



Luc Hoffmann  
Institute

# Shareholder activism: Standing up for sustainability?

REPORT

# CONTENTS

PREFACE.....4

EXECUTIVE SUMMARY.....6

SHAREHOLDER ACTIVISM CASES.....8

PASSIVE SHAREHOLDING AND THE 'BATTLE FOR THE SOUL OF CAPITALISM' ....9

SHAREHOLDER ACTIVISM IN NUMBERS.....10

SHAREHOLDER ACTIVISM FOR SUSTAINABILITY.....11

MATERIALITY AND REPUTATION.....13

PUBLIC POLICY TRENDS AND SHAREHOLDER RIGHTS.....16

THE FUTURE OF SHAREHOLDER ACTIVISM.....19

ANNEX I: ACTIVIST INVESTORS IN SELECTED COUNTRIES.....21

ANNEX II: PROXY COMPANIES.....21

ANNEX III: OVERVIEW OF ACTORS IN ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) SHAREHOLDER ACTIVISM.....22

REFERENCES.....24

SOURCES.....27

Front cover: 'Fearless Girl statue standing up to Wall Street Bull statue in New York'  
© Anadolu Agency/Getty Image  
Written by Elisabeth Losasso and Adrian Dellecker, Luc Hoffmann Institute  
Edited by Anna Knee  
Designed by Dekal.ch  
© Text 2018 Luc Hoffmann Institute  
All Rights Reserved

## PREFACE

Millions of people are shareholders, and therefore owners, of corporations around the world. This ownership can be indirect, via pension schemes for example, which can break or complicate the rights that corporate shareholding confers. Purposefully exercising those rights is called shareholder activism. Despite the fact that shareholders are company owners, most small investors – and many large institutional investors too – either do not exercise their governance rights or outsource these rights to proxy companies with little oversight. In this way, the vast majority of shareholders are ‘passive’. They rely on the ability of the board and managers of the company to run things in a way that protects

or institutional, typically take a small equity stake in a company and, with the motive of maximising short-term financial gain, use this as a vehicle to push through changes in governance, pay structures, dividends and so on that can boost ‘shareholder value’. Activist shareholder behaviour is not new but it appears to have increased in frequency and impact since the 2008 financial market crisis. The challenge for the environmental community is when the short-term interests of ‘shareholder value’ can be at odds with longer-term company objectives, including those for sustainability. This emerging trend, exemplified by Third Point’s acquisition of a stake in Nestlé in 2017, was one of the main drivers of the Luc Hoffmann Institute being involved in this re-

“We want to raise awareness about the impacts of shareholder activism on sustainability, particularly in the conservation community, widen the scope of the debate and draw on a range of partners to expand action on environmental conservation to corporate boardrooms and general assemblies.”



© PEW Institute

and grows their investment. In many cases it is the nature of the governance status quo that attracts their investment in the first place.

The behaviour of passive shareholders has created the conditions for the rise of activist shareholders who, whether individual

search and producing this report.

In direct contrast to the behaviour of activist shareholders, it has long been recognised that there is significant potential for the sustainability movement to mobilise passive shareholders to influence corporate strategies,

particularly on environmental, social and governance (ESG) issues. With better understanding of their role and rights within corporate governance, more shareholders can in theory at least, play an important part in guiding corporate decisions.

To date, a significant number of ESG shareholder activities have been developed. Many focus on climate change for example, setting and meeting emission targets, divesting from fossil fuels, or disclosing regulatory risk around carbon. Less has been done on other environmental issues such as freshwater management, sustainable supply chains, or certification of goods made from natural resources.

As this report shows, a dedicated number of relatively small NGOs and investors have emerged within the field of corporate ESG. They provide research, rankings, certifications, voting advice or direct advocacy at company annual general meetings where corporate governance issues are decided. But efforts tend to remain local or thematic. There has been no concerted and coordinated attempt to determine the connection between shareholder activism and long-term global sustainability.

This is what the Luc Hoffmann Institute is setting out to do. We want to raise awareness about the impacts of shareholder activism on sustainability, particularly in the conservation community, widen the scope of the debate and draw on a range of partners to expand action on environmental conservation to corporate boardrooms and general assemblies.

In the first instance, we will focus on activist shareholders and we aim to bring together the innovative thinking and practice, build new

networks and support research in this rapidly growing space.

This report examines the state of play surrounding the issue – who is involved and what knowledge exists. It outlines trends in shareholder activism in general and more specifically, activism in pursuit of ESG objectives. We also highlight opportunities, risks and challenges of shareholder activism for sustainability from the perspective of shareholders, corporates and non-profits.

This report is our first small step along the path to finding out where we and our partners can play a most effective role in taking shareholder activism to a new level as a force for global sustainability.



Jonathan Hutton  
*Director, Luc Hoffmann Institute*  
April 2018



# EXECUTIVE SUMMARY

**T**his report is intended to inform relevant but as yet unengaged actors about a growing trend that has significant ramifications for environmental conservation and sustainability, negative and positive. It is based on desktop research and a literature review and aims to support an interdisciplinary debate about shareholder activism. Within this review we examine a range of shareholder instruments and engagement options, with a view to understanding their potential as tools to address a wide range of sustainability topics.

This report includes both a historical analysis of general trends and patterns in shareholder activism as well as a deeper dive into more specific shareholder activism that pursues environmental, social and governance (ESG) goals. Recent high-profile cases of shareholder activism illustrate that such activism is now a constant part of corporate life globally.

The different instruments shareholders have at their disposal to drive changes in corporate behaviour are explained and the impacts of ESG shareholder proposals on the performance of a company explored. Drawing from research the report shows that ESG proposals can lead to improvements in the company on the particular issue, even if majority support is very rare.

**This report supports the launch of a Luc Hoffmann Institute project on shareholder activism and sustainability.** It will be followed by a series of interviews of relevant stakeholders to better inform ongoing research and help provide a baseline 'state of play' on the issue. The institute also plans to convene various stakeholders around this topic with a view to increasing the understanding and impact of shareholder activism for sustainability.

## SHAREHOLDER ACTIVISM CASES

Shareholder activism has become increasingly prominent in the investment world and a powerful force in corporate decision making in recent years<sup>1</sup>.

The practice consists of buying a minimum stake of a company's stock – often only 1-3% – and fully asserting ownership rights, in particular the right to vote on motions for corporate decision making at the annual general meeting (AGM). **Such activism is usually focused on maximising investments and short-term profits and tends to rely on extensive media coverage to magnify influence.** This form of influence is different to full takeover bids, for example the model favoured by the 'corporate raiders' of the 1980s who typically raised debt to buy entire companies, restructure them and generate a profit upon their sale or stripping of assets<sup>2</sup>.

Examples of these recent high-profile cases abound. In 2017 in the US, the activist **Trian Fund** launched successful campaigns against **General Electric (GE)** and **Procter & Gamble (P&G)**. Holding only 1.5% of GE shares, Trian drove the CEO of GE off the board after 16 years. P&G became the largest ever campaign target, trying to place Trian's founder, the hedge fund billionaire Nelson Peltz, on the company's board to take control of P&G. In Europe, **Nestlé** became the target of activist US hedge fund **Third Point** which took a 1.3% stake in the company in June 2017. Its founder, Daniel Loeb, demanded major strategic changes in the company's product portfolio, including a share buyback programme and selling its large holding in **L'Oréal**. In September that year, Nestlé essentially gave in to most of Third Point's demands, setting itself an operating margin target for the first time and accelerating a share buyback programme<sup>3</sup>. In the Netherlands, **AkzoNobel**, a Dutch paint and chemicals firm which has been under pressure from **Elliott Advisors** for alleged financial underperformance<sup>4</sup>, agreed to appoint three new directors to its board<sup>5</sup>. In Germany, **Active Ownership Capital** started a historic takeover

battle against the drugmaker **Stada** and managed to replace the top management<sup>6</sup>.

The mere notion of activist investors can be enough to influence companies and values. When Third Point announced that it had taken a stake in Nestlé and made its demands known, Nestlé shares surged by over 4.3%; when Nestlé publically gave in to Third Point's demands, its shares jumped 1.8%. When in 2017 **Kraft Heinz Co.**, a food conglomerate known for its aggressive cost-cutting tactics, failed in its attempt to take over **Unilever**, Unilever still put in place a number of Kraft Heinz's demands, such as carrying out share buybacks to ward off other potential hostile takeovers or activist investors with similar intents<sup>7</sup>.

These activists' campaigns tend to emphasise profitability, growth targets, governance and value per share. They are, by and large, driven by the need for profit, but unlike companies themselves, funds can shift capital from company to company, moving from target to target, ignoring the long-term value of each. A target company's long-term value proposition and sustainability can therefore easily become collateral damage in the process. A company interested in long-term value and environmental sustainability, as Unilever under Paul Polman had loudly proclaimed it was<sup>8</sup>, will see any plans it has on sustainability to be genuinely threatened by these activist investors.

### What is shareholder activism?

The practice of shareholders purposefully exercising their rights as a shareholder to influence a company's behaviour. There is a broad range of instruments, formal and informal, shareholders have at their disposal, as well as a wide spectrum of shareholders with different motivation and approaches. Put simply, one can consider there is a 'spectrum' of shareholder activism. On one end there are the so-called 'Shareholder Activists', individuals or funds, who are driven by short-term interests in increasing shareholder value. On the other end are value driven 'ESG-oriented activists' who use shareholder rights, including harnessing those of others, to advance corporate sustainability. There are also 'passive shareholders': institutional or individual inves-

## PASSIVE SHAREHOLDING AND THE 'BATTLE FOR THE SOUL OF CAPITALISM'

**In the backdrop of these activist shareholder campaigns, which are able to significantly influence a company's strategic direction with only a 1-3% of share, lies an increasing number of passive investors.**

Passive shareholders can be individuals or institutions that do not actively use their right to vote in annual general meetings or who do not exercise the influence this provides. Passive shareholders can include wealthy individuals, institutional investors or pension funds who own stock as investments but do not exercise their owner rights to vote on corporate decision making.

Passive shareholders as a share of the whole have also seen their ranks swelled by the rise in the past few decades because of 'passive investors' and 'passive index funds'<sup>9</sup>. These index funds or exchange-traded funds (ETFs) mirror a market index, such as Standard and Poor's 500 Index (S&P 500) or the Dow Jones U.S. Real Estate Index, without trying to 'beat the market'. Lower management fees of index funds compared to those of actively managed funds and the reliable delivery of the market's average performance have contributed to their popularity. While passive funds currently account for 29% of the US market, they are expected to overtake active market share between 2021 and 2024<sup>10</sup>.

tors who do not actively use ownership rights, whether it is from shares they own or hold for others. For the purpose of this report, 'activist shareholders, or 'activist investors' is understood as the non-value and short-term driven form of activism, contrary to 'ESG shareholder activism' or 'shareholder activism for sustainability' as the value-driven form of shareholder activism.

### The three types of shareholders



\*for example hedge funds, with short-term financial interests

With the surge of passive investment, criticism has also increased. **Several commentators have warned about the perils of passive investment products, such as negatively affecting price discovery, reduced competition between firms due to common ownership and increased market volatility in the event of a crash<sup>11</sup>.** This is seen to threaten the market process and attribution of adequate pricing. Furthermore, because managers of passive funds only buy and sell a company stock based on its place in a given index, this gives them little incentive to engage directly with companies or in an AGM to seek improvements to the way they are individually run.

Recently **Larry Fink, CEO of BlackRock**, the largest investment management company in the world with US\$ 1.7 trillion under investments, told the chief executives of companies with significant BlackRock investment that their responsibility is not only to deliver profits, but also "or the long-term": **"To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society."**<sup>12</sup> Yet as the same letter pointed out, **"in managing our index funds, however, BlackRock cannot express its disapproval by selling the company's securities as long as that company remains in the relevant index."** In other words, large and global investors such as BlackRock, that only indirectly manage their capital via passive funds that track pre-defined indices, are limited in their options to engage with companies, i.e. divestment. This 'degree of separation' between the holders of capital and shareholder rights can prevent action, or provide cover for passivity, or increased incentives for shareholder activism.

**John Bogle**, founder of the Vanguard group, had already warned in 2007 of a 'battle for the soul of capitalism' using this logic: with investors focused only on short-termism, capitalism had been distorting incentives and served the managers of companies over their owners<sup>13</sup>. More recently, Bogle has warned of the dramatic rise of passive investors which is allowing, and will increasingly allow, minority active ones to get their way with very small stakes<sup>14</sup>. Numbers suggest this 'battle' is raging.

# SHAREHOLDER ACTIVISM IN NUMBERS

**The form of shareholder activism described previously where owners exercise their voting right to influence corporate practice, has moved from the fringes to being a standing part of corporate life in a few short years.**

Shareholder activists now manage capital of more than US\$ 170 billion, up from less than US \$3 billion in 2000<sup>15</sup> – a double-digit annual growth rate – with 2016 marking a record in public shareholder activism. Campaigns are frequently relayed and discussed in the mainstream financial press<sup>16,17</sup>. Although initially focused on US-based corporations where initial salvos included Carl Icahn's bid to seek control of Time Warner Management in 2006<sup>18</sup> and Roy Disney's and Stanley Gold's campaign against Disney's CEO Eisner in 2004<sup>19</sup>, shareholder activism has increasingly become a global phenomenon<sup>20</sup>.

While the volume of shareholder activism varies significantly from country to country, the US still sees the most activity with around 300 to 500 annual campaigns against publicly listed companies in the last four years<sup>21</sup>. Activity in Europe and Asia still lags behind the US but has markedly increased recently. During the 2017 proxy season, activists launched 327 public campaigns against US companies. In the same period, investors announced 119 and 86 campaigns in Europe and Asia, respectively. That compares with 62 and 14 campaigns five years ago. In Australia, where activists have started targeting higher-profile companies, 74 campaigns were launched, double that of five years ago<sup>22</sup> (see illustration 1).

**There has also been a rise in cross-border activism where investors from one country target a company listed elsewhere.** At least part of the increase in European activism in recent years has been due to a higher incidence of cross-border activists looking for opportunities in Europe, attracted by cheaper stocks and shareholder-friendly laws<sup>23</sup>. US activist investors are also partially shifting focus to smaller companies that are less prepared for an activist approach<sup>24</sup>.

**The peak of the global upward trend in shareholder activism was reached in 2016 with a record number of shareholder requests on corporate governance and**

**strategic business issues** (see illustration 2). It is estimated that, in the 2016 proxy season (typically defined as the 12 months ending June 30), between 644<sup>25</sup> and 758<sup>26</sup> shareholder requests were submitted against public companies worldwide, a 10 to 13% increase on 2015<sup>27</sup>. In 2017, the global volume of campaigns decreased by 6% with nearly every region experiencing a modest decline in new campaigns versus the 2016 record season<sup>28</sup>.

Most of these activist campaigns have focused on corporate governance or strategic business<sup>29</sup>. In particular, shareholder activists sought to influence decisions on board control and representation, enhanced corporate governance, maximise shareholder value, remove director(s), remove officer(s) and vote/activism against a merger<sup>30</sup>.

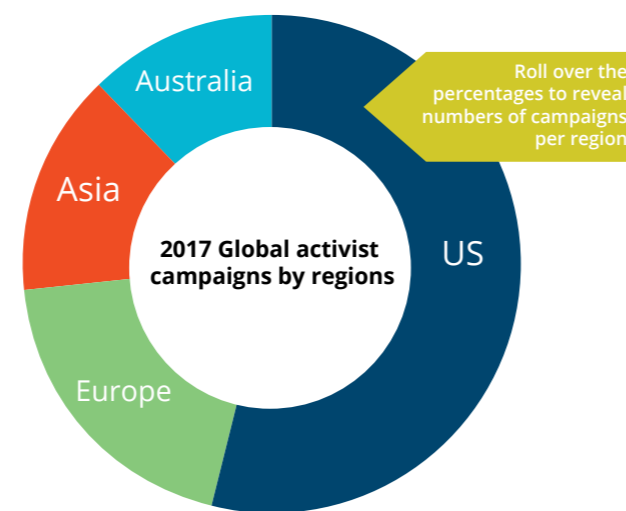


Illustration 1: adapted from JP Morgan, The proxy season 2017.

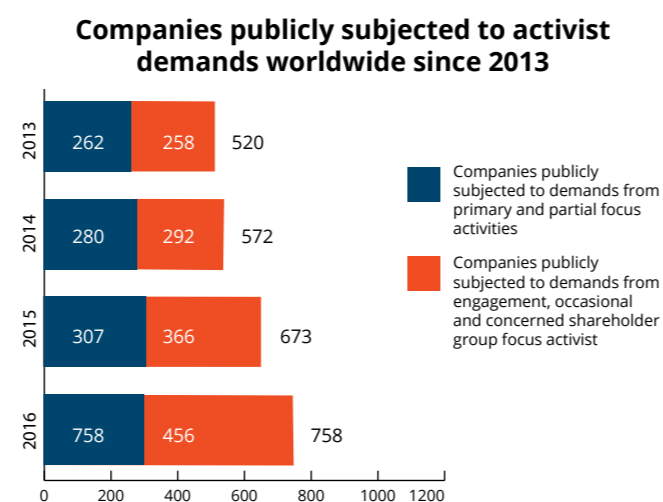


Illustration 2: Adapted from Activist Insight, & Schulte, Roths & Zabel (2017), The Activist Investing Annual Review 2017.

A corollary to this trend is that the term 'shareholder activist' or 'activist investor' has come to mean an

investor who seeks, above all, economic and financial gains to maximise investments in the short term. This form of shareholder activism almost inherently weighs negatively on corporate sustainability policies which are focused on the longer-term.

Meanwhile, however, there are many other shareholders and investors who have also increased another form of activism, using their shareholder rights to positively influence the environmental, social and governance (ESG) performance of companies.

## SHAREHOLDER ACTIVISM FOR SUSTAINABILITY

**Against the backdrop of growing trends for high-profile shareholder activism campaigns, there has also been a marked increase in the number of smaller investors engaging companies on ESG issues in a more positive way for society as a whole.**

These shareholders can engage companies directly, either one-on-one or through group engagements and through the mechanism of a shareholder proposal, just like the more high-profile activists.

**ESG shareholder proposals are usually sponsored by pension funds, ESG-oriented investment managers, religious groups, or coalitions of like-minded investors.** More than ever, institutional investors are actively engaging companies on ESG issues as part of their 'fiduciary duty' (see box) and in the belief in the long-term benefits for corporations and stakeholders. Others operate as proxy advisors (for profit or not), others are philanthropic foundations or non-governmental organisations (NGOs) with a values-driven agenda. Annex III of this report contains a comprehensive list of such actors.

Shareholder proposals on ESG topics have more than doubled in the last two decades<sup>31</sup>. Perhaps more significantly, support for ESG proposals has also markedly increased in the same period, nearly tripling from typically gathering 8% support in 1999 to 21% in 2013<sup>32</sup> and has been stable around 21% each year since then.

In the 2016 US proxy season alone, ESG proposals made

**Fiduciary duty**  
A fiduciary duty is the legal obligation of one party to act in the best interest of another. Institutional investors like pension fund trustees owe fiduciary duties to their beneficiaries. The current state of the law on fiduciary duties is uncertain. In the EU, for example, pension fund trustees are legally permitted to take account of ESG factors in making investment decisions, but the extent of their discretion is not defined. Many investors are reluctant to factor in ESG through fear of liability and favour a short-term investment approach.

up 30% of the overall proposals submitted<sup>33</sup>. In the context of an overall decrease in shareholder activism in 2017, shareholder resolutions specifically related to social and environmental issues have actually increased from 370 in 2016 to 494 in 2017 in the US<sup>34</sup> (see illustration 3).

Within this trend, environmental and corporate political activity were the key areas of focus for ESG-related shareholder proposals in the 2018 proxy season<sup>35</sup> (see illustration 4).

**Among environmentally focused shareholder proposals, climate change has been the primary concern<sup>36</sup>.** Many proposals underpinning this broader trend have for example asked energy companies and utilities about the impact of a warming planet and the implications

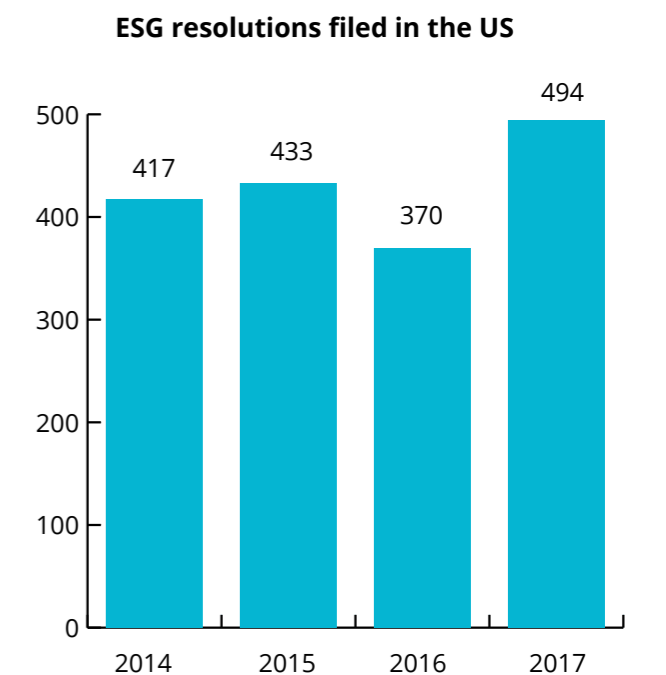


Illustration 3: Adapted from As You Sow, The Sustainable Investments Institute, & Proxy Impact (2017). Proxy Preview 2017.

for their business model of mandatory carbon reduction and if new technologies will affect the competitive landscape<sup>37</sup>. Shareholder proposals relate to targets to cut carbon footprints, carbon accounting, renewable energy goals, deforestation, carbon finance and divestment and coal impacts<sup>38</sup>.

The number of environmental topics other than climate change grew in 2017. Most resolutions targeted recycling and waste, for example phasing out foam packaging, requesting reports on packaging and recycling, waste

**important catalysts of action within companies**<sup>41</sup>. Filing shareholder proposals can lead to improvements in the performance of a company on a particular environmental or social issue, even though such proposals did not receive majority support<sup>42</sup>.

To further understand the impact of ESG shareholder activism, the total number of ESG resolutions filed in one proxy season is best broken down into resolutions voted, withdrawn or omitted (for example, by failing to meet the standard requirements). **While the total number**

### Shareholder resolutions

Shareholders in a publicly traded company are entitled, under certain conditions, to introduce shareholder resolutions, or proposals, to the company management to be voted on at the next annual meeting. These are distinct from company resolutions, which are proposed by the company.

Shareholder resolutions may pertain to company policies and procedures, corporate governance or issues of social or environmental concern. "They are a meaningful way for shareholders to encourage corporate responsibility and discourage company practices that are unsustainable or unethical." (US SIF - The Forum for Sustainable and Responsible Investment).

Every year several hundred shareholder resolutions are filed. The vast majority of shareholder proposals are non-binding, meaning the company is not required by law to comply regardless of the level of support. A non-binding, or advisory proposal asks, recommends, or suggests that the company take or not take a specific action.

**of social and environmental shareholder resolutions filed in 2016 dropped from an all-time high in 2015, the number of actual votes continued its upward march to a record 243**<sup>43</sup>.

**In general ESG resolutions receive, when voted on, lower support than resolutions on corporate governance issues.** In the US the success rate for resolutions has been high with two out of three achieving their objectives<sup>44</sup>. In contrast, the average support for ESG resolutions over the last four years held steady at around 21% each year, above earlier years, and was 21.5% in 2017. (See illustration 5).

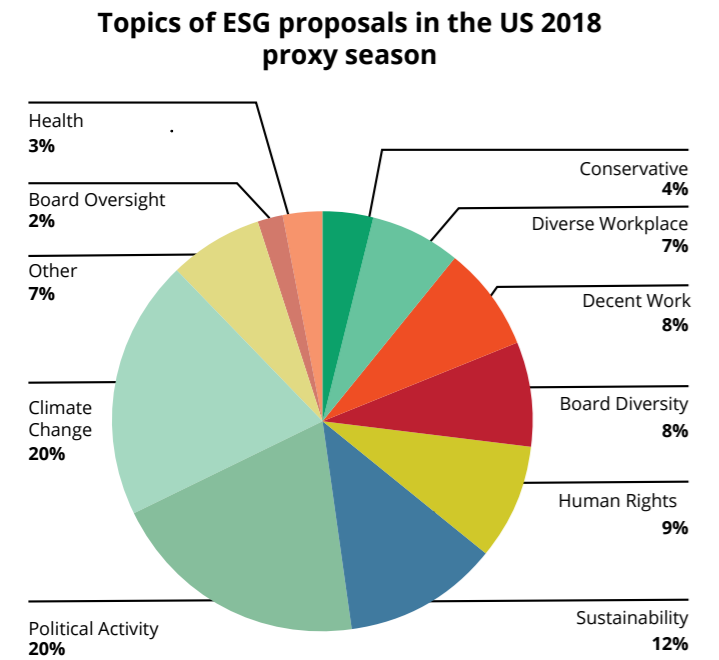


Illustration 4: Adapted from As You Sow, The Sustainable Investments Institute, & Proxy Impact (2018). Proxy Preview 2018.

management strategies, or setting goals for reducing food waste. Water stewardship, pesticides, antibiotics and industrial agriculture were further important categories of proposals on the environment<sup>39</sup>.

An increasing number of proposals seek sustainability reports (see illustration 4) and changes related to 'sustainability governance', for example, how companies make their social and environmental policy decisions<sup>40</sup>.

**Research therefore points to a significant uptick not only in the number of ESG proposals but also on their impact and effectiveness. It also shows that most of these proposals have focused on one environmental issue, climate change mitigation.**

**Evidence further shows that ESG proposals have been**

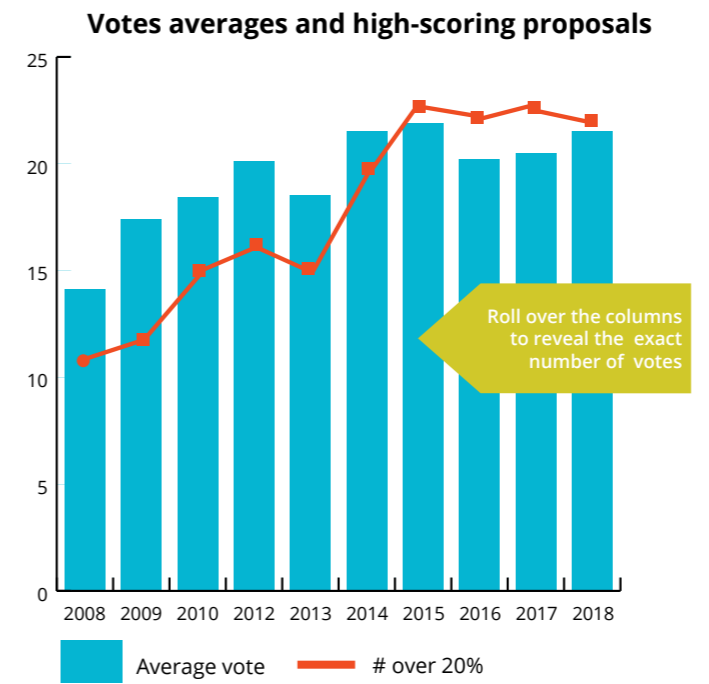


Illustration 5: Adapted from As You Sow, The Sustainable Investments Institute, & Proxy Impact (2018). Proxy Preview 2018.

Examples of successful shareholder campaigns that yielded particularly high support in votes mostly concern climate change. In 2015 a coalition of concerned investors called 'Aiming for A' filed resolutions at BP and Shell asking the companies to disclose more information on how they were adapting to the low-carbon transition<sup>45</sup>. These resolutions became binding under UK law after more than 98% of shareholders voted in support of them.

In the US, 2017 saw the first ever majority votes on climate change shareholder proposals at oil and gas companies and electric utilities<sup>46</sup>. The reason lies in the fact that for the first time in 2017 some of the largest asset managers, BlackRock, Vanguard, Fidelity and American Funds, started voting for climate-related shareholder proposals and contributed significantly to the historic levels of support achieved<sup>47</sup>.

Often, when a shareholder resolution fails to win a majority of the shares voted, it still succeeds in persuading management to adopt some or all of the requested changes when the resolution was favoured by a significant number of shareholders<sup>48</sup>. Research has shown that votes with more than 10% support are difficult for companies to ignore<sup>49</sup>. Resolutions with 20% or more support send a clear message to corporate management and tend not to be ignored by any company<sup>50</sup>.

ESG proposals are withdrawn more often than corporate governance proposals<sup>51</sup>, either because a mutual understanding is reached or the company took specific action, or symbolic actions are taken to placate shareholders.

### One-on-one engagement between shareholders and companies

The annual general meeting (AGM) and shareholder resolutions are not the only way to engage with companies. Institutional shareholders will often engage with a company throughout the year to influence 'behind closed doors' company policies and not publicly at the AGM. Many companies opt for a dialogue and settle with shareholders before resolutions are proposed or prior to a vote.

Studies show that firms' responsiveness to shareholders depend largely on the activist's identity (Goranova & Ryan, 2014), the importance of the issue (Easley & Lenox, 2006; Reid & Toffel, 2009), or a desire to enhance their firm's position (David et al., 2007, Johnson & Greening, 1999; Logsdon & Van Buren, 2009).

## MATERIALITY AND REPUTATION

**One area of growing academic interest in the area of ESG activism has been the relationship between sustainability and the financial performance of companies**<sup>52</sup>.

While there is mixed evidence, recent research points to a positive correlation between ESG programmes and long-term shareholder value. In other words, when companies pursue sustainability agendas this has a positive impact on their bottom line: "Companies committed to ESG are finding competitive advantages in product, labour, and capital markets. Portfolios that have integrated 'material' ESG metrics have provided average returns to their investors that are higher than those of conventional portfolios, while exhibiting lower risk."<sup>53</sup>

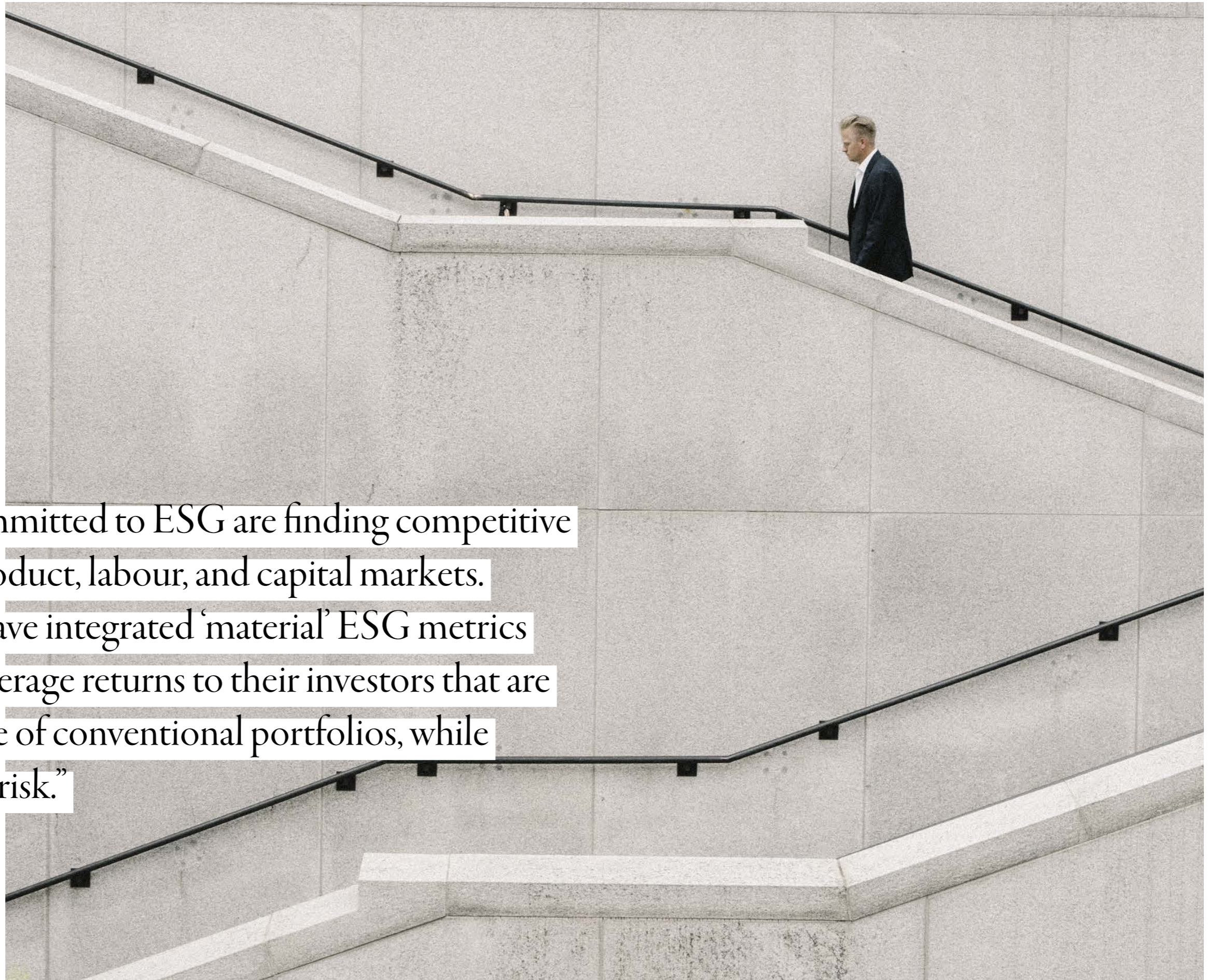
**'Materiality' refers to an issue that affects the financial performance of a company**<sup>54</sup>. One recent study finds that differentiating among sustainability issues based on a materiality criteria yields much clearer results<sup>55</sup>.

Grewal et al.<sup>56</sup> test the relationship between filing ESG proposals and firms' subsequent ESG performance and market valuation. They distinguish between material

and immaterial sustainability issues based on the Sustainability Accounting Standards Board (SASB). The study highlights that filing shareholder proposals is associated with improved performance of the company on the focal ESG issue across both material and immaterial issues. However, proposals filed on immaterial ESG issues are accompanied by larger and faster increases in firms' performance on the ESG issue that the proposal identifies, relative to proposals on material issues. Material sustainability issues frequently require fundamental changes in processes and the business model.

Perrault and Clark<sup>57</sup> discuss the effect of environmental shareholder activists' status and reputation on a company's responsiveness, when shareholders choose to use their ownership to enact changes within firms. They conclude that "firms respond positively to shareholder activists with higher status [...] as well as to stakeholders with a negative reputation that could threaten the firm."

“Companies committed to ESG are finding competitive advantages in product, labour, and capital markets. Portfolios that have integrated ‘material’ ESG metrics have provided average returns to their investors that are higher than those of conventional portfolios, while exhibiting lower risk.”



© Joshua Niss/Unsplash



# PUBLIC POLICY TRENDS AND SHAREHOLDER RIGHTS

**Shareholder activism, in whatever form, is guided by the various national laws and regulations that apply to the local markets in which corporations are traded.**

Often overlooked as agents of change in this sector, national laws and market exchange regulations frame and influence what is and what is not possible for activists, or the overall parameters of engagement.

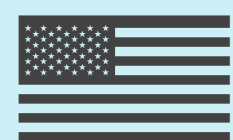
This section gives an introduction to shareholder legislation in select countries or regions: **the United States, European Union, UK, France, Germany, Switzerland and South Africa.**

## Shareholder rights

The rights of shareholders are governed by the laws in the country or state where the company is headquartered or publicly listed. The most important rights include the right to share in the company's profitability, a degree of control and influence over company management selection, and general meeting voting rights.

Although national legislation and regulation differ, basic rights for shareholders are in general: the right to attend the AGM, to ask questions and, to different extents, voting rights. Publicly listed companies are obliged to hold an AGM. Important aspects of company policy such as the re-election of directors and to some extent approval of executive pay packages ('say-on-pay') are often voted on by shareholders at AGMs. Votes can be advisory or binding. Some companies grant common shareholders one vote per share owned. There may be different classes of shares with no voting rights or restricted rights which can dilute decision making. AGMs can also be a forum to discuss the company's performance in relation to environmental, social and governance (ESG) issues.

Shareholders can delegate their voting rights in the general assembly to a proxy company. Proxy companies offer services, such as voting, to institutional and private investors. See a list of proxy companies in Annex II.



United States

**The Securities and Exchange Commission (SEC)** regulates through the Securities Exchange Act of 1934 how shareholders can execute their rights<sup>58</sup>. Shareholders may vote, either in person at the company's AGM, or more commonly, by mail or online. Mutual funds and other registered management investment companies are required to disclose each year how they vote proxies. These reports, called 'N-PX' reports, are published on the SEC website.

The SEC's Shareholder Proposal Rule (Rule 14a-8) permits shareholders to file a proposal at a company if they own at least US\$ 2,000 or 1% of the company's shares and have held the shares continuously for the year prior to the company's annual submission deadline.

Proposals generally need to address corporate environmental, social and governance policy questions that are considered significant public issues and not be related to a matter of the company's ordinary business operations<sup>59</sup>.

The US Chamber of Commerce is lobbying to change the SEC's shareholder proposal process to make the filing of ESG resolutions more difficult, claiming that they are destroying value. The Financial **CHOICE Act**, approved by the House of Representatives in 2017 and facing an uncertain future in the Senate, would replace the **Dodd-Frank Act** and, if it becomes law, sharply raise the ownership threshold for shareholders who can file proposals<sup>60</sup>.

## What is a proxy statement ?

Companies are required to provide shareholders with a 'proxy statement', a document containing the information to make an informed decision during the annual meeting. This led to the term 'proxy voting.' (US SIF).



European Union

The legal basis for shareholder rights in the European Union is the Shareholder Rights Directive (SRD) 2007/36/EC<sup>61</sup>, recently amended by Directive (EU) 2017/828 regarding the encouragement of long-term shareholder engagement<sup>62</sup>. The new provisions, aiming to push for greater shareholder engagement, need to be transposed into the 27 national laws by 10 June 2019<sup>63</sup>. The minimum shareholder rights, as established by the SRD 2007, remain unchanged.

A number of new provisions were introduced to facilitate the interaction between companies and shareholders (Art. 3a-3d). This increases the transparency of institutional investors, asset managers and proxy advisors (Art. 3g -3j). Art 3g, for example, requires

institutional investors and asset managers to describe their engagement policy with shareholders and how they monitor investee companies on relevant matters including ESG risks. Proxy advisors (Art 3j) are required to publicly disclose information about a code of conduct which they apply and information about their research, advice and voting recommendations. Under the new directive, shareholders will have a right to vote on the remuneration of directors ('say-on-pay'). This can be either a consultative or a binding vote.

The SRD is complementary to the EU Directive 2014 on Non-Financial Reporting<sup>64</sup>, currently in transposition phase. In the following jurisdictions, national specifics of the EU framework are described.

## EU Shareholder Rights Directive 2007/36/EC

The specific legal rights of shareholders vary between EU countries but shareholders enjoy at least the following fundamental rights:

- Vote and actively participate in the AGM: ask questions related to items on the agenda and have them answered.
- Put items on the agenda of the AGM and table draft resolutions for items on the agenda (can be subject to a threshold not exceeding 5% of share capital).
- Participate in meetings by means of written or electronic communication, and by appointment of a proxy. The right to accessible and detailed information about the company.



United Kingdom

The UK legal, regulatory and political landscape is generally supportive of shareholder engagement<sup>65</sup>. The UK has always been at the forefront of European activism<sup>66</sup>. The Companies Act 2006<sup>67</sup> outlines the rights of shareholders in the UK. Resolutions tabled by the company are passed by a simple majority but resolutions proposed by shareholders require a majority of at least 75%<sup>68</sup>. Shareholders representing at least 5% of share capital can call for a shareholders' meeting.

Shareholders representing at least 5% of the total voting rights or at least 100 members with voting rights, have agenda-setting power and can request the company to circulate a short document relating to matters that will be discussed at a shareholders' meeting. The government's August 2017 corporate governance reform proposals scaled back previous suggestions that workers should be placed on company boards and annual votes on executive pay be made binding.



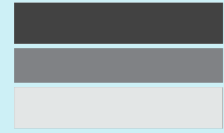
France

The French Commercial Code<sup>69</sup> sets out shareholder rights in France. There are two types of shares: *actions au porteur*, or 'anonymous' shares, and *actions nominatives* with the holders' name made available to the company. The rights to participate and vote in the AGM apply only to the holders of actions nominatives. Voting on resolutions is only valid with a participation of at least one fifth of the share

capital with voting rights. Resolutions are passed on a simple majority vote. Shareholders holding at least 5% of share capital can request to add resolutions to the agenda. Since 2015, all publicly traded companies are required to disclose information in their annual report on their business strategy on climate change-related risk<sup>70</sup>. A speciality of the French Commercial Code are 'double vot-

ting rights' for long-term shareholders (shares that have been registered for at least two years), subject to the satisfaction of certain requirements (Article L. 225-123). In December 2016, the French legislature introduced a

binding 'say-on-pay' vote. As a consequence, shareholders of French-listed companies are required to vote on all forms of compensation provided to a company's corporate officers.



## Germany

Although shareholder activism in Germany is on the rise, there is still significantly less activity than, for example, in the UK. The legal basis for shareholder rights is mainly the German Stock Corporation Act 1965<sup>71</sup>. Resolutions are passed on a simple majority vote. Shareholders, individually or collectively, representing at least 5% of share capital, or equivalent to €500,000, can ask for resolutions to be put on the agenda. Shareholders also have the right

to challenge resolutions put to the meeting if the resolution is deemed 'unethical'<sup>72</sup>. The non-legally binding Corporate Governance Code<sup>73</sup> for listed companies complements legislation. It contains recommendations and suggestions on internationally and nationally accepted standards for successful and responsible business management and also guidance for shareholder meetings



## Switzerland

The main source of law for shareholder rights is the company law contained in Articles 620ss of the Swiss Code of Obligations (CO)<sup>74</sup>. In addition, the Ordinance against Excessive Compensation in Listed Companies which entered into force in January 2014, contains far-reaching rules on corporate governance with direct effects on boards, executive management, shareholders, pension funds and independent proxies<sup>75</sup>. It requires, for example, Swiss pension funds to exercise their voting rights. Furthermore, shareholders have

a binding say on compensation for the board, senior management and the advisory board. Art 689 CO regulates representation in the AGM. The Company Law is currently under revision<sup>76</sup>. One factor that drives down activity is the widespread presence of the so-called 'anchor' shareholders – management-supporting investment firms that typically acquire stakes of 20% or more. As a result, approaching the anchor shareholder first is paramount for successful activism<sup>77</sup>.



## South Africa

A key driver of shareholder activism in South Africa has been the introduction of minorities' rights in the [Companies Act](#) 2008. Minority shareholders with only 10% of shares can call for a general meeting. Shareholders can more easily instigate legal action against directors in the event of financial loss.

The rise in shareholder activism is also partially caused by the fact that over 50% of the market capitalisation of the Johannesburg

Stock Exchange is owned by foreigners<sup>78</sup>. The King Code of Governance Principles 2009, a set of world-class 'best practice' principles for corporate governance, has also played a significant role. It emphasises ethical leadership, sustainability and good corporate citizenship. The best practices include increases in reporting transparency that are required for a listing on the Stock Exchange<sup>79</sup>.

**In all cases it is important to note that public policy underpins shareholders rights and, at least indirectly, access to and engagement in company boards. These laws and regulations vary from country to country but are not fixed; they have evolved over time and continue to evolve.**

## THE FUTURE OF SHAREHOLDER ACTIVISM

**From a sustainability perspective, shareholder ownership should be focused on a long-term relationship between investors and the companies they own.**

Sustainability would be logically baked into this relationship as returns on capital would be focused on the continued success of the companies, not just the immediate term.

Yet many investors actively navigate from one company to the next and focus on short-term efficiencies that can help bring quick returns on investment. To 'beat the market', they can always move on afterwards – ownership changes based on short-term news with little regard for the long-term horizon. With computers and algorithms, ownership can even change in fractions of a second.

Many long-term investors operate via one or more intermediaries. Whether through mutual funds, stock portfolios or pension schemes, investors often fail to link directly to their responsibility in managing their capital. Some of this may be due to lack of awareness among the broader public and wealthy individuals and merits further research.

It is also clear, however, that shareholder engagement and effectiveness on ESG matters are on the rise. Such activism could potentially act as a counterweight to those seeking short-term gains.

**As active ownership continues to mature, more and more institutional investors are becoming aware and active on ESG issues. Yet this raises the question of the quality of management of such issues – there are no fixed 'certified' ESG standards and these can vary significantly in quality.** This is especially important for the proxy companies acting on behalf of large institutional investors who outsource their shareholder rights.

'Greenwashing' is clearly still possible. The increase in ESG interest is also impacted by evolving public policy which can encourage – or otherwise – active ownership. Often, actors involved in corporate engagement are not

influencing public policy and those working on improving public policy on sustainability are not always 'corporate savvy'.

**ESG activism may also benefit from better assessments of the financial materiality of the specific sustainability issue.** For example, managing water risks at local or even systemic levels; climate change risks, whether in increased governmental regulations or rising insurance premiums; ensuring predictable supply chains of natural resources; or even reputational risks may have an impact on a company's bottom line. Activists could therefore benefit from having a better understanding of what is material in each industry, supported by hard evidence. The company itself may not have full knowledge about the materiality of the ESG issue. Informed advisers can help close the knowledge gap between ESG concerns and business operations. If sustainability activists ignore materiality, there is a risk that ESG becomes associated with and labelled as 'value destroying'.

New technologies can also be relevant in the next phase of shareholder activism for sustainability. **Smartphones can better connect investors and their portfolios; improve the certification of supply chains, through decentralised data entry and blockchain technology; allow easier access to information, including on corporate calendars and shareholder resolutions, and may even allow for direct voting.**

**There is a need for a new, holistic approach to shareholder activism for sustainability to counter-balance the short-term-minded activist shareholders.** This must include raising awareness of the issue among large, relevant actors, for example international NGOs focused on social and environmental issues. They must be better prepared to address this important, emerging threat to sustainability. A response must also be organised, one that is specific about the various shareholder instruments and options available to help sustainability actors achieve their global vision.

A number of actors stand to benefit from better shareholder activism for sustainability. **Companies would benefit from more research on the link between sustainability and materiality. Investors with long-term horizons, including but not limited to pension funds, endowments, foundations and sovereign wealth funds, would be better able to fulfill their intra-generational mandates. The technological sector could find new markets for**

managing capital. Public policy and the general public would benefit from corporations being more focused on long-term valuations and sustainable wealth creation.

Galvanizing these actors to counter short-term shareholder activism and stand up for sustainability is of key importance. **A coherent vision and concerted action on shareholder engagement, which lies at the very heart of capitalism, is urgently needed to ensure an economic system that is truly sustainable.**

## ANNEX I: Activist investors in selected countries

Companies that exercise their own shareholder rights having acquired ownership in publicly listed companies.

Country	Company name	Stated ESG goals	Activity/campaign
France	<a href="#">Charity Investment Management (CIAM)</a>		Euro Disney
Germany	<a href="#">Active Ownership Capital</a>		Stada
Monaco/Switzerland/UK	Knight Vinke		E.On
Sweden	<a href="#">Cevian Capital</a>		
Switzerland	Teleios Capital Partners	yes	
US	Bogle Investment Management		
US	Corvex Management		Danone
US	<a href="#">JANA Partners</a>	yes	Apple
US	Nelson Peltz Investment Management		Procter & Gamble 2017
US	Third Point		Nestlé
US	<a href="#">ValueAct Capital</a>	yes	

## ANNEX II: Proxy companies

Proxy companies offer a number of services such as voting and recommendations to institutional and private investors. The majority focus on traditional governance issues and are not engaging in ESG issues. Notable exceptions are Ethos Services, Actares and Proxy Impact.

Country	Proxy company	Location	ESG engagement
Belgium	<a href="#">Deminor International</a>	Brussels	
Switzerland	<a href="#">Actares</a>	Bern/Geneva	yes
Switzerland	<a href="#">Ethos Services</a>	Geneva/Zurich	yes
UK	<a href="#">Hermes EOS</a>	London	
US	<a href="#">C &amp; W Investment Group</a>	Goldston, NC	
US	<a href="#">Egan-Jones Proxy Services</a>	Haverford, PA	
US	<a href="#">Glass, Lewis &amp; Co.</a>	San Francisco, CA	
US	<a href="#">ISS Institutional Shareholder Services</a>	Rockville, MD	Subsidiary ISS-Ethix
US	<a href="#">Marco Consulting Group</a>	Chicago, IL	
US	<a href="#">MSCI</a>	New York, NY	
US	<a href="#">Proxy Impact</a>	California	yes
US	<a href="#">ProxyTell, LLC</a>	Fairfax, VA	

## ANNEX III: Overview of actors in environmental, social and governance (ESG) shareholder activism

Non-profit, for profit, research, academic institutions and proxy advisors engaged in ESG shareholder activism in selected countries and regions.

Country	Name	Type	Description
Europe	<a href="#">Institutional Investors Group on Climate Change (IIGCC)</a>	Network of for profit actors	A collaboration of 150 members, mainly mainstream investors in Europe, with over €21 trillion assets under management, to provide investors with a common voice to encourage public policies, investment practices and corporate behaviour which address long-term risks and opportunities associated with climate change.
France	<a href="#">INSEAD</a>	Academia	<a href="#">Global Private Equity Initiative (GPEI)</a> for responsible investment.
Switzerland	<a href="#">Actares</a>	Non-profit	Membership organisation promoting sustainable investment management through active ownership (shareholder voting and engagement).
Switzerland	<a href="#">Ethos Foundation</a>	Non-profit	Foundation composed of 230 Swiss pension funds and other tax-exempt institutions aiming at promoting socially responsible investment (SRI). Its subsidiary Ethos Services offers proxy voting reports with voting recommendations.
Switzerland	<a href="#">Inrate</a>	For profit	Independent Swiss sustainability rating agency.
UK	<a href="#">ShareAction (Fair-share Educational Foundation)</a>	Non-profit	Promotes responsible investment practices by pension providers and fund managers. Helps savers hold companies to account, directly at AGMs or through their pension savings. Shows opportunities for investors on responsible investment issues. Drives campaigns and makes policy recommendations.
UK	University of Cambridge	Academia	Initiative between Ernst & Young with Cambridge University for a new corporate reporting framework that goes beyond financial reporting: 'Accounting and reporting for long term value' ( <a href="http://www.ey.com/uk/en/services/assurance/ey---long-term-value">http://www.ey.com/uk/en/services/assurance/ey---long-term-value</a> )
US	<a href="#">As you Sow</a>	Non-profit	Promotes environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies.
US	<a href="#">Coalition for Environmentally Responsible Economies (CERES)</a>	Non-profit	Network of investors and environmental, religious and public interest groups to promote investment policies that are environmentally, socially and financially sound. Members include large financial organisations such as Harrington Investments and environmental groups such as the Sierra Club.
US	<a href="#">Green America</a>	Non-profit	Membership organisation founded in 1982, 'Co-op America' until 2009, provides advice on ESG resolutions.
US	<a href="#">Harvard Business School (HBS)</a>	Academia	Publications on ESG and shareholder activism.
US	<a href="#">Investor Responsibility Research Center Institute (IRRCi)</a>	Research Organisation	Funds environmental, social and corporate governance research, as well research on the capital market context that impacts how investors and companies make decisions.
US	<a href="#">ISS-Ethix</a>	Proxy company (for profit)	Provides expertise on ESG issues to financial professionals.

US	<a href="#">Proxy Impact</a>	Proxy company (for profit)	California-based proxy company that provides ESG proxy voting guidelines; proxy voting and reporting; and customised consulting and shareholder engagement services to clients.
US	<a href="#">Sustainable Investments Institute (Si2)</a>	Non-profit	Based in Washington, provides proxy-related issue briefing papers and company-specific analyses as a subscription service for institutional investors, particularly university and college endowments to influence corporate behaviour on social and environmental issues.
US	US SIF: <a href="#">The Forum for Sustainable and Responsible Investment</a>	Non-profit	US forum for sustainable and responsible investors (investment management firms, mutual fund companies, research firms, financial advisors, banks, credit unions, community development organisations, non-profit associations, and asset owners)

# ACKNOWLEDGEMENTS

We thank Yola Biedermann (Ethos), Rob Cameron, Michael Harvey and Charlotte Pearson (SustainAbility), Sue Charman (WWF UK), Clare Hierons (ShareAction), Falko Paetzold and Emilio Marti (University of Zurich, Center for Sustainable Finance and Private Wealth), and Duncan Pollard (Nestlé), who provided insight and expertise that greatly helped compile this report, although they may not agree with all of the interpretations. We would also like to thank Jon Hutton, Director of the Luc Hoffmann Institute, and our colleagues Laura Becerra, Emilie Cavallo, Anna Knee and Melanie Ryan, for their assistance and contributions that significantly improved the report.

# REFERENCES

1 JP Morgan. (2015). The Activist Revolution. Available at [https://www.jpmorgan.com/directdoc/JPMorgan\\_CorporateFinanceAdvisory\\_MA\\_TheActivistRevolution.pdf](https://www.jpmorgan.com/directdoc/JPMorgan_CorporateFinanceAdvisory_MA_TheActivistRevolution.pdf)

2 World Finance, The rebranding of corporate raiders, 9 March 2016 <https://www.worldfinance.com/strategy/the-rebranding-of-corporate-raiders>

3 Fortune, Nestlé Has Given in to All of Dan Loeb's Demands - Except One, 26 September 2017 <http://fortune.com/2017/09/26/nestle-loreal-loeb-margin-profit/>

4 Reuters, Round Two: Elliott Advisors, Akzo Nobel face off in Dutch court, 27 July 2017 <https://www.reuters.com/article/us-akzo-nobel-shareholders-activism/round-two-elliott-advisors-akzo-nobel-face-off-in-dutch-court-idUSKBN1AC11X>

5 The New York Times, Akzo Nobel Ends Feud With Elliott Management, 16 August 2017 <https://www.nytimes.com/2017/08/16/business/dealbook/elliott-management-akzonobel.html>

6 The Economist, Investor activism is surging in continental Europe. Third point, Corvex and Elliott are just beginning, 24 August 2017

7 The Economist, The Parable of St Paul, 31 August 2017

8 The Financial Times, Can Unilever's Paul Polman Change the Way We Do Business? 29 September 2016, <https://www.ft.com/content/e6696b4a-8505-11e6-8897-2359a58ac7a5>

9 Bogle, J.C. (2016). The Index Mutual Fund: 40 Years of Growth, Change, and Challenge. Financial Analyst Journal, Vol. 72, No. 1:9-13.

10 Reuters, Index funds to surpass active fund assets in U.S. by 2024: Moody's, 2 February 2017 <https://www.reuters.com/article/us-funds-passive/index-funds-to-surpass-active-fund-assets-in-u-s-by-2024-moodys-idUSKBN15H1PN>

11 ETF Strategy, BlackRock counters ETF and indexing critics, 11 October 2017 <https://www.etfstrategy.co.uk/black-rock-counters-etf-and-indexing-critics-96214/>

12 Letter of Larry Fink, CEO of Blackrock, to CEOs. 12 January 2018.

13 Bogle, J. The Battle for the Soul of Capitalism (Yale University Press, 2005); Bogle argues for a return to a governance structure in which owners' capital is used in their interests.

14 The Financial Times. (October 26, 2017). Vanguard's Jack Bogle predicts passive investing takeover.

15 Breitinger, D. (August 18, 2017). What is shareholder activism and how should businesses respond? World Economic Forum.

16 The Financial Times. (March 29, 2015). Activist hedge fund turns focus on Japan's Kyocera and Canon

17 Bloomberg. Activist Investors are getting a warmer welcome in South Korea (October 11, 2017) <https://www.bloomberg.com/news/articles/2017-10-10/chaebol-beware-korea-lays-welcome-mat-for-activist-shareholders>

18 The Washington Post. Icahn, Time Warner End Fight. 18 February 2006

19 The Guardian. Disney shareholders force Eisner out of chairman's role. 4 March 2004 <https://www.theguardian.com/business/2004/mar/04/usnews.citynews>

20 The Economist. (August 24, 2017). Investor activism is surging in continental Europe. Third point, Corvex and Elliott are just beginning.

21 Activist Insight, & Skadden (September 2016). Activist Investing in Europe, A Special Report. Retrieved from <https://www.activistinsight.com/resources/reports/> Page 5

22 JP Morgan. (2017). The proxy season 2017.

23 Activist Insight, & Schulte, Roths & Zabel (2017). The Activist Investing Annual Review 2017. Page 16.

24 Activist Insight, & Schulte, Roths & Zabel (2017). The Activist Investing Annual Review 2017. Page 7.

25 JP Morgan. (2017). The proxy season 2017. Page 3.

26 Activist Insight, & Schulte, Roths & Zabel (2017). The Activist Investing Annual Review 2017. Page 7.

27 Available figures for the number of resolutions submitted vary to a large extent. The reason lies in the disclosure requirements. In the US, where most data is available, many of the organisations submitting resolutions on ESG issues disclose them in practice, without being required to do so by law. Requests for permission to exclude resolutions need to be published. However, neither companies nor proponents are required to disclose the number of resolutions that are withdrawn by agreement with corporations.

28 JP Morgan. (2017). The proxy season 2017.

29 JP Morgan. (2017). The proxy season 2017.

30 JP Morgan. (2017). The proxy season 2017.

31 Grewal, J., Serafeim, G., & Yoon, A. (2016). Shareholder Activism on Sustainability Issues.

32 Grewal, J., Serafeim, G., & Yoon, A. (2016). Shareholder Activism on Sustainability Issues. P. 32.

33 Deloitte, August 2016. On the board's agenda.

34 As You Sow, The Sustainable Investments Institute & Proxy Impact (2018). Proxy Preview 2018. P.7.

35 As You Sow, The Sustainable Investments Institute & Proxy Impact (2017). Proxy Preview 2017.

36 As You Sow, The Sustainable Investments Institute & Proxy Impact (2018). Proxy Preview 2018. P.7.

37 As You Sow, The Sustainable Investments Institute & Proxy Impact (2018). Proxy Preview 2018. P.14 ss.

38 As You Sow, The Sustainable Investments Institute & Proxy Impact (2018). Proxy Preview 2018. P.14 ss.

39 As You Sow, The Sustainable Investments Institute & Proxy Impact (2018). Proxy Preview 2018. P.29 ss.

40 As You Sow, The Sustainable Investments Institute & Proxy Impact (2018). Proxy Preview 2018. P.60.

41

BlackRock and Ceres (2015). 21st Century Engagement. Available at <https://www.blackrock.com/corporate/en-hu/.../blk-eres-engagementguide2015.pdf>

42

Grewal, J., Serafeim, G., & Yoon, A. (2016). Shareholder Activism on Sustainability Issues.

43

Proxy Preview 2017

44

Studied period: 2005-2014. The Boston Consulting Group. (August 11, 2015). Winning moves in the age of shareholder activism. BCG perspectives. Available at [https://www.bcgperspectives.com/Images/BCG-Winning-Moves-in-the-Age-of-Shareholder-Activism-Aug-2015\\_tcm80-194285.pdf](https://www.bcgperspectives.com/Images/BCG-Winning-Moves-in-the-Age-of-Shareholder-Activism-Aug-2015_tcm80-194285.pdf)

45

<https://shareaction.org/take-on-bp-and-shell/>

46

<https://www.ceres.org/news-center/blog/four-mutual-fund-giants-begin-address-climate-change-risks-proxy-votes-how-about>

47

Proxy Preview 2018, p. 28

48

<http://www.ussif.org/resolutions>

49

<https://archive.asyousow.org/about-us/theory-of-change/shareholder-advocacy/>

50

<https://archive.asyousow.org/about-us/theory-of-change/shareholder-advocacy/>

51

Bauer, R., Moers, F., & Viehs, M. (2015). Who Withdraws Shareholder Proposals and Does It Matter? An Analysis of Sponsor Identity and Pay Practices

52

Barnett and Salomon, 2006; Margolis and Walsh, 2003; Orlitzky, Schmidt and Rynes, 2003; Hillman and Keim, 2001; McWilliams and Siegel, 2000

53

Kotsantonis, S., Pinney, C., & Serafeim, G. 2016. ESG Integration in Investment Management: Myths and Realities.

54

For example, broadly speaking, environmental issues tend to be more material for the non-renewable and transportation sectors, governance more material for the financial sector and social issues for the healthcare, services, and the technology and communication sectors.

55

Khan, M., Serafeim, G., & Yoon, A. (2016). Corporate sustainability: First evidence on materiality.

56

Grewal, J., Serafeim, G., & Yoon, A. (2016). Shareholder Activism on Sustainability Issues.

57

Perrault, E., & Clark, C. (2015). Environmental Shareholder Activism: Considering Status and Reputation in Firm Responsiveness.

58

Securities Exchange Act of 1934, available at: <https://www.sec.gov/about/laws/sea34.pdf>

59

More information about shareholder proposals in the SEC Staff Legal Bulletin 14: <http://www.sec.gov/interp/le-gal/cfslb14.htm>.

60

<https://regtechfs.com/out-with-the-old-in-with-the-new-financial-choice-act-2017-to-replace-dodd-frank/>

61

Directive 2007/36/EC available at <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32007L0036>

62

Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement

63

More information about the amendments: <https://companylawandgovernance.com/2017/05/28/the-amended-shareholder-rights-directive/>

64

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

65

Activist Insight, & Schulte, Roths & Zabel (2017). The Activist Investing Annual Review 2017.

<https://corpgov.law.harvard.edu/2017/02/21/the-activist-investing-annual-review-2017/>

66

UK Companies Act 2006, available at <https://www.legislation.gov.uk/ukpga/2006/46/contents>

67

Share Action. (March 2017). A guide to shareholder rights across six European countries.

68

Code de Commerce, available at <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379>

69

Share Action. (March 2017). A guide to shareholder rights across six European countries.

70

German Stock Corporation Act 1965. Available in German at <https://dejure.org/gesetze/AktG>

71

Share Action. (March 2017). A guide to shareholder rights across six European countries.

72

German Corporate Governance Code. Available in English at [www.dcgk.de/en/home.html](http://www.dcgk.de/en/home.html).

73

Swiss Code of Obligations. Available in German at Bundesgesetz betreffend die Ergaenzung des Schweizer Zivilgesetzbuchs

74

Calkoen, W.J.L. (March 2016). The

75

Corporate Governance Review. Sixth Edition. Law Business Research Ltd.

76

<https://www.bj.admin.ch/bj/en/home/wirtschaft/gesetzgebung/aktienrechtsrevision14.html>

77

Activist Insight, & Skadden (September 2016). Activist Investing in Europe, A Special Report.

78

<https://mg.co.za/article/2017-09-28-what-the-kpmg-saga-says-about-shareholder-activism>

79

<https://www.brunswickgroup.com/south-africa-investors-press-for-social-change-i2393/>

## SOURCES

Activist Insight, & Schulte, Roths & Zabel (2017). The Activist Investing Annual Review 2017. Retrieved from <https://www.activistinsight.com/resources/reports/>

Activist Insight, & Skadden (September 2016). Activist Investing in Europe, A Special Report. Retrieved from <https://www.activistinsight.com/resources/reports/>

As You Sow, The Sustainable Investments Institute, & Proxy Impact (2018). Proxy Preview 2018. Retrieved from <https://www.proxypreview.org>

Becht, M., Franks, J., Grant, J., & Wagner, H. (May 2017) Returns to Hedge Fund Activism: An International Study. Review of Financial Studies, Forthcoming; European Corporate Governance Institute (ECGI) – Finance Working Paper No. 402/2014. Available at SSRN: <https://ssrn.com/abstract=2376271>

BlackRock and Ceres (2015). 21st Century Engagement. Available at <https://www.blackrock.com/corporate/en->

hu/.../blk-ceres-engagementguide2015.pdf

Breitinger, D. (August 18, 2017). What is shareholder activism and how should businesses respond? World Economic Forum. Available at <https://www.weforum.org/agenda/2017/08/shareholder-activism-business-response-explainer/>

Bauer, R., Moers, F., & Viehs, M. (2015). Who Withdraws Shareholder Proposals and Does It Matter? An Analysis of Sponsor Identity and Pay Practices. *Corporate Governance*, 23: 472–488.

Calkoen, W.J.L. (March 2016). *The Corporate Governance Review*. Sixth Edition. Law Business Research Ltd. Available at [https://www.jurists.co.jp/sites/default/files/tractate\\_pdf/en/TCGR\\_6th.pdf](https://www.jurists.co.jp/sites/default/files/tractate_pdf/en/TCGR_6th.pdf)

Deloitte. (August 2016). On the board's agenda. Retrieved from <https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/on-the-boards-agenda.html>

JP Morgan. (2017). The proxy season 2017. Retrieved from <https://www.jpmorgan.com/jpmpdf/1320739681811.pdf>

JP Morgan. (2015). The Activist Revolution. Available at [https://www.jpmorgan.com/directdoc/JPMorgan\\_CorporateFinanceAdvisory\\_MA\\_TheActivistRevolution.pdf](https://www.jpmorgan.com/directdoc/JPMorgan_CorporateFinanceAdvisory_MA_TheActivistRevolution.pdf)

Geranova, M., & Ryan, L.V. (2014). Shareholder Activism: A Multidisciplinary Review. *Journal of Management*, 40, 1230–1268.

Gillan, S., & Starks, L. (2007). The Evolution of Shareholder Activism in the United States (2007). Available at SSRN: <https://ssrn.com/abstract=959670>

Grewal, J., Serafeim, G., & Yoon, A. (2016). Shareholder Activism on Sustainability Issues. Available at SSRN: <http://ssrn.com/abstract=2805512>

Guay, T., Doh, J.P., & Sinclair, G. (2004). Non-governmental Organizations, Shareholder Activism, and Socially Responsible Investments: Ethical, Strategic, and Governance Implications. *Journal of Business Ethics*, 52, 125–139.

Hart, O., & Zingales, L. (2017). Companies Should Maximize Shareholder Welfare Not Market Value. ECGI - Finance Working Paper No. 521/2017. Available at SSRN: <https://ssrn.com/abstract=3004794>

Hirst, S. (October 10, 2016). Social Responsibility Resolutions. *Journal of Corporation Law*, 2017, Forthcoming; Harvard Law School Program on Corporate Governance Working Paper 2016-06. Available at SSRN: <https://ssrn.com/abstract=2773367> or <http://dx.doi.org/10.2139/ssrn.2773367>

Kabi, M. (2016). The status of shareholder activism in South Africa: 2015 and beyond. MBA Mini-dissertation, University of Pretoria, Pretoria. Available at <http://hdl.handle.net/2263/52418>

Khan, M., Serafeim, G., & Yoon, A. (2016). Corporate sustainability: First evidence on materiality. *The Accounting Review*: November 2016, Vol. 91, No. 6, 1697–1724.

Kotsantonis, S., Pinney, C., & Serafeim, G. (2016). ESG Integration in Investment Management: Myths and Realities. *Journal of Applied Corporate Finance*, 28 (2), 10–16.

Perrault, E., & Clark, C. (2015). Environmental Shareholder Activism: Considering Status and Reputation in Firm Responsiveness. Available at <http://journals.sagepub.com/doi/abs/10.1177/1086026615571939>

Share Action. (March 2017). A guide to shareholder rights across six European countries. Retrieved from <https://shareaction.org/wp-content/uploads/2017/03/ShareholderRightsEurope.pdf>

The Boston Consulting Group. (August 11, 2015). Winning moves in the age of shareholder activism. BCG perspectives. Available at [https://www.bcgperspectives.com/Images/BCG-Winning-Moves-in-the-Age-of-Shareholder-Activism-Aug-2015\\_tcm80-194285.pdf](https://www.bcgperspectives.com/Images/BCG-Winning-Moves-in-the-Age-of-Shareholder-Activism-Aug-2015_tcm80-194285.pdf)

The Economist. (August 24, 2017). “Investor activism is surging in continental Europe. Third point, Corvex and Elliott are just beginning.”

Tkac, P. (2006). One Proxy at a Time: Pursuing Social Change through Shareholder Proposals. *Economic Review – Federal Reserve Bank of Atlanta*; Atlanta, 91 (3), pp.1 – II. Available at [https://www.frbatlanta.org/research/publications/economic-review/2006/q3/vol91no3\\_social-change-through-shareholder-proposals.aspx](https://www.frbatlanta.org/research/publications/economic-review/2006/q3/vol91no3_social-change-through-shareholder-proposals.aspx)

US Forum for Sustainable and Responsible Investment. SRI basics. <https://www.ussif.org/content.asp?contentid=67>. Accessed December 18, 2017.

## Luc Hoffmann Institute

WWF International  
Rue Mauverney 28  
CH-1196 Gland  
Switzerland  
Tel: +41 22 364 9078  
Fax: +41 22 364 0332  
E-mail: [luhoffmanninstitute@wwfint.org](mailto:luhoffmanninstitute@wwfint.org)

[www.luhoffmanninstitute.org](http://www.luhoffmanninstitute.org)



CREATING  
SOLUTIONS  
TOGETHER

