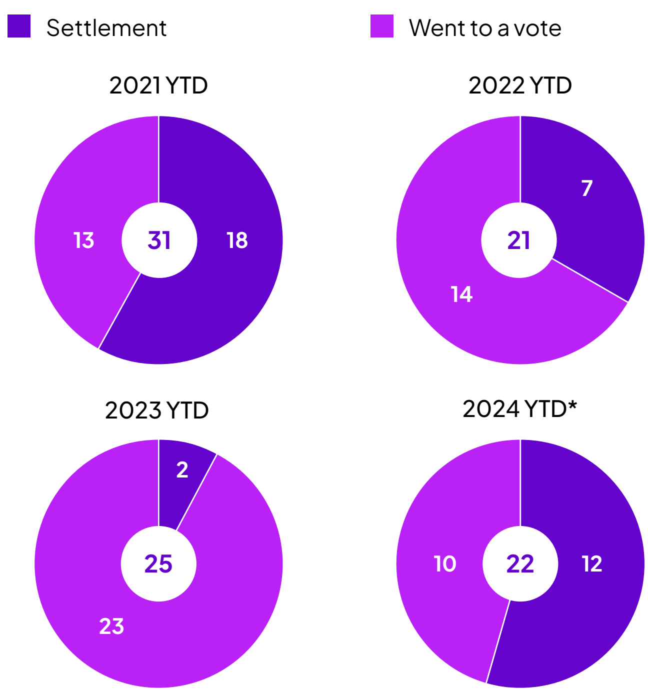
No. European board representation demands made by outcome



*As of June 30

Source: Diligent Market Intelligence / Activism

No. board seats gained by activists at European companies



*As of June 30

Source: Diligent Market Intelligence / Activism

Activism in Asia

Following several years of increased activity in Asia, the level of shareholder activism declined in 2024. In the first half of the year, 274 demands have been made of Asia-based companies, down from 410 and 514 in the first half of 2022 and 2023, respectively. Demands in H1 2024 centered around governance and returning cash to shareholders.

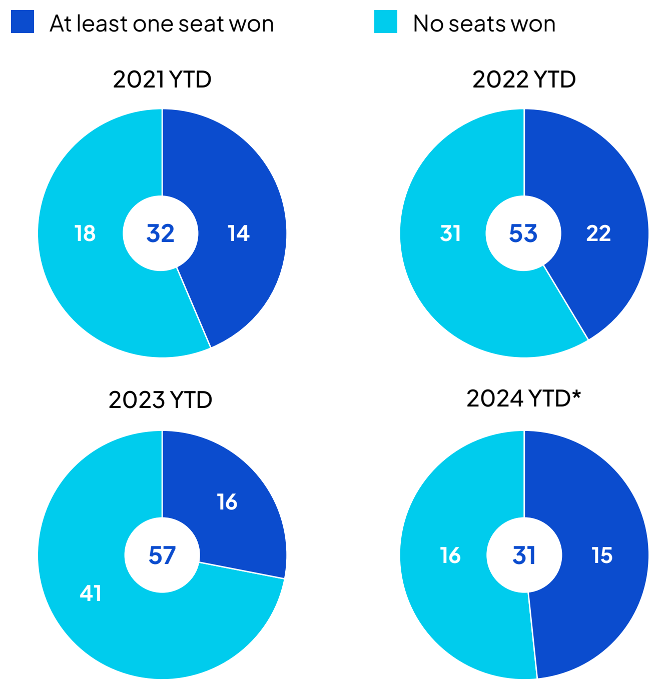
Demand type breakdown of Asian companies publicly subjected to activist demands

Demand group	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
Appoint personnel	33	50	53	33
Capital structure	6	12	23	12
Divestiture	11	20	19	13
Environmental	5	20	15	7
Governance	37	62	89	69
Operational	5	9	12	5
Oppose M&A	6	4	4	2
Push for M&A	4	5	8	3
Remove personnel	26	30	38	34
Remuneration	11	24	40	29
Return cash to shareholders	28	64	88	55
Social	2	4	4	12
Total	263	410	514	274

*As of June 30

Source: Diligent Market Intelligence / Activism

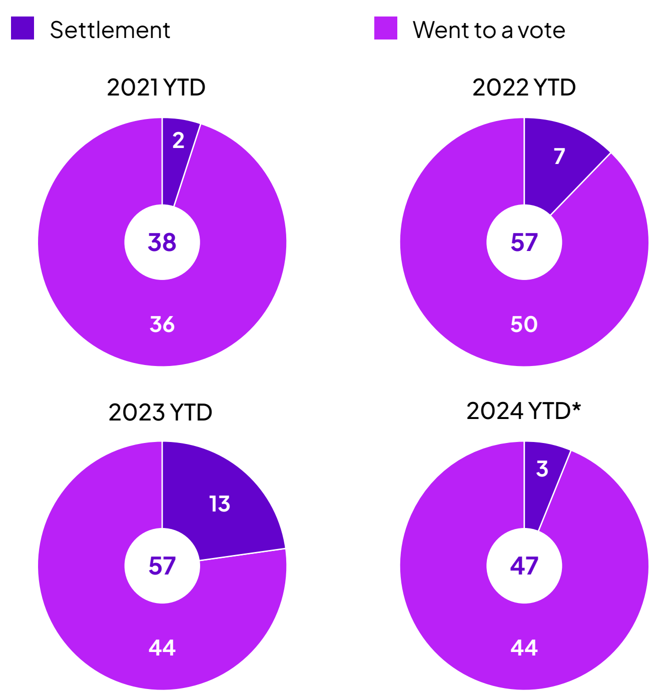
No. Asian board representation demands made by outcome



*As of June 30

Source: Diligent Market Intelligence / Activism

No. board seats gained by activists at Asian companies



*As of June 30

Source: Diligent Market Intelligence / Activism

Activism in Canada

In the first half of 2024, 86 demands were made of Canada-based companies, holding steady compared to the 76 and 89 in the same periods in 2022 and 2023. ESG demands have proven popular, with the majority of demands centered on governance and environmental concerns.

Demand type breakdown of Canadian companies publicly subjected to activist demands

Demand group	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
Appoint personnel	9	7	15	14
Capital structure	1	0	1	4
Divestiture	1	1	5	2
Environmental	8	12	10	15
Governance	14	16	11	24
Operational	1	8	6	3
Oppose M&A	3	2	6	1
Push for M&A	1	1	4	5
Remove personnel	7	6	12	8
Remuneration	1	5	6	4
Return cash to shareholders	1	0	3	1
Social	10	18	10	5
Total	57	76	89	86

*As of June 30

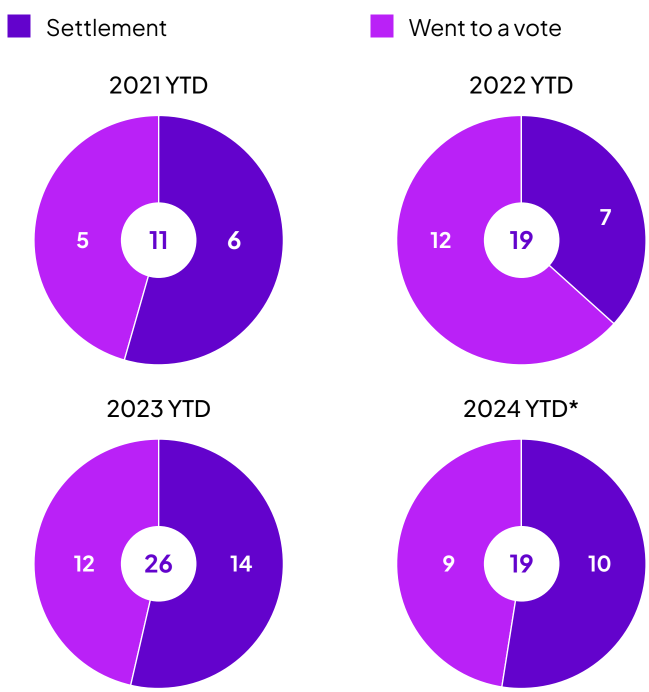
Source: Diligent Market Intelligence / Activism

No. Canadian board representation demands made by outcome

*As of June 30

Source: Diligent Market Intelligence / Activism

No. board seats gained by activists at Canadian companies



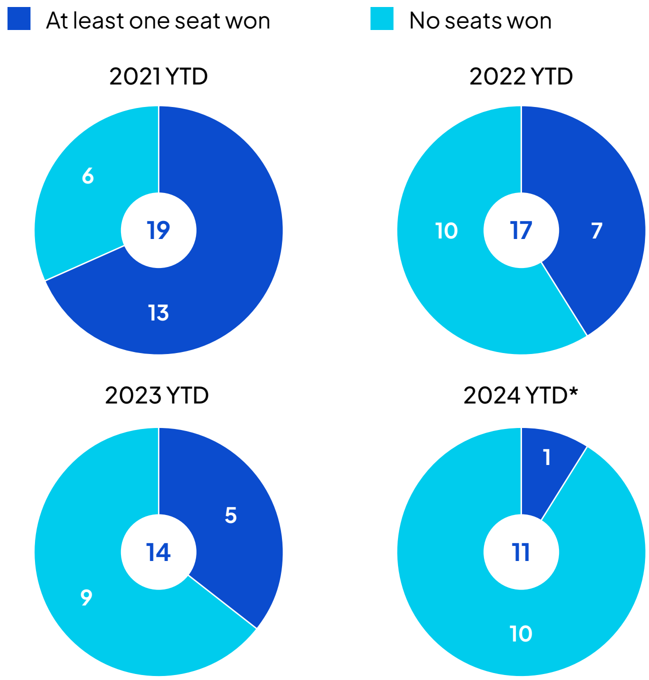
*As of June 30

Source: Diligent Market Intelligence / Activism

Activism in Australasia

In H1 2024, ahead of the November Australian proxy season, 45 demands were made at Australasian companies, down from 48 a year prior and 57 in H1 2022. The majority of demands centered around board refreshment. So far this year, activists have secured two board seats at Australasian companies.

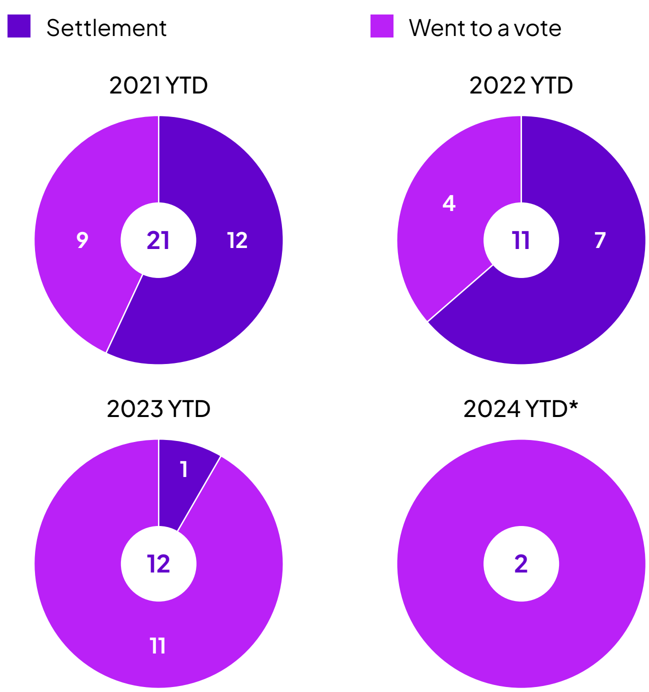
No. Australasian board representation demands made by outcome



*As of June 30

Source: Diligent Market Intelligence / Activism

No. board seats gained by activists at Australasian companies



*As of June 30

Source: Diligent Market Intelligence / Activism

Demand type breakdown of Australasian companies publicly subjected to activist demands

Demand group	2021 YTD	2022 YTD	2023 YTD	2024 YTD*
Appoint personnel	14	14	11	12
Capital structure	1	0	1	2
Divestiture	1	4	2	1
Environmental	4	6	6	1
Governance	7	7	4	2
Operational	3	2	3	2
Oppose M&A	2	2	1	2
Push for M&A	2	3	1	2
Remove personnel	9	15	12	17
Remuneration	0	1	1	1
Return cash to shareholders	1	1	4	3
Social	0	2	2	0
Total	44	57	48	45

*As of June 30

Source: Diligent Market Intelligence / Activism

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.

For more information or to request a demo:

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