Harvard Law School Forum on Corporate Governance

Shareholder Activism Developments in the 2025 Proxy Season

Posted by Ele Klein, Brandon Gold, and Samuel Dayan, Schulte Roth & Zabel LLP, on Wednesday, June 18, 2025

Editor's Note: Ele Klein and Brandon Gold are partners, and Samuel Dayan is an associate at Schulte Roth & Zabel LLP. This post was prepared for the Forum by Mr. Klein, Mr. Gold, and Mr. Dayan.

Despite global economic uncertainty, a challenging M&A environment and an evolving regulatory landscape, shareholder activists remained relatively busy during the first half of 2025. The sustained level of overall activist activity reflects both the variety and versatility of established activists, as well as the continued willingness of other investors to employ the activist toolkit to unlock shareholder value.

Talk of an M&A boom (and an expected increase of M&A-related activism) early this year was quickly overtaken by talk of tariff doom. Board and management teams that fail to contend with today's economic challenges and uncertainties—especially compared to similarly situated peers—risk becoming prime targets for activists once the impact of tariffs manifests in their earnings releases.

Against this backdrop, we have observed a number of key trends in the activism space thus far in 2025.

Few Board Fights Went to a Vote (Including Surprising First-Timers)

Few activist campaigns for board representation in the U.S. have gone all the way to a shareholder vote so far this year, continuing a theme observed in recent years. Following incumbent boards' abnormally high success rate at the polls in 2024, there were some expectations that companies would feel more emboldened to refuse to engage with activists and force shareholders seeking board change to run proxy fights all the way through their annual meetings. Against the current backdrop of market volatility, however, activists and targeted companies have demonstrated a continued willingness to reach mutually acceptable agreements to obviate the need for contentious

and costly fights. **These settlements provide both shareholders and boards with an especially rare commodity these days: a degree of certainty.**

While settlements remain an effective tool for activists to gain board representation and/or effect their desired strategic or operational changes through constructive engagement, some proxy fights nonetheless go the distance. So far in 2025, only eight proxy fights have gone to a vote in the U.S.[1] The activist succeeded in getting at least one of its nominees elected to the board in half of those votes.

Given how few fights went the distance, it is particularly noteworthy which activists ran those contests. After more than a hundred campaigns, Elliott Investment Management had its first ever U.S. campaign go all the way to a shareholder vote at Phillips 66, where Elliott was successful in electing two of its nominees to the board and further solidified its reputation as a formidable activist. Mantle Ridge LP was also forced to take a fight to a vote for the first time in its campaign at Air Products and Chemicals, Inc., where the board decided that it is was unwilling to entertain a settlement and ultimately three of Mantle Ridge's nominees were elected at the annual meeting.

These activist victories at the ballot box serve as reminders that boards would be ill-advised to ignore shareholders' cases for change or to dismiss opportunities to collaborate constructively with activists.

Withhold/Against Campaigns Remain Popular

"Withhold"/"Against" campaigns—where shareholders withhold support for or vote against a company's nominees without nominating an alternative slate—remain a popular tactic in certain scenarios. Although these campaigns typically do not attract the same level of attention as proxy fights and cannot achieve the same level of binding change compared to electing an alternate slate, they still can send a powerful message to boards that shareholders are dissatisfied, serve as a precursor to a traditional proxy fight and bring boards to the negotiating table.

This proxy season, we have seen shareholders run every different variety of withhold campaign. At Harley-Davidson, Inc., H Partners ran a full contested solicitation, including disseminating a proxy statement, urging shareholders to withhold vote from targeted directors. A full solicitation offers the stockholder proponent the ability to solicit votes on its own proxy card, open up means to more aggressively court shareholders and their votes and offers additional transparency into voting results, but is subject to all of the proxy rules and disclosures (including a requirement to file a proxy statement). At the other end of the spectrum, eligible shareholders can announce how they intend to vote and the reasons therefore via press releases, a tactic that can be used as a standalone campaign or to show your support for an unaffiliated shareholder's campaign.

Activists also took advantage of the ability to run "exempt" withhold campaigns, including Ancora's campaign against the re-election of three incumbent directors at Forward Air Corporation. When running an "exempt" campaign, eligible activists urge shareholders to vote against specified directors or other matters using the targeted company's own proxy card. Ancora managed to garner the opposition of a majority of votes to the re-election of Forward Air's chairman. While the two other directors targeted by Ancora were reelected by a slim majority, they nonetheless voluntarily resigned from the board, illustrating the potential potency of withhold campaigns in sending a clear message to boards.

At companies with majority voting resignation policies, directors who fail to receive the support of a majority of shareholders at an election typically must tender a resignation from the board, which the board typically has the option to accept or reject within a specified timeframe. Boards that reject such resignations and allow these "zombie" directors to stay on the board can expect heightened scrutiny from investors and proxy advisors, and become especially vulnerable to activists.

Challenging Environment for Passive Investor Support

In 2024 and so far in 2025, the largest passive investors—BlackRock, State Street, and Vanguard, also known as the "Big Three"—have generally voted in favor of incumbent director slates in contested elections. This trend is significant given that these institutions typically own sizeable stakes (and sometimes even dispositive voting stakes) in most public companies.

Even when activists are successful at obtaining recommendations from all of the leading proxy advisors in favor of their slate, it may prove difficult, if not impossible, to succeed without the support of the top passive investors. Although Barington Capital managed to garner the support of all three proxy advisors for its campaign at Matthews International Corporation early this proxy season, each of the "Big Three" passive investors reportedly voted for the company's slate, handing the company a victory. While it can be a challenge for an activist to win a contest without the support of the top passive investors (according to reports), Elliott's success at electing two nominees to Phillips 66 shows that it is not impossible – depending on the shareholder base.

The current political environment may make it even more difficult for dissident shareholders to obtain the support of passive managers, as the "Big Three" have come under increased scrutiny at both the state and federal levels. In January, a federal judge claimed that BlackRock was impermissibly tainted by "ESG activism" in part because it voted for an activist slate in a 2021 proxy fight. In February, the staff of the Securities and Exchange Commission published new guidance regarding its beneficial ownership reporting rules that made it more difficult for large asset managers to press for change at public companies where they have significant positions. More

recently, in May, the Federal Trade Commission and U.S. Department of Justice Antitrust Division came out in support the Attorney General of Texas in a case alleging that the "Big Three" violated antitrust laws when they previously supported "ESG" initiatives.

Against this political and regulatory backdrop, passive managers—whose votes were already difficult for dissidents to obtain—may be even less willing to support activist board nominees, and activists, with the help of advisors, need to thoroughly understand a potential target's stockholder base and investor sentiment.

Classified Boards are Under Renewed Attack

On the governance front, we have seen activists continue to attack classified boards—either as a focal point of the campaign or as an ancillary governance improvement. With immense success, activists have been submitting shareholder proposals for companies to amend their governing documents to declassify their boards.

Recognizing that these proposals for annual elections are almost certain to pass due to overwhelming support of shareholders, companies are preemptively acquiescing to activists' demands. For example, both Match Group and Riot Platforms came out in support of board declassification following their receipt of shareholder proposals submitted by activists. Phillips 66's staggered board also proved to be a major point of contention in Elliott's campaign. Although shareholders had overwhelmingly voted in favor of declassification on numerous occasions, they failed to reach the supermajority voting threshold required to amend the company's charter. In response, Elliott submitted a creative shareholder proposal requesting that the Board adopt a corporate governance policy that would require all directors to commit to serving one-year terms at each annual meeting. Although the proposal did not pass, it successfully drew attention to the board's governance practices.

In other contexts, we have seen companies attempt to use their classified board structure to disenfranchise, shareholders—including at Ionic Digital and PENN Entertainment, where the companies staggered boards reduced the number of seats in the classes that were up for election during an ongoing activist campaign. The companies' defensive actions were subsequently challenged in court: Ionic Digital was ordered to restore the number of seats up for election and the legal challenge at PENN is still pending.

Advance Notice Bylaw Case Developments

2025 has seen a series of Delaware court decisions upholding companies' rejections of activist board nominations for purportedly failing to comply with their advance notice bylaw

requirements. These decisions highlight the importance for activists to collaborate with their legal counsel to carefully prepare their nomination notices and related documents in light of the specific target company's organizational documents and developments in caselaw. We suspect that some companies may feel emboldened by these decisions to allege immaterial deficiencies in nomination notices.

Although these decisions generally upheld companies' rejections of allegedly noncompliant nomination notices, in one case, the court notably ordered a company to permit the activist to re-submit a nomination notice. There, as a result of the company's preclusive action to reduce the number of directors an activist could elect, the court ordered the company to postpone the meeting, restore the number of seats up for election and re-open the nomination window for all shareholders—even the activist that had submitted the purportedly deficient notice.

Therefore, we strongly encourage activists to thoroughly prepare nomination notices in consultation with experienced advisors as to not leave any room for challenge.

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[1] Proxy fights for board representation at U.S. operating companies with a market capitalization greater than $100mm according to FactSet.(go back)