



2016 Year in Review

FTI Consulting
Activism and M&A Solutions

In 2016, shareholder activists targeted giants among the likes of Yahoo, Morgan Stanley and Monsanto in industry rattling campaigns.

Proxy fights and campaign counts continued to increase. Meanwhile, investors poured money into passive funds and generally pulled money away from actively managed funds. MorningStar's 2016 Global Asset Flows Report highlighted that in the equity category group, \$390 billion flowed into index funds while \$423 billion flowed out of active funds. Correspondingly, activist fund assets under management (AUM) decreased to \$121.2 billion, down a modest 1.4% compared to the 2015 peak. Yet, the activism "strategy" of actively managed funds still gained momentum as activists became more assertive and campaign tactics more developed. Additionally, hedge fund activists returned 10.43% according to eVestment, again outperforming various other hedge fund strategies.



Board representation campaigns continue to grow in popularity and surpassed M&A as a primary objective.



Of the **109 proxy fights** announced in 2016, 44 resulted in board seats for the sponsoring activist.



Including settlement scenarios, **89 board seats** were given to activists in 2016.

Source: FactSet, SharkRepellent

Flow of Funds to Passive Strategies

Although these trends were largely the same in previous years, the compounding effect has left a significant mark on shareholder activism and will certainly change its course in the future. More than \$470 billion moved into passive funds in general in 2016 in what MorningStar dubbed "flowmageddon," giving index funds significant influence. When index managers embrace activist strategies, or at least vote on behalf of the change the activist is seeking, the index manager is clearly expressing a view against the status quo at a given issuer. This, in effect, allows the index manager to ride the coattails of the activist who must undergo the intense level of research required in planning for and executing an activist campaign and bear the corresponding expense. These votes are increasingly important to win as funds continue to flow into the hands of passive funds. On the other hand, when institutional funds disagree with management's strategy and the proposals suggested by activist funds, they are not always equipped to manage an activist campaign.

Ronald P. O'Hanley, President and CEO of State Street Global Advisors, in his address at the Weinberg Center 2017 Corporate Governance Symposium said:

"This has been an ongoing focus of our engagements with boards, as a growing number of companies have been reaching quick-fire settlement agreements with activists that change a company's long-term business, capital allocation strategies and corporate governance structures. That's why we have told boards that they need to consider the interests of long-term shareholders as they assess everything from the duration of the agreements and ownership thresholds to holding period requirements for continued board representation."

This marks a divergence between the fund's ideology and activist investors' and indicates this institution's commitment to long term shareholder value.

¹Morningstar 2016 Global Asset Flows Report dated March 6, 2017.

²J.P. Morgan 2017 M&A Global Outlook.

³eVestment Hedge Fund Industry Performance Report December/Q4/Year End 2016.

Increased Pressure on Boards

The dynamic within board rooms across the U.S. was noticeably different in 2016. There is a tangible interest for board members to hold increasingly stringent credentials and to drive alpha. The NACD Blue Ribbon Commission Report on Building the Strategic-Asset Board stated that, “Communications with investors and other key stakeholders should include a detailed explanation of the link between the organization’s strategic needs and the board’s composition and skill set, as well as information about the board’s continuous-improvement processes.” This has resulted in more responsibility to motivate management towards growth at the board level and be open to others’ ideas on how best to do so. While collegiality and collaboration are helpful for boards to function properly, entrenchment plagues many public company boards and may be one of the hardest things to realize while in the midst of such an environment. Boards have gotten better at continually assessing the skill sets of their directors, but are certainly not as diverse or effective as investors are demanding.



















Although shareholder-friendly corporate governance is not a particularly new trend, it has compounded to truly put directors in the spotlight to fulfill their fiduciary duty or risk replacement by a dissident director.

High-Profile Proxy Fights / Activist Campaigns of 2016

<p>Announcement date: 09/26/2014</p>	<p>Announcement date: 12/02/2015</p>	<p>Announcement date: 10/5/2016</p>
<p>Settlement Agreement: 04/27/2016, campaign ongoing</p>	<p>Meeting date: 01/25/2017</p>	<p>Meeting date: Ongoing</p>
<p>Stock trend:* 4.89% thru EOY</p>	<p>Stock trend:* 46.31%</p>	<p>Stock trend:* 10.67% thru EOY</p>
<p>Summary: Starboard sent a scathing letter to the Yahoo board in early January insisting on a change in leadership and strategy. Shortly thereafter, <i>Bloomberg</i> reported that Yahoo was considering an outright sale with Verizon as a possible buyer. By April, the parties reached a settlement agreement to appoint four Starboard candidates to the Company’s Board and include them in the 2016 AGM. Neither Jeff Smith nor Marissa Mayer received overwhelming shareholder support in the board elections, however, both were elected, as expected.</p>	<p>Summary: Sandell has been pushing Bob Evans to spin off its packaged foods business ever since it initially invested in the company in 2013. In 2016, Sandell finally convinced the company to consider tax-friendly spin-off options and it hired JP Morgan in order to pursue options for value creation. In January 2017, Golden Gate Capital agreed to buy Bob Evans Restaurants for \$565 million including debt, indicating a long-fought success for Sandell.</p>	<p>Summary: Elliott jump-started a campaign against Samsung urging the company to demerge into a holding company and an operating company, improve governance and distribute dividends. This all followed Elliott’s unsuccessful campaign at Samsung C&T in the previous year which faced criticism in South Korea. By November, Samsung’s bribery scandal hit the press and the company conceded to Elliott’s wishes. The Company appointed an independent director, approved the use of 50% of cash flows to be returned to shareholders and suggested it would consider splitting in two.</p>

*Stock trend traces the stock price change from the announcement of the activist campaign to the corresponding end date or through 12/31/16, pending whether the campaign is considered ongoing or completed. Stock price data is sourced from FactSet.

High-Profile Proxy Fights / Activist Campaigns of 2016

 	 	 
 <p>Announcement date: 09/06/2016</p>	 <p>Announcement date: 08/15/2016</p>	 <p>Announcement date: 09/12/2016</p>
 <p>Settlement Agreement: Ongoing</p>	 <p>Meeting date: Ongoing</p>	 <p>Meeting date: Ongoing</p>
 <p>Stock trend:* 8.88% thru EOY</p>	 <p>Stock trend:* 42.45% thru EOY</p>	 <p>Stock trend:* 3.65% thru EOY</p>
 <p>Summary: In early September, Pershing filed its original 13D reporting a 9.9% stake in Chipotle. The fast casual restaurant was plagued by food-safety concerns and poor results. By December, Pershing had announced its plans for the Company and may have instigated the removal of its co-CEO, Monty Moran. In exchange for two board seats, Pershing agreed to refrain from making any public statements about the company for two years.</p>	 <p>Summary: In August, ValueAct took a 2% stake in Morgan Stanley with the explanation that the market was undervaluing bank stocks. According to a report by the <i>Financial Times</i>, ValueAct asked Morgan Stanley to focus on growing the wealth management and advisory businesses. Although relatively little came out publicly with respect to this campaign, ValueAct categorized its stake as a core position, indicating that it may push for economic changes in the future.</p>	 <p>Summary: Starboard kicked off its campaign against Perrigo in September, where it expressed belief that the company was undervalued, but possessed valuable assets even in its non-core business. Two months later, Perrigo announced it would review strategic alternatives for its drug Tysabri. Negotiations remained behind closed doors until early in 2017 when a settlement agreement was announced.</p>

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High-Profile Proxy Fights / Activist Campaigns of 2016



MARCATO



Announcement date:
07/11/2016



Settlement Agreement:
Ongoing



Stock trend:*
3.65% thru EOY



Summary:
Mercato continually ramped up its pressure on Buffalo Wild Wings throughout the year. After the activist's first presentation was submitted, the Company launched a \$300 million share buyback and then shook up its board without soliciting Mercato's input. Buffalo Wild Wings plans did not satisfy Mercato last year and the campaign continues, as a proxy fight kicked off earlier this year.

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