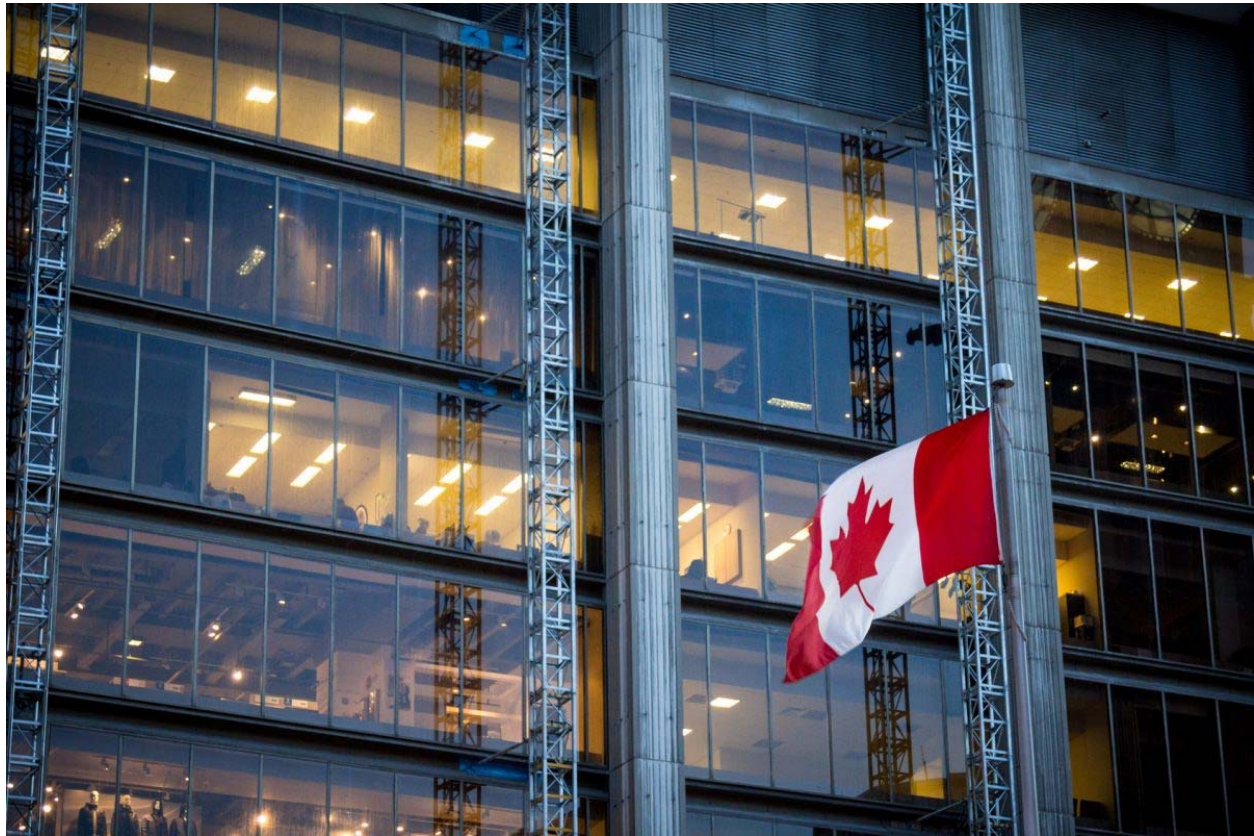


## Activist Investors Are Hunting Canada — Why?

*By Forbes Columnist/Skytop Strategies CEO and Founder Christopher P. Skroupa*



Waliid Soliman is chair of Norton Rose Fulbright Canada LLP and co-chair of our Canadian special situations team, which encompasses Canada's leading hostile M&A, shareholder activism and complex reorganization transactions. Over the past several years, he has been involved in almost every major proxy battle in Canada, acting for both issuers and activists. He is widely regarded as one of the leading special situations practitioners in Canada. In addition, his practice focuses on mergers and acquisitions, restructurings, financings, corporate governance and structured products.

Mr. Soliman was the only lawyer recognized in the Globe and Mail's Report on Business Magazine Power 50 list for 2017. Among other philanthropic endeavours, Mr. Soliman is a board member of the Toronto SickKids Hospital Foundation.

Ele Klein is a partner at Schulte Roth & Zabel in the M&A and Securities Group. He serves as co-head of the firm's global Shareholder Activism Group and as a member of the firm's Executive Committee. Mr. Klein practices in the areas of shareholder activism, mergers and acquisitions, securities law and regulatory compliance. He represents activists and companies in matters ranging from corporate governance and control to proxy contests and defensive strategies.

In addition, Mr. Klein is well-known for his expertise since the early 1990s in the development and implementation of alternative investment structures for private equity investments and, specifically, the structuring and negotiating of private investments in public equity, or PIPEs, and related products

including registered direct offerings, convertible 144A offerings, reverse mergers, equity lines and SPACs. Mr. Klein received his law degree from Yale Law School.

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**Christopher P. Skroupa:** Are activists looking to Canada as a place to bring their brand of activism?

**Walied Soliman:** Though Canada has always been on the map for U.S. activists, we are seeing increased interest from U.S. activists, likely spurred by a weak Canadian dollar and a target-rich environment for funds from other countries looking for new investment opportunities. We are also noticing a trend that U.S. activists are more and more looking outside of the U.S. for targets, focussing specifically on smaller to medium-sized issuers. These targets are attractive as it is easier to accumulate a position in their stock and they likely have fewer resources to mount a defence against activists.

**Ele Klein:** From the U.S. side, after a number of years of a hiatus, we are also seeing increased interest in foreign companies, particularly in Canada. Many U.S. investors have traditionally looked to Canada for investment opportunities based on it being close to home with similar metrics. As more investors look again at Canada, it is catching the eye of others as they seek attractive companies to invest in.

**Skroupa:** What is it about Canada that presents U.S. activists an attractive opportunity?

**Soliman:** Canadian corporate law rules make it one of the most activist-friendly jurisdictions in the developed world. In Canada, for example, shareholders who own five percent of the voting equity of an issuer are able to requisition a meeting of shareholders.

In Canada, activists can also build up a stake in target companies of up to 10 percent before they are required to disclose their ownership. Most Canadian jurisdictions also allow dissidents to solicit proxies from up to 15 shareholders or by way of public broadcast, speech or press release, without first distributing a dissident information circular.

**Klein:** In addition to being a shareholder-friendly jurisdiction and having less onerous reporting requirements, the similar approach to governance and financial analysis, as well as the many cross-listed companies, makes it comfortable for U.S. funds to understand and analyze. The fact that it is so close to home also allows funds to be able to monitor these investments with similar ease to those trading in the U.S.

**Skroupa:** Has the level of activity increased in Canada? How much success have U.S. activists realized in Canada?

**Soliman:** Activists, in general, have experienced incredible success in Canada over the years. This is especially true of the last few years, which has seen record levels of activist activity in the Canadian capital markets and almost equal levels of activist success.

Trend-wise, U.S. activists who have achieved the most success have a few things in common. First, they typically have sought minority representation. We have found that Canadian shareholders are more open to replacing a minority of the board rather than voting for wholesale change. Second, they have presented strong, detailed theses which outline in plain language why change is required at the company.

This has been especially resonate with Canadian institutional investors, who have traditionally been reluctant to engage or align with activists but are now recognizing the activist value proposition.

**Klein:** As mentioned earlier, U.S. funds had been less active over the past few years in Canada. With the health of the economy and the other factors discussed, these funds are turning once again to Canada and recognizing the opportunities. With the increasing numbers of successful campaigns in Canada, more funds are encouraged to use the tools they have mastered in the U.S., included evaluating minority board positions and leveraging their relationships in engagement with institutional investors, for companies in Canada in need of improvement.

**Skroupa:** What is the outcome of that activity?

**Soliman:** The rise of U.S. activism in Canada has had several effects in the Canadian capital markets. First, activism has now become a prominent feature of Canadian corporate life. Boards have reacted to the threat of activism by establishing defensive measures, such as bylaw provisions for advance notice, forum selection and enhanced quorum. Canadian issuers have also begun to pay closer attention to their corporate governance practices.

Activists, for their part, have adapted their approaches. Aggressive, frontal attacks have made way for behind-closed-door negotiations. Activists have also diversified their narratives—no longer are activists solely focused on board composition, but their demands have now spread to subjects such as accounting practices, executive pay, dividends, the redemption features of a company's securities, or perceived public interest considerations.

**Klein:** The evolution and sophistication of U.S. activists has allowed them to bring their focus to Canada. As mentioned, the trend towards operational changes including capital allocation, executive performance and returns on investment and stock prices, have migrated north to Canada with more and more U.S. funds being interested in Canada on a constant basis.