

SHAREHOLDER ACTIVISM: RECENT UK TRENDS

In the United States, the amount of capital allocated to hedge funds with strategies defined by shareholder activism has rocketed in the past decade, up from \$19bn to \$246bn. Shareholder activism is established as a major force in the US and it is becoming increasingly important in the UK and elsewhere in Europe. There were 43 public activist campaigns against European companies in 2013, up from 23 in 2010. UK corporates need to understand the dynamics of shareholder activism before it is too late.

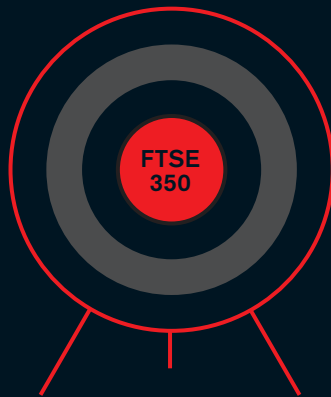
\$19bn

capital allocated to hedge funds with strategies defined by shareholder activism in 2004

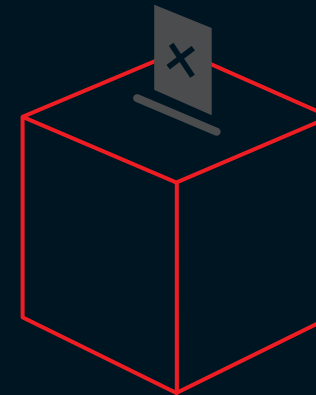
\$246bn

capital allocated to hedge funds with strategies defined by shareholder activism in 2013

GOVERNANCE ACTIVISM



Activism around governance issues looks set to grow in the UK because: The attitudes of large institutional investors towards real or perceived failings have changed significantly. Major legal and regulatory changes, including binding votes on directors' remuneration, are giving activist investors a greater voice.

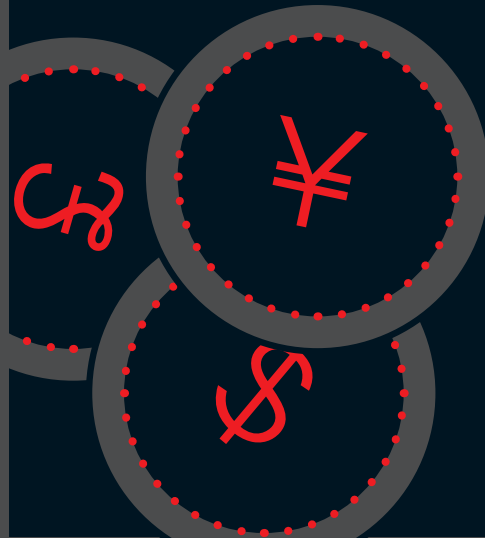


OPERATIONAL AND STRATEGIC ACTIVISM

UK activism around strategic issues and shareholder value will increase thanks to:

Large US activists are looking for fertile new geographies to target and the UK ticks many of their boxes.

Large institutional shareholders are increasingly willing to back the activist investor against incumbent management.



FACTORS DRIVING ACTIVISM IN THE UK

Say on pay

Shareholders now have a binding say on remuneration policy every three years, and an annual advisory vote on implementation of the policy.

The Stewardship Code and Investors' Forum

Launched in 2010 and 2013 respectively, these are aimed at promoting effective engagement between institutional shareholders and UK listed companies, and facilitating discussions on governance and strategy.

Changing regulatory environment

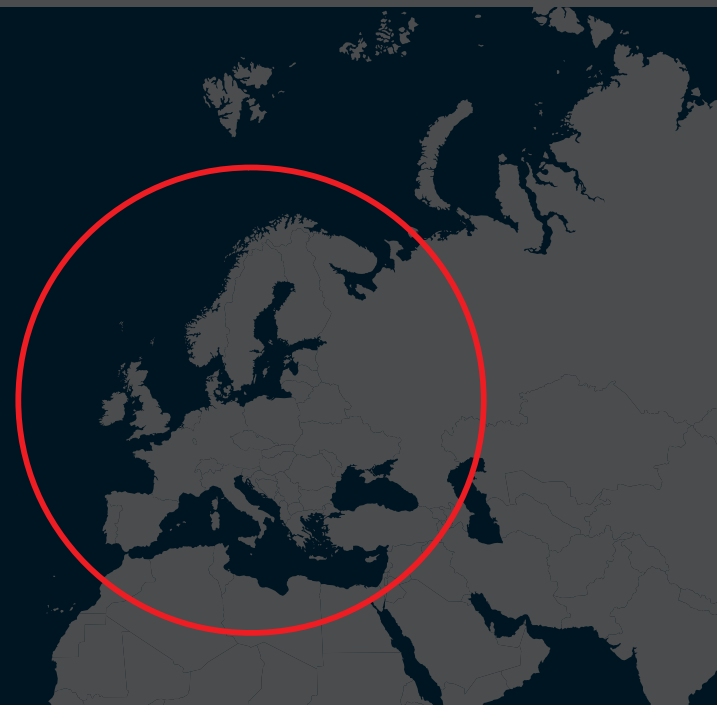
Changes from the Takeover Panel and ESMA (the European regulator) make it easier for shareholders to exercise their votes without the risk of triggering adverse regulatory consequences.

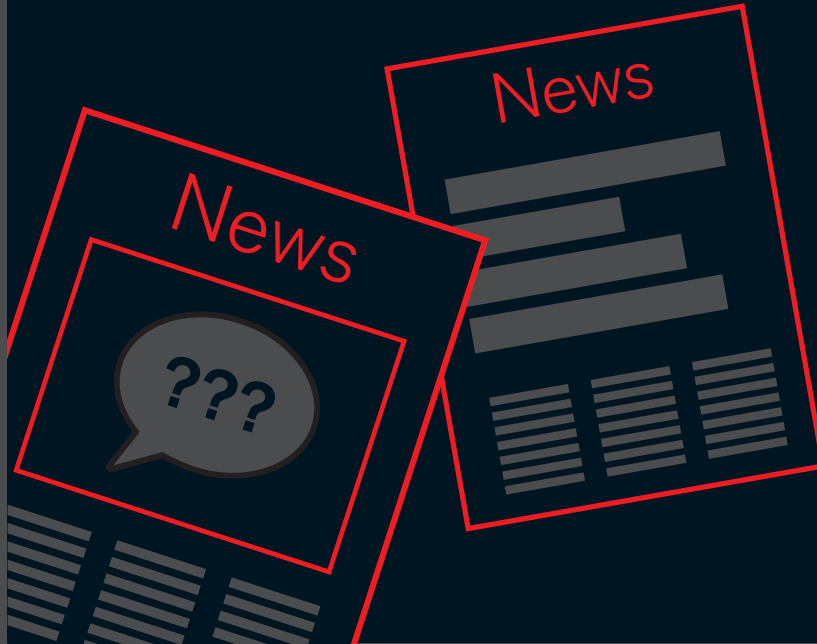
Financial performance

Corporate activism was the best performing hedge fund strategy in 2013.

Slower economic recovery in the UK and Europe

There are potentially more targets for activists in the UK and Europe than in the US because lower levels of M&A activity mean reduced exit opportunities for disaffected shareholders.





WEAPONS IN THE ACTIVIST ARSENAL

If a board is aware of an activist targeting the company, it needs to be alive to the range of legal and regulatory tools at the activists' disposal, including:

- Raising questions at general meetings
- Demanding general meetings
- Proposing resolutions at general meetings
- Removing directors
- Voting down resolutions
- Demanding the circulation of statements
- Bringing actions for unfair prejudice
- Pursuing derivative claims

BE PREPARED: A FIVE-POINT PLAN

1

Think like an activist

Activists will focus on assets which over-complicate the company's management structure, or are a distraction. Companies need well-rehearsed arguments for keeping such assets.

2

Prepare a "black book"

Have plans in place to deal with activist shareholders before they arrive on the share register, equivalent to a takeover defence "black book".

3

Identify the activists' weaknesses

There are a number of regulatory bear traps for unwary activists. Companies can use these to their advantage.

4

Establish an early warning system

Brokers can be a good source of useful market intelligence and can help companies gain a fuller picture of their shareholder base.

5

Engage in constructive dialogue

Pre-empt activists by engaging in regular and constructive dialogue with major shareholders.

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