2023

Diligent Market Intelligence

Proxy Season Review

Produced in association with Olshan Frome Wolosky.

Diligent

OLSHAN

Contents

Proxy Season Review 2023

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Editor's foreword

Josh Black, Editor-in-Chief, Diligent Market Intelligence

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Long-time readers will notice a few changes around here. Following our rebranding as Diligent Market Intelligence, this and the advert overleaf should be the only mentions of Insightia in this report. Rest assured, our mission as a data provider will remain the same: namely, empowering organizations to enhance their engagement, stewardship and governance activities by providing access to real-time data and insights.

Initially, the changes to our online portal will be limited to a few minor cosmetic ones but we are also excited to bring you an even broader variety of data sets in the near future. As you'll see in this report and in ESG 2023, published earlier this year, we've quickly integrated executive compensation, ESG risk scores and news analytics from Diligent's Manzama service into our arsenal.

Our Proxy Season Review 2023 is a great opportunity to kick off this new era with a range of insights into the state of relations between investors and issuers. While the U.S. proxy season was dominated by the introduction of the universal proxy card (UPC) and battles over ESG against a backdrop of politicization and inflation, Europe faced a cost-of-living crisis and Asia another year of radical demands to improve returns. These real-world factors impacted hundreds of shareholder meetings this year.

For activists, this was a less active year than it might otherwise have been thanks to a banking crisis, depressed European markets and a dearth of M&A. Only in Asia – and notably in Japan and South Korea – did fights really take off. UPC did not lead to an increase in proxy fights, but it did help more activists win votes (six out of 10 contested votes went the way of the activist in the first six months of 2023) and led to earlier settlements. If that track record continues into a more opportunistic macro environment, more activists could replicate Carl Icahn's giant-killing at Illumina, which tops our list of wildest campaigns.

For ESG supporters, this was another mixed year. Support for environmental and social shareholder proposals was mostly down in the U.S. and Europe, where they are most common. But the picture was clouded by a wide variety of proposals, including some anti-ESG proposals that dragged down averages. A strong pass rate for climate change proposals in the U.S. is worth calling out, as is the appeal of pro-union and lobbying disclosure proposals. Such issues prove that support for ESG is not all dried up.

One topic that combined ESG, activism and shareholder proposals in 2023 is remuneration. This proxy season saw a spate of remuneration-themed shareholder proposals, mainly asking that severance packages be put to a shareholder vote. Our readers voted it the number one ESG issue. And yet, rebellions on "say on pay" votes were flat or down in almost every region, suggesting lessons had been learnt from past proxy seasons.

"While the U.S. proxy season was dominated by the introduction of universal proxy and battles over ESG against a backdrop of politicization and inflation, Europe faced a cost-of-living crisis and Asia another year of radical demands to improve returns."

There are, of course, lessons to be learned from this proxy season, albeit too many to list in this foreword. The data illustrate the changing nature of shareholder demands and we're indebted to the contributors who agreed to be interviewed, as well as our sponsors, Olshan Frome Wolosky and Morrow Sodali. I hope you'll enjoy their valuable insights, as well as those provided by Diligent Market Intelligence's journalists and research analysts.

The universal proxy regime – The results are in!

The introduction of the universal proxy card fostered a rise in both settlements and contentious corporate bylaw amendments in the first half of 2023, writes Andrew Freedman, chair, shareholder activism practice group, Olshan Frome Wolosky.

Andrew Freedman
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The 2023 proxy season saw strong momentum following a record-breaking season in 2022. There have been 403 companies in the U.S. that were subject to activist demands, which is slightly below trend compared to last season as some activists have taken a "wait and see" approach to how the Securities and Exchange Commission's (SEC) new universal proxy card (UPC) rules play out.

We also witnessed robust activity in Canada, Europe, and Asia. Things are getting particularly interesting in Japan, where it has been reported that more than 80 companies were subject to upwards of 370 shareholder proposals in June alone as the Tokyo Stock Exchange (TSE) continues to put pressure on listed companies to become more shareholder-friendly.

Here in the U.S., the results are in as far as how the "mix-and-match" format under the new UPC rules impacted shareholder activism during the 2023 season. As we predicted, we saw more minority slate campaigns seeking to replace the most vulnerable incumbent directors and a significant uptick in early-stage settlements as institutions seemed eager to test out "mix-and-match" voting.

We continue to see campaigns settle as companies and activists alike feel their way through the new UPC regime. This penchant for compromise has resulted in some seasoned activists securing more than just board seats at high profile companies. Shake Shack entered into an agreement with Engaged Capital that not only resulted in the appointment of the former chief financial officer of Domino's Pizza to the board, but also secured the company's commitment to retain a consulting firm and eliminate the founder's director designation rights.

Meanwhile, warnings by company advisors that UPC would open up the floodgates to first-time activists because the rules would purportedly make it easier and cheaper to run contests turned out to be a fallacy. The number of U.S. campaigns commenced by first-time activists as a percentage of all campaigns stayed relatively flat compared to prior years, and the data clearly shows that budgets for most activist campaigns still run in the hundreds of thousands of dollars, if not millions.

Unfortunately, the same company advisors who claimed that UPC would make proxy contests more accessible to shareholders have actually driven up the cost of running an election contest by counseling companies to weaponize their advance notice bylaw procedures in order to make it easier for them to invalidate nomination notices and bypass the UPC requirements at their annual meetings.

However, these tactics backfired in a big way against some of these companies, like at Masimo where the board adopted advance notice bylaws that required information from the nominating shareholder that went well beyond what is necessary and reasonable.

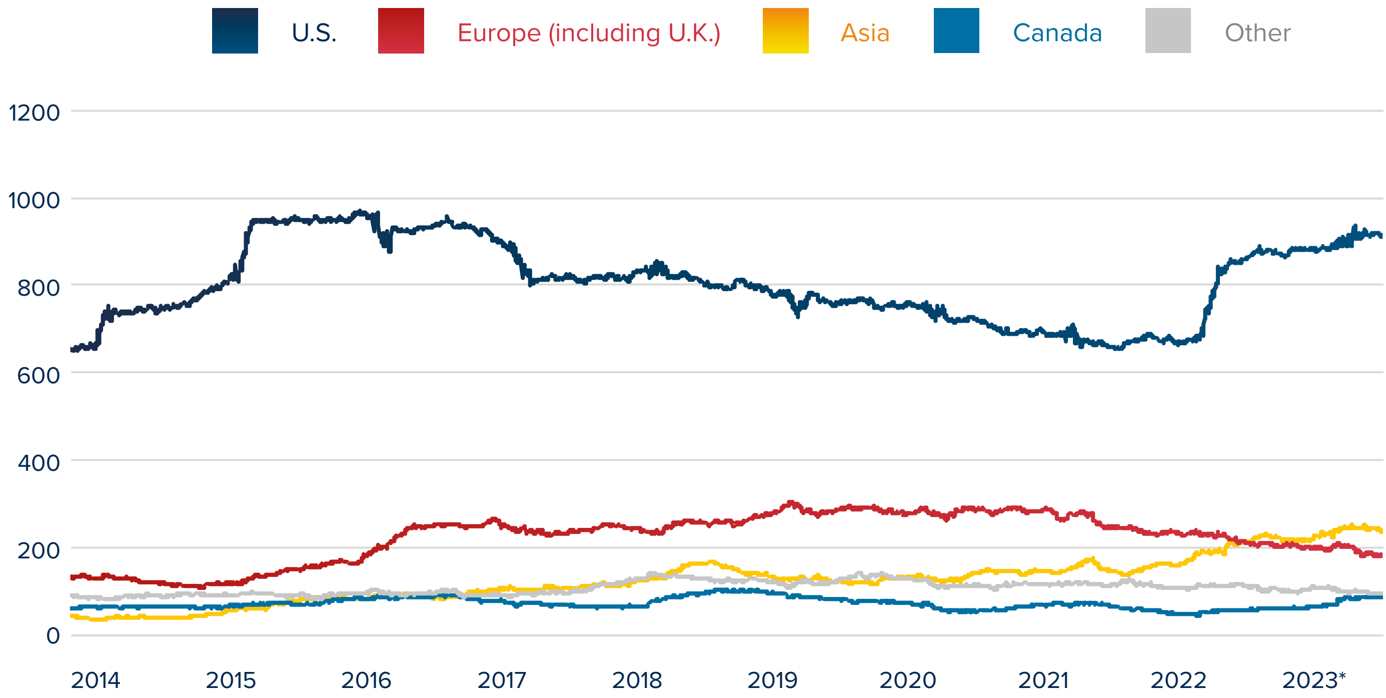
> *"It remains to be seen whether lessons will be learned from Masimo and companies will be less cavalier with their defense tactics in the second half of 2023 and beyond."*

Only after being challenged in court by Politan did the company rescind these bylaw provisions and terminate its recently adopted poison pill. But the damage was already done – in its recommendation to shareholders fully supporting the dissident slate, Institutional Shareholder Services (ISS) described these nomination requirements as "an affront to shareholders" that "did not even approach the definition of reasonable."

It remains to be seen whether lessons will be learned from Masimo and companies will be less cavalier with their defense tactics in the second half of 2023 and beyond. In any event, Olshan remains committed to continuing to stand up for the rights of shareholders against any abuse of the corporate machinery or any other inventive machination designed to suppress shareholder democracy.

Proxy season trends at a glance

365-day rolling total of activist campaigns by company HQ region



*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

No. activist demands made globally by demand type

Demand group	2019 YTD	2020 YTD	2021 YTD	2022 YTD	2023 YTD*	YOY % change
Appoint personnel	240	182	172	201	196	↓ 2.5
Capital structure	27	25	24	28	39	↑ 39.3
Divestiture	46	33	37	46	42	↓ 8.7
Environmental	48	51	63	115	115	0
Governance	320	302	299	334	327	↓ 2.1
Operational	38	65	45	46	54	↑ 17.4
Oppose M&A	38	26	43	33	23	↓ 30.3
Push for M&A	63	49	28	46	38	↓ 17.4
Remove personnel	138	113	87	122	110	↓ 9.8
Remuneration	70	54	68	101	117	↑ 15.8
Return cash to shareholders	77	92	77	104	131	↑ 25.9
Social	118	107	93	129	144	↑ 11.6

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

Outcome of resolved gain board representation demands that went to a vote by region

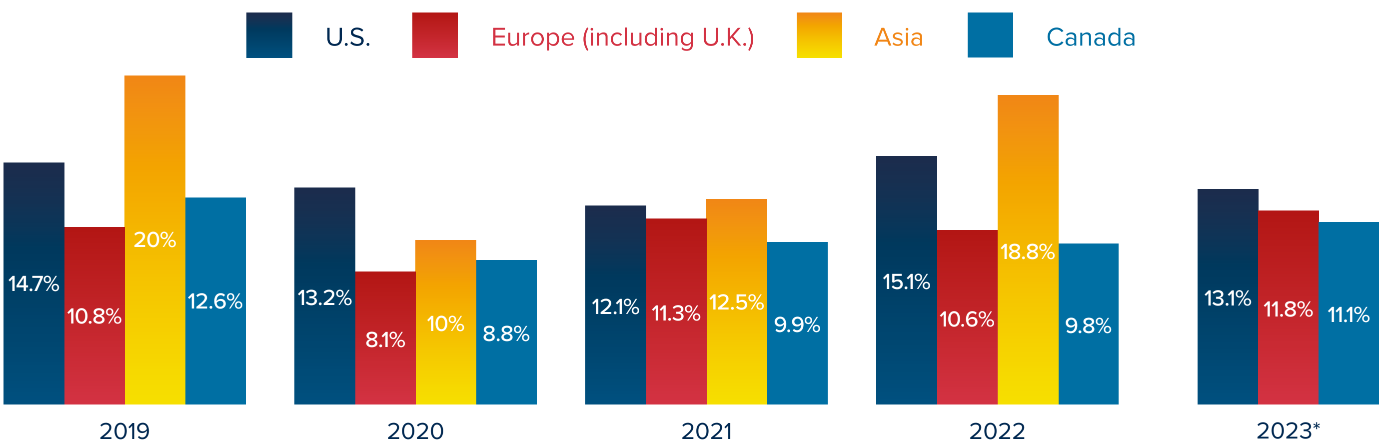
Company region & outcome	2019	2020	2021	2022	2023 YTD*
U.S.	27	22	22	23	11
At least one activist board seat won	14	12	9	9	6
No seats won	13	10	13	14	5
Canada	7	10	5	4	5
At least one activist board seat won	6	7	3	3	4
No seats won	1	3	2	1	1
Europe (including U.K.)	62	34	30	42	20
At least one activist board seat won	31	16	13	15	7
No seats won	31	18	17	27	13
Asia	32	37	46	58	40
At least one activist board seat won	13	14	20	24	11
No seats won	19	23	26	34	29
Australia	30	33	27	23	7
At least one activist board seat won	14	6	11	10	4
No seats won	16	27	16	13	3
Other	2	2	4	1	0
At least one activist board seat won	0	0	4	1	0
No seats won	2	2	0	0	0
Total	160	138	134	151	83

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

No. and proportion of advisory "say on pay" proposals receiving <80% support by region

No. proposals					
Region	2019 YTD	2020 YTD	2021 YTD	2022 YTD	2023 YTD*
U.S.	425	392	350	458	342
Europe (including U.K.)	112	107	180	219	175
Asia	5	2	3	3	3
Canada	28	20	24	24	24



*As of June 30, 2023.

*Other regions = Africa, Australasia, South America and Mexico

Source: Diligent Market Intelligence / Voting

No. and average support for (%) shareholder proposals by type and region

Environmental

Region	2019 No. proposals w. results	2019 Average support for (%)	2020 No. proposals w. results	2020 Average support for (%)	2021 No. proposals w. results	2021 Average support for (%)	2022 No. proposals w. results	2022 Average support for (%)	2023 YTD* No. proposals w. results	2023 YTD* Average support for (%)
U.S.	31	23	32	32.5	41	41.2	69	34.2	83	21.7
Canada	8	17	7	36.2	4	37.3	15	19.5	24	19.6
Europe (including U.K.)	9	12.3	15	20	18	6.6	17	12.6	17	11.7
Asia	39	4.9	44	5.9	36	6.9	48	8.5	47	8.5
Other	17	23.6	11	28.1	6	71.9	4	79.6	0	0

Social

Region	2019 No. proposals w. results	2019 Average support for (%)	2020 No. proposals w. results	2020 Average support for (%)	2021 No. proposals w. results	2021 Average support for (%)	2022 No. proposals w. results	2022 Average support for (%)	2023 YTD* No. proposals w. results	2023 YTD* Average support for (%)
U.S.	116	29	115	30.4	110	35.7	199	24.5	199	17.7
Canada	6	22.9	11	7	8	24.5	15	16.3	10	21.5
Europe (including U.K.)	4	39.8	0	0	2	2.4	4	6.7	4	32.4
Asia	4	12.3	2	8.4	9	8.7	12	16.7	10	10.7
Other	1	23.6	3	10	0	0	3	6.1	0	0

General governance

Region	2019 No. proposals w. results	2019 Average support for (%)	2020 No. proposals w. results	2020 Average support for (%)	2021 No. proposals w. results	2021 Average support for (%)	2022 No. proposals w. results	2022 Average support for (%)	2023 YTD* No. proposals w. results	2023 YTD* Average support for (%)
U.S.	155	43.9	160	41.1	178	44.9	156	39.8	76	32.5
Canada	3	22.6	1	18.4	0	0	0	0	0	0
Europe (including U.K.)	18	72	4	53.4	6	50.4	18	54.7	2	50.1
Asia	19	62	17	80.9	23	65.6	57	90.5	31	69.4
Other	2	5.2	2	6.8	6	5.6	4	63.6	0	0

Remuneration

Region	2019 No. proposals w. results	2019 Average support for (%)	2020 No. proposals w. results	2020 Average support for (%)	2021 No. proposals w. results	2021 Average support for (%)	2022 No. proposals w. results	2022 Average support for (%)	2023 YTD* No. proposals w. results	2023 YTD* Average support for (%)
U.S.	44	22.4	39	21.6	26	25.4	38	35.4	46	26.1
Canada	22	10.9	8	7	2	7.4	4	11.3	4	9.2
Europe (including U.K.)	25	78.1	21	74.1	13	90.3	15	58.2	9	39.6
Asia	14	56.9	20	45.2	39	70.9	45	45.4	53	26.8
Other	1	9	0	0	0	0	1	24	0	0

*As of June 30, 2023. **Other regions = Africa, Australasia, South America and Mexico Source: Diligent Market Intelligence / Voting

WILDEST campaigns of 2023

Amid depressed financial markets and soaring inflation, activists are placing a heightened focus on company profitability and have been increasingly unforgiving of companies failing to maximize profits and streamline operations.

In this section, the Diligent Market Intelligence (DMI) editorial team reveals our picks for the wildest activist campaigns of the 2023 season.

So far this year, we've seen the godfather of shareholder activism lock horns with a biotech giant while simultaneously defending his holding company from a shorts attack, veteran activist Nelson Peltz back down from a fight, and divisive mergers and acquisitions, some of which have developed into heated lawsuits.

1st Carl Icahn at Illumina

Carl Icahn's campaign for three board seats at gene sequencing company Illumina started out as a protest against its acquisition of cancer detection test maker Grail, which he argued should be unwound in the face of regulatory opposition. But in typical Icahn style, the focus shifted to Illumina CEO Francis deSouza and Chair John Thompson, who Icahn accused of having a less than independent relationship, given they had worked together at another company and publicly referred to each other as "friends."

"We wonder how Thompson and deSouza can continue with straight faces to minimize their extensive relationship," Icahn wrote in a May letter to shareholders, criticizing the board's decision to award deSouza an 87% pay increase to $27 million, despite Illumina's stock declining by over 60% in 2022.

Icahn appeared to be on the ropes, however, when a May 2 short report by Hindenburg Research accused his namesake conglomerate, Icahn Enterprises, of using a "Ponzi-like" economic structure to pay dividends, resulting in a 50% fall in its market capitalization. Yet, shareholders largely overlooked the issue, voting in Icahn lieutenant Andrew Teno to the board at the May 25 annual meeting, while voting out Chair Thompson.

"[Icahn's] a shareholder and entitled to nominate, vote, and make suggestions," commented Lawrence Elbaum, co-head of Vinson & Elkins' activism practice. "If he was trying to take over the company, [Illumina] could have said his people shouldn't have oversight because they don't even have good oversight over Icahn Enterprises. But he just wanted a few seats."

The campaign could well have another chapter. On June 2, Hologic CEO Stephen MacMillan and Edwards Lifesciences CFO Scott Ullem joined the board, potentially weakening Icahn's influence. Ten days later, deSouza revealed he would be stepping down as CEO.

In July, it was revealed that Illumina may be subject to an EU fine of up to $453 million, due to the Grail acquisition's lack of regulatory approval.

2nd IAA at Ritchie Bros.

The storied merger of Ritchie Bros. Auctioneers and IAA was one of the most openly debated deals in a long time.

Upon announcing its intention to acquire auto salvage and parts auction company IAA for $7.3 billion in November last year, Ritchie Bros.' stock price tanked by 20%, quickly becoming the subject of criticism from investors like Luxor Capital and Janus Henderson, over fears that the deal was not the "unique and extraordinary opportunity" the company described.

Deep Field Asset Management was more forthright in its criticism of the potential deal, arguing in a February statement that it would "destroy" shareholder value and "should be sent to the scrapyard by RBA shareholders."

> *"The storied merger of Ritchie Bros. Auctioneers and IAA was one of the most openly debated deals in a long time."*

The transaction also garnered so much attention from investors due to its cross-border aspect with Canada, adding nuances to the transaction and how the merger was voted on.

Ritchie Bros. opted to sweeten the offer, bringing Starboard Value into the deal with a board seat in return for a $500-million investment agreement, while Ancora Advisors issued a presentation calling out naysaying investors for making misleading, false, and "laughable" arguments against the acquisition.

The week before the special meeting, odds appeared stacked against the deal. Not only had the acquisition faced mounting investor opposition, but both Glass Lewis and Institutional Shareholder Services (ISS) recommended shareholders vote against the deal, touting the companies' prospects as standalones.

Despite pushback, the deal ultimately went through, with more than 46% of shareholders voting against the acquisition at the March 14 special meeting.

3rd Trian Partners at Walt Disney Co.

Trian Partners' campaign at Walt Disney was gearing up to be what looked like one of the headline campaigns of the season before drawing to an abrupt close after Disney unveiled a bold restructuring plan that promised to result in $5.5 billion in savings.

Just one month after Disney reshuffled its board as part of a truce with Third Point Partners and revealed Bob Iger would be returning as CEO two years into his successor's tenure, Trian Partners revealed its intention to nominate founder Nelson Peltz to the media giant's board.

Trian claimed Disney was "a company in crisis" after shedding $120 billion in market value last year, seeing its earnings per share decline by 50% since 2018, scrapping its dividend in 2020 for the first time in 57 years, and lacking an actionable CEO succession plan. The company, Peltz argued, had no excuse not to be thriving, given its "unrivalled global scale."

> *"Trian claimed Disney was 'a company in crisis' after shedding $120 billion in market value last year and seeing its earnings per share decline by 50% since 2018."*

Disney's attempt to placate Peltz through the appointment of Mark Parker as independent chair failed to bear fruit, with the company setting its shareholder meeting for April 3.

The campaign took a sudden change in direction on February 8, when Disney published better-than-expected financial results for Q1 2023, along with a raft of business initiatives, including plans to reinstate its dividend by the end of 2023 and a reorganization under three core businesses.

The next day, Peltz ended his fight at Disney, claiming the proposed changes "are a win for all shareholders" and broadly aligned with Trian's thinking. "We are pleased with the role that Trian was able to play in helping to focus the board to take decisive actions which we believe will lead to better financial results," a spokesperson for Trian Partners told Diligent Market Intelligence (DMI).

4th Coliseum Capital Management at Purple Innovation

To kick off this eight-month campaign, in September 2022 investor Coliseum Capital Management offered to acquire mattress maker Purple Innovation for $4.35 per share, reaffirming its longstanding support for the company and management team.

Purple was resistant, electing to adopt a poison pill and rejecting the $362-million takeover offer, claiming the bid “undervalued” its business and prospects.

> *“The mattress specialist opted to issue preferred stock with cumulative voting rights, designed to prevent a Coliseum board sweep.”*

With Coliseum owning 44% of the shares and planning a control slate, the mattress specialist opted to issue preferred stock with cumulative voting rights, designed to prevent a Coliseum board sweep. In the succeeding months, Coliseum sued Purple over the preferred dividend and subsequently Purple announced undesirable quarterly earnings, which caused its share price to fall.

In mid-April, Purple reached a settlement with Coliseum under which three new directors were appointed to the board, incumbent director Adam Gray, managing partner at Coliseum, was named board chair. In addition, the cumulative voting securities were redeemed, restoring the company’s one-share/one-vote construct.

5th Politan Capital at Masimo Corp.

After Masimo battled its way through a rough year of operational underperformance, legal skirmishes, and an unpopular acquisition that sent its stock plummeting 42.5%, Politan Capital Management disclosed an 8.8% stake in August 2022, briefly sending the stock up 8.4%. But what was to come ranked among the most explosive campaigns of the 2023 season.

Just two months after disclosing its stake, Politan filed a lawsuit against Masimo, claiming that the Russell 3000 medical device company’s board had breached its fiduciary duty by approving a highly dilutive poison pill with a 10% trigger, and adding new “extreme” nomination requirements, after the activist privately stated interest in joining the board.

“Universal proxy is a voting mechanic – it did not create a new way for shareholders to seek board seats or make running a proxy contest less expensive,” Ryan Nebel, partner at Olshan Frome Wolosky, told DMI. “As a consequence, companies like Masimo that bought into these false narratives have now been put on the defensive by concerned shareholders and advocacy groups for adopting these ill-advised amendments.”

The lawsuit was kicked back and forth for several months until Masimo agreed to revert to its old bylaws in February. However, now joined by California State Teachers’ Retirement System (CalSTRS), Politan maintained legal pressure on Masimo regarding CEO Joe Kiani’s employment agreement which, among other things, would allow Kiani restricted stock units equal to 5% of the outstanding shares and the potential for a $43-million cash payment.

At the June 26 special meeting, Politan secured both of the board seats it sought, including one for the activist firm’s chief investment officer, Quentin Koffey.

Honorable mentions

Other activist campaigns worth mentioning include the five-firm activist swarm around Salesforce, which averted a proxy fight with Elliott Management after delivering better-than-expected fourth quarter results and adding ValueAct Capital Partners CEO Mason Morfit to its board.

Bluebell Capital Partners’ push for BlackRock to replace CEO Larry Fink and review its ESG investment policies also dominated headlines, being one of the few ESG campaigns of the season by an activist hedge fund, while Murchinson’s campaign at Nano Dimension was fraught with lawsuits and contested acquisitions.

> *“Bluebell Capital’s push for BlackRock to replace CEO Larry Fink also dominated headlines.”*

Oasis Capital’s proxy fight at Fujitec made our top 10 for the second consecutive year, after former CEO and Chair Takakazu Uchiyama failed in his bid to completely overhaul the board, just months after being fired by recently elected Oasis directors. Ping An Insurance’s push for HSBC to split its Asian and western operations was another memorable campaign that ended with the U.K. banking giant selling its Canadian business, reinstating its dividend, and shareholders rejecting the split.

Gaining ground

The anticipated surge of activist investing did not materialize during the 2023 proxy season but modest increases in campaign volume and successful board battles will likely embolden dissidents, writes Josh Black.

The outlook for activism heading into the 2023 proxy season was the best in years thanks to plummeting stock prices and the introduction of the universal proxy card, Diligent Market Intelligence (DMI) predicted in its *Shareholder Activism Annual Review* in February.

Over the course of the past six months, the picture has sometimes been clouded by economic uncertainty, resulting in a season short of blockbuster campaigns. Yet, the first votes under the universal proxy and more generous settlements should give activists room for optimism.

Win some, leave some

Budding proxy fights at Salesforce and Walt Disney Co. suggested that the 2023 proxy season would be one for the ages before Elliott Management and Trian Partners, respectively, chose uncharacteristically to back down. Yet, the universal proxy card has helped activists, a fact that has been noted by many in the investor and issuer worlds.

The two campaigns shared some notable characteristics, especially in their resolution. Both companies promised a more aggressive focus on profitability and showed markets that progress was well under way. They also offered board changes as concessions, Salesforce adding three directors, including constructive activist Mason Morfit, of ValueAct Capital Partners, and Disney replacing its chair, having already added a new director in a settlement with Third Point Partners at the end of 2022.

A banking crisis just as nomination deadlines closed may have seen other contests dropped. "We've had a number of contests go the distance," Morrow Sodali Managing Director, Michael Verrechia, told DMI. "But at the same time, we've worked with a lot of companies which were either concerned about an activist turning up, or had a threat behind the scenes, and for various reasons those situations fell away."

> *"Where activists have continued to demand board seats publicly, the first votes under the universal proxy and more generous settlements should give activists room for optimism."*

Globally, activists racked up 214 board seats at the end of June, compared with 201 at the same point in 2021. A rush of early settlements combined with an improved record in proxy fights that went to a vote undoubtedly helped.

"There certainly seems to be a lot of quiet resolutions and maybe that's the leverage of the universal proxy that activists are using," MacKenzie Partners' president, Bob Marese, told DMI in an interview.

Perhaps most notably of fights that went the distance, Illumina's John Thompson became the first chairman of a large-cap North American company to be voted off a board

No. board seats gained by activist nominees by region

Region	2019 YTD	2020 YTD	2021 YTD	2022 YTD	2023 YTD*
Asia	44	46	38	57	54
Australia	26	8	18	11	12
Canada	27	13	11	19	25
Europe (excluding U.K.)	35	24	22	13	19
U.K.	16	5	8	8	6
Other	7	5	8	1	1
U.S.	131	137	96	113	97
Total	286	238	201	222	214

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

since the Canadian Pacific fight of 2012. Carl Icahn's campaign also led to the departure of the company's CEO, despite winning just one seat.

Semi-defrosted

Yet board composition was a more contested topic than in years past, according to DMI's Activism module the number of M&A demands worldwide fell 17.6% in the first half of 2023. Advisors blamed that on economic uncertainty and the dearth of M&A, with many companies reluctant to do deals that could be challenged by vigorous antitrust enforcers on both sides of the Atlantic. Indeed, the Illumina campaign was in part a referendum on the company's acquisition of Grail despite regulatory concerns.

"Activism has always followed the transaction market," said Barclays Global Head of Shareholder Advisory Jim Rossman in an interview. "Depressed M&A volumes and scarce capital chill activism because you can't make a case for change."

One of the biggest M&A activism campaigns of the year ended in Ritchie Bros. securing shareholder support for its merger with IAA with just 54% for the transaction. The hard-fought solicitation saw Starboard Value ally with Ritchie Bros. in return for favorable investment terms and a role at the combined company in one of the more innovative activist approaches of the season.

As the proxy season draws to a close, however, M&A activism appears to be picking up. More such demands were made in May and June than in the first four of 2023, according to DMI's *Activism* data.

ESGR continues

Shareholder demands related to environmental, social, governance and remuneration issues handily outstripped past proxy seasons, thanks mostly to soaring demands in the social category. Those demands came more from individual investors and nonprofits than hedge funds, which conspicuously declined to bring the kinds of environmental- or social-themed proxy fights that enlivened the 2021 and 2022 proxy seasons.

Also absent were proxy fights from the same individual investors and nonprofits that regularly file shareholder proposals. The universal proxy card rule was expected to make it easier and cheaper to run a proxy fight and, according to Marese, some are still thinking about it. But updated advance notice bylaws requiring extensive legal disclosures may also have increased the hurdles and legal fees involved, even before the cost of the solicitation is included.

"The cost of running a proxy contest is shareholder profile-specific," said Verrechia. "Under the new rules, the dissident is required to mail to two-thirds of the outstanding shares. In certain situations, that can allow for a fairly cost-efficient campaign for the dissident."

Outcome of activist demands for board representation by year

Settlement/ Went to vote	2019	2020	2021	2022	2023 YTD*
N/A	81	79	75	67	45
Settlement	183	140	111	130	70
Went to vote	160	138	134	151	83
Total	424	357	320	348	198

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

"Budding proxy fights at Salesforce and Walt Disney Co. suggested that the 2023 proxy season would be one for the ages."

Success rate (%) of global ESG and remuneration-related demands

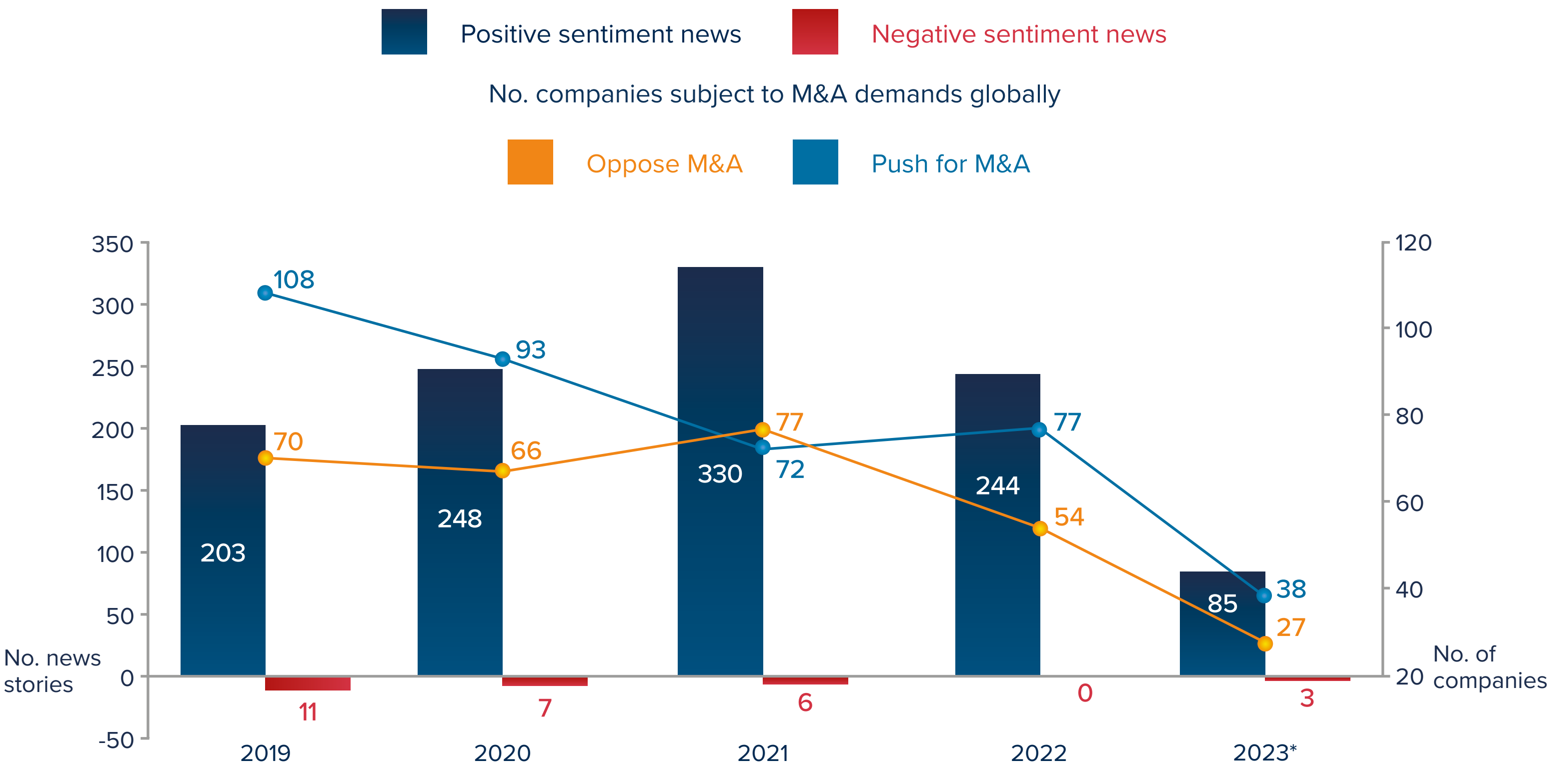
No. campaigns					
Demand group and outcome	2019	2020	2021	2022	2023 YTD*
Environmental	9.52%	8.34%	11.28%	15.46%	15.83%
Activist withdrew demands	17.95%	1.47%	3.37%	6.00%	2.63%
At least partially successful	5.13%	13.24%	17.98%	14.67%	5.26%
Activist's objectives unsuccessful	76.92%	85.29%	78.65%	79.33%	92.11%
Social	18.68%	19.63%	18.50%	22.37%	25.14%
Activist withdrew demands	1.31%	2.50%	4.11%	3.23%	8.29%
At least partially successful	6.54%	9.38%	20.55%	12.90%	6.63%
Activist's objectives unsuccessful	92.16%	88.13%	75.34%	83.87%	85.08%
Governance	60.44%	61.60%	59.06%	51.03%	45.14%
Activist withdrew demands	7.88%	7.17%	9.87%	9.09%	5.54%
At least partially successful	28.89%	16.33%	24.46%	19.60%	14.15%
Activist's objectives unsuccessful	63.23%	76.49%	65.67%	71.31%	80.31%
Remuneration	11.36%	10.43%	11.15%	11.13%	13.89%
Activist withdrew demands	12.90%	9.41%	19.32%	12.96%	7.00%
At least partially successful	15.05%	17.65%	17.05%	6.48%	10.00%
Activist's objectives unsuccessful	72.04%	72.94%	63.64%	80.56%	83.00%

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

Global M&A-related news stories by sentiment

The number of positive news stories related to M&A transactions dropped sharply in the first half of 2023, reflecting how market volatility has made both investors and issuers reluctant to engage in deals.



*As of June 30, 2023.

Source: Diligent / Manzama Source: Diligent Market Intelligence / Activism

The impact of universal proxy

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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Now that the dust has settled, how has universal proxy card (UPC) changed the shareholder activism landscape and defense tactics?

Elizabeth Gonzales-Sussman (EG): One of the unfortunate outcomes of the new UPC rules this proxy season was the increased weaponization by companies of their advance notice bylaw provisions to invalidate nomination notices, in order to allow them to sidestep the use of a UPC for their annual meetings. Late last year, the Securities and Exchange Commission (SEC) issued guidance stating that if a company invalidated a nomination notice, it would not need to use a UPC that listed the dissident's nominees and the company's nominees on their proxy cards. As a result, we saw a number of entrenched boards adopt this playbook and attempt to hold their annual meetings naming just the company's nominees on their proxy cards.

In undertaking these efforts, dissidents were forced to spend significant resources fighting unilateral decisions by boards to invalidate otherwise valid nominations. In most cases, our clients were successful in defending against such unscrupulous actions, with companies backtracking from their positions shortly after being challenged in court or receiving overwhelming negative feedback from shareholders. Companies and their advisors should understand that these entrenchment tactics can often backfire, as a board's decision to deny shareholders the ability to vote on a dissident's candidates could be interpreted to suggest the board's indifference to shareholders' competence and ability to evaluate for themselves purported deficiencies.

Ryan Nebel (RN): It has been well documented that UPC has engendered an environment where companies are much more willing to settle compared to prior years, after quickly realizing that their attempts to insulate their weakest directors in a UPC contest format could be an uphill battle. Digging a little deeper, settlement discussions are commencing much earlier in the process, are being negotiated at lightning-fast speeds, and are often finalized and announced prior to either side even filing its preliminary proxy. Many of these negotiations have been less hostile than in the past and my clients have not had to cave on material terms for which they have established precedent in prior settlements like the duration and scope of their standstills, minimum ownership thresholds and expense reimbursement.

In a sense, UPC has brought out the best and worst of board behavior. While it is encouraging to see reasonable resolutions being reached early in the engagement process in many situations, the scorched-earth tactics utilized in others is reason for concern.

Elizabeth, can you talk a little more about the types of advance notice bylaw changes you observed this proxy season?

EG: Many companies updated their bylaws to conform the timing and notification requirements of their shareholder nomination procedures to those of the new UPC rules. Unfortunately, however, many of these bylaw amendments went well beyond the changes that were needed to address the new rules or that are otherwise required by law. Rather, companies used this as an opportunity to expand their advance notice bylaws with so-called "disclosure enhancements" that make the process for shareholders to nominate directors unnecessarily costly and sometimes completely impractical from a business standpoint.

Some of the more egregious disclosure requirements were challenged in court – like asking for the names of the nominating hedge fund's limited partners. Other offensive bylaw provisions that emerged from UPC include asking for copies of the nominating shareholder's proprietary and highly confidential fund documents. While some of our clients challenged these problematic provisions in court, many companies waived compliance with them before a court could weigh in on their enforceability. As such, a dissident may face the same hurdles next season.

"In a sense, universal proxy has brought out the best and worst of board behavior."

Ryan, what was the root cause of so many companies adopting these bylaw amendments and potentially exposing them to lawsuits from shareholder activists, like we saw at Masimo?

RN: There are a handful of company advisors that are directly responsible for convincing boards that the UPC format would make it much easier for first-time gadfly activists to run a competing slate of candidates and that boards needed to protect themselves from the impending threat of a new wave of frivolous contests that UPC would unleash. This false narrative made amending advance notice bylaws to further complicate the nomination process an easier sell to boards.

But, at the end of the day, the tsunami of frivolous contests never came. UPC is a voting mechanic – it did not create a new way for shareholders to seek board seats or make running a proxy contest less expensive. As a consequence, companies like Masimo that bought into these false narratives have now been put on the defensive by concerned shareholders and advocacy groups for adopting these ill-advised amendments.

"Companies and their advisors should understand that entrenchment tactics can often backfire, as a board's decision to deny shareholders the ability to vote on a dissident's candidates could be interpreted to suggest the board's indifference to shareholders' competence."

What were some other trends you saw this proxy season?

EG: Heeding Institutional Shareholder Services' (ISS) warning last year that activists who may have, in the past, "overreached" with respect to the size of their slates and that padding the number of nominees in the UPC regime could "backfire," a vast majority of our clients decided to run minority slates over majority slates. As Ryan discussed above, most of these settled in the early stages of the campaign.

Interestingly, since our clients settled for fewer board changes than they may have wanted, a little more emphasis was given to settlement terms designed to give them more confidence that strategic or governance changes would, in fact, be implemented. For example, some of our clients required more specific terms for capital return plans, some demanded the CEO resignation as part of their settlement, and some reversed recent bylaw amendments.

Do you think this trend of running smaller slates will continue?

RN: Each situation is unique, but there's no doubt that most of our activist clients took extremely calculated approaches to targeting one or two of the most vulnerable incumbent nominees and highlighting with surgical precision every attribute and skill possessed by their proposed replacement nominees, as measured against those of the incumbents.

However, control contests may not necessarily be a thing of the past – I think many activists decided to show some restraint this season, in light of ISS' guidance on slate sizing and wanted to test the waters under UPC with more skeletal slates. We could see activists get a little more aggressive on slate sizing next proxy season but expect them to continue to tailor their slates to the specific situation to maximize their chances for success.

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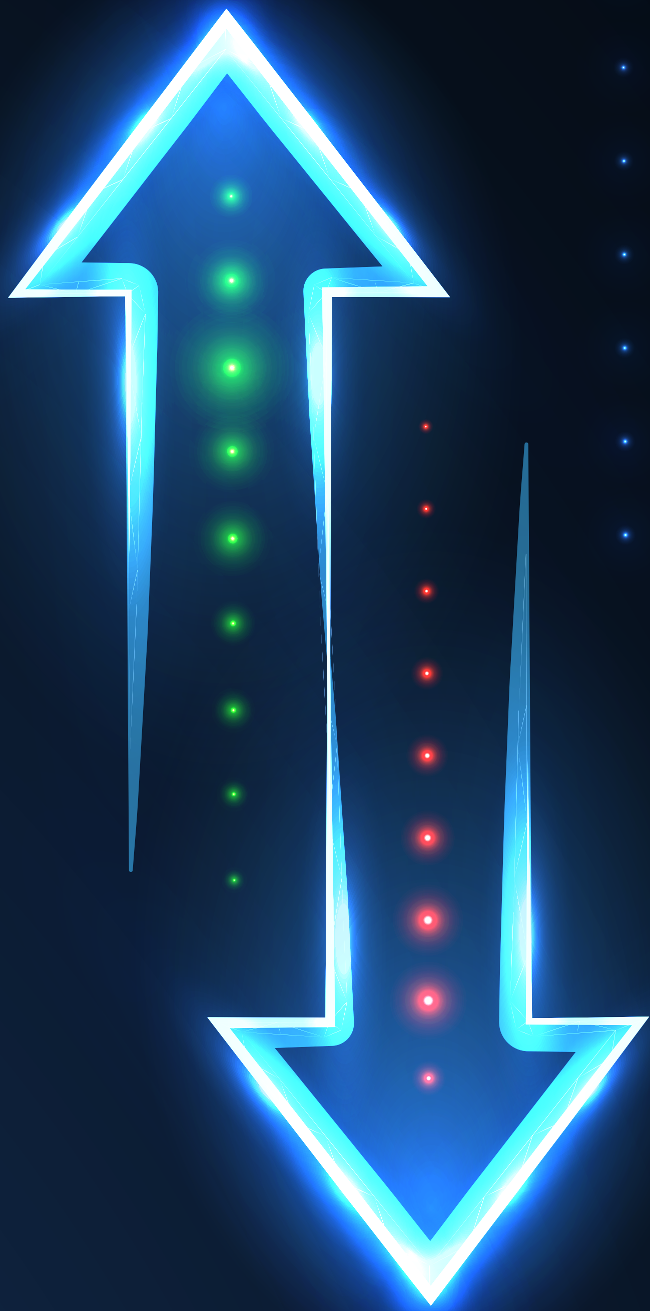


ESG proposals yield mixed results

The 2023 season was full of ups and downs on the ESG front, with cost-of-living concerns refocusing investor priorities, writes Rebecca Sherratt.

In a year wrought with rising inflation, market volatility and increasingly vocal anti-ESG sentiment, support for ESG proposals has been decidedly mixed, with institutional investors lending their support to only a handful of proposal themes this season.

Globally, nine environmental and social shareholder proposals won majority support in the first six months of 2023, equivalent to a 2.4% success rate. In the first half of 2022, 36 proposals of this kind passed, equating to a 10.1% success rate, according to DMI's *Voting* module.

"Compared to, say, 2021, where support for ESG proposals was at an all-time high, the specificity of such proposals now is very apparent and clearly a contributing factor to the decline in support," Kilian Moote, managing director in the ESG advisory practice at Georgeson, told Diligent Market Intelligence (DMI). "Institutional investors are sharpening their focus and clarifying how they perceive their role when it comes to material ESG issues."

Low energy

In the first half of 2023, the 26 climate change proposals subject to a vote in the global energy sector won 23.6% average support, compared to 23.9% throughout 2022. Proposals of this kind in North America have an 11.1% pass rate, compared to 8.3% a year prior.

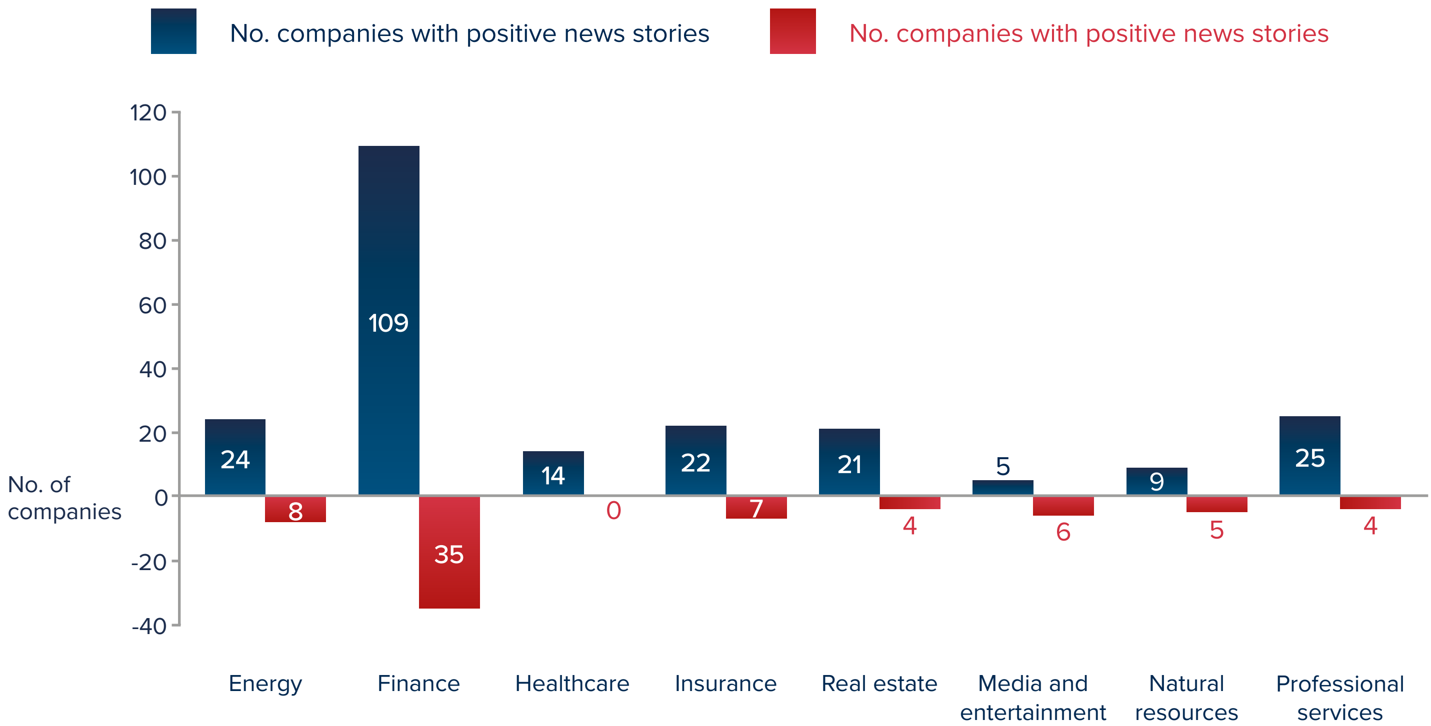
Despite none of the five climate change shareholder proposals in the European energy sector winning majority support this year, average support has increased to 14.3%, compared to 10.2% in 2022. One such proposal seeking medium-term Scope 3 emissions targets at TotalEnergies won 30% support, up from 17% support the last time it was subject to a vote in 2020.

"Institutional investors are sharpening their focus and clarifying how they perceive their role when it comes to material ESG issues."

Not all proposals of this kind have borne fruit, however, with support for identical Scope 3 proposals at Chevron and Exxon Mobil more than halving compared to previous years.

Global ESG-related news sentiment by sector

This chart examines the proportion of global companies that have been featured in both positive and negative ESG-related news stories by sector in the past 12 months. The financial sector is subject to the largest portion of negative ESG-related stories.



*News stories published between June 30, 2022 - June 30, 2023.

Source: Diligent / Manzama

McKenzie Ursch, legal advisor at Follow This, attributes this dwindling support to a change in tack on the part of proxy advisors.

"If you look at the support our proposals have received in the past, both Institutional Shareholder Services (ISS) and Glass Lewis have tended to support us," McKenzie Ursch, legal advisor at Follow This, told DMI in an interview. "This year, we only received support for our resolution at TotalEnergies from ISS, and that doesn't really make sense. Chevron and Exxon Mobil are miles behind where TotalEnergies is in mitigating their climate impact, so to advise for a proposal at TotalEnergies and against identical ones in the U.S. doesn't make sense."

Moote told DMI that the increasing specificity of investor asks is also a contributing factor. "The increase in proposals calling for target setting, financed emissions, and Scope 3 reporting have likely contributed toward proposals being deemed overly prescriptive and winning the support of fewer investors. ESG proposals in the energy sector [historically] tended to be broader and less specific."

"Despite none of the five climate change shareholder proposals in the European energy sector winning majority support this year, average support has increased to 14.3%, compared to 10.2% in 2022."

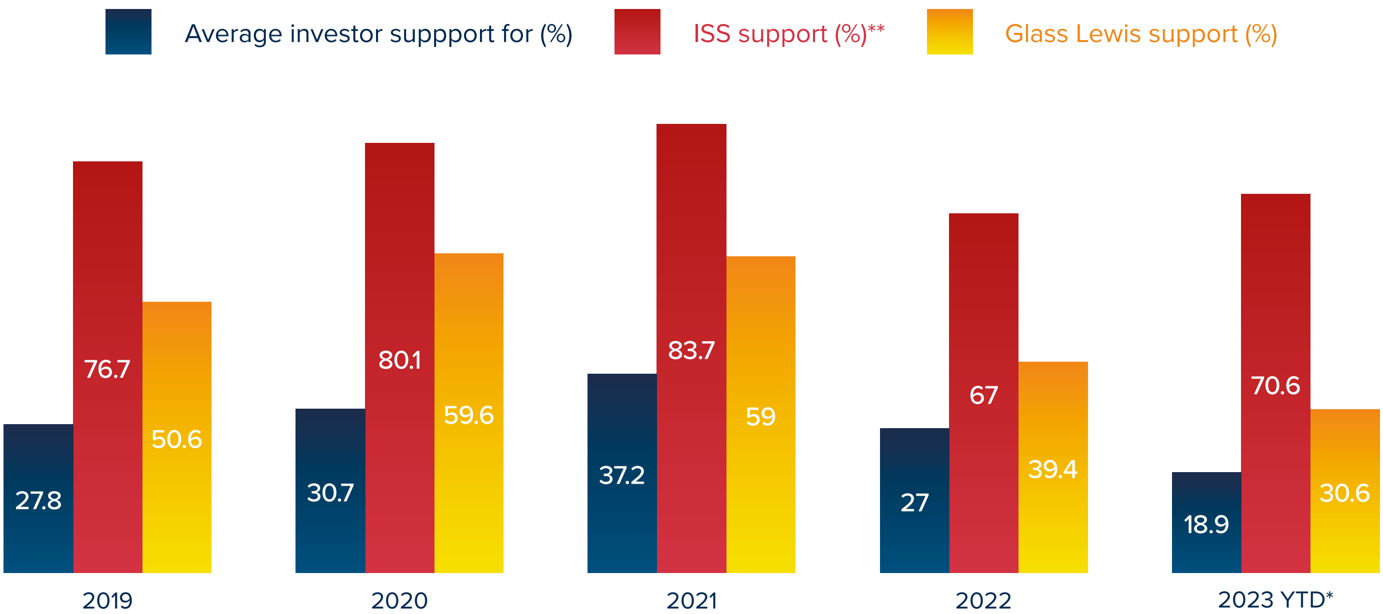
Cost-of-living concerns

Human rights and employee welfare proposals have also won the favor of investors, eager to mitigate potential reputational and staffing risks arising from cost-of-living pressures brought on by rising inflation.

In the first half of 2023, seven proposals subject to a vote at U.S.-listed companies seeking third-party assessments of freedom of association received 36.3% average support, compared to 30% support throughout 2022. One such

Average support (%) and proxy advisor recommendations for U.S. environmental and social shareholder proposals

No. proposals with results				
2019	2020	2021	2022	2023 YTD*
147	147	151	268	282



*As of June 30, 2023. **Based on ISS synthetic recommendations.

Source: Diligent Market Intelligence / Voting

proposal won 52% support at Starbucks' March 23 annual meeting, following concerns that the company was engaged in anti-unionization efforts.

"Overall labor market dynamics are likely a contributing factor as to why various human capital management proposals received higher attention and support from both proxy advisors and institutional investors," Moote said. "Tight labor markets and disruptions due to disputes between labor and management can be disruptive to company performance."

Cost-of-living concerns similarly permeated executive pay discussions, with six (33.3%) of shareholder proposals seeking investor approval of severance payments winning upwards of 40% support this year.

"We ask that companies explain how their executive compensation program is resilient and, thus, will deliver reasonable pay outcomes across a broad range of market environments," BlackRock said in a recent whitepaper. "In this context, resilient means that programs will adequately reflect the financial performance that shareholders are experiencing."

Highest supported ESG shareholder proposals globally by year

2022

Company	Meeting date	Company HQ	Sector	Proposal detail	For (%)
Hangzhou Cable	May 20, 2022		Technology	Approve investment in vehicle lithium battery project	100
Standard Bank Group	May 31, 2022		Financial services	Report on climate progress	99.8
Standard Bank Group	May 31, 2022		Financial services	Enhance disclosure of greenhouse gas emissions	99.7
Standard Bank Group	May 31, 2022		Financial services	Enhance emissions reduction targets	99.7
Chevron	May 25, 2022		Energy	Oversee and report on reliability of methane emission disclosures	98

2023 YTD*

Company	Meeting date	Company HQ	Sector	Proposal detail	For (%)
FLSmidth & Co.	Mar 29, 2023		Industrials	Report on human rights	100
Cenovus Energy	Apr 26, 2023		Energy	Report on lobbying activity alignment with net-zero goals	99.5
New York Community Bancorp	Jun 01, 2023		Financial services	Report on lobbying activity alignment with Paris Agreement goals	95
Coterra Energy	May 04, 2023		Energy	Enhance methane emission disclosures	74.4
Dollar General	May 31, 2023		Consumer defensive	Commission a third-party audit of worker safety and wellbeing	67.7

*As of June 30, 2023.

Source: Diligent Market Intelligence / Voting

Director elections under the microscope

Thanks to challenging market environments, investors are being increasingly scrutinous of director elections, writes Rebecca Sherratt, publications editor, Diligent Market Intelligence (DMI).

"Only 0.8% and 9% of directors, respectively, have sustainability and technology specialist backgrounds."

Rebecca Sherratt
rsherratt@diligent.com

Proxy season offers shareholders essential vision into how companies are reacting to various risks and opportunities, which often results in issuers facing a multitude of questions from key stakeholders. 2023 is no exception, with investors keen to understand how issuers are weathering the current business environment and challenges brought on by market volatility.

According to Diligent Market Intelligence (DMI) data, director re/elections are becoming a popular tool with which investors can send a clear message to the company around key issues. As of October 5, 2023, support for global director re/elections this year has declined to 95.9%, compared to 96.5% and 96.3% throughout 2021 and 2022, respectively.

Regional nuances

When comparing directors by region, support held relatively steady, with support for European directors somewhat higher than for their American counterparts, while support for directors in Asia declined.

U.S. director re/election proposals averaged 93.6% support in 2023, as of October 5, compared to 93.9% throughout 2022.

As in previous years, CEO compensation may have played a part in the level of dissent observed on public company director re/elections. Other factors in play include enhanced focus on board-level diversity, director commitments, stewardship matters around climate change and capital allocation decisions.

"Board quality and composition was the top reason we did not support management on director elections in the Americas. However, improved disclosures on material business risks led to fewer votes against director elections on transparency grounds," BlackRock's proxy season review stated. The asset manager supported 92.9% of U.S. management director re/election proposals in the 2023 season, up from 92.6% a season prior.

Vanguard noted in its U.S. regional brief that it "continued to see boards self-governing their directors' capacity, with companies increasingly establishing director commitment policies and practices to ensure that directors can dedicate the requisite time and attention to each board on which they serve."

State Street Corp., meanwhile, updated its voting policy this year to say that it may vote against nominating committee chairs at S&P 500 companies which do not disclose an internal policy on director time commitments.

In Europe, average investor support for director re/elections held steady at 96.6%.

BlackRock noted in its review that many European issuers provided "enhanced disclosures and policies better aligned with shareholders' long-term economic interests." Where European directors were opposed, remuneration concerns were "the key governance theme," alongside director overcommitment and independence.

In Asia, shareholder support for directors declined to 96.9%, compared to 97.4% in 2022. In its season review, BlackRock noted that director independence "continued to be a significant driver of votes to signal concerns" on Asian director re/election resolutions.

Skillsets and gender diversity

While board diversity has for several years been demanded by investors, director sector and skillset expertise is part of a new focus on board composition for investors.

"Director skills are becoming a focal point of investor engagements," Keith Larson, senior attorney and assistant secretary at Edison International, said at the Council of Institutional Investors' (CII) Fall Conference in September. "Shareholders cite director disclosure, particularly board skill matrices, as great tools to understand the makeup of the board."

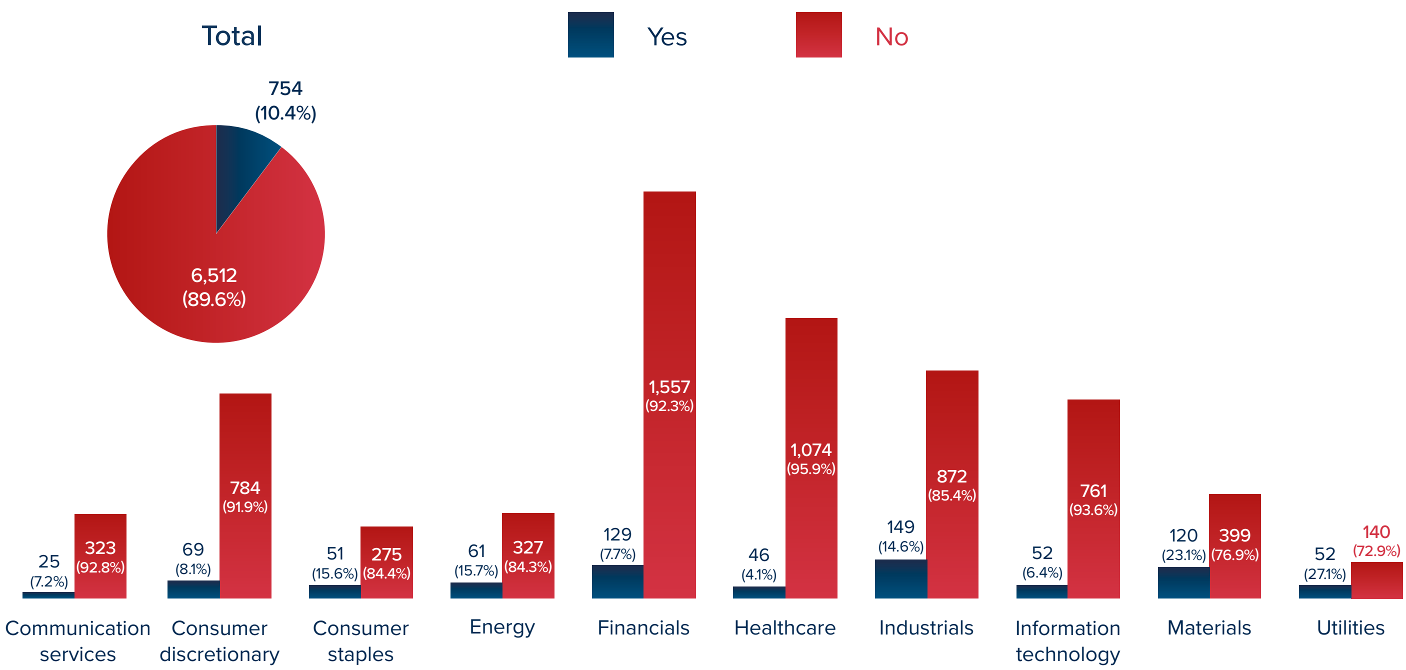
Analyzing more than 110,000 global directors in 7,266 publicly listed companies from DMI, only 0.8% and 9% of directors, respectively, have sustainability and technology specialist backgrounds, skills which are becoming increasingly critical for addressing today's business operations and stakeholders' needs.

DMI data suggest that female directors formed approximately 38% of global director appointments in the past year. As of October, 23.8% and 57.1% of S&P 500 and FTSE 350 boards feature a minimum of 40% female representation, respectively.

2023 marked the first season in which State Street Corp. revealed it may vote against Russell 1000 nominating committee chairs that do not disclose, "at a minimum, the gender, racial and ethnic composition of their boards."

CORRECTION: This article has been comprehensively updated to provide the latest data on investor voting decisions. A previous version incorrectly stated the level of support for director re/election proposals. Diligent Market Intelligence apologizes for the error.

Proportion of global companies that currently have a sustainability expert on the board

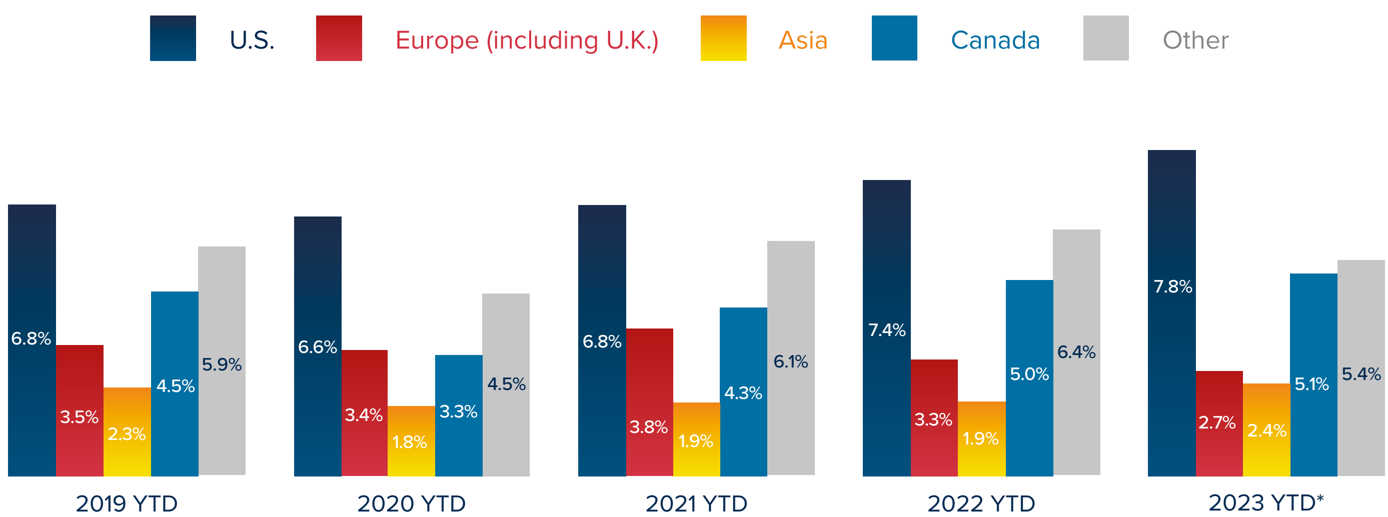


*Based on over 110,000 directors in 7,266 publicly-listed global companies.

Source: Diligent / Compensation and Governance Intel

No. and proportion of director re/election proposals receiving <80% support by region

No. proposals					
Region	2019 YTD*	2020 YTD*	2021 YTD*	2022 YTD*	2023 YTD*
U.S.	1,463	1,377	1,510	1,733	1,761
Europe (including U.K.)	309	290	379	335	297
Asia	854	721	751	760	886
Canada	260	172	250	307	299
Other	165	121	164	160	54



*As of October 5, 2023.

*Other regions = Africa, Australasia, South America and Mexico

Source: Diligent Market Intelligence / Voting

Proportion of directors with sector expertise by region

Sector	U.S.	Canada	Europe (including U.K.)	Asia	Other
Communication services	16%	14%	18%	8%	15%
Consumer discretionary	35%	28%	34%	21%	26%
Consumer staples	13%	14%	16%	12%	14%
Financials	57%	54%	50%	26%	53%
Healthcare	31%	12%	14%	8%	14%
Information technology	30%	16%	20%	19%	17%
Materials	11%	30%	16%	20%	29%
Industrials	40%	37%	42%	40%	33%
Utilities	7%	13%	9%	3%	8%
Energy	10%	27%	9%	4%	18%

*As of June 30, 2023. Source: Diligent Market Intelligence / Compensation and Governance Intel

Proxy advisor recommendations for director re/election proposals by region

U.S.

Year	No. proposals with results	Investor average support (%)
2019	23,200	94.4
2020	22,846	94.4
2021	24,263	94.4
2022	25,329	93.9
2023 YTD*	22,541	93.6

Europe (including U.K.)

Year	No. proposals with results	Investor average support (%)
2019	9,611	96.7
2020	9,661	96.5
2021	10,817	96.5
2022	11,173	96.6
2023 YTD*	11,068	96.8

Canada

Year	No. proposals with results	Investor average support (%)
2019	6,008	96.1
2020	5,728	96.6
2021	6,220	96.1
2022	6,462	95.9
2023 YTD*	5,830	95.6

Asia

Year	No. proposals with results	Investor average support (%)
2019	41,644	97.2
2020	44,426	97.4
2021	45,014	97.5
2022	44,269	97.4
2023 YTD*	36,875	96.9

Other

Year	No. proposals with results	Investor average support (%)
2019	2,786	95.8
2020	2,668	96.9
2021	2,689	95.8
2022	2,506	95.3
2023 YTD*	982	95.4

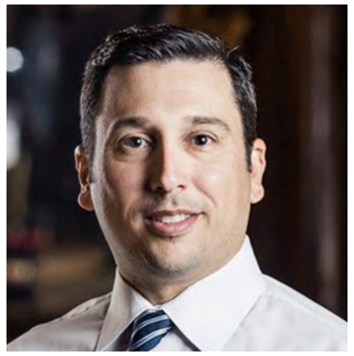
*As of October 5, 2023. **Other regions = Africa, Australasia, South America and Mexico

Source: Diligent Market Intelligence / Voting

Fostering effective shareholder engagement

An interview with Michael Verrechia, managing director, M&A and Activism Advisory Group, Morrow Sodali.

"The reality is that holders still want to see a case for supporting one or more dissident nominees."



Michael Verrechia
m.verrechia@morrowsodali.com

Has the introduction of universal proxy impacted shareholder activism in ways you expected?

The previous contest voting system had been in place for decades and shaking that up certainly will come with some bumps in the road. We've already seen some changes to the original thought around how to count votes, overvoting and discretionary voting privileges. I think when the dust settles from this proxy season, it will be important to review what did and didn't work from a process perspective.

Prior to the 2023 proxy season, proxy advisors spent a significant amount of time speculating on how the implementation of a universal proxy card (UPC) could impact the outcome of contested director elections. Much of that focus surrounded the idea that it has never been easier to pick and choose candidates from both slates, which could lead proxy advisory firms and voters to ask, "what's the harm?" in appointing one or two dissident nominees to a board. While undoubtedly true – checking the boxes has never been easier – the reality is that holders still want to see a case for supporting one or more dissident nominees. The burden of proof still lies on the dissident group to make the case for change.

While planning for how universal proxy could impact the contest endgame is an important exercise, I think it is just as important to understand how UPC impacts the overall shareholder solicitation strategy. I believe the key to success lies in effective communication with each shareholder constituency. That requires an understanding of the type of shareholders you have and ultimately how they best digest the information being delivered to them.

Institutional holders, hedge funds and the like are seasoned proxy voters. However, companies with a significant retail footprint likely saw some level of confusion in voting from individual holders. Through the course of the season, we worked closely with advisors to draft effective communications for retail holders to help them understand what was different with their ballot this year, and to get them to the desired call to action.

How have activists' priorities and engagements changed so far this season?

Outside of the perceived threat that universal proxy might make a company more vulnerable in a contest, I don't believe there was necessarily much change in how activists engaged with company targets this season. Notably, we do still see a high number of early settlements to avoid a potential contest. For those contests that went further down the runway, some to the ballot box, engagement with the activist was largely the same.

"The previous contest voting system had been in place for decades and shaking that up certainly will come with some bumps in the road."

What can a company do when shareholders oppose an announced deal?

In almost every M&A transaction that I've worked on over the last few years there has been some level of concern regarding deal opposition and, ultimately, what form that may take. When opposition surfaces, whether it's a formal "vote no" campaign, just rumblings on the street of a flawed process, or an unexplored third-party deal, being able to communicate effectively with your shareholder base is critical.

The first step is understanding how the deal announcement and any public opposition may have changed the makeup of your shareholder base. We can be most effective when conducting a forensic shareholder profile analysis early in the process, even before the deal is publicly announced. We then use this analysis to settle on an optimal record date and repeat the profile analysis as of the actual record date. This enables us to evaluate how the potential change in profile will impact our solicitation strategy to achieve a positive outcome for the client.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Europe investors focus on financials

Soaring interest rates and depressed markets have prompted investors to prioritize financials when engaging with European issuers, writes Will Arnot.

Rising inflation and market turbulence throughout the U.K. and Europe have refocused both activist shareholders and institutional investors on financials, as cost-of-living concerns run rampant and investors have become eager to streamline costs and unlock value.

In the first six months of 2023, remuneration plans at U.K. and Europe-listed companies received 91.6% average support, down from 92.1% in the same time period a year prior. FTSE 350 average CEO total realized pay averaged three million pounds ($3.7 million) in FY2022, compared to 2.6 million pounds ($3.3 million) in 2021, according to Diligent Market Intelligence's (DMI) *Compensation* module.

"The cost-of-living has heightened investors' attention to executive pay increases, with a particular focus on changes in salary and other fixed elements such as pension contributions," Daniele Vitale, head of ESG in U.K./Europe at Georgeson, told DMI in an interview. "In the past, salary increases that were in line with those awarded to the wider workforce would generally have been considered routine and acceptable, both in the U.K. and across Continental Europe."

Tightening markets have also pushed traditional activists to change tact, shifting from blocking deals to demanding the sale of long undervalued companies at a time where other growth options are limited.

"Tightening markets have pushed traditional activists to change tact, shifting from blocking deals to demanding the sale of long undervalued companies at a time where other growth options are limited."

U.K.- and Europe-based companies saw a 67% partial success rate for campaigns for or against a merger in 2022, a number that has held steady in the first half of 2023. In comparison, only 50% of campaigns of this kind were at least partially successful in 2021. Campaigns of note include Petrus Advisors' ongoing call for Deutsche Pfandbriefbank to sell struggling subsidiary Capveriant and the acquisition of Countryside Partnerships by rival firm Vistry Group, driven by activists Inclusive Capital Partners and Browning West.

No. demands made at Europe-based companies by demand type

Demand group	2019 YTD	2020 YTD	2021 YTD	2022 YTD	2023 YTD*	YOY % change
Appoint personnel	54	31	30	32	25	↓ 21.8
Capital structure	10	5	5	2	4	↑ 100
Divestiture	10	6	9	12	8	↓ 33.3
Environmental	6	8	9	12	13	↑ 8.3
Governance	42	44	30	22	23	↑ 4.5
Operational	9	15	3	6	10	↑ 66.6
Oppose M&A	10	8	16	10	6	↓ 40
Push for M&A	11	12	5	10	6	↓ 40
Remove personnel	39	25	19	22	24	↑ 9.1
Remuneration	17	20	18	16	8	↓ 50
Return cash to shareholders	27	46	29	20	19	↓ 5

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

No. resolved activist campaigns at Europe-based companies by year and outcome

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

Average ESG risk scores at Europe & U.K.-based companies by sector

ESG Risk Scores rank issuers on a scale of 1 - 100, the higher the number denoting the better ESG-related disclosure the company provides compared to industry peers.

Sector	Environmental	Social	Governance	Total
Basic materials	52	55	63	**56**
Communication services	61	55	63	**59**
Consumer cyclical	57	44	63	**53**
Consumer defensive	60	49	59	**55**
Energy	49	54	63	**54**
Financial services	63	46	62	**55**
Funds	45	46	52	**47**
Healthcare	49	39	60	**48**
Industrials	53	48	61	**53**
Real estate	51	48	61	**53**
Technology	53	39	63	**49**
Utilities	55	48	62	**54**

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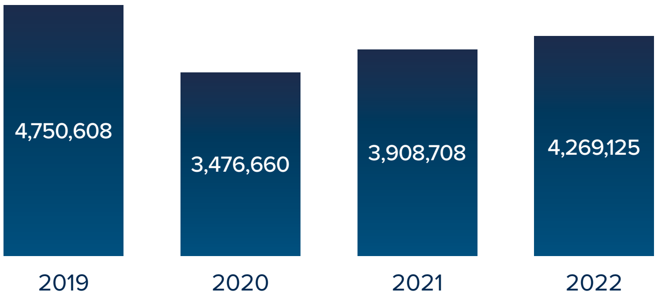
*As of June 30, 2023.

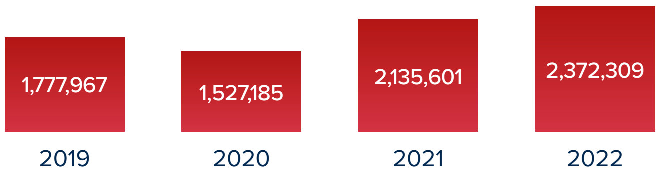
Source: Diligent Market Intelligence / ESG

Average CEO total realized pay by year and index

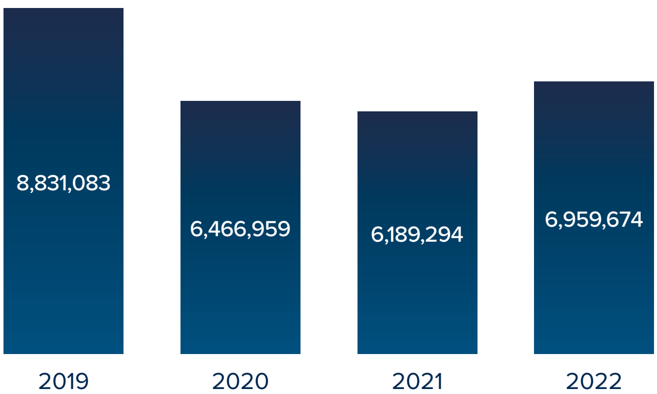
FTSE 100 (£)



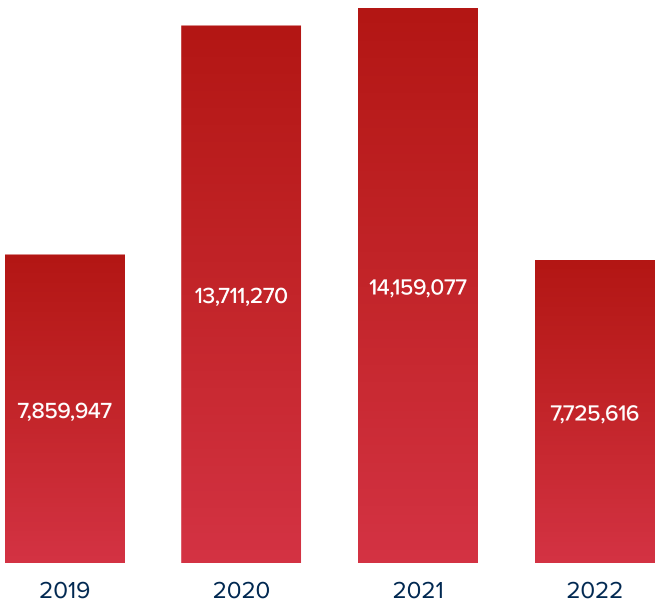
FTSE 250 (£)



CAC 40 (€)



DAX 30 (€)



Source: Diligent Market Intelligence / Compensation

Asia embraces ESG

With ESG suffering a crisis of confidence in the U.S., investors are redirecting their attentions to Asia, writes Will Arnot.

Both 2022 and 2023 have played host to an influx of environmentally focused activist campaigns in Asia, supported by local regulators. Of the 181 global campaigns to feature environmental demands in the first half of 2023, 15 (8.3%) were submitted at Japan- or South Korea-listed companies.

Climate-related shareholder proposals are winning increasing support, also. Of the 15 proposals of this kind subject to a vote at Asia-listed companies in the first half of 2023, three won upwards of 20% support. None of the three proposals of this kind subject to a vote in 2021 won above 12% support, according to Diligent Market Intelligence's (DMI) *Voting* module.

"The anti-ESG movement in the U.S. has caused some proponents to look elsewhere to see where they can apply pressure," Cas Sydorowitz, global CEO of Georgeson, told DMI in an interview, noting that due to the lack of ESG regulation in Asia, a large proportion of companies may be viewed as "ripe targets."

"In Japan, we've seen a lot of companies commit to net-zero by 2050," Bernadette Maheandiran, director, Asia climate and energy at Market Forces, told DMI. "But we haven't seen how they're going to get there."

Regulators are taking note of the increased pressure investors are placing on companies to enhance their ESG commitments and could also serve as a key driving force behind ESG uptake in Asia. The Task Force on Climate-Related Financial Disclosures (TCFD) is becoming increasingly prevalent, while Singapore revealed in July that it is considering mandating climate reporting for both public and private companies, in line with International Sustainability Standards Board (ISSB) recommendations.

Earlier this year, BlackRock also issued a whitepaper, citing board independence as a "major corporate governance issue" in the APAC region, encouraging companies to "have transparent and independent director nomination and removal processes."

"The anti-ESG movement in the U.S. has caused some proponents to look elsewhere to see where they can apply pressure."

Nearly a third of all campaigns ran in Asia in the first half of 2023 by primary-, partial-, and occasional-focus activists have concerned either appointing directors to or removing personnel from company boards.

YS Food was targeted back in April by investment firm Blue Goats Capital, which suggested the appointment of its founder, Kazuhiro Aoyagi, would help the restaurant chain operator expedite its overseas expansion. In a showcase of how Asian companies are becoming increasingly accepting of activism, YS Food backed Aoyagi's appointment at its June 28 annual meeting.

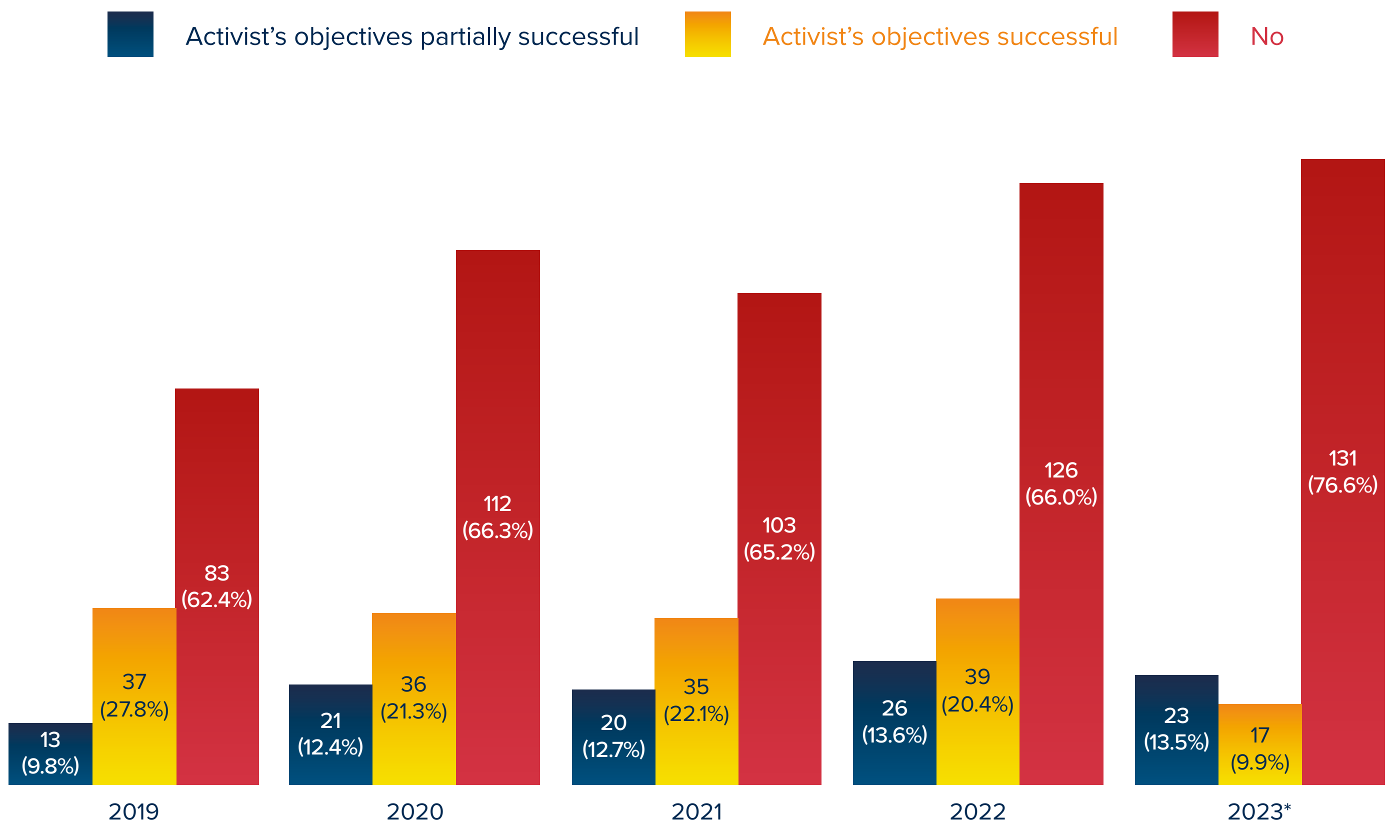
No. demands made at Asia-based companies by demand type

Demand group	2019 YTD	2020 YTD	2021 YTD	2022 YTD	2023 YTD*	YOY % change
Appoint personnel	38	37	34	51	53	⬆ 3.9
Capital structure	3	3	6	12	23	⬆ 91.6
Divestiture	11	14	11	20	17	⬇ 15
Environmental	0	1	5	20	14	⬇ 30
Governance	34	32	37	63	89	⬆ 41.2
Operational	2	7	5	10	11	⬆ 10
Oppose m&a	2	2	6	4	4	0
Push for m&a	4	6	4	5	8	⬆ 60
Remove personnel	30	30	27	32	38	⬆ 18.7
Remuneration	9	5	11	24	39	⬆ 62.5
Return cash to shareholders	30	23	28	66	88	⬆ 33.3
Social	0	1	2	4	3	⬇ 25

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

No. resolved activist campaigns at Asia-based companies by year and outcome



*As of June 30, 2023.

Source: Diligent Market Intelligence / Activism

Support for (%) environmental shareholder proposals at Japan-listed companies

	2019		2020		2021		2022		2023 YTD*	
Proposal type	No. proposals	Average support for (%)	No. proposals	Average support for (%)	No. proposals	Average support for (%)	No. proposals	Average support for (%)	No. proposals	Average support for (%)
Adopt/amend climate change policy	0	N/A	0	N/A	1	4.8	7	14.5	6	11.9
Create climate change report	0	N/A	1	34.5	2	18.6	5	20.4	6	19.3
Assess impact of a two-degree scenario	0	N/A	0	N/A	0	N/A	0	N/A	3	14.7
Adopt/amend environmental policy	0	N/A	4	4	11	5.5	2	6.5	3	6.7
Create environmental report	0	N/A	0	N/A	1	20.1	1	4	1	3.9
Create industrial waste/pollution report	0	N/A	0	N/A	0	N/A	2	2	1	N/A

*As of June 30, 2023.

Source: Diligent Market Intelligence / Voting

Average ESG risk scores at Asia-based companies by sector

ESG Risk Scores rank issuers on a scale of 1 - 100, the higher the number denoting the better ESG-related disclosure the company provides compared to industry peers.

Sector	Environmental	Social	Governance	Total
Basic materials	53	46	51	**50**
Communication services	47	44	59	**51**
Consumer cyclical	50	34	54	**45**
Consumer defensive	50	41	51	**46**
Energy	52	49	52	**51**
Financial services	53	38	53	**46**
Funds	53	48	58	**53**
Healthcare	50	33	54	**43**
Industrials	52	38	52	**46**
Real estate	50	44	52	**49**
Technology	50	33	57	**45**
Utilities	49	43	52	**48**

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*As of June 30, 2023.

Source: Diligent Market Intelligence / ESG

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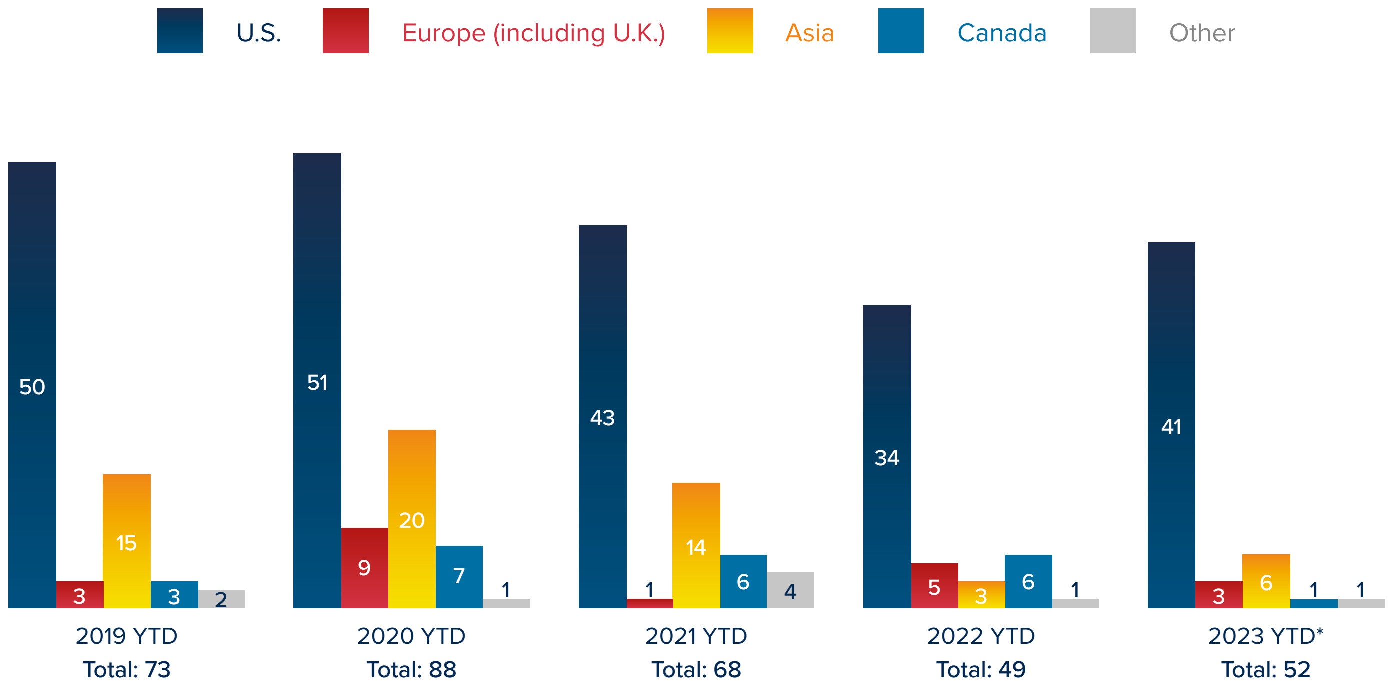
Shorts data

No. short campaigns initiated by company region



*As of June 30, 2023.

Source: Diligent Market Intelligence / Activist Shorts

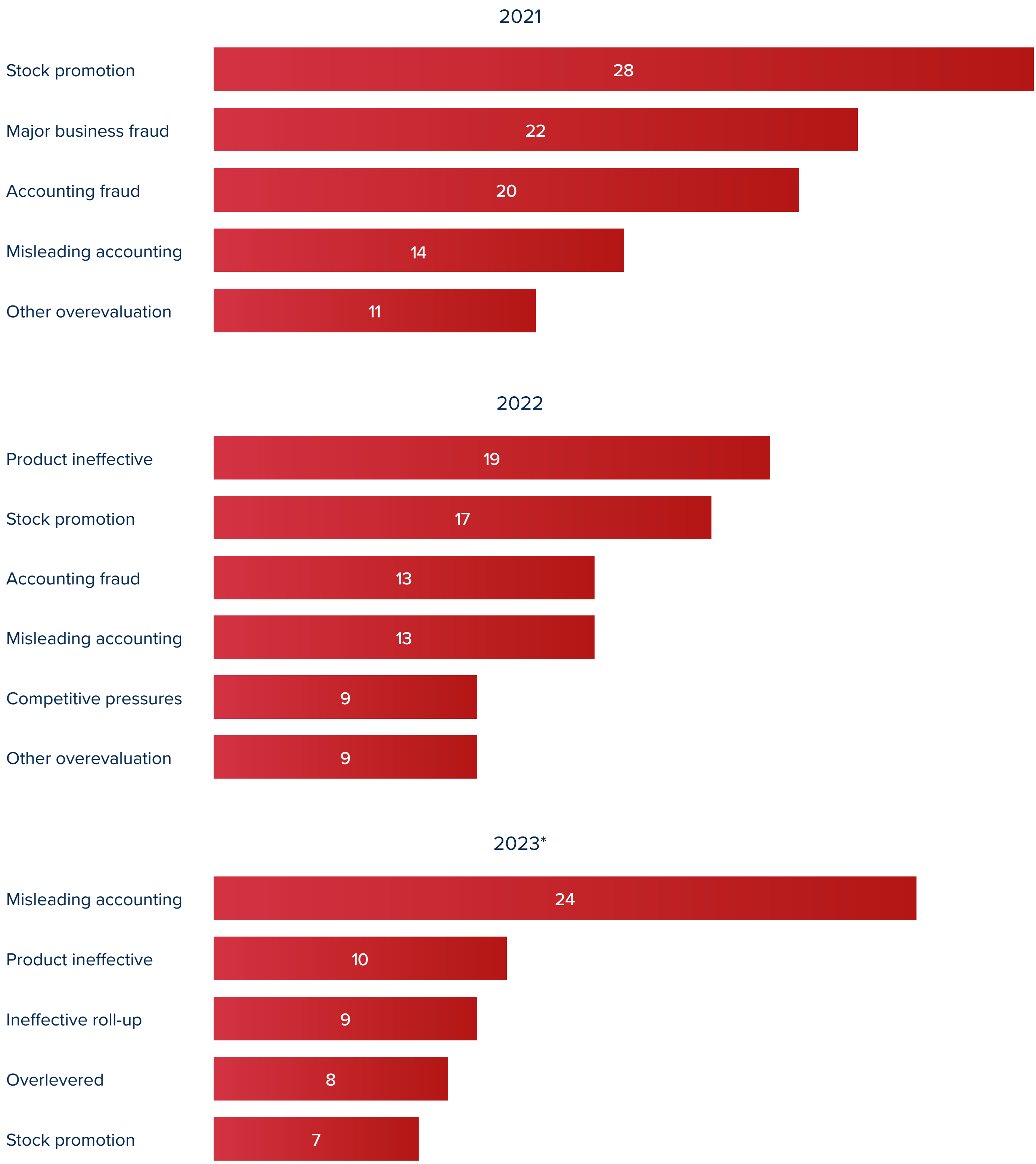
Average one-week and one-month short campaign returns by region

Company region	2019 YTD*	2020 YTD*	2021 YTD*	2022 YTD*	2023 YTD*
U.S.					
Average one-week campaign returns	6.36	7.52	4.38	10.01	5.70
Average one-month campaign returns	4.38	7.01	14.06	7.96	3.16
Canada					
Average one-week campaign returns	-1.36	8.22	7.89	2.10	-7.14
Average one-month campaign returns	2.11	7.81	7.76	21.52	N/A
Europe (including U.K.)					
Average one-week campaign returns	16.89	15.38	4.08	9.86	12.29
Average one-month campaign returns	17.77	12.32	5.89	2.32	-18.05
Asia					
Average one-week campaign returns	7.96	2.71	4.41	3.70	9.16
Average one-month campaign returns	6.90	9.04	4.10	5.08	11.15
Other					
Average one-week campaign returns	11.84	11.23	8.49	17.78	-1.23
Average one-month campaign returns	7.76	11.75	20.37	13.91	6.52

*As of June 30, 2023.

Source: Diligent Market Intelligence / Activist Shorts

Most frequent allegations used by short sellers globally



*As of June 30, 2023.

Source: Diligent Market Intelligence / Activist Shorts

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