Harvard Law School Forum on Corporate Governance

As Activism Becomes a Year-Round Sport, Possible Regulatory Changes Could Impact Both Activists and Companies

Posted by Elizabeth R. Gonzalez-Sussman, Ron S. Berenblat, and Roy Cohen, Skadden, Arps, Slate, Meagher & Flom LLP, on Tuesday, February 3, 2026

Editor's note: Elizabeth R. Gonzalez-Sussman is a Partner, Ron S. Berenblat is of Counsel, and Roy Cohen is an Associate at Skadden, Arps, Slate, Meagher & Flom LLP. This post is based on their Skadden memorandum.

Key Points

- Activist investors remain a powerful force in the corporate landscape, increasingly using more sophisticated multimedia and digital strategies to exert pressure on companies and boards.
- An increase in off-cycle and "vote no" campaigns in the U.S., coupled with more activists going public without any private engagement, is making activism a year-round phenomenon.
- Companies may need to consider reevaluating their approaches to shareholder engagement if proposed regulatory changes are adopted to curb the influence of institutional investors and proxy advisory services in shareholder votes.

Despite geopolitical volatility, tariff policy uncertainty and a slower-than-expected M&A market in the first half of 2025, shareholder activism has not cooled. In fact, 2025 experienced another record year in the U.S. for activism, even though global activity fell slightly behind the previous year's pace. In 2025, 313 campaigns were launched against U.S. companies compared to 302 campaigns in 2024, while 583 global campaigns were launched in 2025 compared to 593 in 2024, according to FactSet.[1]

At the same time, the U.S. is experiencing a number of regulatory and political changes that may transform activism in 2026 and beyond. Below are our key observations on the current state of play of activism in light of these changes and other developments.

M&A-focused campaigns are back on the rise. In the second half of 2025, M&A-focused campaigns picked up after a slow start to the year, with 40 campaigns against U.S. companies compared to 25 in the first half. Recent M&A campaigns have focused on breaking up large conglomerates, forcing companies to divest non-core assets or putting the company up for sale, although a push for consolidation has been a focus for certain industries like banking and energy. (See "Boards Face Continued Pressure to Pursue Spin-Offs as Investors Seek Corporate Clarity and Value Creation.")

Most activist campaigns continue to settle. With proxy fights becoming more expensive — they cost U.S. issuers roughly $7.24 million on average for campaigns that went to a vote in 2025 — more than 90% of U.S. board seats gained by activists in 2025 were achieved through negotiated settlements rather than a shareholder vote. Even so, activists have been more successful when fights went the distance: They secured at least one seat in six of 15 U.S. election contests in 2025 (a 40% win rate) compared to five of 18 in all of 2024 (a 28% win rate).

There is no longer a proxy season. Activism is increasingly a year-round sport, as campaigns are no longer clustering around traditional nomination windows. Off-cycle pressure campaigns using sophisticated multimedia and digital strategies are becoming more effective, and surprise attacks without any prior private engagement are more common. "Withhold" campaigns (where activists call upon shareholders to vote against directors) continued to play a prominent role in 2025 and garnered significant shareholder support, including at one company where the activist issued a single letter. (See our September 2025 article on withhold campaigns, "Activists Say 'Yes' to 'Vote No' Campaigns in 2025.")

The regulatory and political landscape is shifting. Significant regulatory changes and political pressure directly impacting the shareholder activism arena and its key players may create less predictability in voting outcomes for contested elections and M&A.

- Earlier in 2025, the Securities and Exchange Commission (SEC) issued guidance narrowing the scope of activities that more-than-5% stockholders may undertake while preserving "passive" status necessary to qualify to file a short-form Schedule 13G. As a result, certain traditionally passive institutional investors have become more cautious in their engagements with companies. Some institutional investors also announced they were splitting their proxy voting teams into distinct units with separate decision-makers, while others are expanding their pass-through voting programs, allowing their underlying clients to indicate their voting preferences.
- At the same time, proxy advisory firm Glass Lewis announced that it would eliminate its standard benchmark voting recommendations in 2027. (See also our December 3, 2025, client alert "ISS Announces Benchmark Policy Updates for the 2026 Proxy Season.")
- Most recently, the White House issued an executive order directing federal regulators to review and consider actions to limit the influence of proxy advisory firms, including by examining their treatment of diversity, equity and inclusion (DEI) and environmental, social and governance (ESG) priorities and assessing how such considerations influence

voting recommendations. These developments could materially affect how institutional investors and proxy advisory firms shape shareholder outcomes and, in turn, make proxy voting outcomes less predictable. (See our December 16, 2025, client alert "White House Executive Order Aims to Restrict the Influence of Proxy Advisory Firms.")

As a result of these developments, companies may want to expand their investor engagement programs to reach a wider audience and recalibrate the manner in which they engage with underlying index fund investors or retail holders. On the flip side, activists may become even more emboldened to launch campaigns and resist settlement given the unpredictability of vote outcomes.

Off-Cycle Preparedness, Board Optimization and Shareholder Engagement Are Paramount

For boards, the implications are clear: They must be prepared for off-cycle challenges and activity after nomination deadlines by maintaining continuous engagement with key investors and strategizing on how best to reach smaller holders. Transparency is critical, particularly where non-core assets or strategic options could be misunderstood.

Regular board-level education and preparedness sessions remain essential, as does continuous evaluation of board structure and composition to ensure each director provides a critical, demonstrable skill. Each director should be a distinct value-add with a clear, defensible profile, while the board as a whole must present a cohesive, strategically aligned front capable of withstanding increasingly sophisticated activist campaigns.

The data in this article is from FactSet (as of December 31, 2025). It excludes exempt solicitations, activism against companies subject to the Investment Company Act of 1940, hostile or unsolicited M&A, short campaigns, bear raids and campaigns "for" management or shareholder proposals.(go back)