

LAZARD'S SHAREHOLDER ADVISORY GROUP

**2019 Review of Shareholder Activism**

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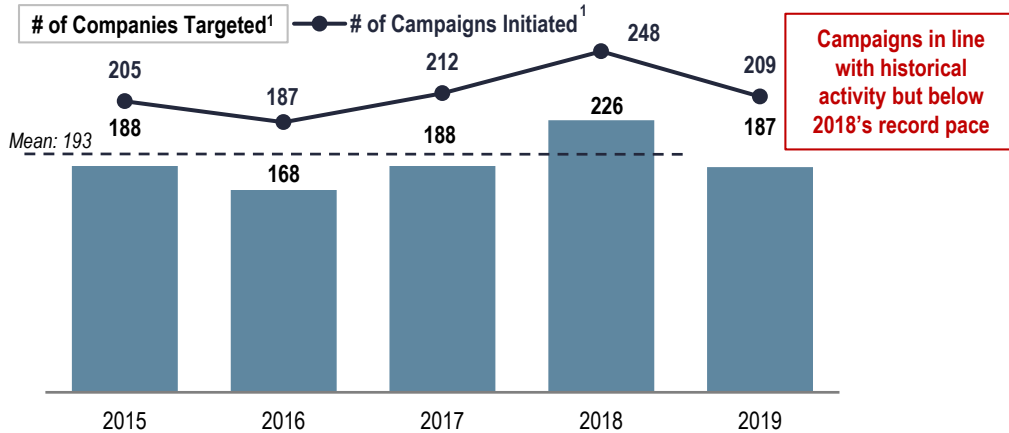
## Key Observations on the Activist Environment in 2019

1	<b>Activist Activity Returns to Multi-Year Trend After Record 2018</b>	<ul style="list-style-type: none"> <li>• 187 companies targeted by activists, down 17% from 2018's record but in line with multi-year average levels                             <ul style="list-style-type: none"> <li>– Aggregate capital deployed by activists (~\$42bn) reflected a similar dip relative to the ~\$60bn+ level of 2017/2018</li> </ul> </li> <li>• A record 147 investors launched new campaigns in 2019, including 43 “first timers” with no prior activism history</li> <li>• Elliott and Starboard remained the leading activists, accounting for more than 10% of global campaign activity</li> </ul>
2	<b>Activism's Continued Influence Outside the U.S.</b>	<ul style="list-style-type: none"> <li>• Activism against non-U.S. targets accounted for ~40% of 2019 activity, up from ~30% in 2015                             <ul style="list-style-type: none"> <li>– Multi-year shift driven both by a decline in U.S. targets and an uptick in activity in Japan and Europe</li> </ul> </li> <li>• For the first time, Japan was the most-targeted non-U.S. jurisdiction, with 19 campaigns and \$4.5bn in capital deployed in 2019 (both local records)</li> <li>• Overall European activity decreased in 2019 (48 campaigns, down from a record 57 in 2018), driven primarily by 10 fewer campaigns in the U.K.                             <ul style="list-style-type: none"> <li>– Expanded activity in continental Europe – particularly France, Germany and Switzerland – partially offset this decline</li> </ul> </li> </ul>
3	<b>Record Number of M&amp;A-Related Campaigns</b>	<ul style="list-style-type: none"> <li>• A record 99 campaigns with an M&amp;A-related thesis (accounting for ~47% of all 2019 activity, up from ~35% in prior years) were launched in 2019                             <ul style="list-style-type: none"> <li>– As in prior years, there were numerous prominent examples of activists pushing a sale (HP, Caesars) or break-up (Marathon, Sony) or opposing an announced transaction (Occidental, Bristol-Myers Squibb)</li> </ul> </li> <li>• The \$24.1bn of capital deployed in M&amp;A-related campaigns in 2019 represented ~60% of total capital deployed                             <ul style="list-style-type: none"> <li>– The technology sector alone saw \$7.0bn put to use in M&amp;A related campaigns</li> </ul> </li> </ul>
4	<b>Activist Influence on Boards Continues</b>	<ul style="list-style-type: none"> <li>• 122 Board seats were won by activists in 2019, in line with the multi-year average<sup>1</sup> <ul style="list-style-type: none"> <li>– Consistent with recent trends, the majority of Board seats were secured via negotiated settlements (~85% of Board seats)</li> <li>– 20% of activist Board seats went to female directors, compared to a rate of 46% for all new S&amp;P 500 director appointees<sup>2</sup></li> </ul> </li> <li>• Activists nominated a record 20 “long slates” seeking to replace a majority of directors in 2019, securing seats in two-thirds (67%) of the situations that have been resolved</li> </ul>
5	<b>Outflow Pressure on Active Managers Intensifies</b>	<ul style="list-style-type: none"> <li>• Actively managed funds saw ~\$176bn in net outflows through Q3 2019, compared to ~\$105bn in 2018 over the same period</li> <li>• The “Big 3” index funds (BlackRock, Vanguard and State Street) continue to be the primary beneficiaries of passive inflows, collectively owning ~19% of the S&amp;P 500 – up from ~16% in 2014</li> </ul>
6	<b>Other Noteworthy Observations</b>	<ul style="list-style-type: none"> <li>• ESG focus continues to grow: over the past two years, the AUM represented by signatories to the UN's Principles for Responsible Investment increased ~26% to ~\$86tn, and the number of assets in ESG-related ETFs increased ~300%</li> <li>• The Business Roundtable's “Statement on the Purpose of the Corporation” emphasized the importance of companies incorporating the interests of all stakeholders, not just shareholders, into their decision-making processes</li> <li>• The SEC's guidance on proxy advisors sought to increase accountability and oversight standards in their company evaluations</li> </ul>

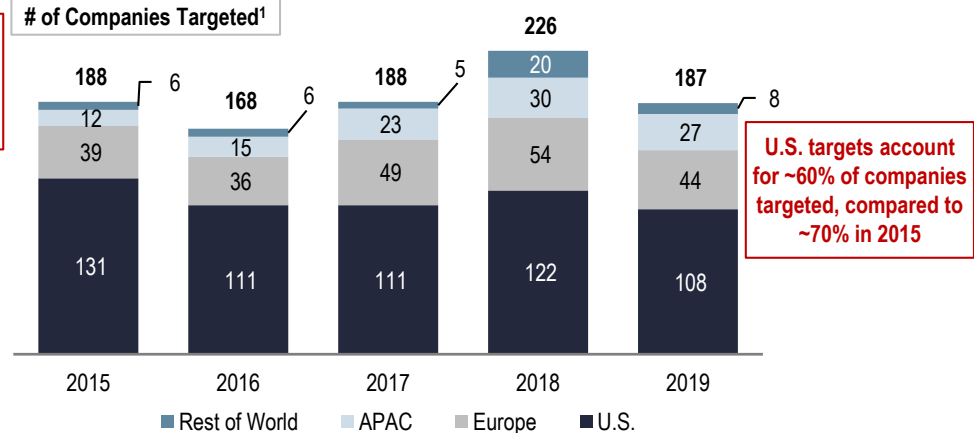
# 1 Campaign Activity and Capital Deployment

(\$ in billions)

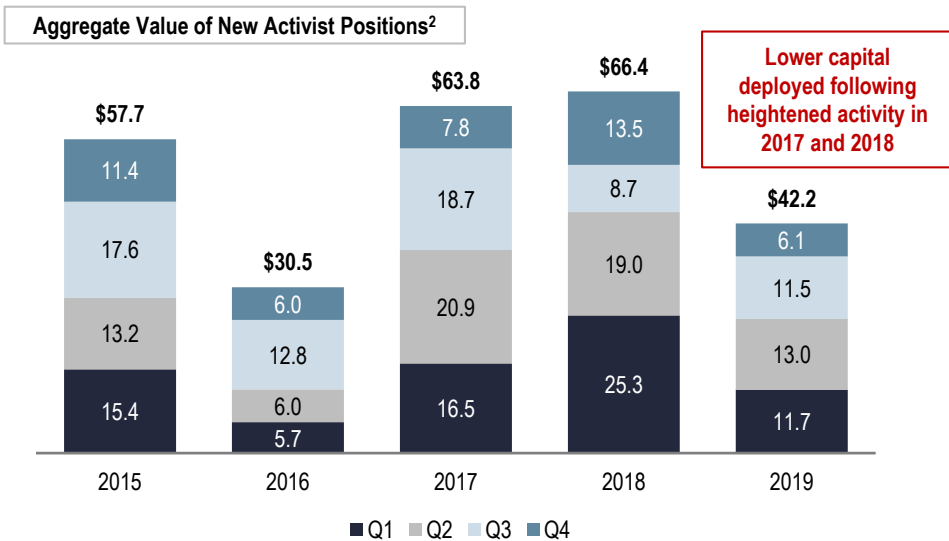
## Annual Campaign Activity



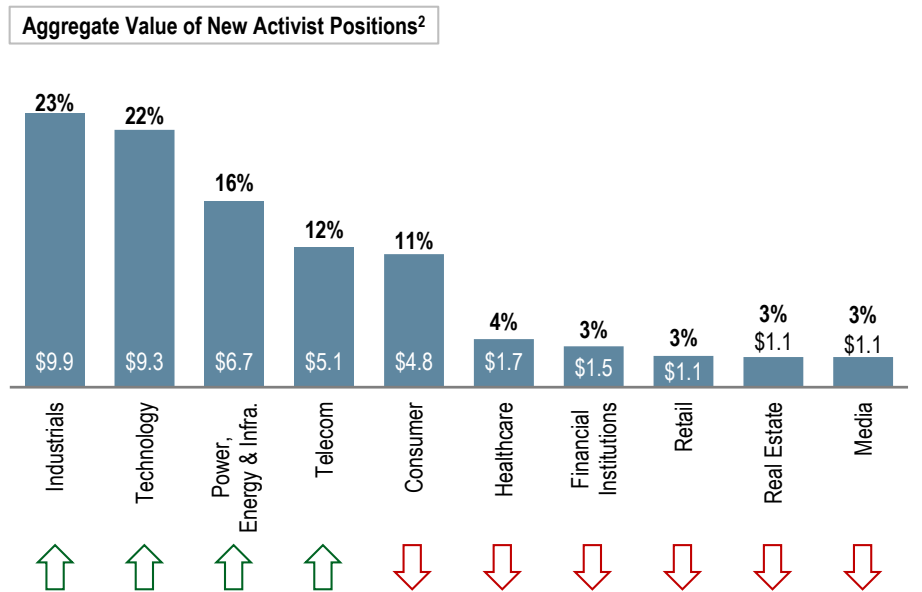
## Companies Targeted Annually by Region



## Capital Deployment in New Campaigns


























## Capital Deployment by Sector in 2019



Source: FactSet, press reports and public filings as of 12/31/2019.  
 Note: All data is for campaigns conducted globally by activists at companies with market capitalizations greater than \$500 million at time of campaign announcement.  
 1 Companies spun off as part of campaign process counted separately.  
 2 Calculated as of campaign announcement date. Does not include derivative positions.  
 3 4-year average based on aggregate value of activist positions.


























# 1 Notable 2019 Public Campaign Launches and Developments—U.S.

(\$ in billions)

Launch Date	Company / Market Cap	Activist	Highlights	Launch Date	Company / Market Cap	Activist	Highlights
11/19	 \$29.8  \$8.4		<ul style="list-style-type: none"> <li>Icahn disclosed a stake in HP and urged the Company to merge with Xerox, citing cost synergies</li> <li>HP rejected the takeover proposal, criticizing Xerox's "hostile" actions, but noted it saw potential in a deal</li> </ul>	5/19	 \$8.6		<ul style="list-style-type: none"> <li>In October, Aramark announced a settlement with Mantle Ridge, appointing six new Directors, including a new CEO, while also agreeing to lower its threshold to call a special meeting</li> </ul>
9/19	 \$39.5		<ul style="list-style-type: none"> <li>D.E. Shaw released a white paper criticizing Emerson's cost structure and organization, urging an independent strategic review</li> <li>Emerson reached an informal settlement with D.E. Shaw in November, appointing an independent Director and agreeing to review its compensation program</li> </ul>	5/19	 \$44.0		<ul style="list-style-type: none"> <li>In August, Occidental completed its acquisition of Anadarko</li> <li>In November, Icahn signaled its intent to nominate a slate of 14 Directors to replace Occidental's Board</li> </ul>
9/19	 \$39.6		<ul style="list-style-type: none"> <li>Following Elliott's demand for Marathon to break itself up, the Company announced that it would spin off its Speedway unit</li> <li>In December, Marathon announced a settlement with Elliott, agreeing to replace an outgoing Director with one approved by Elliott; Marathon also agreed to declassify its Board</li> </ul>	2/19	 \$81.4	 	<ul style="list-style-type: none"> <li>Starboard and Wellington separately came out against the Company's planned \$74bn acquisition of Celgene, citing pipeline risks, with Starboard also nominating Directors</li> <li>Starboard withdrew its campaign after ISS and Glass Lewis recommended in favor of the deal</li> </ul>
9/19	 \$268.8		<ul style="list-style-type: none"> <li>Following Elliott's initial letter, AT&amp;T sold off several assets in pre-planned transactions</li> <li>In late October, AT&amp;T announced long-term financial targets, the addition of new independent Directors and a delay in its CEO succession, which Elliott issued a press release in support of</li> </ul>	1/19	 \$31.7	 	<ul style="list-style-type: none"> <li>Elliott and Starboard separately pushed eBay to divest non-core assets like StubHub and its Classifieds business, with each settling separately for Board representation</li> <li>The Company's CEO resigned in September after disagreements with the Board, and eBay later sold StubHub for ~\$4bn</li> </ul>
6/19	 \$5.8		<ul style="list-style-type: none"> <li>Starboard sent a letter to AECOM in June 2019, urging it to launch a full strategic review and sell its Construction Services business</li> <li>In November, Starboard and AECOM settled, with AECOM adding three new independent Directors, including a Starboard Partner, to its Board and splitting the Chairman / CEO roles</li> </ul>	5/18	 \$173.2		<ul style="list-style-type: none"> <li>In December, ValueAct and Citi extended their information sharing agreement through 2021, with ValueAct complimenting Citi's leadership</li> <li>ValueAct and Citi had first entered into an information sharing agreement in January following the disclosure of ValueAct's position in May 2018</li> </ul>

# 1 Notable 2019 Public Campaign Launches and Developments—Rest of World

(\$ in billions)

Launch Date	Company / Market Cap	Activist	Highlights	Launch Date	Company / Market Cap	Activist	Highlights
11/19	 \$34.1 	<b>OASIS</b>	<ul style="list-style-type: none"> <li>Oasis sent a letter to Seven &amp; i in September and demanded the divestment of non-core units, improved governance and greater capital return</li> </ul>	7/19	 \$4.2 	<b>ELLIOTT</b>	<ul style="list-style-type: none"> <li>Following months in which Elliott said that it would not tender its shares in Capgemini's buyout of Altran, Elliott released a presentation in November detailing its opposition to the deal and urged Capgemini to increase its offer price</li> </ul>
9/19	 \$6.2 	 	<ul style="list-style-type: none"> <li>In October, Prosus announced a separate bid for Just Eat beyond Takeaway.com's existing offer, which had received opposition from Eminence but support from Cat Rock</li> <li>Just Eat rejected Prosus' offer, saying it undervalued its business</li> <li><i>Post-12/31 update: Just Eat's offer was successful</i></li> </ul>	6/19	 \$16.5 		<ul style="list-style-type: none"> <li>In September, Ferguson announced that it would spin off its U.K. operations in order to create two separately listed companies, following pressure from Triam</li> </ul>
8/19	 \$63.7 		<ul style="list-style-type: none"> <li>Following reports that Third Point had built a stake, the activist disclosed in its Q3 investor letter that it had met with Company executives and urged it to improve governance and accelerate the integration of Essilor and Luxottica</li> </ul>	4/19	 \$54.8 		<ul style="list-style-type: none"> <li>In October, Sony announced record Q2 operating profit, citing the performance of its image sensors business, which Third Point had requested the Company divest</li> <li>Sony had earlier dismissed Third Point's request for divestitures</li> </ul>
8/19	 \$6.2 	<b>ELLIOTT</b>	<ul style="list-style-type: none"> <li>Following calls from Elliott to divest its AutoScout24 business, Scout24 announced the sale of the unit to Hellman &amp; Friedman in December</li> <li>Elliott cuts its stake in Scout24 shortly after</li> </ul>	4/19	 \$157.7 	<b>ELLIOTT</b>	<ul style="list-style-type: none"> <li>Elliott disclosed a stake in SAP in April, supporting a recently announced comprehensive review</li> <li>In October, SAP's CEO retired; the Company later announced a share buyback plan and additional details of its strategic plan at a Special Capital Markets Day</li> </ul>
8/19	 \$1.1 	<b>ELLIOTT</b>	<ul style="list-style-type: none"> <li>In October, following Unizo's rejection of initial offers from Fortress and Blackstone, Elliott issued a public letter asking the Company to explain its reasons for rejecting the offers</li> <li>As of the end of 2019, there were several competing tender offers outstanding</li> </ul>	4/18	 \$30.9 	<b>ELLIOTT</b>	<ul style="list-style-type: none"> <li>Elliott nominated Directors to Hyundai's Board and made several governance-related proposals at Hyundai's 2019 AGM</li> <li>All Elliott proposals and Director nominees were defeated at the March AGM</li> </ul>

# 1 Largest Activist Targets in 2019—U.S. and Rest of World

(\$ in billions)

U.S.			
Company	Activist	Position	Market Cap
AT&T		1.2% <sup>3</sup>	\$268.8
CVS Health		--	99.6
Bristol-Myers Squibb		0.4%	81.4
OXY		4.0%	44.0
Marriott	LANDandBUILDINGS	<0.1%	41.5
MARATHON		2.5%	39.6
EMERSON	DE Shaw & Co	1.0%	39.5
Anadarko Petrolium Corporation	DE Shaw & Co	0.6%	36.5
ebay <sup>1</sup>	/	4.0% / 0.5%	31.7
hp		4.2%	29.8
CENTENE <sup>1</sup> Corporation	/	0.6% / --	23.5
DOLLAR TREE		1.7%	23.3
Cerner		1.2%	20.4
NEWMONT	PAULSON & CO. INC.	--	18.4
CenturyLink	Southeastern/ Asset Management	6.2%	15.2
<b>Cumulative Market Cap of Top 15:</b>			<b>\$813.4</b>

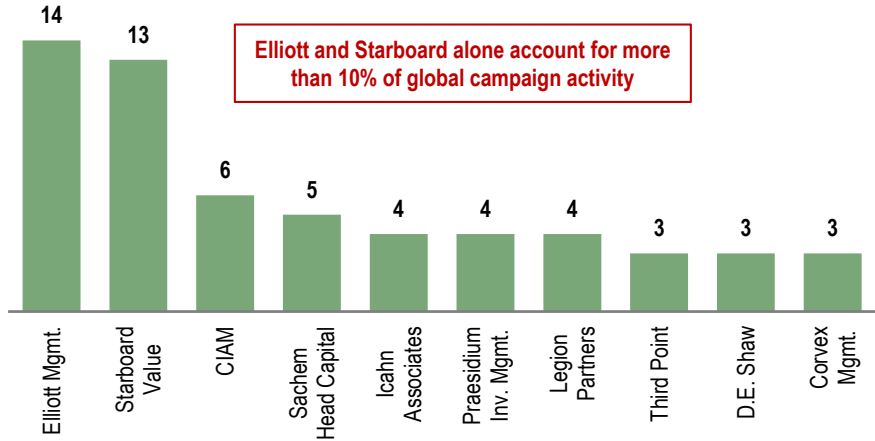
Rest of World				
Company	Country	Activist	Position	Market Cap
SAP			0.8% <sup>3</sup>	\$157.7
ESSILOR LUXOTTICA <sup>1</sup>		/  /	1.2% <sup>3</sup> / --	63.7
SONY			2.7% <sup>3</sup>	54.8
Allergan			--	53.8
SEVEN STARS		OASIS	<1%	34.1
HYUNDAI			2.6%	30.9
telenor			--	28.4
CERN			3.0%	24.8
KIRIN			2.0%	19.2
Sumitomo Corporation			5.2%	19.0
RENAULT			--	18.8
FERGUSON			6.0% <sup>3</sup>	16.5
Deutsche Bank			3.0%	15.8
CNH INDUSTRIAL			3.0%	15.0
ACCOR			<1%	11.5
<b>Cumulative Market Cap of Top 15:</b>			<b>\$564.0</b>	

# 1 The Broadening Activist Landscape in 2019

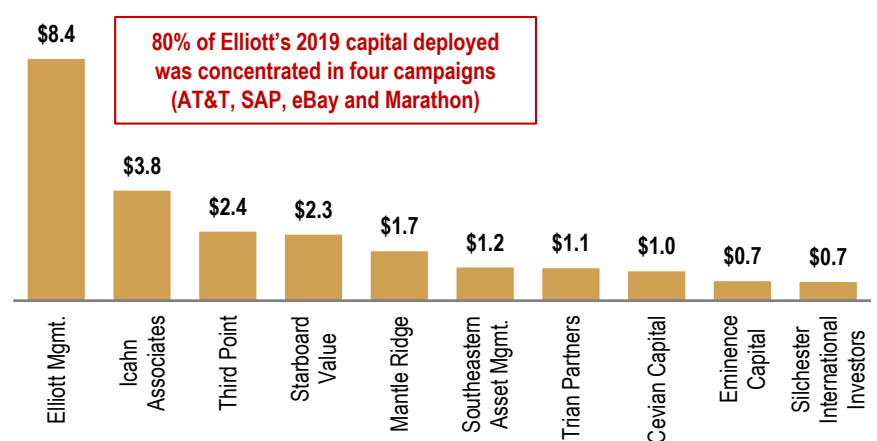
(\$ in billions)

While Elliott and Starboard remain the most active players, the record number of investors launching campaigns demonstrates activism's broad adoption

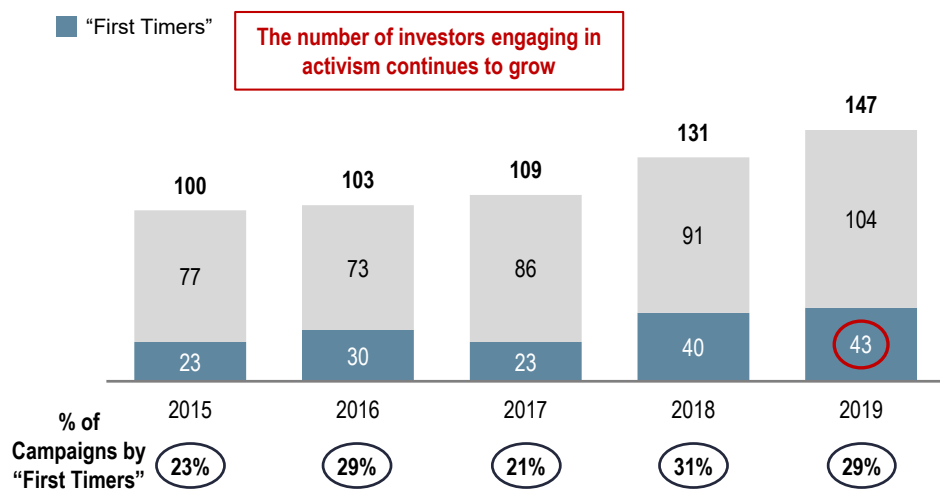
**Activist Activity by Campaigns Launched, 2019<sup>1</sup>**



**Activist Activity by Capital Deployed, 2019**



**Investors Launching Campaigns**



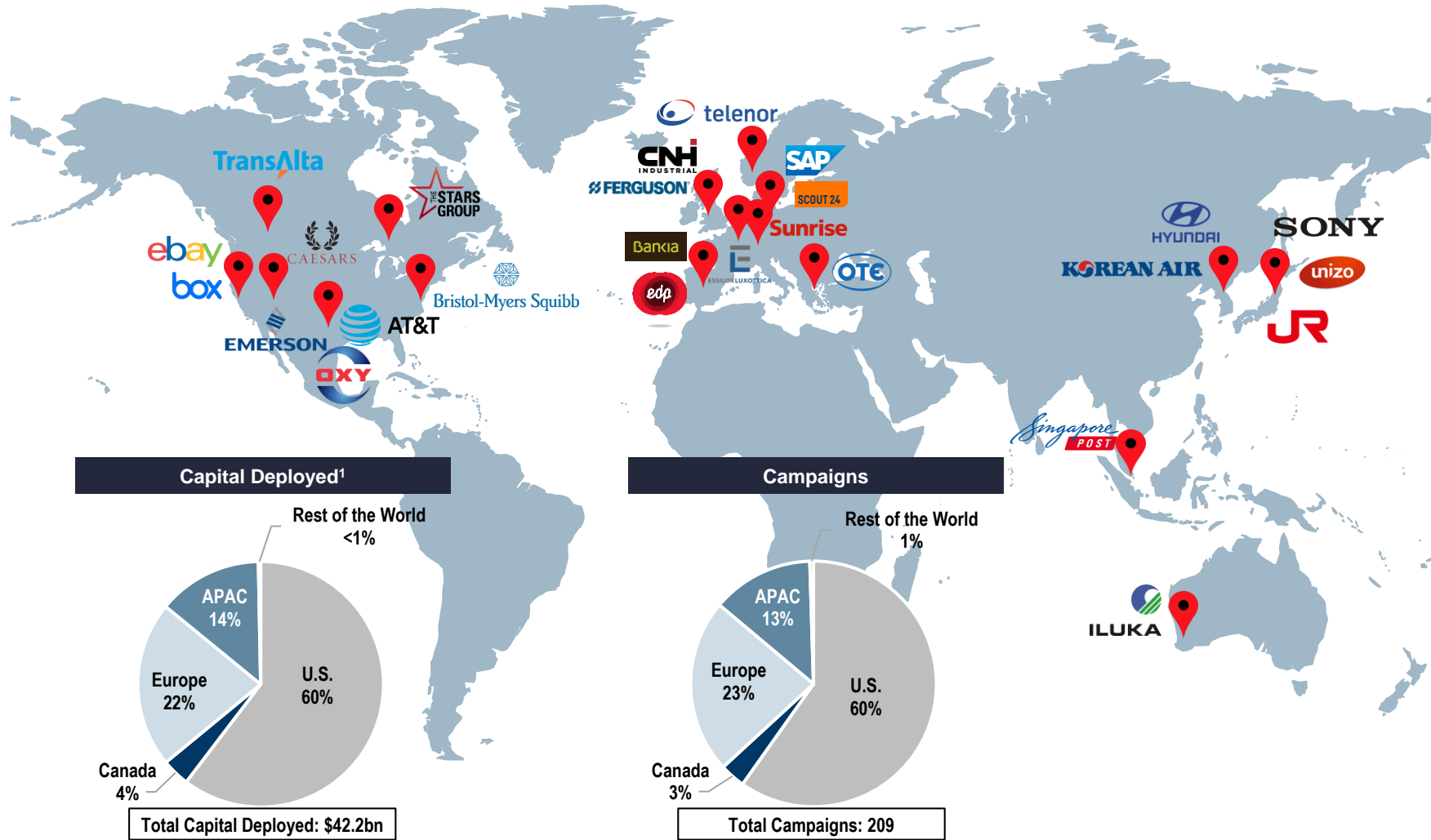
**Instances of Activism/Vocalism by Traditional Long-Only Investors**

Date	Shareholder	Company	Action
8/19	ARTISAN PARTNERS	Bankia	Criticized proposed merger with Banco Sabadell, suggested new deal
7/19	T.Rowe Price	EQT	Issued press release stating voting support for dissident Rice Group slate
4/19	T.Rowe Price	OXY	Withheld vote for Company Board in response to Anadarko acquisition
4/19	RAILLIE GIFFORD FIDELITY INTERNATIONAL	ESSILORLUXOTTICA	Group nominated Directors to Company Board; incumbents re-elected
4/19	NEUBERGER BERMAN	VERINT	Nominated Directors and publicly criticized Company; later settled
3/19	M&G INVESTMENTS	methanex	Nominated Directors following capex disagreement
2/19	WELLINGTON MANAGEMENT	Bristol-Myers Squibb	Filed first 13D in opposition of Celgene acquisition; deal later approved
1/19	NEUBERGER BERMAN	Ashland	Reached Board refreshment settlement with Company amid activist campaign

Source: FactSet, press reports and public filings as of 12/31/2019.  
 Note: All data is for campaigns conducted globally at companies with market capitalizations greater than \$500 million at time of campaign announcement.  
 1 Ranked secondarily on capital deployed in the event of a tie on campaigns launched.

## 2 Activism is a Global Phenomenon

As in prior years, international activity accounted for ~40% of both campaigns and capital deployed

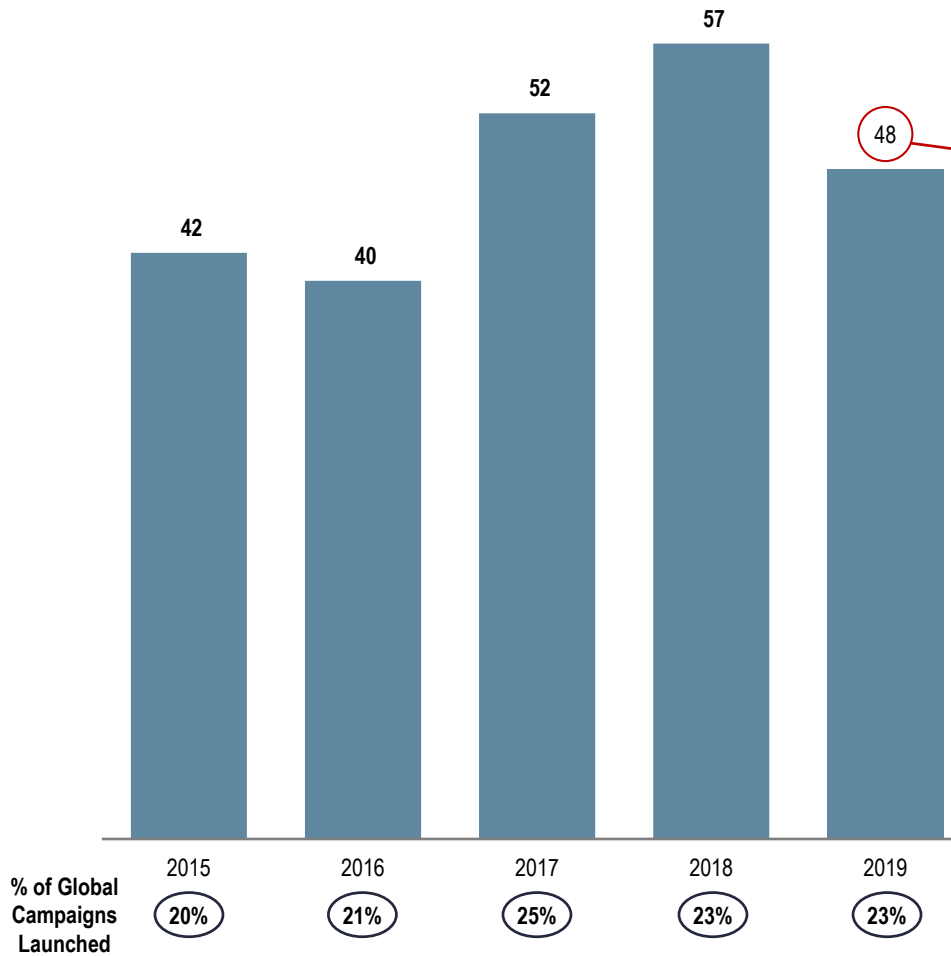




## 2 2019 International Shareholder Activism

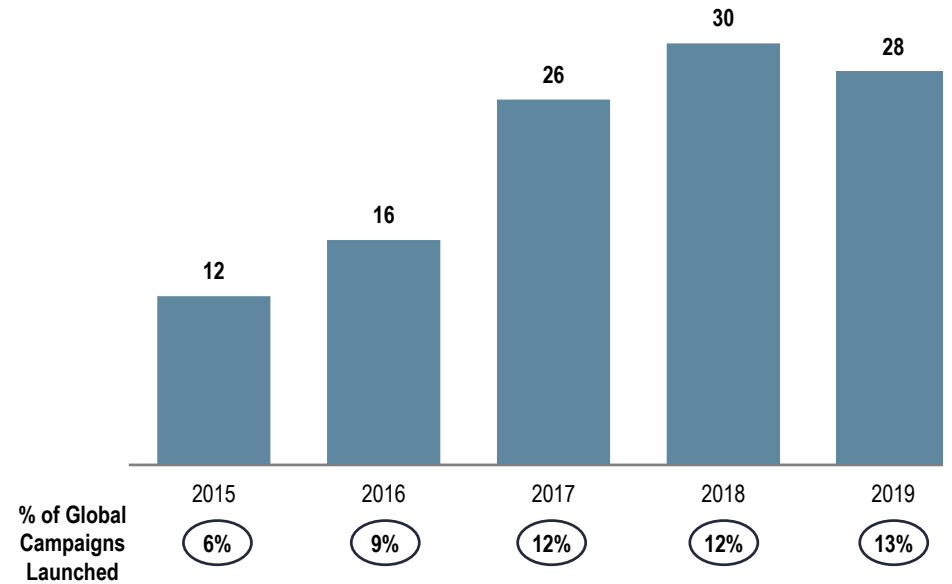
(\$ in billions)

### Activism Against European Companies



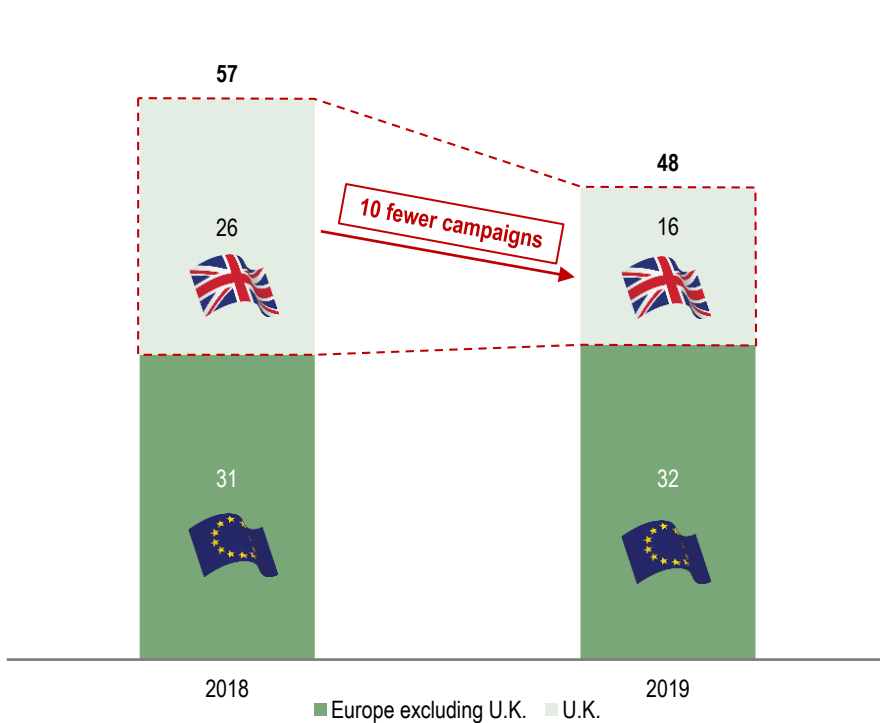
Although there was record activity in Q3, 2019 was down from 2018 peak levels; the 16% decrease was in line with the decline in global activity

### Activism Against APAC Companies



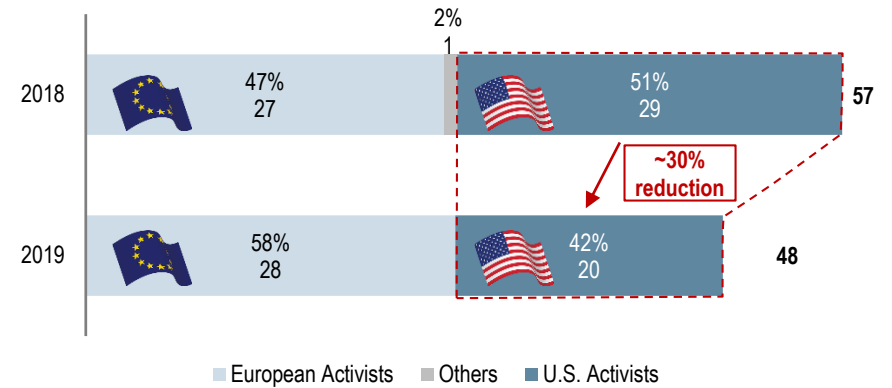
## 2 European Pullback: U.K. Activity and U.S. Agitators Driving Slowdown

European Activism Decrease Driven by U.K. Activity Decline



- U.K. continues to be the **#1 target in Europe** but has declined from **46% of European campaigns in 2018 to 33% in 2019**
- Given the number of **non-U.K. campaigns remained stable** year-over-year, the **decrease in U.K. activity** had a **significant impact** on overall European activity

U.S. Activists Slowing New Campaign Activity



Most Prolific European Activists

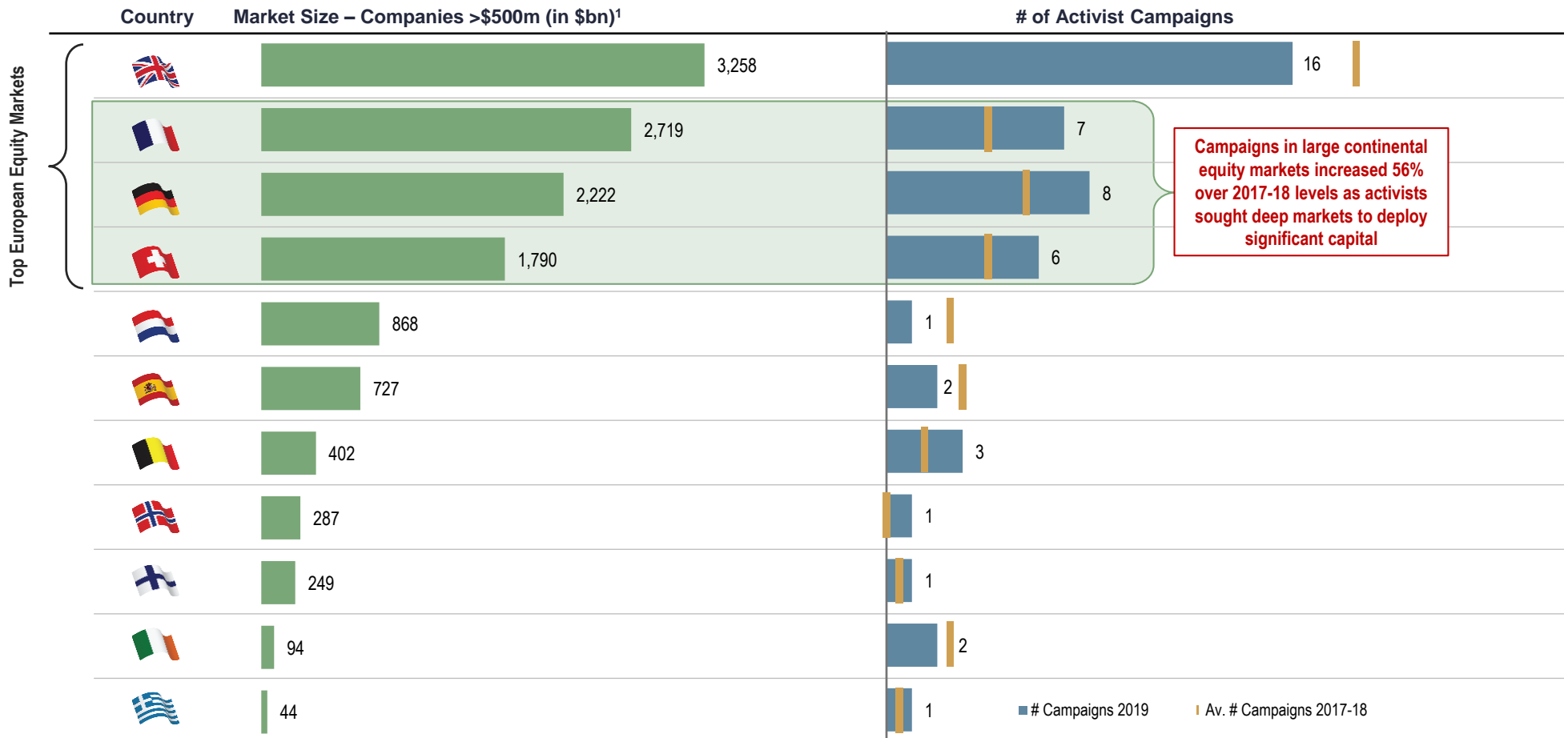
2018		2019	
Activists	# Campaigns	Activists	# Campaigns
IPETRUSADVISERS	3	CIAM	6
Cevian Capital	3	Cevian Capital	2
CIAM	2	IPETRUSADVISERS	2
LUCERNE Capital Management	2	VERAISON Investment Management	2

- Despite the success of many U.S. activists, Europe has continued to attract more **local agitators**
- Several players became **more vocal and visible** in the European landscape, competing with **global players**

## 2 European Target Diversification Anticipated to Continue

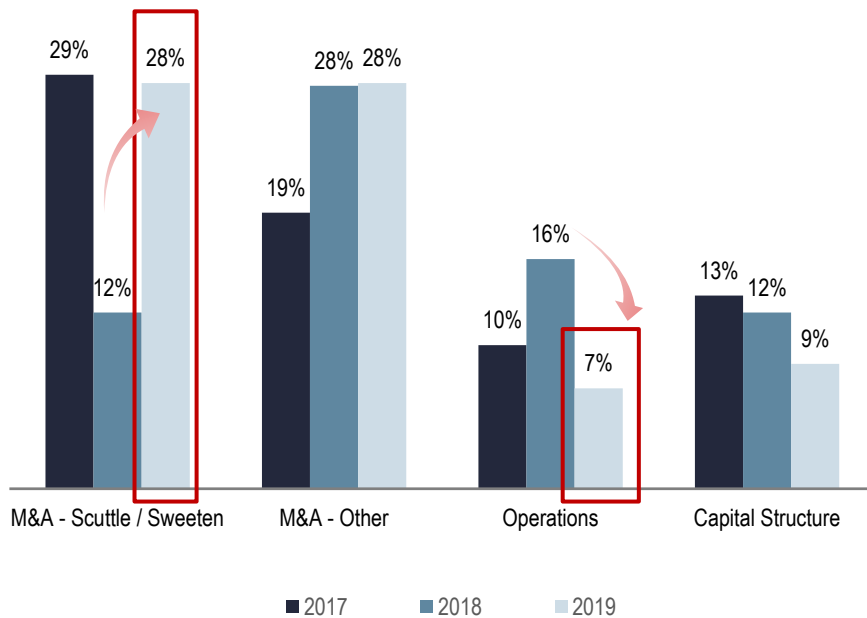
2019 saw a move away from the traditional focus on activism in the U.K., with increased activity in France, Germany and Switzerland. There is potential for activists to target other high-performing jurisdictions in the coming year

- Activism in Europe has now broadened across the European landscape and activists are targeting all countries in their search to unlock value and to capture alpha – leaving no stone unturned

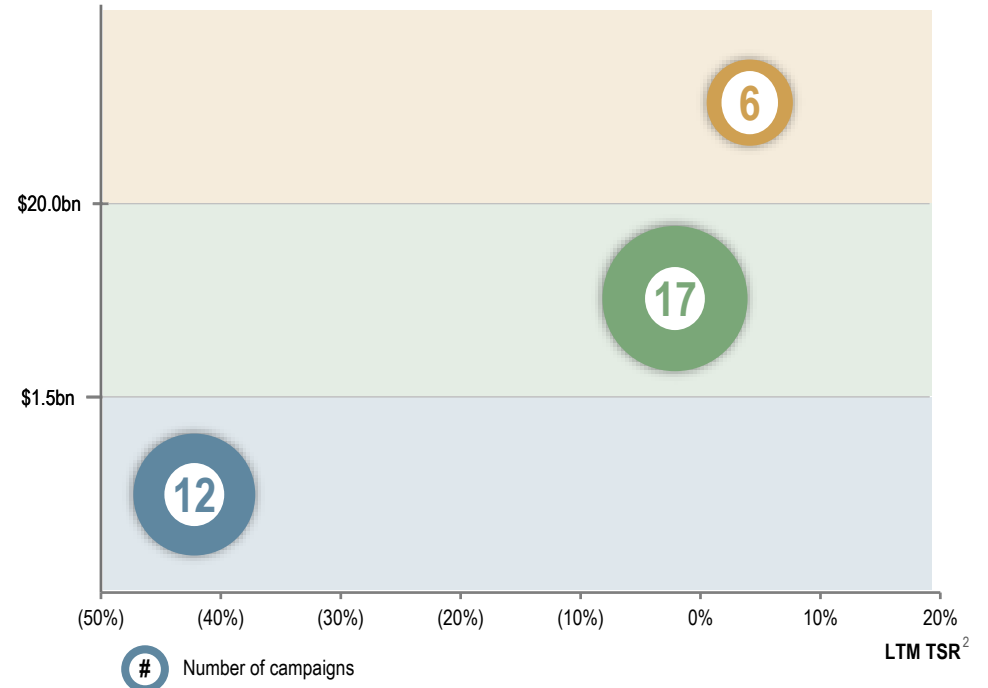


## 2 Sharp Focus on Ongoing M&A and Mid-Cap Sweet Spot in Europe

Activism Value Creation Objectives



2019 Campaigns by Market Cap and Target Performance vs. Index<sup>1</sup>



- After difficult activist fund returns in 2018, in 2019 activists shifted to less risky campaigns with a shorter timeframe
  - Scuttle/Sweeten campaigns with limited downside and clearer timeline were the most common
  - Objectives requiring a longer runway to execution such as operational changes were more limited

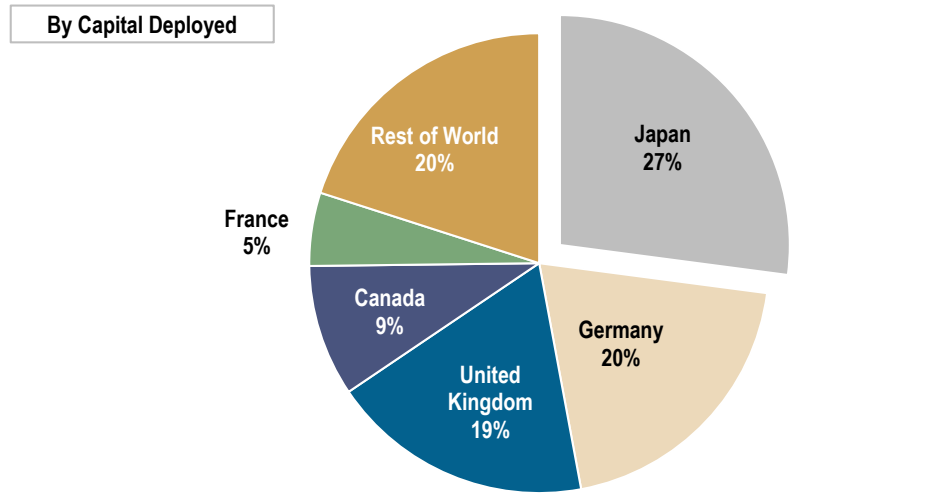
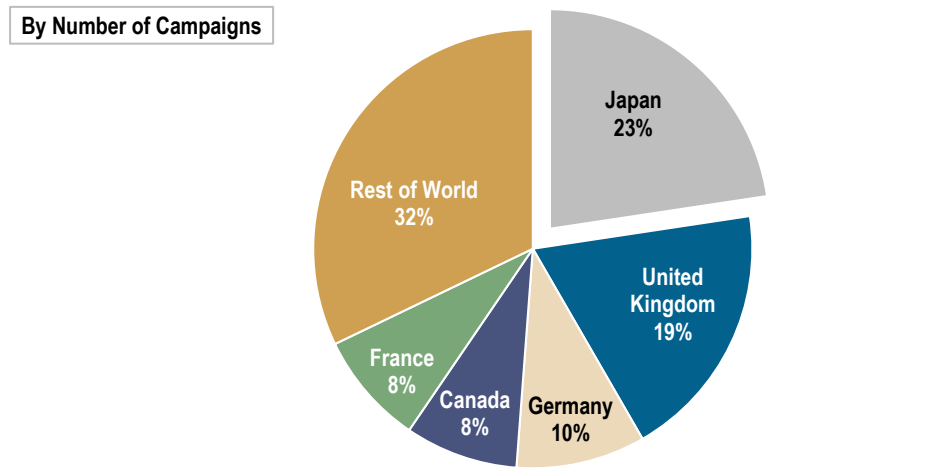
- 2019 activism demonstrated a clear divergence in strategy by target size
- Targeting of the \$1.5-20bn “sweet spot” represented ~49% of 2019 campaigns, excluding campaigns to scuttle/sweeten announced transactions
- Activists targeted high performing larger companies to accelerate existing plans, and smaller companies with weaker performance where options to “fix” or redefine strategy are more effective

## 2 Shareholder Activism in Japan

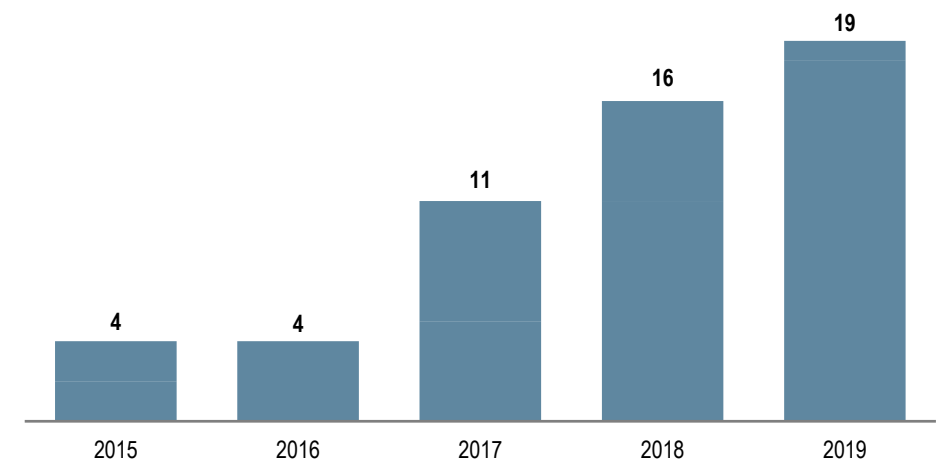
(\$ in billions)

For the first time, Japan was the busiest non-U.S. jurisdiction with record highs in both capital deployed and campaigns launched

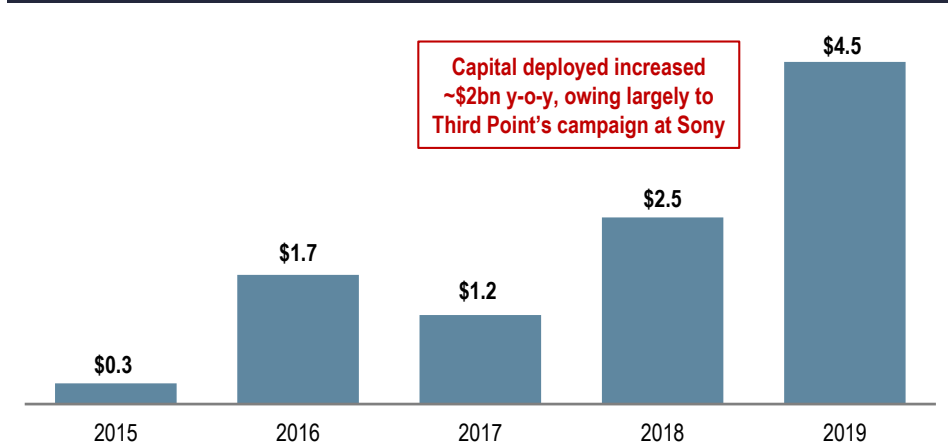
### Non-U.S. Activism, 2019



### Campaigns Against Japanese Companies



### Capital Deployed in Japanese Campaigns



### 3 The Activist Role in M&A in 2019

#### Sell the Company

Agitate for sale of target or encourage industry consolidation

35%

Target / Activist	M&A Thesis
11/19  	Icahn pushed for HP to accept a takeover offer from Xerox due to potential cost savings of \$2bn; after HP rejected the offer, Icahn sent a letter to shareholders pushing for their support
5/19  	Mantle Ridge reportedly pushed for a sale of Aramark, also considering forming its own consortium to make a takeover bid; Mantle Ridge later settled for Board representation
1/19  	Icahn pushed for a strategic review, eventually settling with Caesars for three Board seats; Eldorado Resorts later purchased Caesars for \$17.3bn
1/19  	Elliott disclosed a stake in QEP and submitted a takeover offer; in August, the two parties settled, with QEP adding two Directors and forming a new operations committee

#### Break-Up / Divestiture

Agitation for a divestiture of a non-core business line or company breakup


33%

Target / Activist	M&A Thesis
9/19  	Following Elliott's call to break the Company up, Marathon announced it would spin off its Speedway unit and launched a comprehensive review
9/19  	After Elliott urged divestitures, AT&T announced a new, long-term strategic plan, including divestitures, but did not commit to divesting DirecTV as Elliott had initially requested
6/19  	Following AbbVie's acquisition of Allergan, it was reported that Elliott had privately pushed for the break-up of Allergan
4/19  	In a letter to shareholders, Sony said its Board had rejected Third Point's call to divest its imaging sensors business, defending its conglomerate structure after Third Point's white paper

#### Scuttle or Sweeten Existing Deals

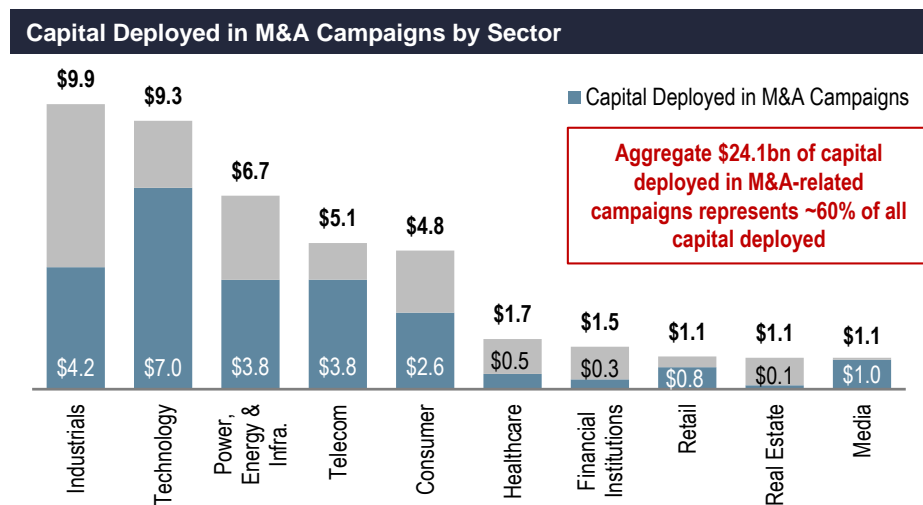
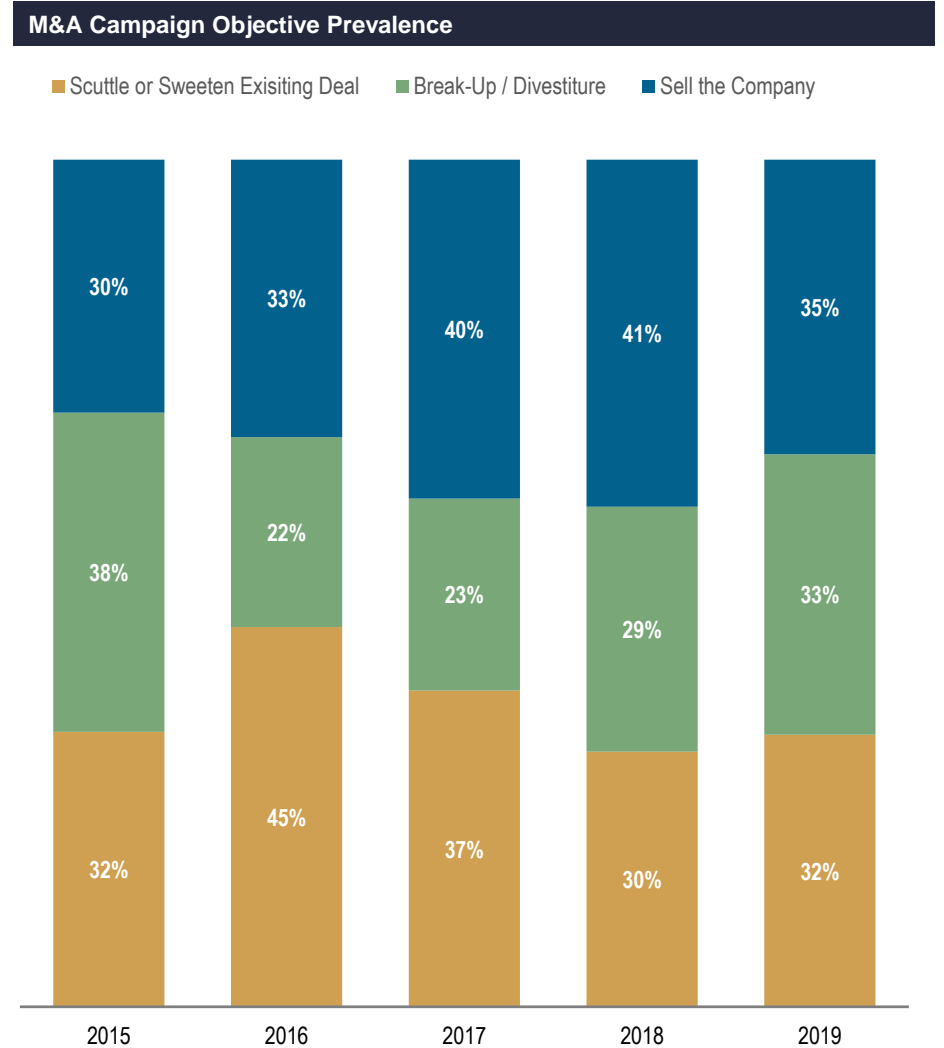
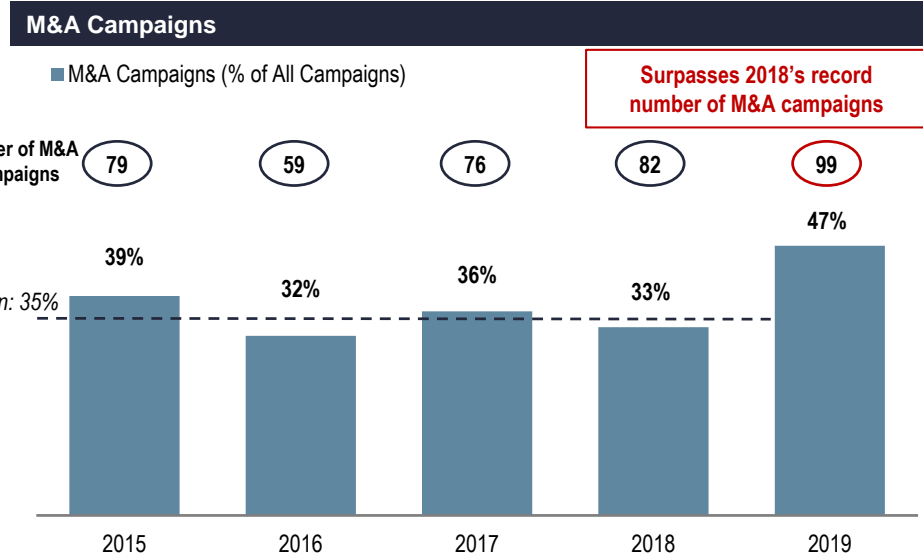
Entry into a live M&A situation to improve deal terms or block an ill-perceived deal from proceeding

32%

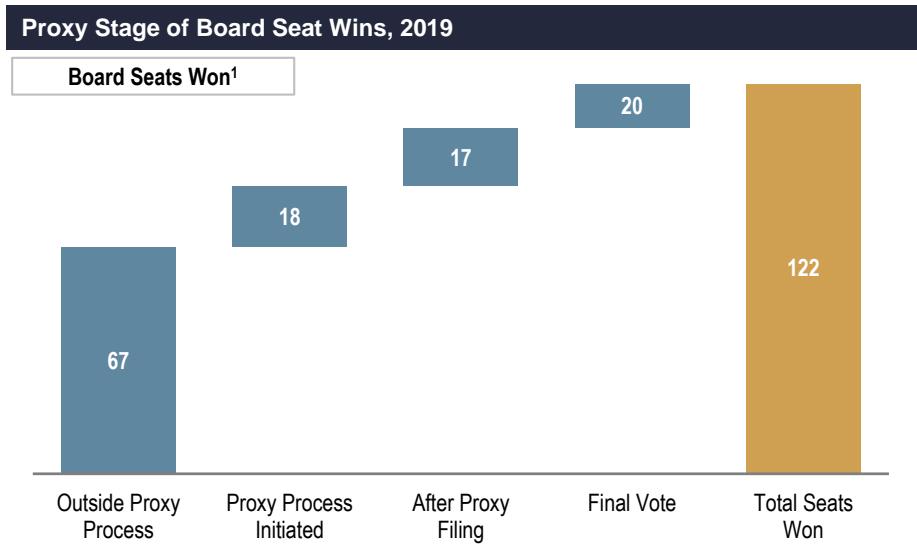
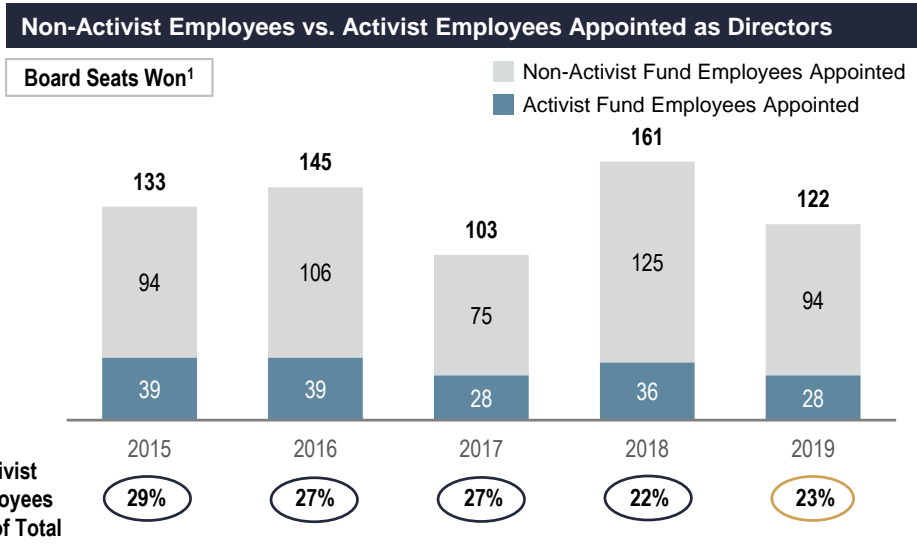
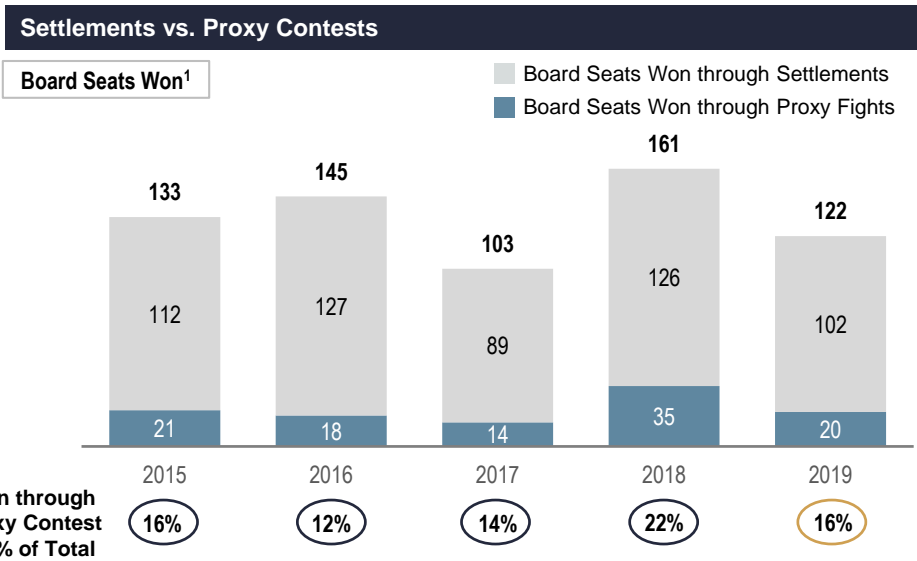
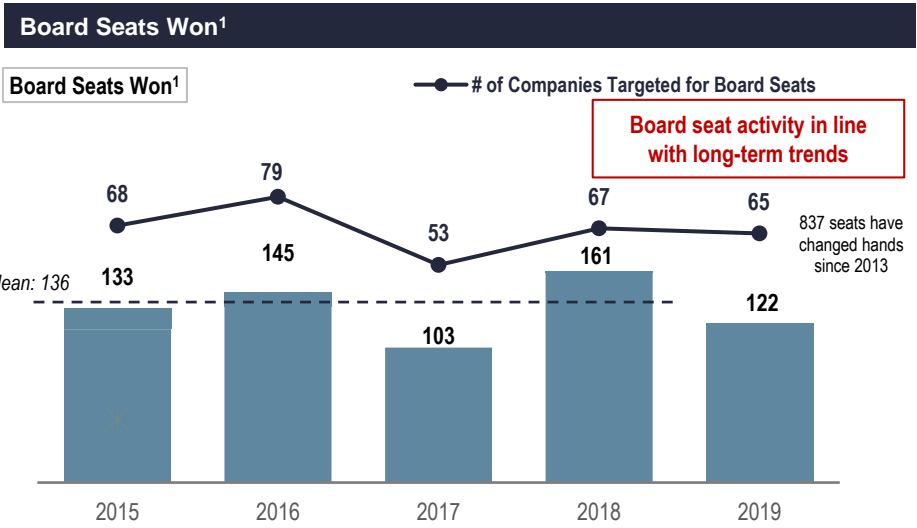
Target / Activist	M&A Thesis
7/19  	After months of saying it would not tender its shares in Caggemini's offer for Altran, Elliott launched a public critique of the deal but said it might sell its stake if Caggemini sweetened its offer
6/19   	CIAM came out against the proposed merger between Renault and Fiat Chrysler, saying that the deal would benefit Fiat Chrysler more than Renault
5/19  	Icahn criticized the Anadarko deal and the financing Occidental arranged so it could avoid a shareholder vote; Icahn planned to nominate a slate to replace Occidental's Board
2/19   	Starboard and Wellington separately came out against the Company's planned \$74bn acquisition of Celgene; Starboard withdrew after ISS and GL backed the deal

### 3 Sustained Prominence of M&A-Related Campaigns

47% of campaigns launched in 2019 were M&A-driven, demonstrating the persistence of M&A as a campaign theme



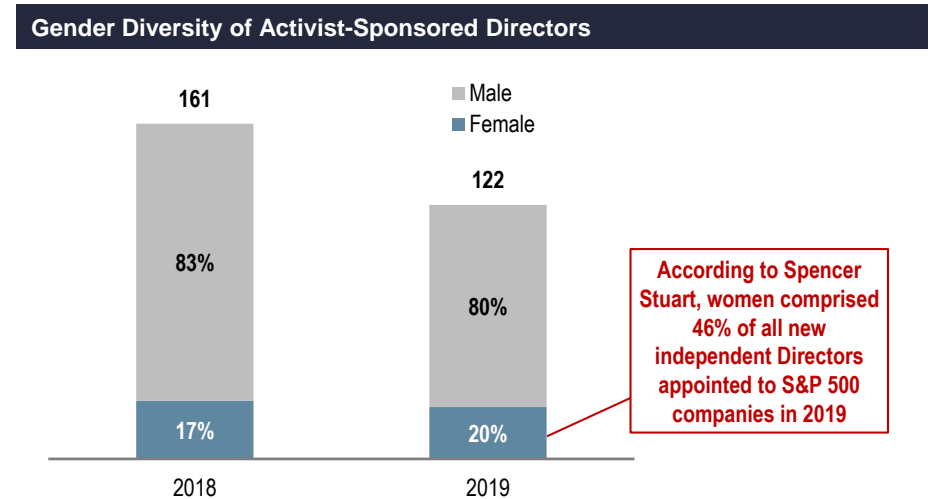
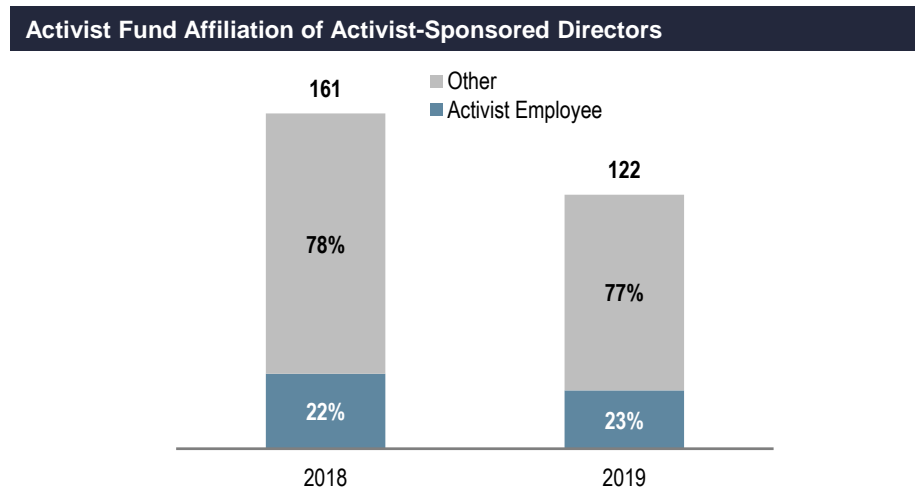
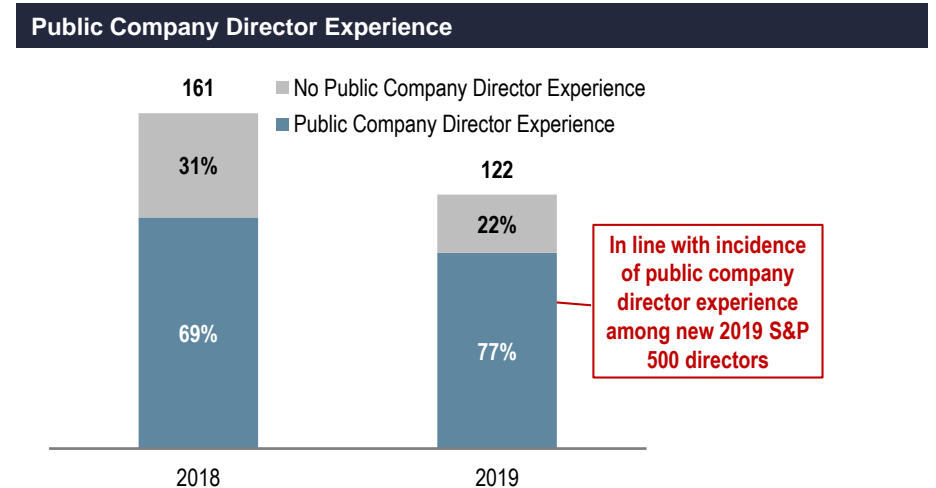
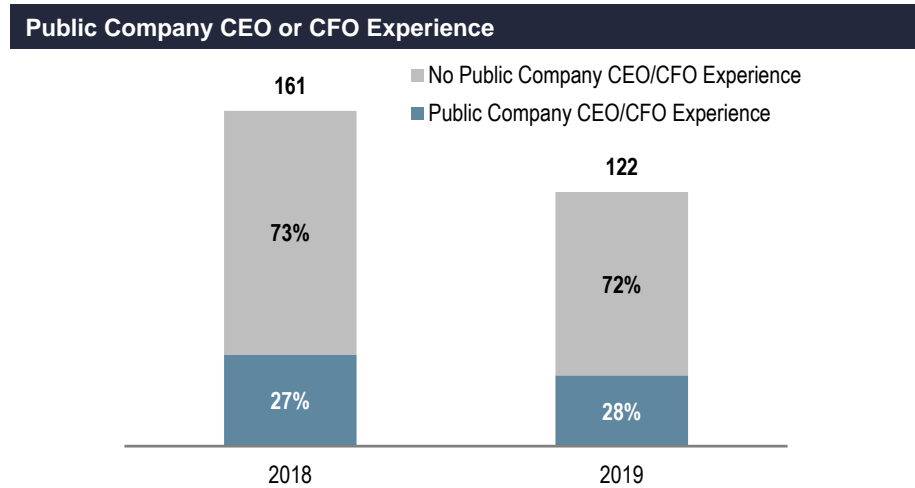
## 4 Board Seats Won





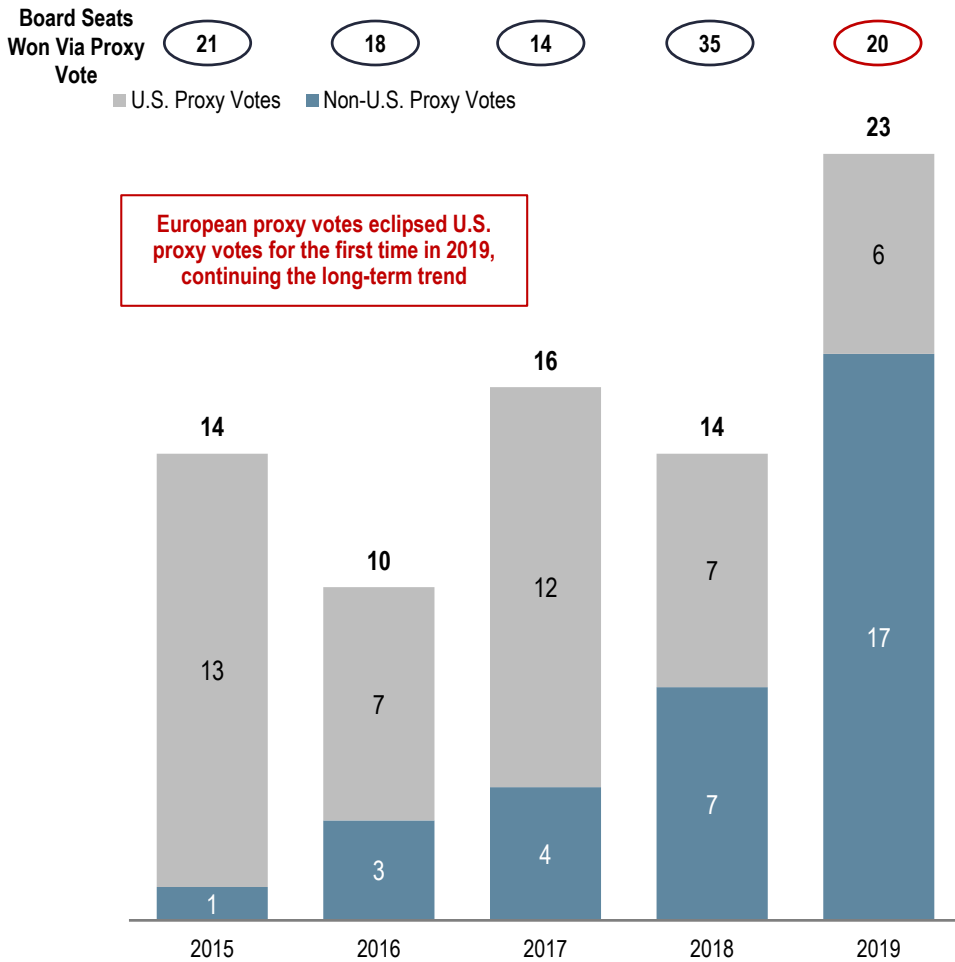
## 4 Profile of 2019 Activist Director Appointments

Activists consistently enlist experienced individuals with senior public company experience for their Director nominees; however, the gender diversity of these nominees continues to fall short relative to newly appointed Directors in the S&P 500

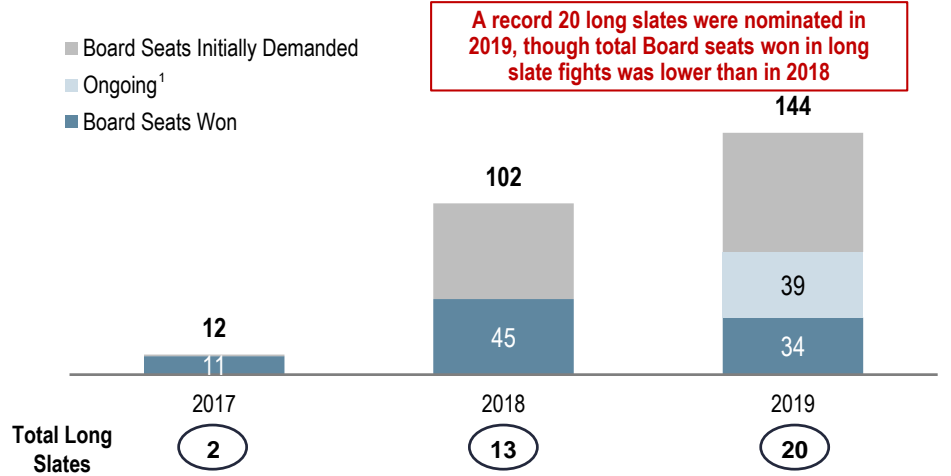


## 4 Long Slate Nominations and Proxy Fights

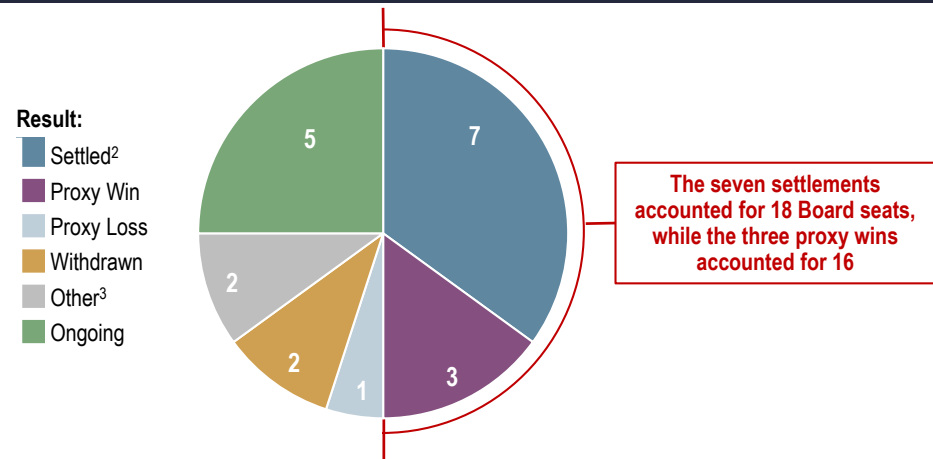
Contested Proxy Votes, 2015-2019



Long Slate Nominations, 2017-2019



Long Slate Results, 2019



Source: FactSet, press reports and public filings as of 12/31/2019.

Note: Long slates defined as instances where an activist nominated Directors to replace 50%-plus of the incumbent Board.

1 Reflects Board seats "in play" at the end of Q4 2019.

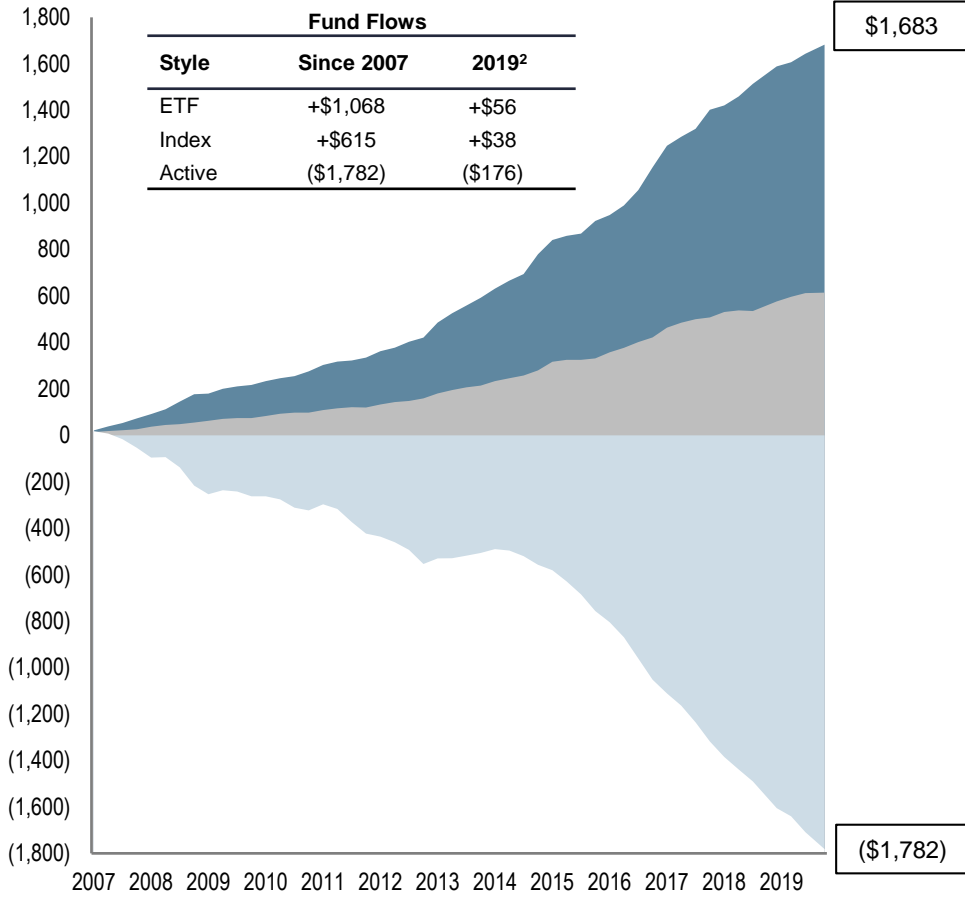
2 Includes the appointment of David Martin, an original nominee on Coast Capital's long slate, as Chairman of FirstGroup in August 2019 following the defeat of Coast's slate.

3 Includes: Velan Capital's successful withhold campaign against two Progenics Pharmaceutical Directors following the declaration of its long slate nomination as invalid, and the acquisition of Cincinnati Bell by Brookfield Infrastructure Partners.

# 5 The Growing Influence of Passive Managers

(\$ in billions)

**Cumulative Flows and Net Share Issuance<sup>1</sup>**

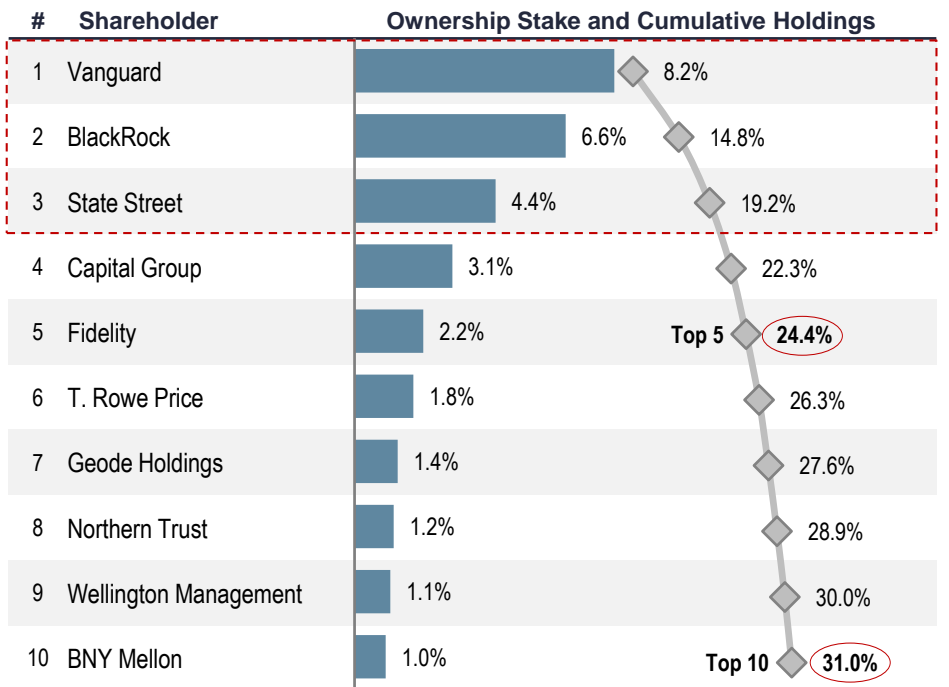


- Index Domestic Equity ETFs<sup>3</sup>
- Index Domestic Equity Mutual Funds<sup>4</sup>
- Actively Managed Domestic Equity Mutual Funds<sup>5</sup>

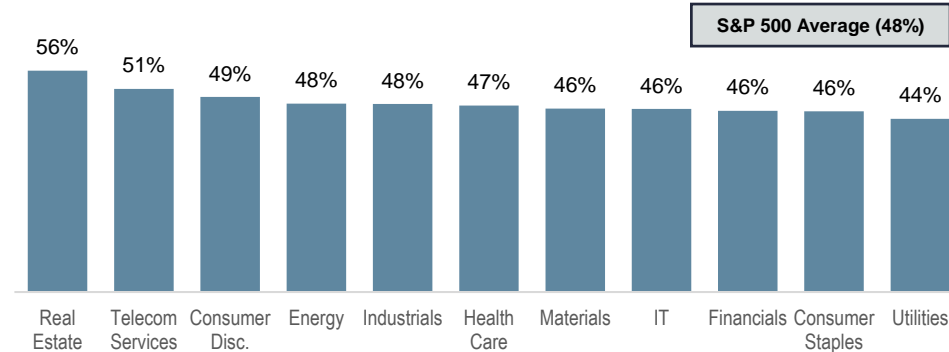
Source: FactSet, P&I and Simfund.

1 Equity mutual fund flows include net new cash flow and reinvested dividends. Data excludes mutual funds that invest primarily in other mutual funds.  
 2 Through Q3 2019.  
 3 ETF distribution channel.  
 4 All mutual index funds (excludes ETFs).  
 5 All mutual funds that are not index funds.  
 6 Includes institutional and insider ownership.

**S&P 500 Top 10 Shareholders**



**Q3 2019 S&P 500 Top 10 Shareholder Concentration by Sector<sup>6</sup>**



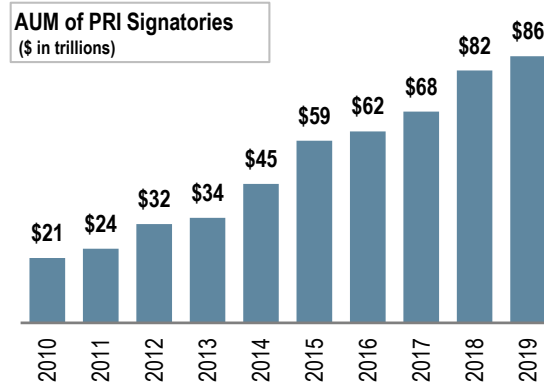
## 6 Rapid Growth in ESG Investing

Asset managers continue to commit to incorporating ESG principles into their investment processes, and asset classes related to ESG are seeing strong growth; however, the trend is attracting growing scrutiny over the use of the ESG label and whether the label could be misleading investors

### Investors Increasing Commitment to ESG

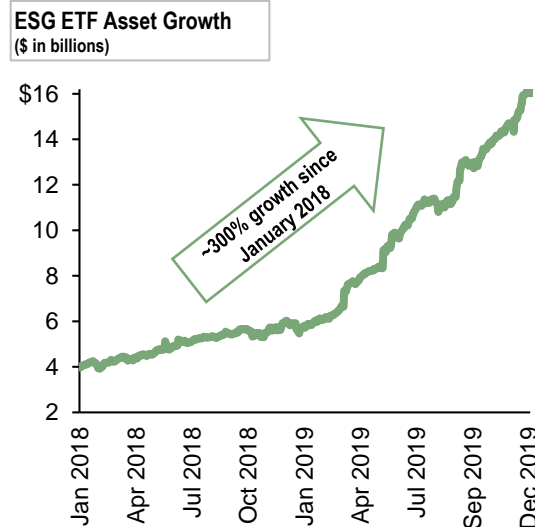
#### The UN Principles for Responsible Investment (PRI)

- Established in 2006, the UN PRI is a pledge from investors to incorporate ESG considerations into the investment process
- In the past two years, ~660 additional asset managers have signed the PRI, bringing the total number of signatories to nearly 2,400, representing ~\$86tn in AUM



#### Assets in ESG ETFs

- Further indication of growing ESG interest can be seen in the growth of related ETF assets; while still a small part of the asset management industry, assets in ESG-related ETFs have quadrupled since the start of 2018



### Growing Scrutiny of the ESG Label

**The Securities and Exchange Commission has sent examination letters to firms as record amounts of money flow into ESG funds.** These funds broadly market themselves as trying to invest in companies that pursue strategies to address environmental, social or governance challenges, such as climate change and corporate diversity. . . .

“This is a relatively new area,” said Betty Moy Huber, co-head of law firm Davis Polk & Wardwell LLP’s environmental, social and corporate governance group. **“Now the SEC is saying, ‘Wait, how do you know these are ESG products and that you don’t have a fossil fuel company with known, poor ESG performance in there?’”**

- Wall Street Journal, “ESG Funds Draw SEC Scrutiny,” December 2019 (emphasis added)

“Thus we arrive at the next problem with using ESG factors: there are no clear standards. . . . **In many instances, ESG reporting has been presented as though it were comparable to financial reporting, but it is not. While financial reporting benefits from uniform standards developed over centuries, many ESG factors rely on research that is far from settled.**”

- Hester Peirce, SEC Commissioner, Remarks at the University of California Fullerton, September 2018 (emphasis added)

## 6 New Statements and Regulations Reshaping Stakeholder Power

The Business Roundtable “Statement on the Purpose of a Corporation” and the SEC’s proxy advisor guidance were two high-profile moves intended to redefine the consideration of various stakeholders in corporate decision-making

<b>“Statement on the Purpose of a Corporation,” August 2019</b>	<b>SEC Proxy Advisor Guidance, November 2019</b>
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- **The Business Roundtable’s statement was the first since 1997 that did not endorse the concept of “shareholder primacy” in corporate decision-making**
- **The statement was signed by 181 CEOs**
- **The statement has not been accompanied by any legislative or regulatory action that would affect the fiduciary duties of Directors**

We commit to:

- **Delivering value to our customers.** We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.
- **Investing in our employees.** This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.
- **Dealing fairly and ethically with our suppliers.** We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.
- **Supporting the communities in which we work.** We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.
- **Generating long-term value for shareholders,** who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

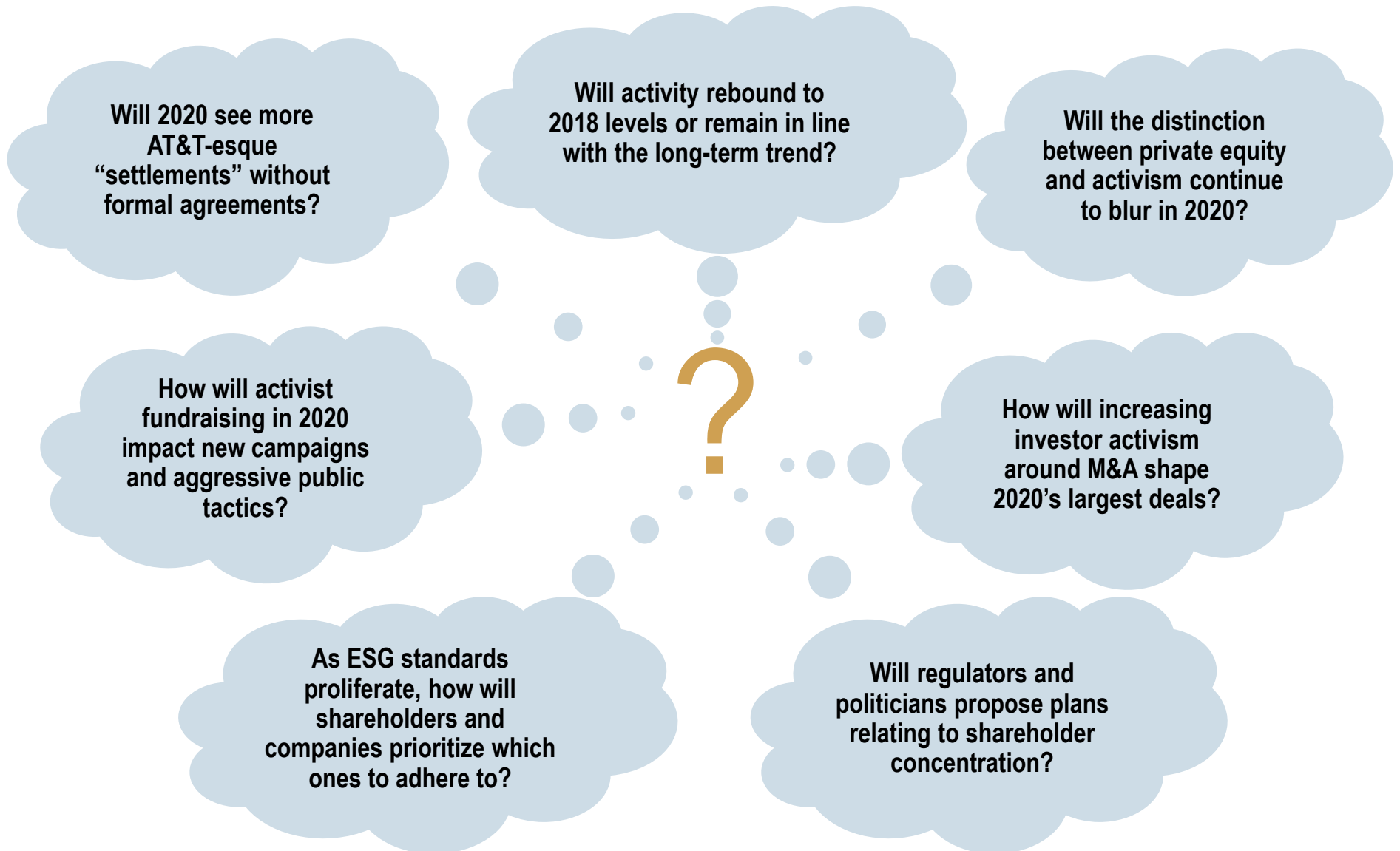
*- The Business Roundtable (emphasis added)*

- **The SEC’s guidance clarified that proxy advisors are subject to anti-fraud rules and should disclose the sources of information they use in arriving at their voting recommendations**
- **The guidance also allows for a review and feedback period for companies to respond to proxy advisor reports and recommendations**
- **In November 2019, ISS announced that it was suing the SEC over its process in arriving at the guidance; ISS claimed that the guidance was issued without the required notice-and-comment period**

**We must recognize that there is a myriad of investor interests and preferences. Many of these interests overlap substantially, such as the thirst for information material to an investment decision.** But there are many others that do not and may be in direct conflict, such as a desire for a company to sell or buy a particular business or undertake a particular study or course of action. . . . **Accordingly, our proxy process, in its components and as a whole, necessarily reflect the need for a rich exchange of information and the need to balance the interests of proponents of shareholder proposals with the interests of their fellow shareholders.**

*- Jay Clayton, “Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System” (emphasis added)*

## Key Questions for Activism in 2020 and Beyond



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