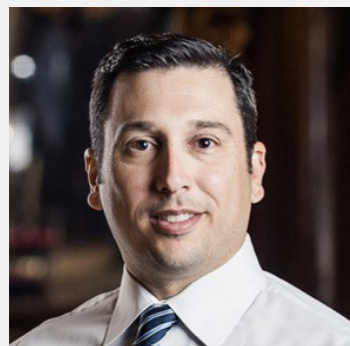


Unlocking value

An interview with Michael Verrechia, managing director of Morrow Sodali's M&A and activism advisory group.

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What shareholder activism trends, if any, do you think could carry over from 2022 into the new year?

Over the last few years, we've seen an uptick in proxy contests from “first-time” and less established activists, or investors with smaller campaigns under their belt who then move on to bigger targets. With the universal proxy card now in effect, we expect that trend to continue. In situations where the target company is closely held, an activist investor could conduct an entry-level campaign for a reduced cost to create pressure for change where they otherwise would not.

Additionally, we expect we will continue to see opposition to M&A transactions on both sides of the deal. While those situations usually do not materialize into formal proxy contests, public opposition from a credible holder can create tremendous risk to the deal and concern at the ballot box.

How might the universal proxy card impact battles for board control?

With the ability to easily “split” your vote for nominees on both slates, we could see an increased level of support for some subsets of dissident nominees. Most large institutions and proxy advisory firms will continue to evaluate whether the activist makes a compelling case that change is necessary before supporting even a well-qualified dissident nominee. However, there are institutional holders and hedge funds that may feel more comfortable voting for some well-qualified nominees on the dissident slate even when they believe overall support for the management team is warranted.

The perceived unintended consequences of voting a dissident card under the old proxy voting system no

longer exist and the ability to freely pick and choose nominees could result in a willingness to support fresh voices in the boardroom. We may also see ESG activists or gadflies take advantage of the lower campaign costs available with the universal proxy card to create pressure for a self-interested agenda.

Would all activist campaigns benefit from an ESG component now?

The spotlight on a company's corporate governance practices has long been a part of all activism campaigns. While ESG initiatives are certainly front and center for many governance-minded voters, a successful activism campaign will continue to be driven by an activist's ability to tie the initiative to unlocking value. While activist investors will certainly continue to highlight poor ESG practices when it benefits their campaign, the success of pure ESG campaigns to date has been mixed, and going forward will be dependent on the activist's ability to make that link.

How might M&A activism evolve in the new year?

Over the last few years, we've seen a significant level of high-profile deal activism on both the buy- and sell-side. As a result, we are always prepared for deal opposition even on seemingly run-of-the-mill friendly M&A transactions. While the focus of the activism is sometimes to block a deal, the activist's goal is generally to get revised terms where shareholders make more money. That said, deal opposition can take many forms beyond a formal proxy contest or vote no campaign. As a result, companies involved in M&A transactions should work together to create a detailed engagement plan. ■