

M&A Report – Annual Activism Update – 2022

Client Alert | August 21, 2023

This Client Alert provides an update on shareholder activism activity involving NYSE- and Nasdaq-listed companies with equity market capitalizations in excess of \$1 billion and below \$100 billion (as of the last date of trading in 2022) during 2022.

Announced shareholder activist activity increased relative to 2021. The number of public activist actions (82 vs. 76), activist investors taking actions (54 vs. 48) and companies targeted by such actions (72 vs. 69) each increased. The period spanning January 1, 2022 to December 31, 2022 also saw several campaigns by multiple activists targeting a single company, such as the campaigns involving: Alphabet Inc. that included activity by NorthStar Asset Management and Trillium Asset Management; C.H. Robinson Worldwide, Inc. that included Ancora Advisors and Pacific Point Wealth Management; and SpartanNash Company that included Ancora Advisors and Macellum Advisors. In addition, certain activists launched multiple campaigns during 2022, including Ancora Advisors, Carl Icahn, Elliott Investment Management, Engine Capital, JANA Partners, Land & Buildings, Starboard Value and Third Point Partners, which each launched three or more campaigns in 2022 and collectively accounted for 32 out of the 82 activist actions reviewed, or 39% in total. Proxy solicitation occurred in 17% of campaigns in 2022—a slight decrease from the amount of solicitations in 2021 (18%).

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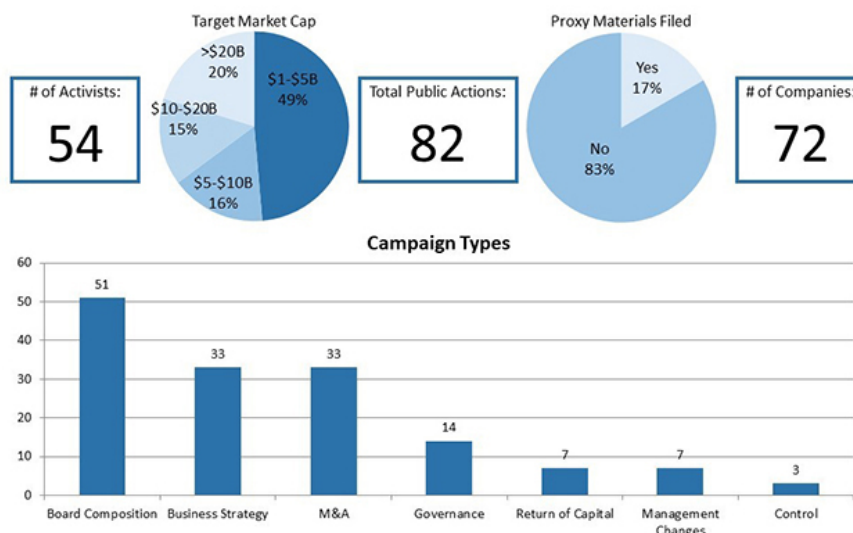
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By the Numbers—2022 Public Activism Trends



*Study covers selected activist campaigns involving NYSE- and Nasdaq-listed companies with equity market capitalizations of greater than \$1 billion as of December 31, 2022 (unless company is no longer listed), and all information is derived from publicly available sources

**Ownership is highest reported ownership since the public action date and

includes economic exposure to derivatives where applicable.

Additional statistical analyses may be found in the complete Activism Update linked below.

Notwithstanding the increase in activism levels, the rationales for activist campaigns during 2022 were generally consistent with those undertaken in 2021. Over both periods, board composition and business strategy represented leading rationales animating shareholder activism campaigns, representing 63% and 39% of rationales in 2022 and 58% and 34% of rationales in 2021, respectively. M&A (which includes advocacy for or against spin-offs, acquisitions and sales) increased in importance relative to 2021, as the frequency with which M&A animated activist campaigns was 40% in 2022 and 33% in 2021. At the opposite end of the spectrum, management changes, return of capital and control remained the most infrequently cited rationales for activist campaigns, as was also the case in 2021. (Note that the above-referenced percentages total over 100%, as certain activist campaigns had multiple rationales.)

23 settlement agreements pertaining to shareholder activism activity were filed during 2022, which is an increase from the 17 filed in 2021. Those settlement agreements that were filed had many of the same features noted in prior reviews, including voting agreements and standstill periods as well as non-disparagement covenants and minimum-share ownership and/or maximum-share ownership covenants. Expense reimbursement provisions were included in less than half of those agreements reviewed, which is a decrease from previous years. We delve further into the data and the details in the latter half of this Client Alert.

We hope you find Gibson Dunn's 2022 Annual Activism Update informative. If you have any questions, please reach out to a member of your Gibson Dunn team. [Read More](#).

The following Gibson Dunn lawyers prepared this client alert: Barbara Becker, Richard Birns, Dennis Friedman, Andrew Kaplan, Saeed Muzumdar, Kristen Poole, Daniel Alterbaum, and Joey Herman.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this publication. For further information, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following practice leaders, members, and authors:

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