

Boards That Win: Are You Built for What's Next?

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Speaker Intros



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Key Issues in Activism



Enhanced Disclosures to Address Director Relevance

Companies have been enhancing their Board composition disclosures to illustrate what each director brings to the board in response to increased investor pressure. In responding to investor scrutiny, companies should consider the following:

Building relevance into director descriptions

A director's biography should clearly show:

1. Why **they are qualified** to be on the board
2. What **skillset they bring to or the role they play within the board** in plain spoken, easily accessible language.
3. Most of all, director descriptions should move past generic governance platitudes and **connect a director's skillset to stated corporate strategy, values and purpose.**

Making individual director backgrounds accessible

Optimizing individual directors' digital profiles helps make information more easily accessible to investors. **Simple improvements, such as incorporating Search Engine Optimization functionality** into the investor relations website as well as directors' biographies, can guide investors to the relevant information. Working with directors to **enhance their LinkedIn profiles** can take this one step further, providing a channel for thought leadership and a more detailed picture of director expertise and interests.

Engaging investors on directors' skills

While it should be part of regular board-level engagement with investors, regulatory or company changes are a good prompt to **gauge investors' perspectives on board skills.** Engaging investors can provide insight into what they consider to be priorities and is an opportunity to ensure investors know the board is continually seeking to improve and enhance the board's skillset.

Enhancing director visibility and voice

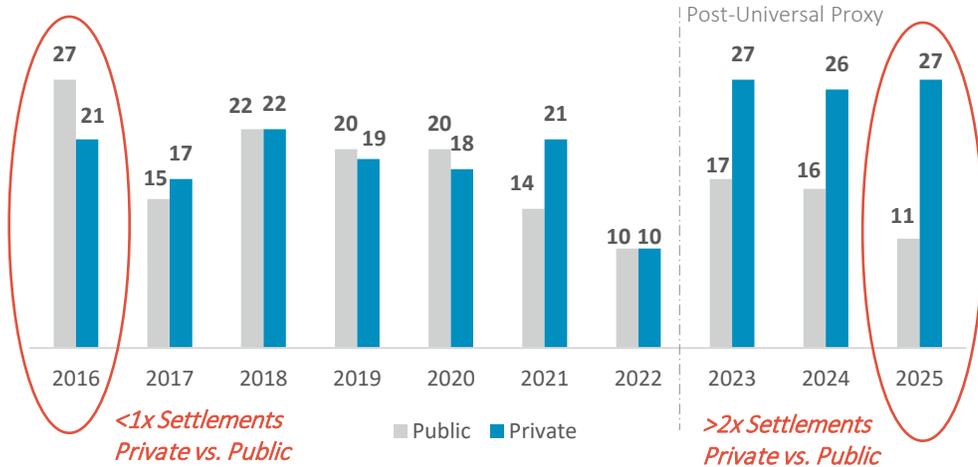
It can be difficult for investors to see how involved an individual director is and the value they bring to the boardroom. **Look for ways to elevate the visibility of individual directors.** Whether this is posting a **video interview** on the investor relations page or encouraging a director to pen a blog post on the company website, these incremental steps can have an **outsized impact in demonstrating the director's engagement,** insight and effectiveness.

Settlements

Settlements Reached Privately and Quickly Post Universal Proxy

Record Level of Settlements Reached Privately

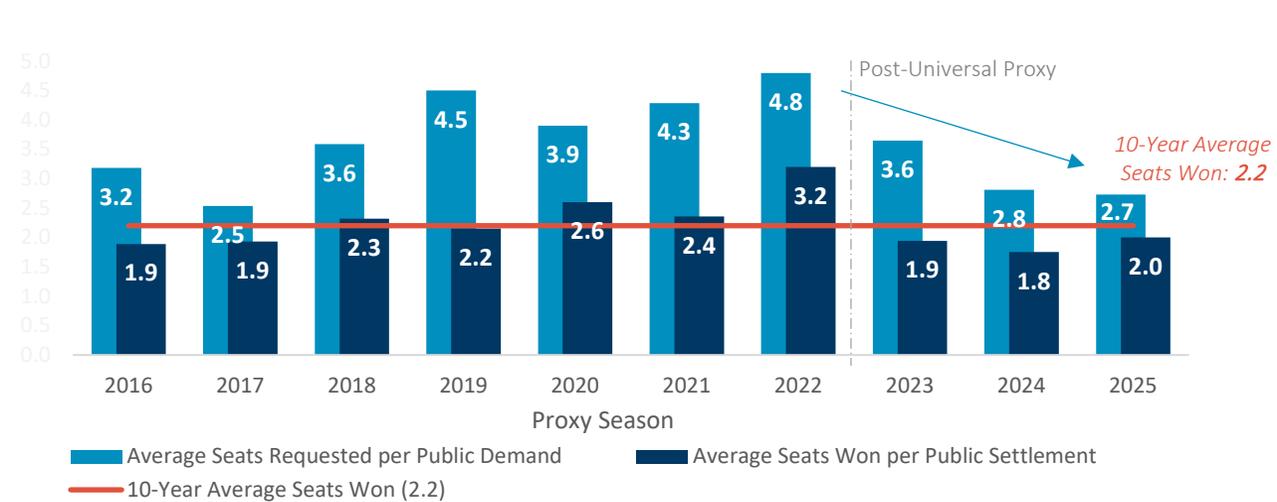
Settlements Made Publicly (after an activist reveals its position) vs. Privately



Activists Win Same Number of Seats Publicly or Privately

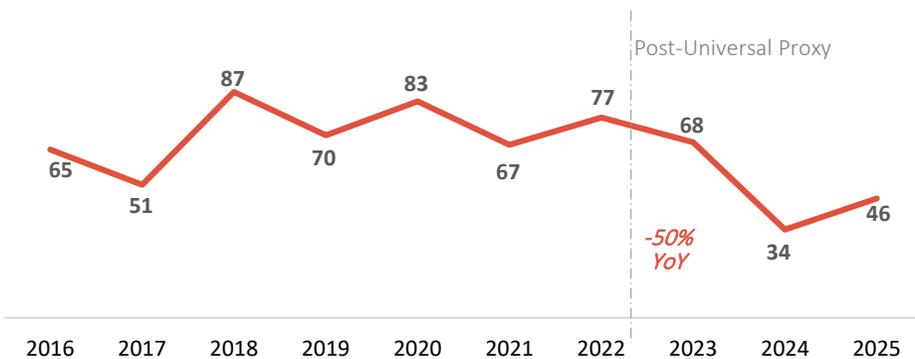
Post-UPC, Initial Demands Call for Fewer Seats, But Activists Still Secure 2 Seats

Average Seats Requested and Won in Public Settlements



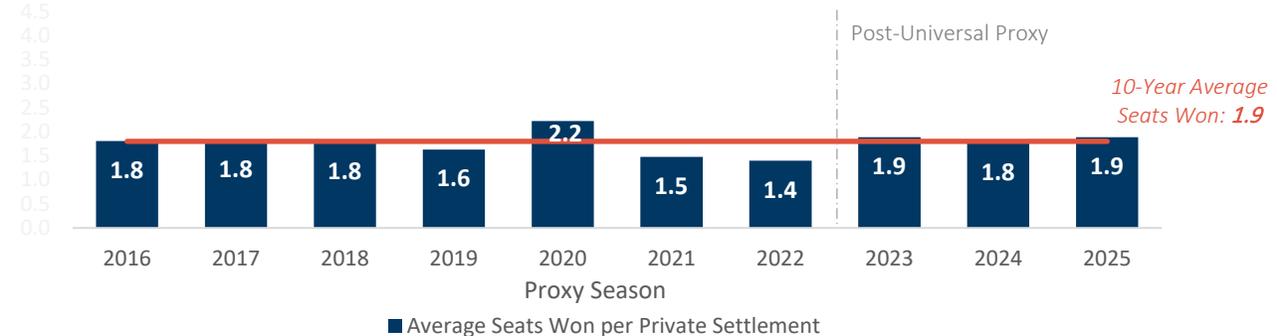
Post- UPC, Even Public Campaigns are Resolved More Quickly

Average Days to Settle From Public Revealing of Activist Position



Private Settlements Consistently Average 2 Seats Won

Average Seats Won per Private Settlement

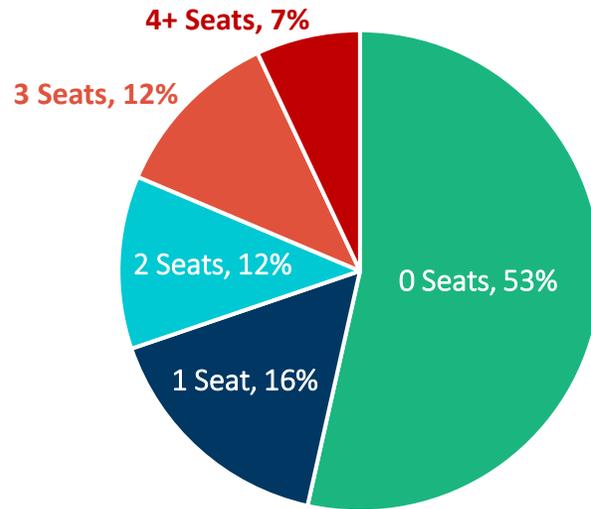


Activists Winning Less in Proxy Fights

Comparing Seats Won Via Proxy Fight versus Via Settlement

Activist Seats Won Via Proxy Fight

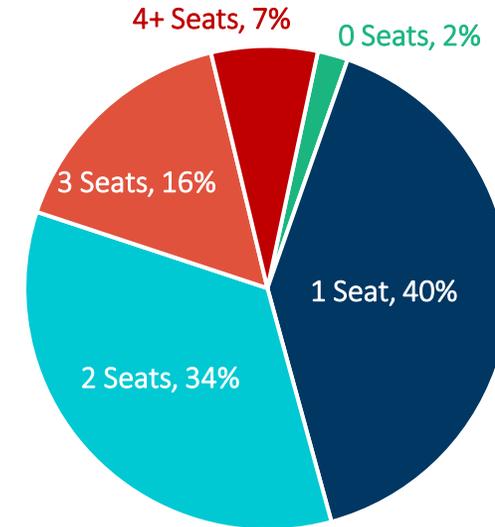
Since Universal Proxy's Implementation (43 total fights)



After universal proxy, activists have won ZERO seats in more than half of proxy fights that went to a vote

Activist Seats Won Via Settlement

Since Universal Proxy's Implementation (124 settlements)



Considerations for Settlements

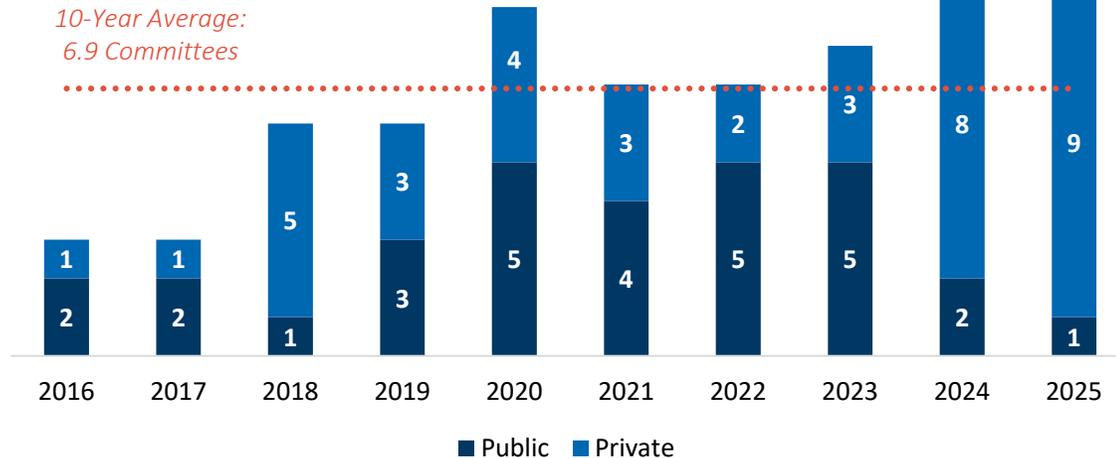
- ✓ **PRO:** Avoids distracting proxy fight
- ✓ **PRO:** May avoid other concessions (i.e., refreshment)
- ✓ **PRO:** May include standstill agreement (though increasingly, standstill agreements do not go through the next nomination window)
- ✗ **CON:** If a committee is created, it enables the activist to exert more influence on the strategic direction of the company
- ✗ **CON:** Creating a committee sends a specific signal to the market
- ✗ **CON:** Market seems to be coalescing around activists winning same number of seats by settlement (with additional concessions) or by vote (without)

Biggers Asks from Activists

Activists seek to influence strategy to drive results, which has led to an increase in committee creation, calls for CEO changes, and a focus on investor days

Activists Increasingly Push for Committee Creation in Settlements

Number of Settlements Including the Formation of a Committee



Investor Days Can Be Attractive Inflection Points for Activists

Start Date	Company	Activist	Commentary
09/2025	workday	ELLIOTT	Elliott announced \$2 billion stake one day after financial analyst day
03/2025	cognizant	MANTLE RIDGE	Engaged privately with company since 2H2022 and revealed position before 2025 Investor day
03/2025	AUTODESK	STARBOARD VALUE	Starboard re-engaged with company, calling upcoming Q3 Investor Day as pivotal moment to deliver margin improvements
12/2023	BIOMARIN	ELLIOTT	Settlement included commitment to host investor day in 2024

Activists Have Increasingly Advocated for Leadership Change

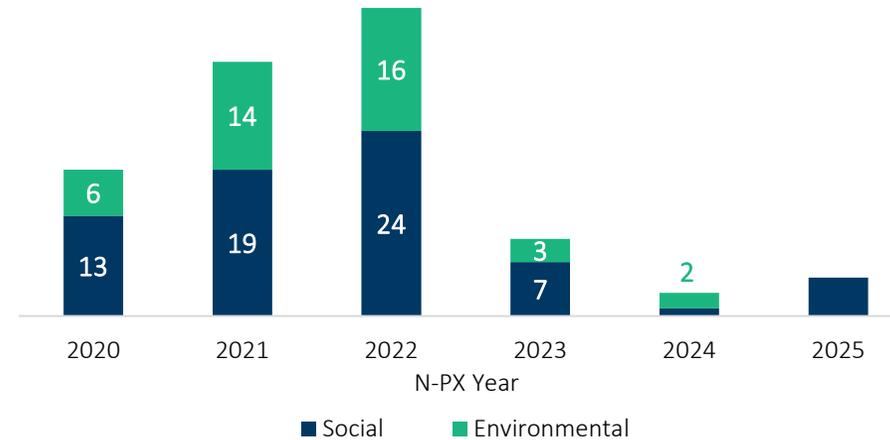
Start Date	Company	Activist	Mkt Cap (\$B)
02/2026	NORWEGIAN CRUISE LINE HOLDINGS LTD.	ELLIOTT	\$11
11/2025	COTERRA	Kimmeridge	\$24
8/2025	CSX	ANCORA	\$77
10/2024	AIR PRODUCTS	MANTLE RIDGE	\$63
08/2024	STARBUCKS	ELLIOTT	\$109
01/2024	NORFOLK SOUTHERN	ANCORA	\$71

Large Institutional Investor Votes are Shifting

E&S Retrenchment

Criticism of the Big Three for advancing a “woke agenda,” along with changes to the 13D/G rules, has led them to support fewer E&S proposals and instead favor governance proposals. Proxy advisors have also shifted their recommendations in this direction.

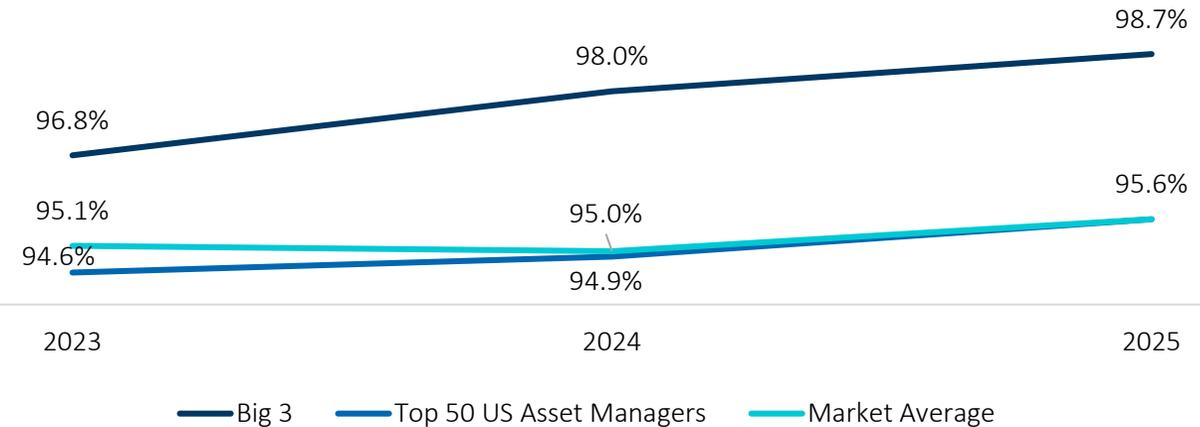
Few Proposals See Majority Support
Number of Environmental and Social Proposals That Passed



Support for Management

Over the past three years, the Big Three have increasingly favored management in contested situations. Other asset managers have followed this trend; proxy advisors less so.

Institutional Investor Support For Management Proposals



Key Takeaways



Investors increasingly care about director relevance



Major passive investors have become more focused on governance issues



Activists are asking for more than just board seats



Preparation is essential to navigating activist pressure

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Tabletop Scenarios



Scenario 1

Description

S.K.N., a well-established beauty and personal care company, has historically delivered consistent financial performance. Under a new CEO who has been in the position for 18 months, increased competition from new and emerging market entrants has begun to pressure S.K.N., contributing to earnings underperformance and shareholder returns that have lagged both peers and the S&P 500 in the past four quarters. To better understand evolving investor expectations and shareholder sentiment, S.K.N. engaged an external advisor to conduct an investor perception study.

In the findings, investors acknowledged S.K.N.'s brand strength and market presence, but expressed growing concerns around strategic clarity and execution. Specifically, 35% of responding shareholders perceived the company as pursuing too many initiatives and 44% were unclear on how the business would outperform peers. 47% of investors felt the Board could be refreshed.

Questions to Consider

- Upon receiving this information, what, are three actions the Board should consider doing next?
- Does your Board review investor perception studies?
- Are you confident that the perception study reflects a fair view of market feedback?

Key Issues

- S.K.N. experiencing earnings underperformance and lagging shareholder returns due to increased competition
- CEO joined the company 18 months ago
- Perception study found growing concerns among investors around strategic clarity and execution

Scenario 2

Description

Bullpen Management, a well-known activist hedge fund, emails the S.K.N. Investor Relations team to schedule a meeting with certain Board members. Bullpen does not provide an agenda and requests that the meeting be held in-person at the firm's New York office within a week.

In the meeting, Bullpen presents a detailed, 20-page deck articulating its investment thesis, underscoring S.K.N.'s strong brand awareness and established market position. It also highlights a series of strategic and operational missteps under the current CEO that have contributed to sustained underperformance. Bullpen demands that the CEO be replaced and, if not done so in the next month, it will be forced to run a proxy contest. Bullpen also notes that it has engaged with other shareholders who agree with its position.

Questions to Consider

- Should Board members meet with the shareholder without management?
- What are three things the Board should do in considering Bullpen's demand for change?

Key Issues

- Well-known activist Bullpen requests a meeting with several of S.K.N.'s Board members
- During the meeting, Bullpen calls out strategic and operational missteps under the current the CEO
- Bullpen demands the CEO be replaced within a month or threatens to run a proxy contest

Scenario 3

Description

Three weeks after Bullpen's meeting with members of S.K.N.'s Board, Bullpen's legal counsel privately contacts the Company's corporate secretary with a proposed settlement framework. Under the proposal, Bullpen would agree to not run a proxy contest this year if the Company agrees to the immediate removal of the CEO, the appointment of two independent directors and the immediate formation of a Strategic Committee to conduct a search for a new CEO. Bullpen indicated that if the settlement were rejected, it would proceed with a public proxy contest, nominating a slate of five-out-of-11 directors.

The Board understands earnings, which will be reported in four weeks, are mixed, with promising results from new product lines but continued pressure on legacy brands.

Questions to Consider

- How should the Board assess and respond to the proposed settlement offer?
- Based on the limited facts at hand, should the Board replace the CEO?

Key Issues

- Proposed settlement from Bullpen:
 - Immediate removal of CEO
 - 2 independent directors appointed
 - Formation of Strategic Committee to search for a new CEO
- Alternative:
 - Nomination of 5 directors



Thank You