

Shareholder Activism and ESG: When to Talk, How to Listen, How to Respond

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I. Recent Trends in Activism

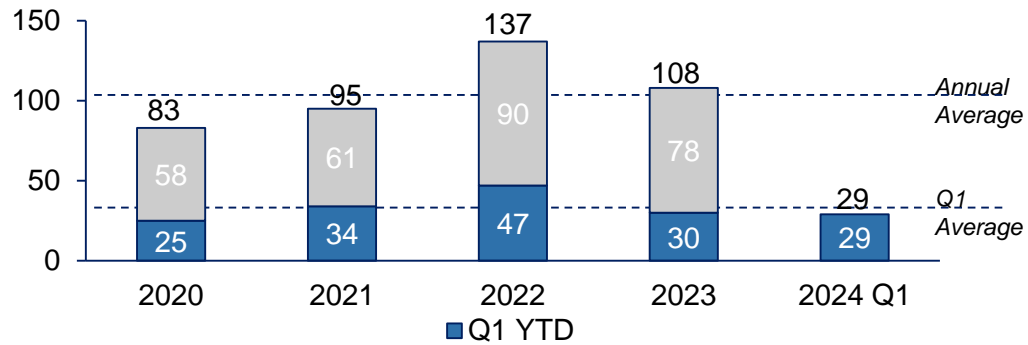
II. What's Happening in the Board Room

III. Settlement Activity & the Universal Proxy Card

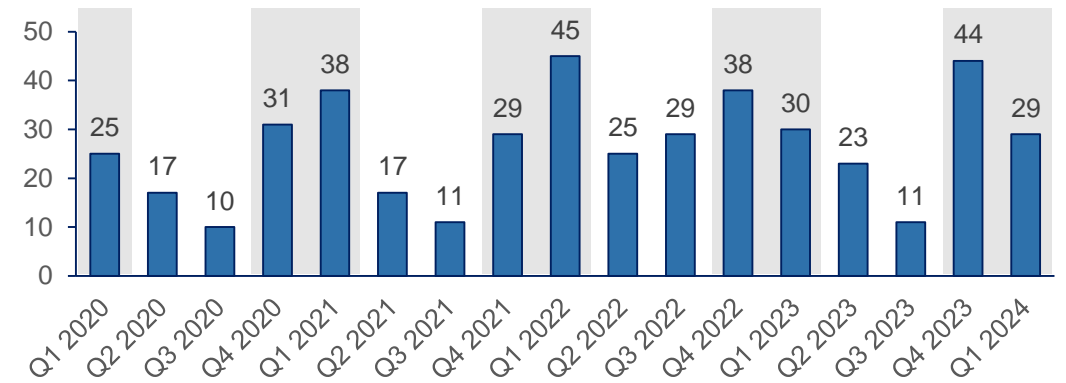
IV. Lightning Round

Activism Activity

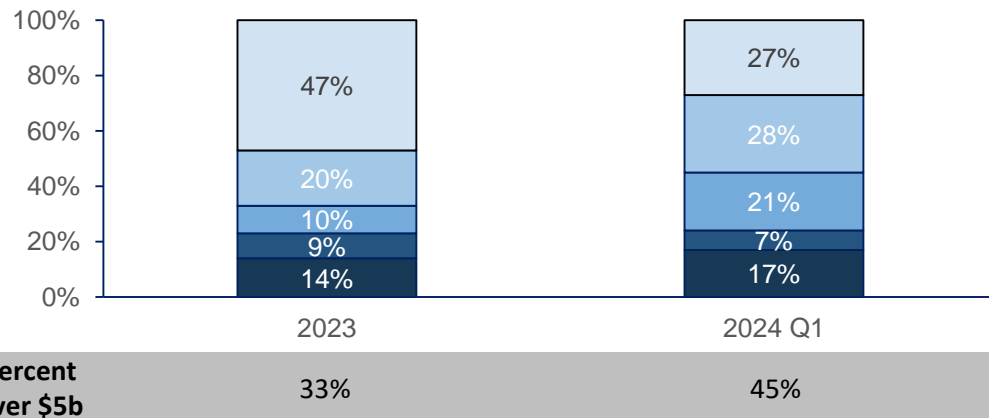
U.S. Annual Campaign Activity



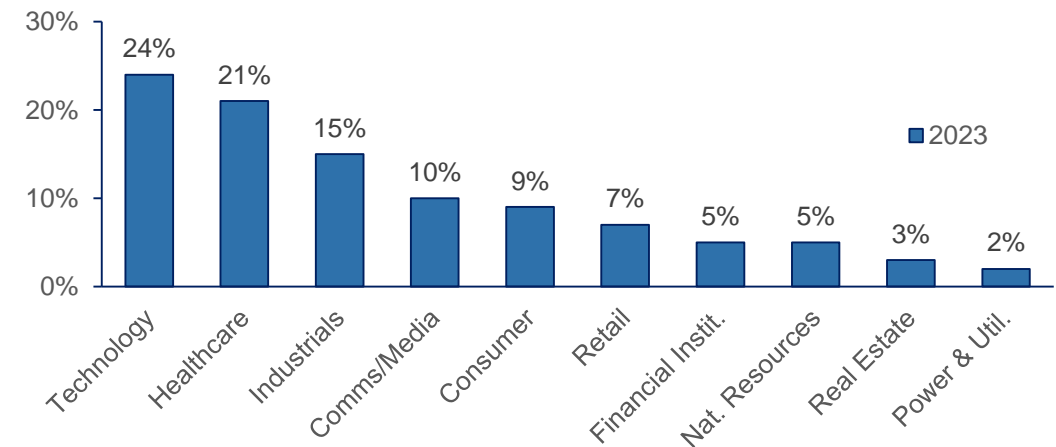
U.S. Campaign Initiations by Quarter



U.S. Campaign Activity by Market Cap



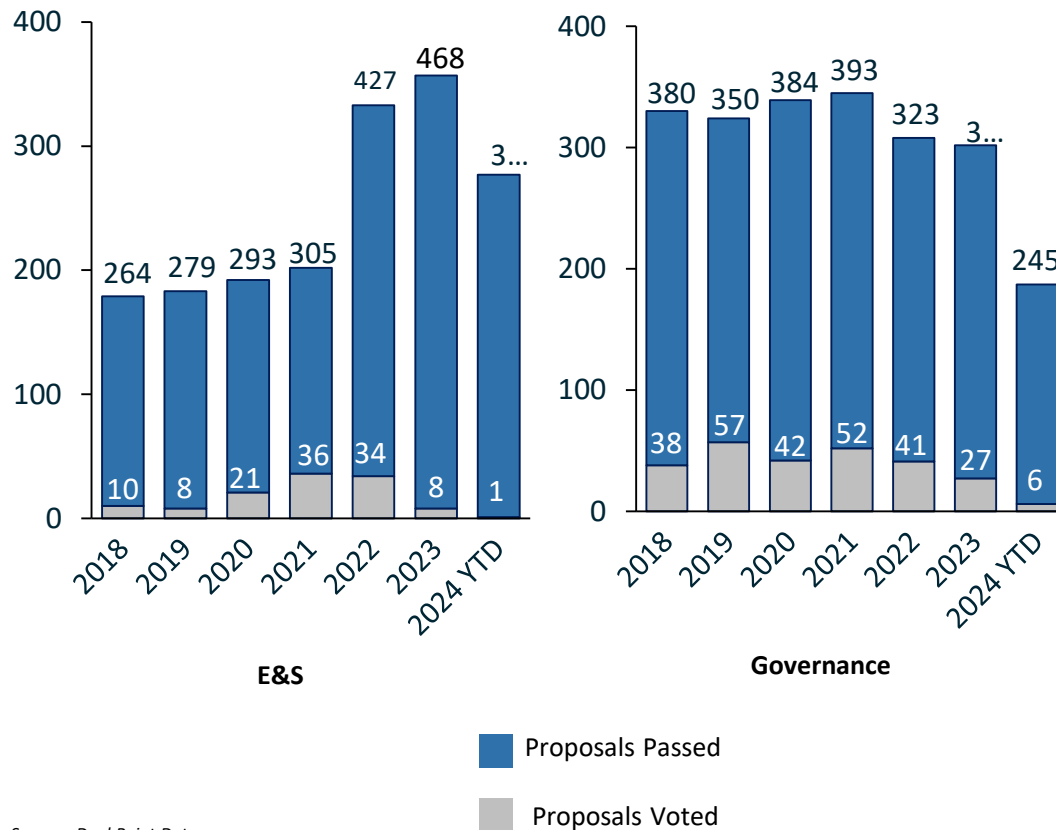
U.S. Campaign Activity by Sector



Note: Data is predominately for campaigns at companies with market capitalizations over \$500m
 Sources: Barclays Q1 2024 and 2023 Review of Shareholder Activism; Lazard 2023 Review of Shareholder Activism; Factset; Bloomberg; Diligent Market Intelligence; 13D Monitor

Shareholder Proposals Expose Divisions

Overall Support for E&S Proposals Continue to Decrease While Proposal Volume Remains Elevated



Trends in 2023-24

- Support for E&S proposals continued to decline due to lower support from institutional investors
- Investors leveraging director voting to advance E&S agenda
- Investors focusing on “value” and “return” when assessing more prescriptive and burdensome proposals such as requests for third-party audits
- Activists looking to diversify strategies, including launching single-issue proxy contests
- Anti-ESG proposals continue to fail to gain traction

Source: Deal Point Data

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What's Happening in the Boardroom



Regulatory Uncertainty

- SEC climate rules stayed pending Eighth Circuit decision
- California climate rules under legal challenge
- SCOTUS ruling on *Chevron* doctrine to reshape agency rulemaking
- CSRD reporting for EU entities to begin in 2025/26



Spotlight on Directors

- Universal proxy rules increase scrutiny on individual directors
- Ongoing investor focus on director commitments
- Board evaluations key tool for facilitating conversations on board composition and potential activism vulnerabilities



Scrutiny on Risk

- Boards remain under pressure to address growing range of risks
- Cybersecurity, AI and climate among top concerns for investors
- Missteps can be costly with pressure being directed at both management and the board

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Impact of the Universal Proxy Card

So far, UPC has not had a dramatic impact, but long-term effects remain unknown.

Overview of 14a-19 Requirements

- New SEC rules require, in a proxy contest, that the company and the dissident use **universal proxy cards that list the names of all people nominated for election by the company and the dissident**
- The new rules require dissidents to comply with notice and solicitation requirements, including:
 - Providing notice to the company that it intends to engage in a proxy contest at least 60 days before anniversary of prior year meeting (most company advance notice bylaws would require earlier notice of the nomination)
 - Representing that it intends to solicit shareholders with at least 67% of the voting power
- The rules require that the company **notify the dissident of its nominees at least 50 days before the anniversary of prior year's meeting**

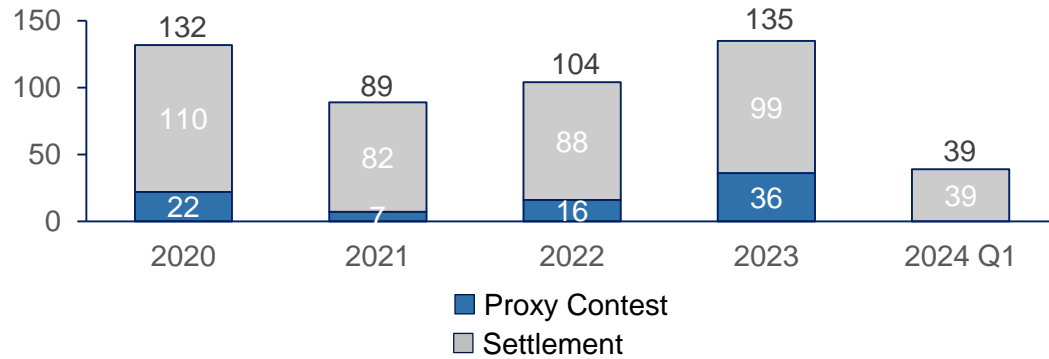
Key Takeaways

- Both the company and dissident may now solicit in favor of competing candidates, affecting contest strategies and tactics and sometimes pressuring settlement
- While UPC theoretically lowered the cost of entry, proxy fight costs did not lessen, and there was no surge in bare-bones campaigns
- Solicitation requirement (67% of voting power) did not present a deterrent given concentration of most shareholder bases
- Individual directors and their qualifications, rather than just the company, are more direct targets of a public activist campaign
- Increased opportunity for “issue candidates”
- Eventual impact on activist election success and negotiations is unclear (will be company-specific); may benefit the company in some cases

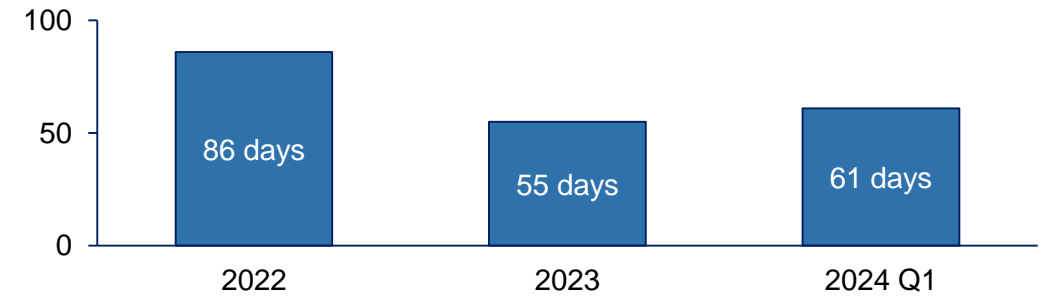
Sources: Exchange Act Rule 14a-19

Settlement Trends

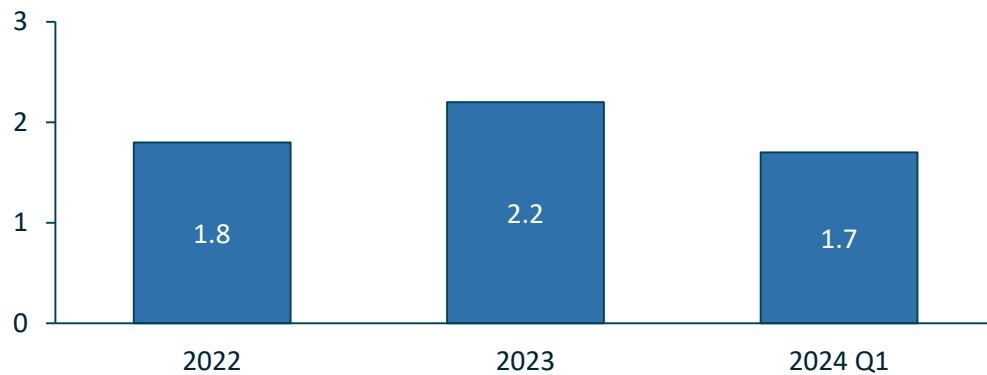
Boards Seats Won via Proxy versus Settlement (Global)



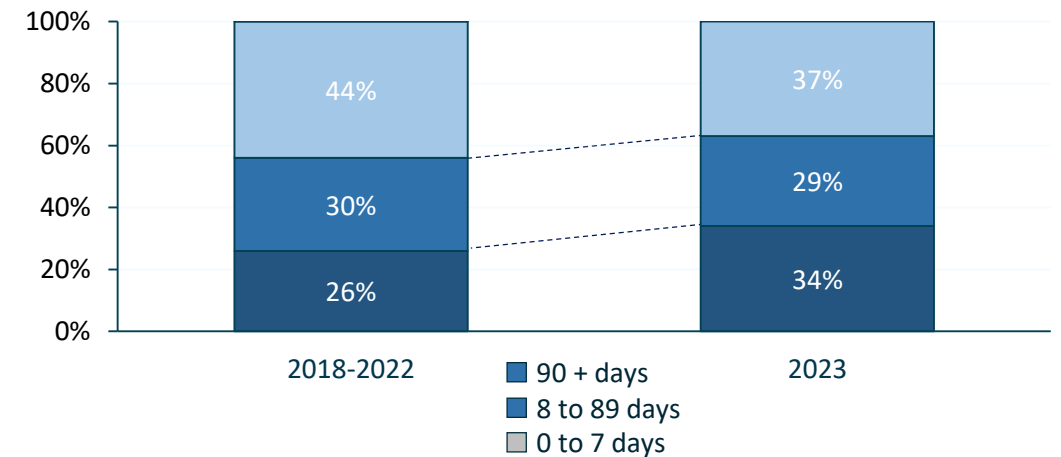
Median Time to Settle (U.S.)



Board Seats Won per Campaign (U.S.)



Length of Time to Settle (North America)



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