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Proxy Season Review 2024

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The evolution of proxy contests

An interview with Michael Fein, founder and CEO, Campaign Management.

Michael Fein
Founder and CEO
michael.fein@campaign-mgmt.com

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> “While companies may not agree with or adequately address each shareholder’s concerns, it is essential to be aware of any hot-button issues.”

How did shareholder activism evolve in 2024 compared to previous years?

2024 provided an opportunity to better assess the impact of the universal proxy cards (UPC) on contested director elections. While 2023 marked the first full proxy season with mandated use of UPC, activists and companies alike were reluctant to leave their campaign’s fate up to the will of shareholders under a newly implemented voting framework, opting instead for a negotiated and certain outcome. As a result, we saw a spike in settlements in 2023.

Observations thus far in 2024 reveal a number of interesting insights. We continue to see a high level of settlements, yet they are arriving faster, perhaps a function of opposing sides projecting vote outcomes sooner and preferring to avoid the expense and distraction of a drawn-out campaign if they can negotiate an acceptable outcome.

Yet, despite the relatively high level of settlement activity, companies and shareholders remain willing to take campaigns to a vote. Two notable campaigns ended with opposite outcomes, as Walt Disney turned away both Trian Fund Management’s and Blackwells Capital’s nominees, while Browning West replaced the entire board of Gildan Activewear. These two decisive victories may serve to embolden companies and activists, particularly when they have a strong conviction in their thesis.

How has UPC impacted the nomination process and how activists think about directors?

It will be interesting to see if we experience an increase in proxy contests involving multiple activists targeting the same company. The individual nominee comparisons enabled by the UPC put a premium on dissidents nominating the best candidates to not only unseat incumbent directors but to also defeat nominees potentially put forth by other shareholders.

We saw competing dissident slates at Disney this year and I can envision this trend continuing, although activists should be cautiously aware that competing dissident slates can potentially cannibalize votes for change, which may ultimately benefit a company’s defense.

We’re also seeing a trend towards self-refreshment of boards as many companies recognize the UPC enables precision targeting of their directors and proactively upgrade if vulnerabilities are identified. The ability of shareholders to vote for directors on an individual basis is undoubtedly driving improved board composition.

As a result, we have seen a substantial decrease in board seats won, with activists winning 11% of seats sought thus far in 2024, compared to 65% in the first half of 2023.

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Activist demands in the first half of 2024 experienced a 15% increase over the same period last year. With greater understanding of new dynamics introduced by the UPC, as well as an appreciation for the inclinations of shareholders and proxy advisors to support dissidents under the new framework, activism in the U.S. remains alive and well.

2024 has played host to a number of high-profile activist campaigns at large-cap companies. How might corporate defense tactics vary for larger companies, compared to smaller ones?

Although the majority of activism has historically occurred at smaller companies for a variety of reasons, activism at large-cap companies has steadily increased in recent years and accounts for roughly half of North American campaigns thus far in 2024.

While large and small companies have many common defensive tactics, implementation is often easier and more effective for large companies for the simple reason that they have substantially greater resources to fend off activists. Larger companies typically have a more robust investor relations staff dedicated to engaging and fostering relationships with top institutional shareholders well in advance of an activist threat, which may be crucial to gain support.

Larger companies also benefit from access to a cadre of top advisors (including attorneys, investment bankers, investor relations professionals and proxy solicitors) specializing in activist defense, so are generally better prepared for the challenge. Of course, deeper pockets also allow larger companies to utilize new and creative techniques to engage with shareholders to drive support, including social media and digital initiatives. In contrast, the more limited financial resources and management bandwidth of smaller companies can often constrain their defensive capabilities.

What is your biggest tip for companies going into the upcoming engagement season?

Listen to your shareholders. While it’s critical to articulate a cogent plan for long-term value creation and demonstrate the board’s qualifications, many companies seem more focused on pushing their own agenda than listening to the concerns of their shareholders. While companies may not agree with or adequately address each shareholder’s concerns, it is essential to be aware of any hot-button issues, especially when repeated by multiple shareholders, and develop effective messaging and an action plan to help alleviate them.

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CAMPAIGN MANAGEMENT, LLC
15 WEST 38TH STREET
SUITE 747
NEW YORK, NY 10018

212.632.8422
WWW.CAMPAIGN-MGMT.COM