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Shareholder activism surges amid falling valuations, universal proxy ballots

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- Activist agitation is at levels not seen in years, governance advisors say
- New SEC rules increase chances for challengers to win seats in proxy fights
- Advisors seeing “fair amount of settlement activity” to avoid costs, distraction

Shareholder activism is on the rise – most of it outside of public view – driven by falling valuations and the growing impact of the SEC’s new universal proxy card mandate, according to two advisors and an investment banker, all of whom counsel companies on governance issues.

The bear market is sending stock prices to compelling levels and causing many companies to fall into the price ranges of value-investing activist funds, the advisors agreed.

Deteriorating market conditions only accelerated an increase in activism that was already building in anticipation of SEC changes that went into effect on 1 September, said Michael Fein, president of **Kingsdale Advisors**.

The coming proxy season will be the first requiring that every ballot include names of all director candidates, enabling shareholders to vote any combination of dissident and company nominees.

Kingsdale – which advises public companies on governance, transactions and other special situations – has seen an increase in activity by established, well-known activist funds, as well as by an increasing number of new entrants, Fein told this news service.

“We’ve been as busy as we’ve ever been,” he said.

“I think it’s something that anyone who…works in our space has noticed and is currently experiencing,” Fein added.

Activism activity took a relative break during the height of the pandemic, as funds licked their own wounds and attended to challenges within their portfolio companies, he said.

The last couple of proxy seasons, however, have seen a resurgence in activity, with increasingly sophisticated activist funds that carefully size up target companies well in advance of nomination deadlines, according to Fein.

Universal proxy cards have significantly strengthened the hand of activists, he said.

“They anticipate they’ll have a decent shot at getting at least some representation on the board,” Fein said of the new dynamic.

That new leverage is causing target companies to engage more readily with activists, he explained.

“We’re seeing a fair amount of settlement activity as companies assess the likelihood of even a partial victory by activists,” Fein said.

In many cases, target companies “aim to arrive at an amicable settlement to avoid the cost and distraction of a proxy contest,” he said.

With so much of the jockeying and settlement discussions occurring behind the scenes, publicly reported situations do "not fully reflect the true amount of activist activity," Fein said.

"Sometimes these things go to a fight and sometimes they settle or sometimes, as an activist does more homework, they decide it's not a battle they want to continue pursuing," he said.

Kingsdale's experience mirrors the trend observed by advisors at **Goldman Sachs** [NYSE:GS] who report seeing the highest levels of activism activity in the TMT space since at least 2018 – the vast majority occurring behind the scenes, said Barry O'Brien, co-chief operating officer of global TMT at the investment bank.

"I would say 75% of activist situations never even get public and so when you see (this) amount of public activism, you can just be sure that there is three to four times that in private activism going on at any time," he told this news service.

During a panel on M&A and investment banking at the Goldman Sachs Communacopia and Technology conference in San Francisco this month, O'Brien told the gathering that difficulties in the capital markets have narrowed the activists' playbook, limiting options for changes to balance sheets and capital structures.

"So they're pushing for M&A," he said, adding: "Just know that the activism environment is rampant right now."

In addition to outright sales of target companies, clients are also seeing activists advocate for spin-offs or divestitures of divisions, O'Brien said.

Speaking on the sideline after the panel, the banker described how activist funds are capitalizing on the reduced valuations as a "cheap entry point" to get into a stock and then push for a sale.

"That is a quick win for an activist if they can get a company sold, having bought in at all-time low stock prices," he said.

Reevemark, a New York-based strategic communications firm specializing in "complex situations," including governance matters, is also seeing a spike in activism-related business, founding partner Paul Caminiti told this news service in an email.

" We are helping more companies address vulnerabilities and get prepared for potential agitation behind the scenes," the statement said.

The universal proxy card represents a significant new complication for target companies, Caminiti agreed.

"Companies need to be prepared for proxy contests this season...and depressed valuations, earnings pressures and market uncertainty make activist agitation more likely both to happen and gain investor support," he said.

by Aldrin Brown in Los Angeles