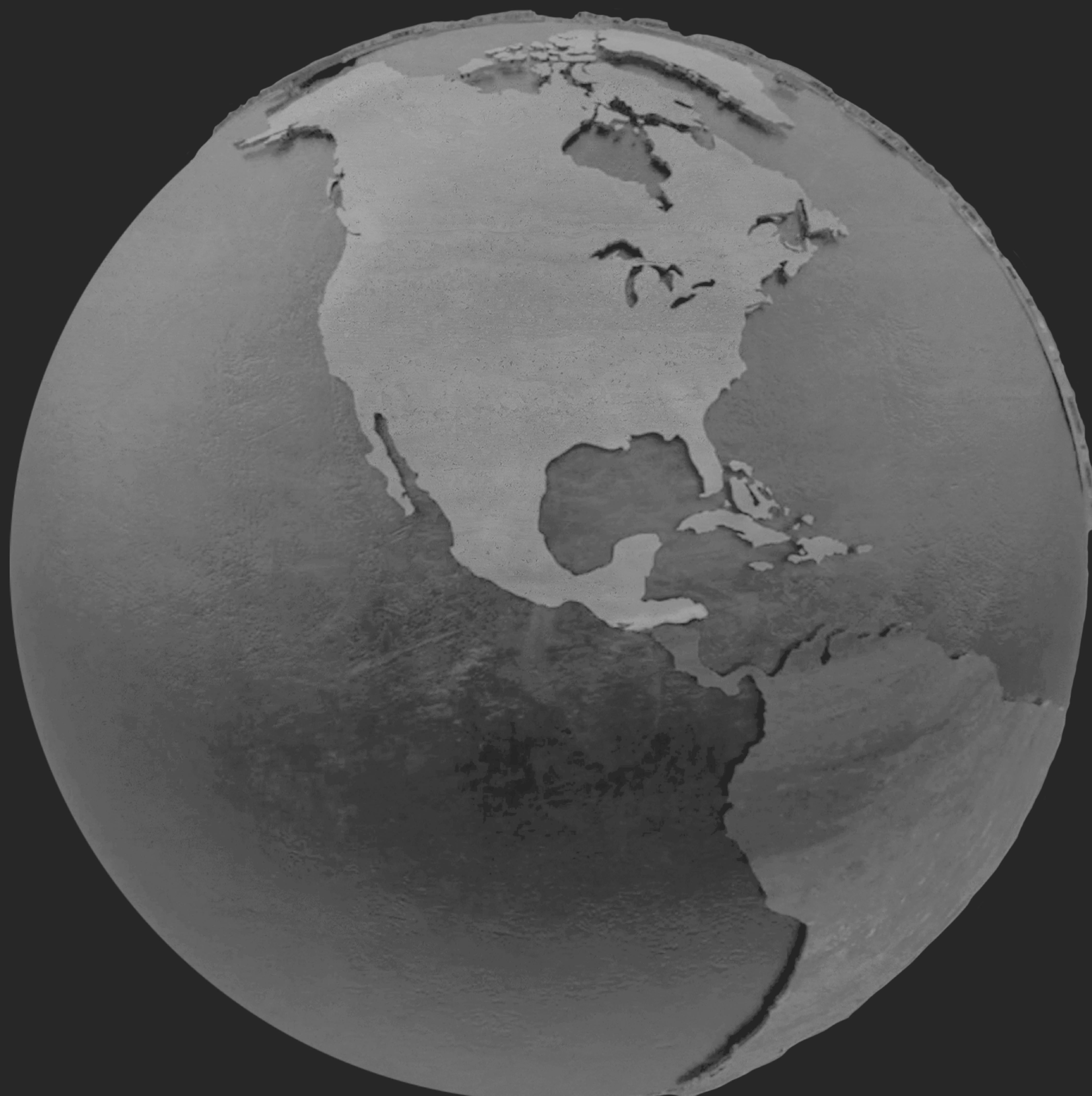
KINGSDALE Advisors



2020

PROXY SEASON REVIEW

CONTENTS

Unless otherwise stated, the source of data used in tables and charts in this report is Kingsdale Advisors, November 30, 2020.
Some percentage charts may not sum to 100% due to rounding.
All dollar figures are expressed in Canadian dollars unless otherwise specified.
Sector data displayed in tables and charts in this report are framed in reference to respective company's four-digit GICS (Global Industry Classification Standard) code.

INTRODUCTION

Where do we begin?

In a year of unprecedented change and uncertainty, the tenets of good corporate governance remained. While issuers have had to adapt the methods, mediums, and matters covered, the fact remains that close and consistent engagement with your shareholders provides a strong foundation for success, especially when shareholder activism is involved.

Throughout the initial part of the pandemic, activists were relatively dormant, presumably to allow companies to weather the storm without further distractions. However, now that a new normal has settled in and companies have adjusted action plans in place, activists are revving their engines betting that companies will conclude that a settlement is preferable during the continued COVID-19 turmoil. With the pandemic expected to last well into 2021, waiting for the end of COVID-19 to restart activist advances is unrealistic. Activists must be activists and sitting on the sidelines doesn't deliver returns.

The numbers show rising levels of shareholder activism. After an overall decline in 2019, we are seeing activism return to 2018 levels as the year progressed and we expect continued growth. In June 2020 alone, we saw nine cases of shareholder activism – nearly a quarter of all contests in the 2020 proxy season and among the busiest months on record – indicating the advent of what we believe is a looming "activist renaissance".

A substantial amount of companies, mostly small and industry-specific (retail, travel and hospitality, food and beverage, and oil and gas), have share prices that have not recovered in line with large caps, making them vulnerable. As we are starting to see, board-related campaigns during what we are referring to as the "COVID Period" (from July 1 to November 30) are targeting small or micro-cap issuers.

We are seeing a trend of contested M&A with public opposition coming out from significant shareholders. Many outcomes are yet to be determined but motives vary from seeking increased offer prices to outright deal rejection.

To be successful in this new normal, companies need to prepare a response that not only addresses activist concerns, but displays a wide-ranging knowledge of options and strategies, and employ the right advisors who aren't afraid to set precedents as opposed to following them.

The most important step in this new world is to ensure that you engage with shareholders and take their concerns seriously. More than anything, the new normal has proven that ignoring a problem and hoping it goes away all but ensures that it will erupt.

We would be remiss if we did not note that we also expect an uptick in non-financial activism such as shareholder pushes and proposals related to climate change and diversity, which we examine in our companion piece, *The New Abnormal: How 2020 Has Changed the Future of Corporate Governance* (October 2020).

As we know, activism is unpredictable in terms of the who/what/when/where – but the why is a constant. We have said it before and will say it again, it is a simple factor of corporations being accountable to their owners. That market dynamic has not changed.

Wes Hall
Executive Chairman
& Founder

Amy Freedman
Chief Executive Officer

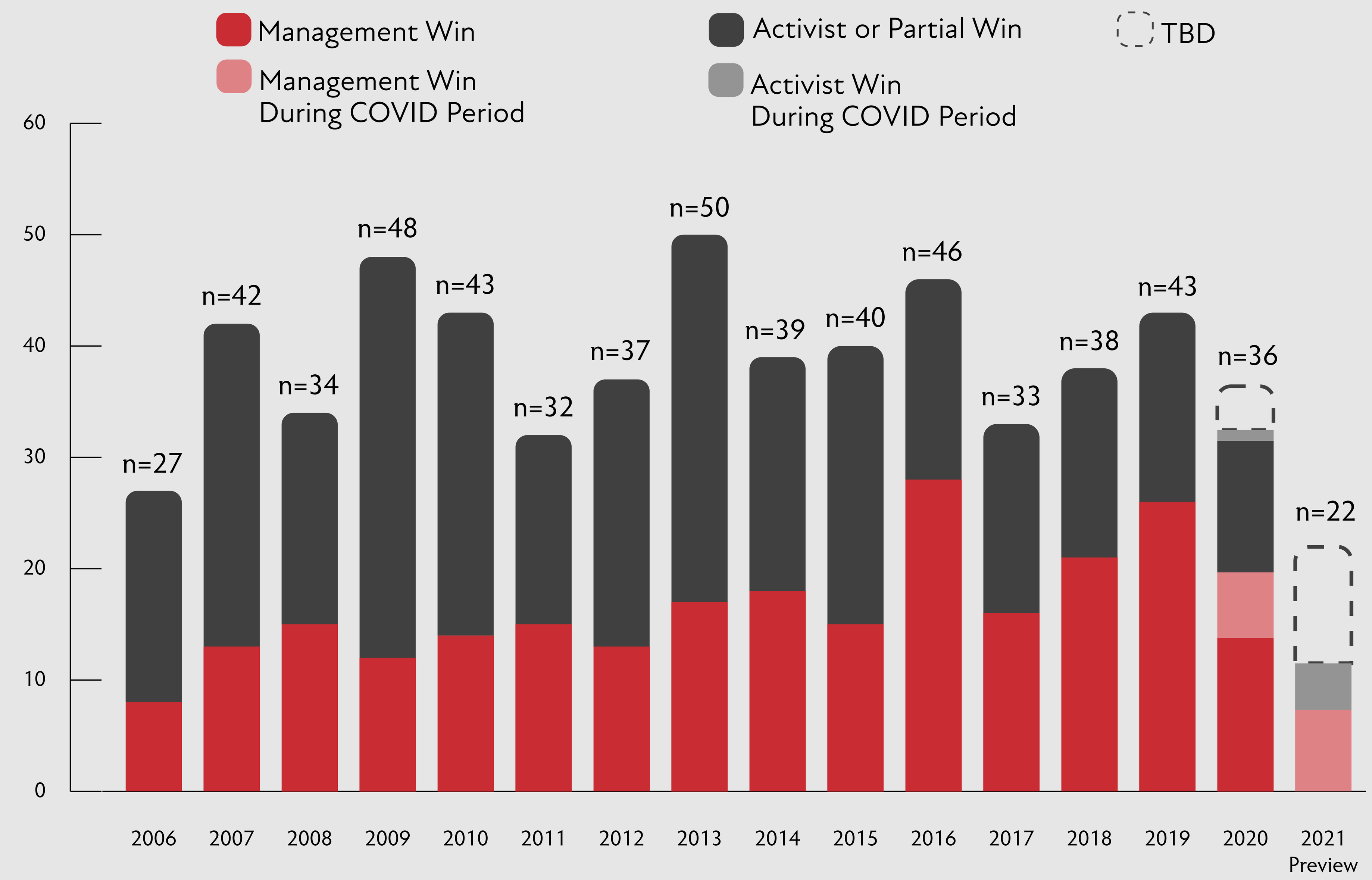
Ian Robertson
President, Canada

PROXY CONTEST OVERVIEW

On a year-over-year basis, 2020 has proven to be a somewhat quieter year as the total number of fights launched decreased by 14%. We believe this can be attributed to two main factors. First, many activists chose to sit on the sidelines in the early part of the pandemic, allowing companies to focus on crisis management to avoid the risk of being criticized for forcing companies to engage in resource and cost-heavy activism. Second, the inability in Canada to hold a virtual contested meeting means some meetings were delayed until later in the year and outside of the 2020 proxy season timeframe. Since holding a virtual contested meeting in Canada was 'virtually' impossible, this may have also been a consideration and impeded the timing of some activist actions.

fig. 1

PROXY CONTESTS IN CANADA (2006-Present)*



Despite a slight dip, 36 contests this proxy season remains within a reasonable range relative to the previous decade (a range of 32 to 50 and an average of 40).

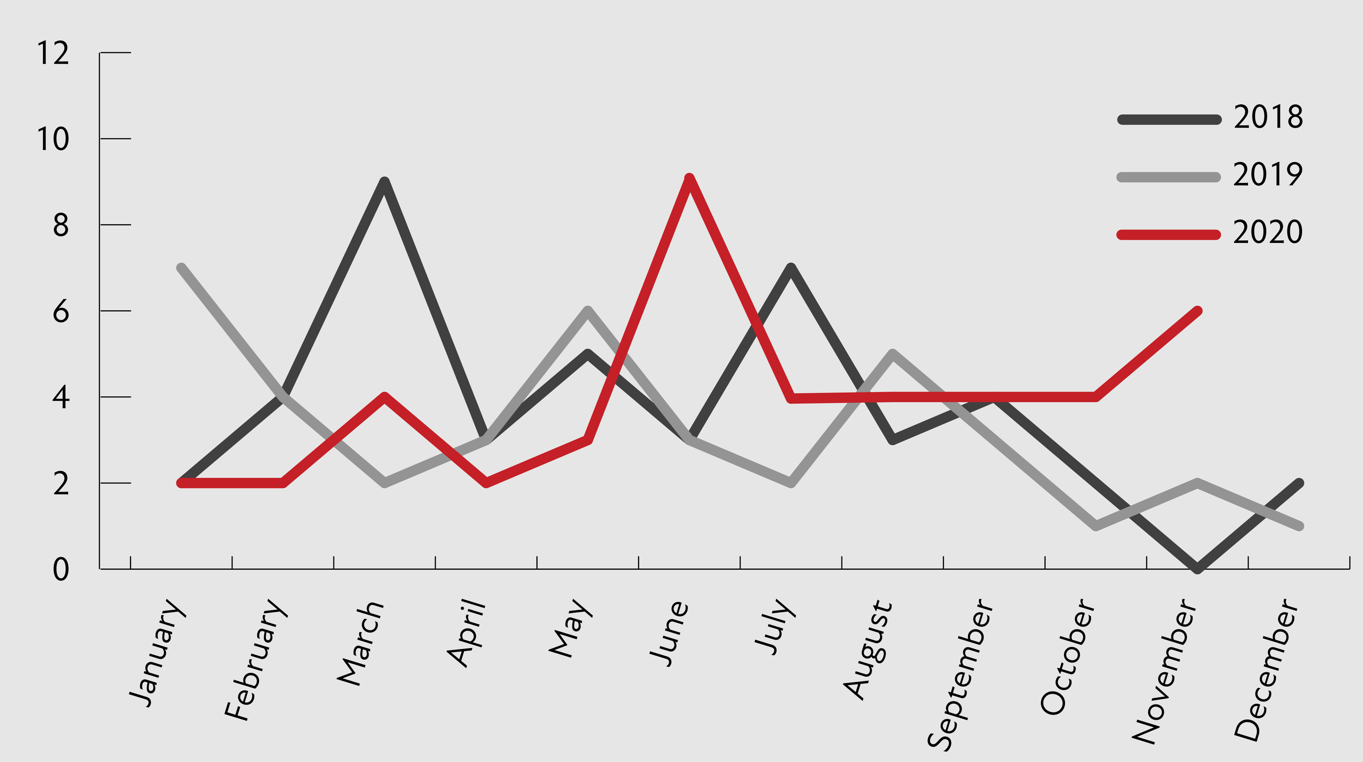
Comparing Canada to the rest of the world[1], the U.S. has seen a 7% year-over-year drop in the number of companies targeted in proxy contests, while the decline is much more pronounced in Australia (50%), and the U.K. (55%).

NO SUCH THING AS ACTIVIST SEASON

Outside of a calendar year-end decline, historically activist timing and behaviour can be unpredictable. Typically, activists will not requisition a meeting until enough time has passed after a company's AGM. After receiving a meeting requisition, companies have 21 days to respond, and can delay a meeting for a prolonged period, sometimes as long as four to five months. Activists have also realized that institutional shareholders prefer to see a long track record of attempts to work constructively with a company before mounting a proxy campaign and that shareholders can be leveraged to help negotiate or pressure for settlements.

fig. 2

NO SUCH THING AS ACTIVIST SEASON



1. *Source: Activist Insight; as measured by the number of activist targets during the first half of each calendar year.*

WE CHANGED OUR TIMEFRAME FOR PROXY SEASON

Given the length and breadth of campaigns, which often start in the fall or winter and conclude in the summer, we have shifted our proxy season timeframe from calendar year-end to a June 30 proxy season end.

Since most companies hold their AGMs or SMs prior to June 30, this new timeframe allows us to more accurately capture the projected end of related activities better than a calendar year-end timeline. It also allows us to capture any short-term activism (advance nominations, proposals related to the election and/or replacement of directors, contested financing, etc.) in line with long-term activism.

Additionally, for Canadian investors that post proxy voting records on an annual basis and for U.S. investors that make annual N-PX filings for proxy voting records, June 30 is also the year-end. The foreign private issuer test is also based on June 30 information.

Figures shown reflect the number of proxy contests launched during a 12-month period between July 1st of the previous calendar year and June 30 of the current calendar year; e.g. the 2020 proxy season covers the period of July 1, 2019 to June 30, 2020. For our 2020 proxy season review, we also show the outcomes of the contests that were launched before June 30, 2020 but concluded during what we define as the COVID Period (the five-month period of July 1, 2020 to November 30, 2020) and marked as "Management Win During COVID" and "Activist Win During COVID". For the partial season of 2021, the figure represents the five-month period of July 1, 2020 to November 30, 2020.

WHAT COUNTS AS A PROXY CONTEST?

We take a very comprehensive view on what is considered a proxy fight, as only a small number of activist actions see a mailed circular and an even smaller number go to a meeting.

We consider a proxy fight to have been initiated when an activist shareholder (or group of shareholders) in opposition to management:

- Makes a public filing of its activist intent (through a planted news story, a press release, or a 13D);
- Requisitions a shareholder meeting;
- Publicly announces an intention to nominate alternate directors;
- Solicits alternative proxies;
- Conducts a "vote no" campaign on either the election of directors or M&A transactions; or
- Announces the intention to launch a hostile takeover bid, regardless of whether a vote or the hostile bid actually takes place, as long as the opposition is publicly known.

In other words, if a shareholder publicly says it has targeted you, we consider the fight to be on.

Our proxy contest data captures the campaigns that served as tools to drive change for activists seeking board representation, changing board composition, catalyzing changes in strategy or in capital allocation, urging a sale or break-up of the company or other value-enhancing transactions, blocking a board-approved transaction, or making a hostile bid, among other dissenting actions.

WHAT COUNTS AS A WIN?

For activists seeking board representation, a win is defined as achieving the majority of their objectives. For example, an activist asks for three board seats and receives two. If an activist receives any of its asks, it is considered a partial win. Conversely, a management win means an activist receives nothing.

In cases of a hostile bid, if the target's board is successful in fending off the bid or increasing the value of the offer and reaching a friendly deal, we consider that a win for management (and shareholders). In cases of a friendly transaction, an activist win is defined as the activists successfully blocking the transaction.

ACTIVISM BACK ON THE RISE

While there were fewer activist campaigns in the first five months of the 2020 calendar year, with only 13 contests launched compared to 22 and 23 in each of the previous two years, we saw a three-year high of nine contests launched in June. While the record pace was not sustained in the following months, we saw an average of four contests initiated each month between July and November for a total of 22 contests over the period, which was higher than 2019 over the same period.

Between March 14, when the Canadian government announced the state of emergency, and November 30, the total number of proxy contests launched was 39, representing a 44% increase over the same period last year, and 18% higher than the 2018 level.

2021 PREVIEW
PROXY FIGHTS CONCLUDED DURING THE COVID PERIOD
(July 1–November 30, 2020)

Of the six 2020 proxy contests that were concluded during the COVID Period, four were board campaigns where board seats were the primary activist demand. The activists won the contest against Australis Capital Inc. by gaining all five demanded seats at the company's November meeting, while management won the other three contests:

- It is worth noting the contested situation involving DeepRock Minerals Inc. (CSE: DEEP) where the activist Yeshivas Limudei Hashem Society (YLHS) demanded replacing three of five incumbent directors through a meeting requisition. On October 30, it was reported that YLHS had sold its entire share ownership in the company. Therefore, while there was no settlement, this contest did not go to a vote.
- The situation with Happy Creek Minerals Ltd. (TSX: HPY) involved White Tiger Venture Group LLC, which sought to replace the entire board. The activist never filed a proxy for the meeting in August and all of management's nominees were elected.
- The only contest that went to a vote was Turquoise Hill Resources Ltd. (TSX TRQ), a controlled company, where activist Pentwater Capital Management LP ("Pentwater") sought one board seat and a proposal providing minority shareholders the exclusive right of nominating and electing independent directors. The nomination was ultimately defeated, receiving just 35.39% of votes cast in favour. However, on November 30, Pentwater sent an open letter to the Rio Tinto board, calling it to address corporate governance issues and "oppressive actions" against Turquoise Hill's minority shareholders.

GEOGRAPHY*

(Excluding non-public campaigns)

2020 PROXY SEASON
(July 1, 2019 to June 30, 2020)

British Columbia (11)

CANFOR CORP.	Vancouver	$1.93B
CASCADERO COPPER CORP.	Vancouver	$3.89M
COBALT 27 CAPITAL CORP.	Vancouver	$349M
COPPER NORTH MINING CORP.	Vancouver	$1.72M
DEEPROCK MINERALS INC.	Vancouver	$248K
DESTINY MEDIA TECHNOLOGIES INC.	Vancouver	$10.53M
HAPPY CREEK MINERALS LTD.	Vancouver	$8.42M
MGX MINERALS	Vancouver	$12.63M
SELECT SANDS CORP.	Vancouver	$3.46M
SIERRA WIRELESS INC.	Richmond	$347M
TECK RESOURCES LTD.	Vancouver	$6.54B

Alberta (5)

AURWEST RESOURCES CORP.	Calgary	$387K
CALFRAC WELL SERVICES	Calgary	$26.9M
ENCANA	Calgary (Now Denver, CO)	$6.79B
TIDEWATER MIDSTREAM	Calgary	$344M
TOP STRIKE RESOURCES CORP.	Calgary	$463K

Other (U.S.)* (1)

AUSTRALIS CAPITAL INC.	Las Vegas, NV	$39.08M

** Australis is Canadian incorporated but headquartered in the U.S.*

Ontario (14)

AIMIA INC.	Toronto	$374M
ALPHA GROUP INDUSTRIES INC.	Toronto	Nano
BRAMPTON BRICK LTD.	Brampton	$66M
CORNERSTONE CAPITAL RESOURCES	Ottawa	$117M
DEALNET CAPITAL CORP.	Toronto	$17M
EVIANA HEALTH	Toronto	$8.84M
GUYANA GOLDFIELDS	Toronto	$140M
HUDSON'S BAY COMPANY	Brampton	$1.89B
JUST ENERGY CORP.	Toronto	$338M
OPTIVA INC.	Mississauga	$245M
RESTAURANT BRANDS INTERNATIONAL INC.	Toronto	$34.3B
SHERRITT INTERNATIONAL CORP.	Toronto	$42M
STAR NAVIGATION SYSTEMS GROUP	Brampton	$21M
TOREX GOLD RESOURCES	Toronto	$1.49B

Quebec (3)

BOMBARDIER	Montreal	$1.29B
TRANSAT A.T.	Montreal	$452M
TURQUOISE HILL RESOURCES	Montreal	$1.05B

COVID PERIOD
(July 1, 2020 to November 30, 2020)

British Columbia (5)

CASCADERO COPPER CORP.*	Vancouver	$5.8M
DECISIVE DIVIDEND CORP.	Vancouver	$17.7M
DESTINY MEDIA TECHNOLOGIES INC.*	Vancouver	$10.5M
KNIGHTHAWK INC.	Vancouver	$400K
MIDAS GOLD CORP.	Vancouver	$569.6M

Alberta (5)

BONTERRA ENERGY CORP.	Calgary	$50.4M
MELCOR REAL ESTATE INVESTMENT TRUST	Edmonton	$65.4M
PESORAMA INC.	Calgary	Private Company
RIFCO INC.	Red Deer	$20.3M
ROCKY MOUNTAIN DEALERSHIPS INC.	Calgary	$136.1M

Saskatchewan (1)

KARNALYTE RESOURCES INC.	Saskatoon	$7.38M

Manitoba (1)

ARTIS REAL ESTATE INVESTMENT TRUST	Winnipeg	$1.08B

Ontario (7)

BLACKBERRY LTD.	Waterloo	$3.6B
CF ENERGY INC.	Markham	$37.3M
GMP CAPITAL INC.	Toronto	$132.7M
GREAT CANADIAN GAMING CORP.	Toronto	$2.15B
MEDIA CENTRAL CORP.	Toronto	$3.1M
OPTIVA INC.*	Mississauga	$269M
TORSTAR CORP.	Toronto	$58.6M

Quebec (3)

COGECO COMMUNICATIONS INC.	Montreal	$5.48B
DOREL INDUSTRIES INC.	Westmount	$470.9M
MASON GRAPHITE INC.	Laval	$39.5M

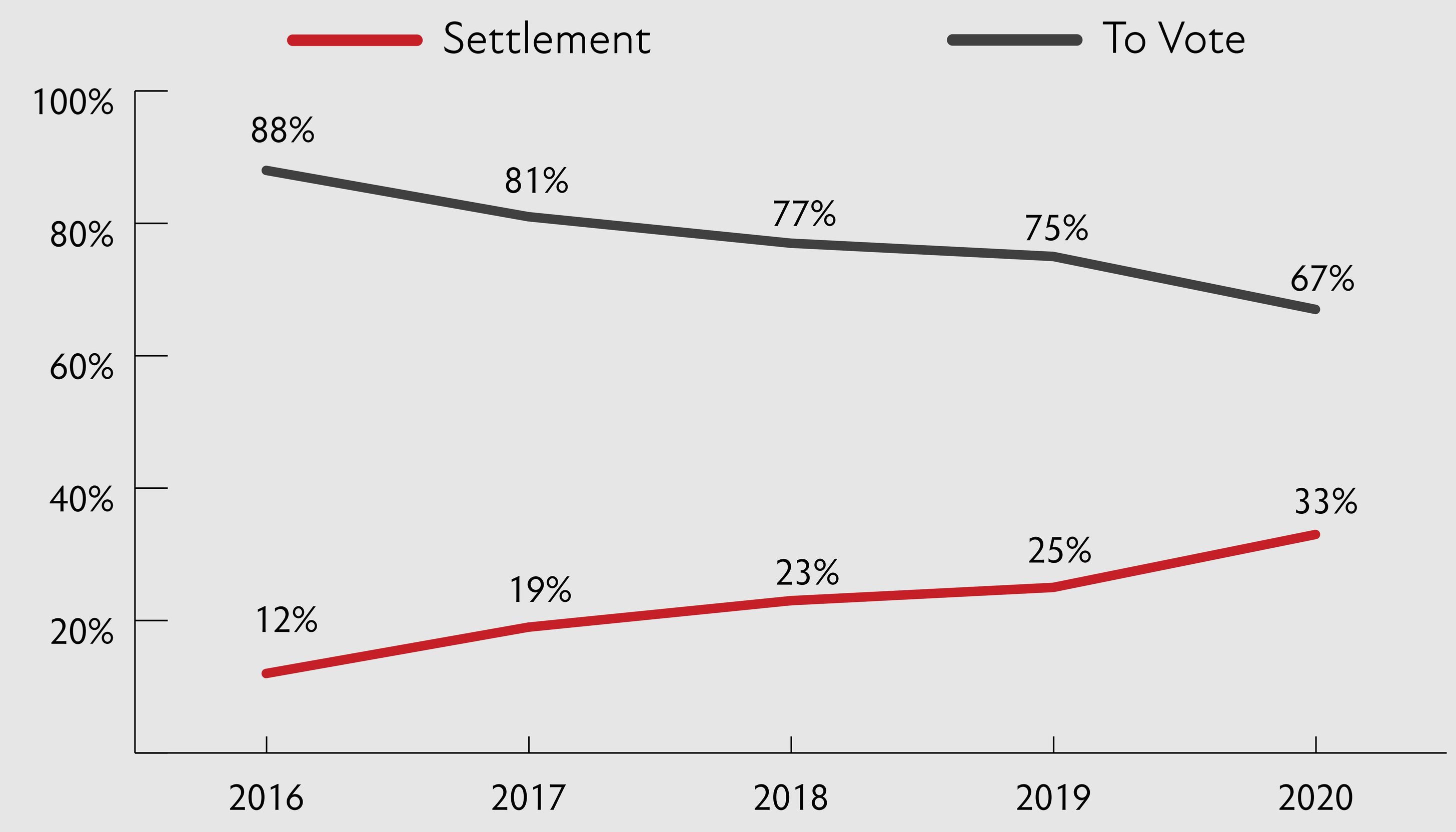
PROPORTION OF SETTLEMENTS vs VOTES

Settlements continue to increase as they exceeded 30% for the first time, and the rate of settlement is even higher as many activist situations settled behind the scenes before the contests went public (hence excluded from our statistics).

The trend of rising settlements is a result of boards increasingly understanding the financial and reputational damage that proxy contests can cause and becoming more open to change and less willing to blindly follow underperforming management. Unlike in the past, the rising transparency across Canadian markets and costs of a contested vote and ongoing PR campaigns make settlements an increasingly attractive option for all parties. Importantly, we note that directors are more inclined to settle with an activist if they think a shareholder vote might produce a worse outcome for the board. As such, a sophisticated vote projection with scenario analysis will be instrumental to a board's decision on whether to settle and on what terms. Activists will do a similar calculated move and only push for a full contest if reasonable settlement cannot be reached. In many situations, threatening a full contest is a tactic to get more favourable terms of settlement.

fig. 3

PROPORTION OF CONTESTS THAT LEAD TO SETTLEMENT vs VOTE*



SEAT GAINS
Voting vs Settlements

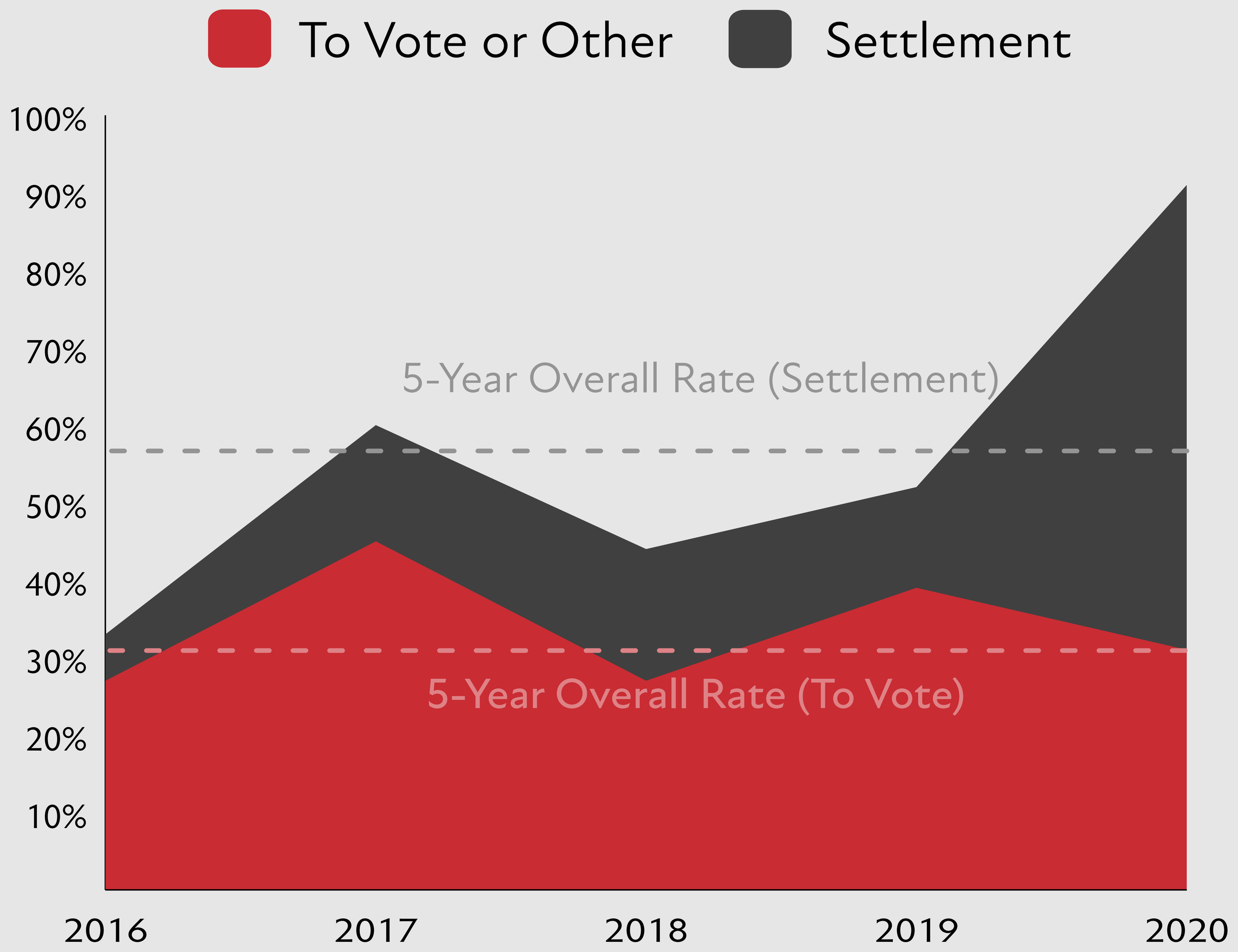
Although the sample size is relatively small, our data suggests that settlements provide a greater yield of board seats compared to a vote (settlements gained 58% of requested seats vs 33% over the past five years). The prohibitive cost of a lengthy campaign and the issuer-side aggravation in providing a framework and materials for a contested meeting make settlement concessions more probable – not to mention scenarios where the board has concluded even more seats could be won by an activist if they allowed a vote to occur.

As elaborated in the sidebar on page 2, among the 2020 proxy contests that were concluded during the COVID Period, none were settled and two (Turquoise Hill vs Pentwater Capital and Australis Capital vs concerned shareholders) went to a vote, with activists gaining all five requested seats at Australis Capital but none at Turquoise Hill.

As a 2021 preview, among the seven concluded board campaigns initiated during the first five months of the 2021 proxy season (July 1 to November 30, 2020), two were settled (Artis REIT vs Sandpiper Group and Media Central Corp. vs concerned shareholders) with the activists gaining a total of eight of nine requested seats (or 89%), which is in line with what we saw during the 2020 proxy season. The board seats gained as a percentage of requested for the other five contests were less than 20% (four of 23 or 17%) with the activist winning only one of these contests.

fig. 4

BOARD SEATS GAINED
Voting vs Settlement (2016–Present)*



BOARD SEATS GAINED
(2016–Present)

fig. 5

Voting or Other *

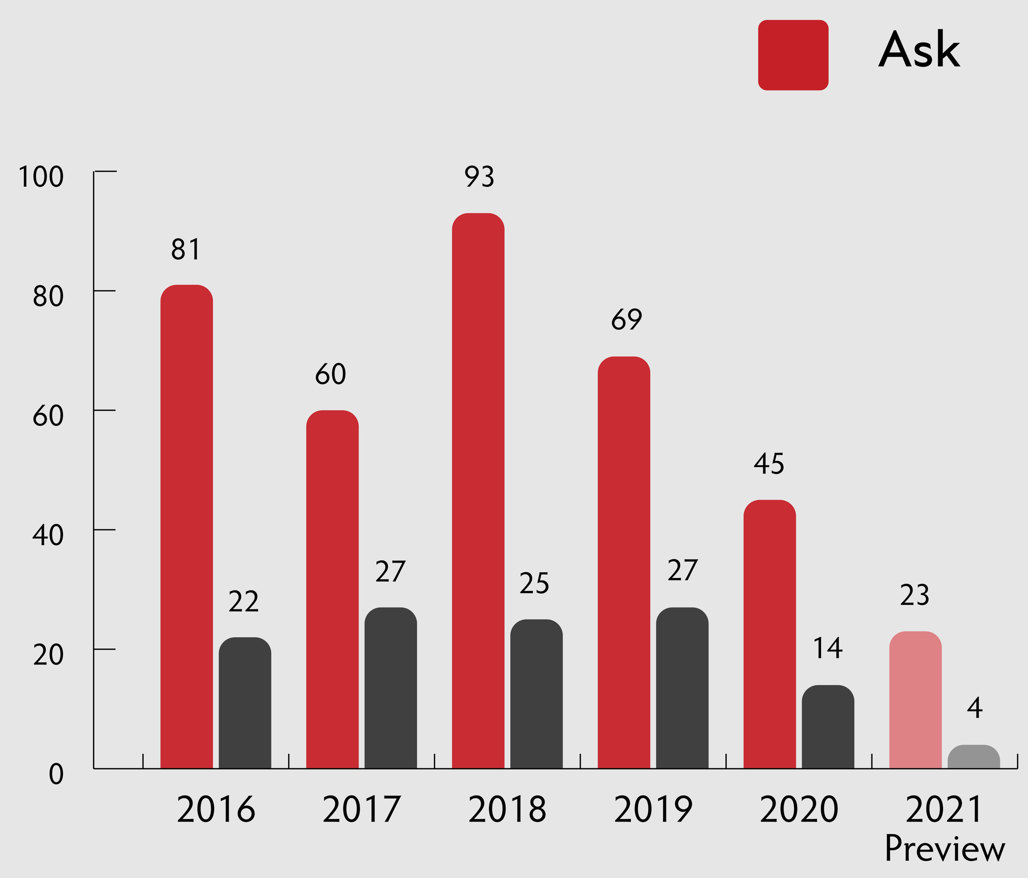
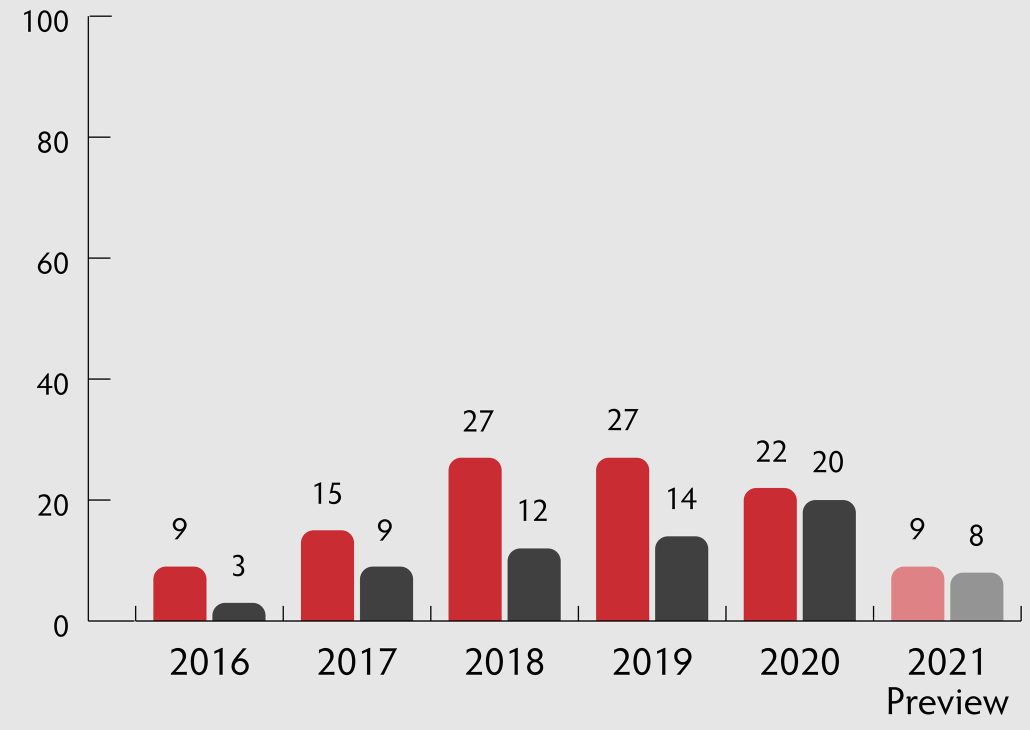


fig. 6

Settlement *



WHOSE SIDE ARE THEY ON?

Institutional Shareholders

It used to be a foregone conclusion that, in contested situations, the larger fund managers would automatically support management. However, in recent years, the data seems to suggest that they are becoming more open to supporting activists.

In the last year, the top 100 global fund managers supported activists – at least partially and at times fully – 36% of the time in contested situations. Clearly asset managers understand the leverage they have and will hold management accountable when they underperform.

TOP 100 GLOBAL INVESTMENT MANAGERS' VOTING RECORDS (2012-2020)

INVESTMENT MANAGERS	TOTAL MEETINGS	MEETINGS VOTED WITH MANAGEMENT	MEETINGS VOTED WITH ACTIVIST	MEETINGS VOTED ALL ACTIVIST	% VOTED WITH MANAGEMENT	% VOTED WITH ACTIVIST	% VOTED ALL ACTIVIST
Top 10	1,809	1,258	551	256	69.54%	30.46%	14.15%
Top 25	3,769	2,444	1,325	606	64.84%	35.16%	16.08%
Top 50	6,147	3,788	2,359	1,051	61.62%	38.38%	17.10%
Top 100	9,331	5,775	3,556	1,604	61.89%	38.11%	17.19%
All	18,106	11,561	6,578	3,086	63.85%	36.33%	17.04%

TOP 100 GLOBAL INVESTMENT MANAGERS' VOTING RECORDS (2020 Proxy Season)

INVESTMENT MANAGERS	TOTAL MEETINGS	MEETINGS VOTED WITH MANAGEMENT	MEETINGS VOTED WITH ACTIVIST	MEETINGS VOTED ALL ACTIVIST	% VOTED WITH MANAGEMENT	% VOTED WITH ACTIVIST	% VOTED ALL ACTIVIST
Top 10	103	59	44	14	57.28%	42.72%	13.59%
Top 25	220	117	103	37	53.18%	46.82%	16.82%
Top 50	330	161	169	61	48.79%	51.21%	18.48%
Top 100	460	229	231	91	49.78%	50.22%	19.78%
All	540	265	275	119	49.07%	50.93%	22.04%

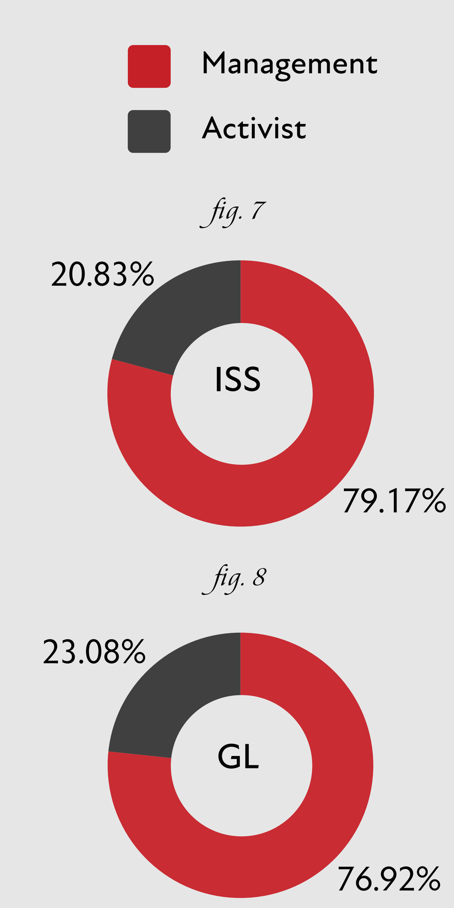
Proxy Advisors

Support for activists from the two leading proxy advisors, Institutional Shareholder Services Inc. ("ISS") and Glass, Lewis & Co., LLC ("GL"), is not always forthcoming and relies upon a persuasive and measured narrative in the face of an oppressive or incompetent regime. As we can see, their recommendations historically tend to favour management's position.

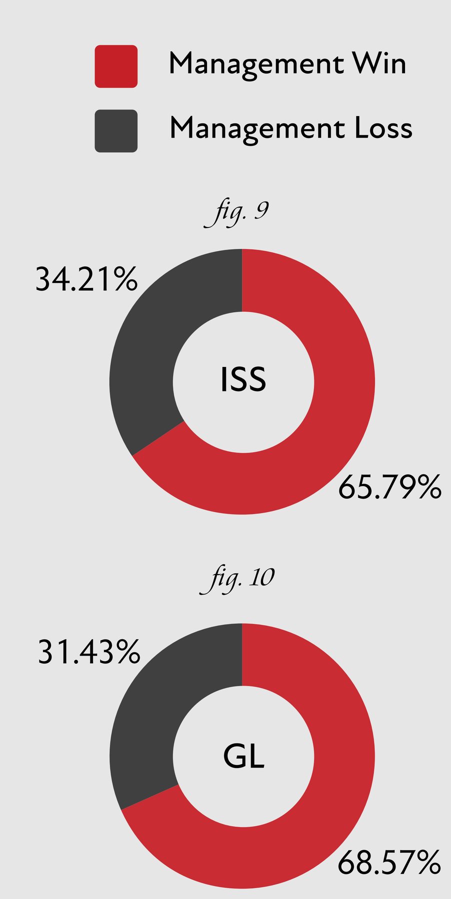
As the majority of recommendations made are in favour of management, it follows that ISS and GL's influence are likely to help carry the day in management's advantage. However, certain circumstances, such as joint actors, poor communications, or emotional responses from shareholders, contribute to a departure from the traditional advice from proxy advisors.

We consider ISS and GL to have recommended in favour of activists if they support a majority of the activist's slate in a board-related campaign. Otherwise, we consider the two proxy advisors to have sided with management. In a transaction-related campaign, we consider ISS and GL to have sided with management if they supported the transaction recommended by management.

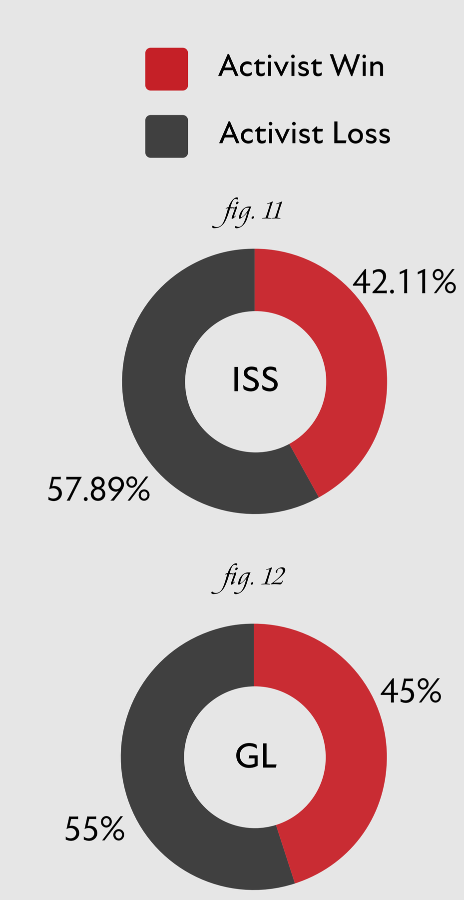
RECOMMENDATIONS 2016–Present *



CORRELATION OF MANAGEMENT RECOMMENDATION TO WIN 2016–Present *



CORRELATION OF ACTIVIST RECOMMENDATION TO WIN 2016–Present *

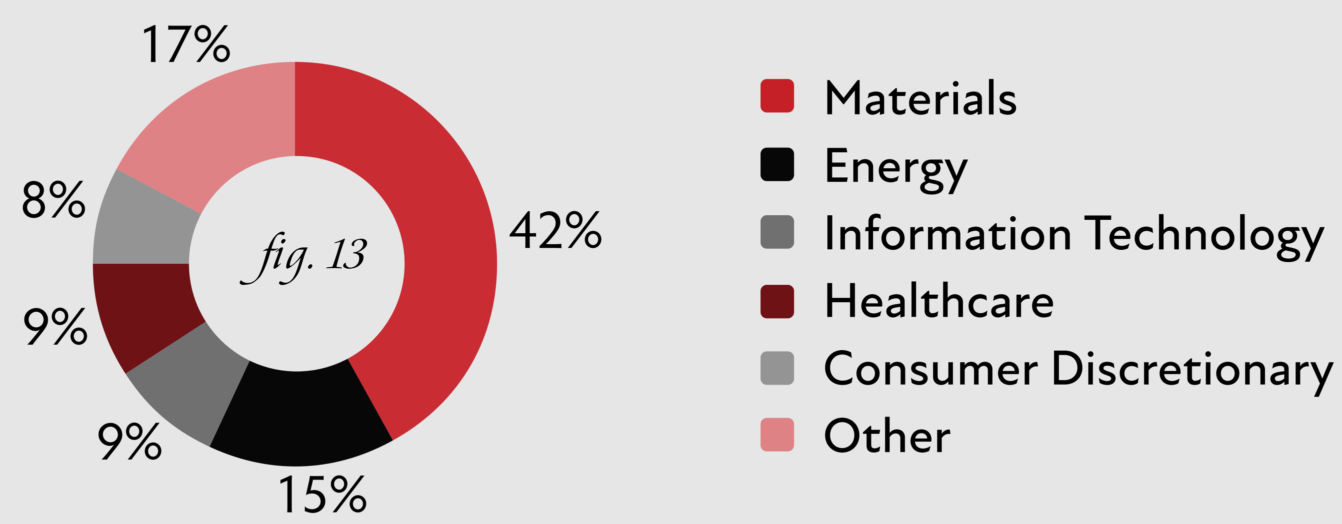


MOST ACTIVE SECTORS

As expected for a primarily extractive economy like Canada, Materials remains the largest target sector when compared against all others. While there is some variability, depending upon the year, Energy is the second largest target sector. We recognize that the Healthcare sector has experienced a significant boom in recent years, attributed to the emergence of the Cannabis industry in Canada. However, it seems like the Cannabis industry honeymoon period of M&A and power seizing has slowed considerably following a tumultuous 2019. As an activist's goal is to pursue a strategy that maximizes shareholder value, activists may not be willing to deploy capital in sectors where companies are significantly tied to depressed oil prices, or sectors that are severely affected by COVID-19 – there are few pathways to success.

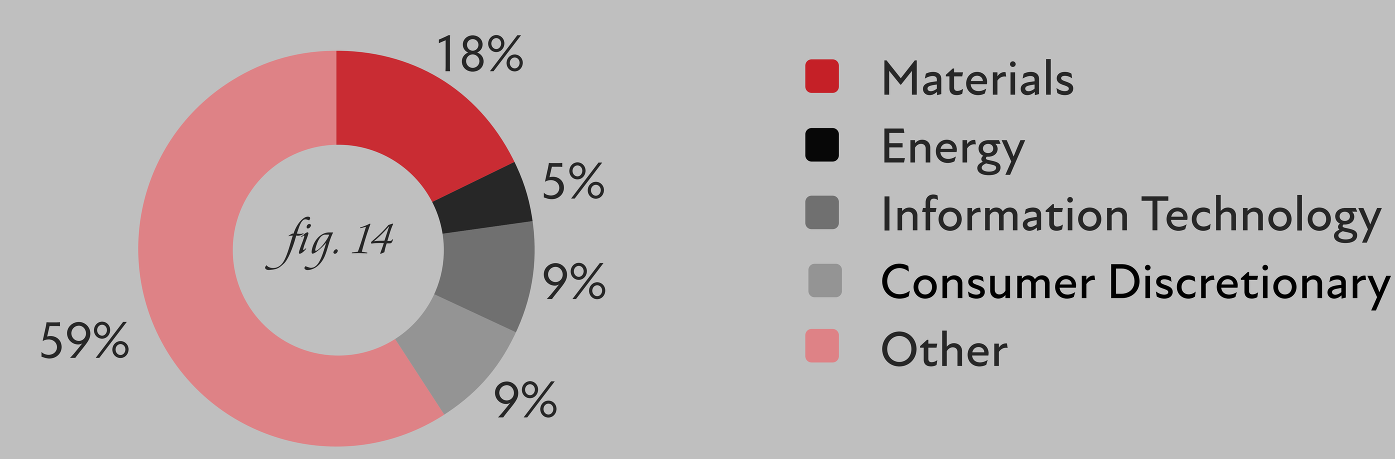
As noted earlier, the evidence based upon the contests launched during the COVID Period shows that no one will be safe in the 2021 proxy season. Almost all sectors have seen activism in the early months with the only exception being Healthcare. Most notably, we have seen four contests launched targeting communication services companies, the highest in five years. This includes two transaction-related campaigns targeted at Torstar Corp. and Cogeco Communications Inc., as well as two board-related campaigns targeted at Destiny Media Technologies and Media Central Corp.

BREAKDOWN OF MOST ACTIVE SECTORS (2016–2020)*



2021 PREVIEW – MOST ACTIVE SECTORS

(COVID Period: July 1–November 30, 2020)*



While the sample size is relatively small (n=22), it is worth noting that the contests launched during the COVID Period targeted a much wider range of sectors than what we have typically seen in the past, as the five most active sectors subject to activism in the past five years (i.e. Materials, Energy, IT, Healthcare, and Consumer Discretionary) only accounted for 41% of the activism during this period compared to an average of 83% for the last five years.

fig. 15

NUMBER OF PROXY FIGHTS BY SECTOR (2016–2020)*

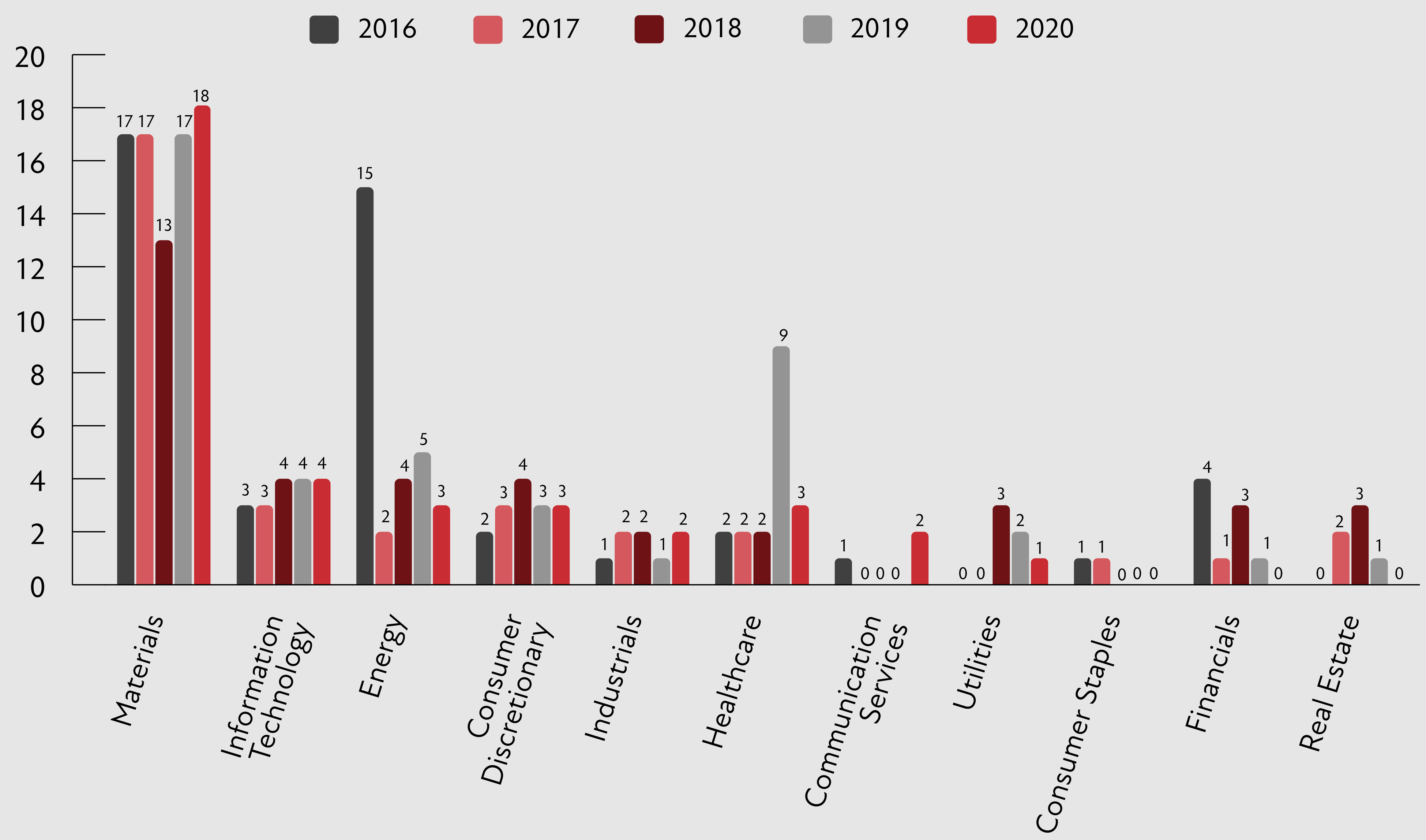
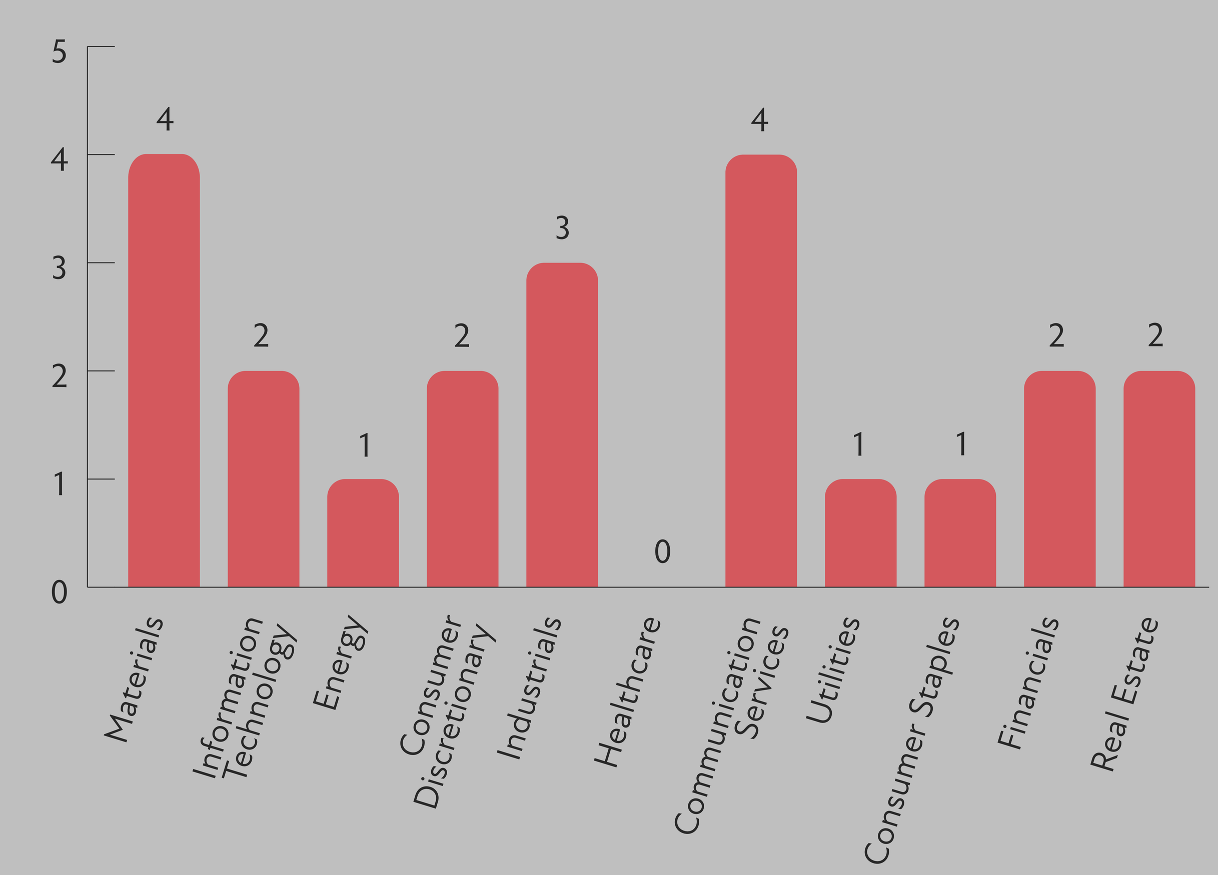


fig. 16

2021 PREVIEW – PROXY FIGHTS BY SECTOR

(COVID Period: July 1-November 30, 2020)*

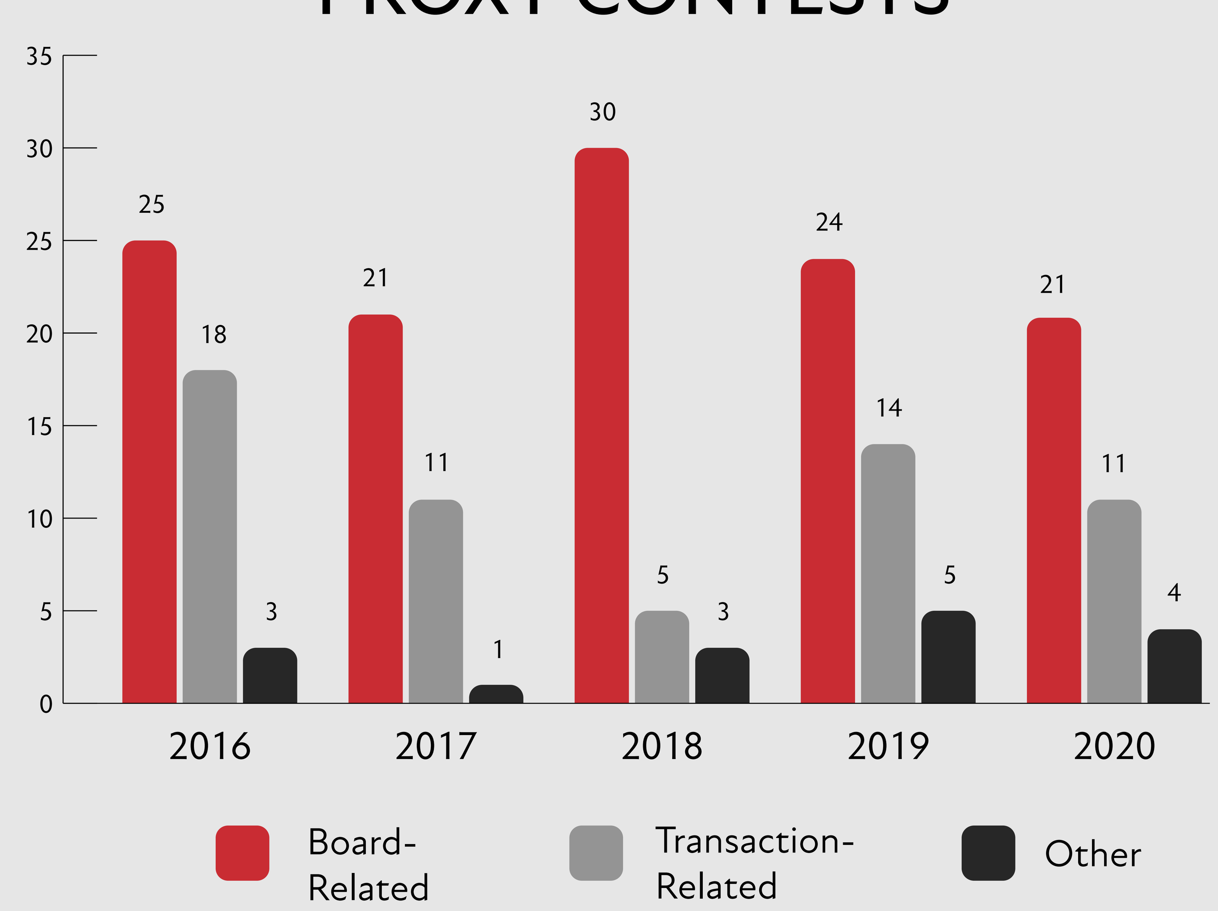


ACTIVIST OBJECTIVES

Consistently over the past five years, board-related proxy contests have remained the most common form of activism, with almost two-thirds of cases revolving around gaining board seats. Board-related activism is a relatively low-cost/high-yield mechanism for gaining or increasing strategic control of public companies compared to transaction-based activism.

fig. 17

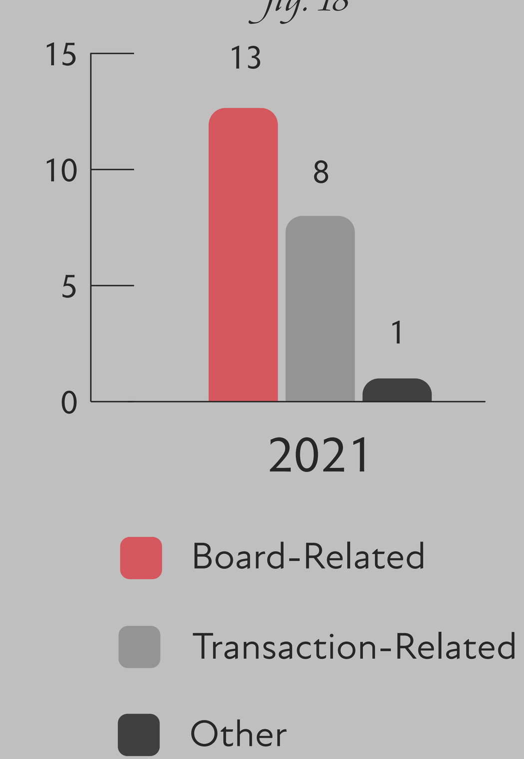
BOARD- vs TRANSACTION-RELATED PROXY CONTESTS*



2021 PREVIEW – CONTEST OBJECTIVES

(COVID Period: July 1–November 30, 2020)*

fig. 18



During the COVID Period, we are seeing a rise of transaction-related campaigns (n=8), which represent 36% of all contests launched during this period vs an average of approximately 30% for the previous five seasons, including three in the month of November alone where the go-private transactions at Dorel Industries Inc., Rocky Mountain Dealerships Inc., and Great Canadian Gaming Corp. are all facing public opposition by shareholders.

ACTIVIST SLATE TYPE

While the majority of proposed slates in board-related contests remain a whole or majority slate (65% of the board-related campaigns where director nomination is the primary objective), the proportion of minority slates increased this season (35%) compared to last (29%), marking the highest rate over the most recent five proxy seasons.

Deciding which slate type to use is pivotal to an activist's strategy. In cases where there is a large institutional shareholder base, activists need to consider the proxy advisory firms' frameworks when building their slates. For example, a majority slate will require a detailed activist business plan in addition to a management transition plan, whereas a minority slate will require a less stringent threshold.

It is worth noting that activists who asked for a whole or majority slate tend to target small or nano-size issuers. For 2020, the average market cap size – measured at the launch of proxy contests – of companies hit by an activist's whole or majority slate was about $50 million. One explanation is that the proxy advisors tend to have very limited influence at these companies, and activists that have asked for whole/majority slates do not have the burden of developing a compelling business plan. Hence, this strategy – start high then bid down as needed in accordance with campaign progress and settlement negotiations – can often yield good results.

Contrary to what we have seen in the rise of minority slates during the 2020 proxy season, all board-related campaigns during the COVID Period utilized either a majority or whole slate. In our view, this is largely a function of the companies targeted in these campaigns since all 13 are small or micro-cap issuers with an average market capitalization of approximately $30M.

fig. 19

ACTIVIST SLATE TYPE *

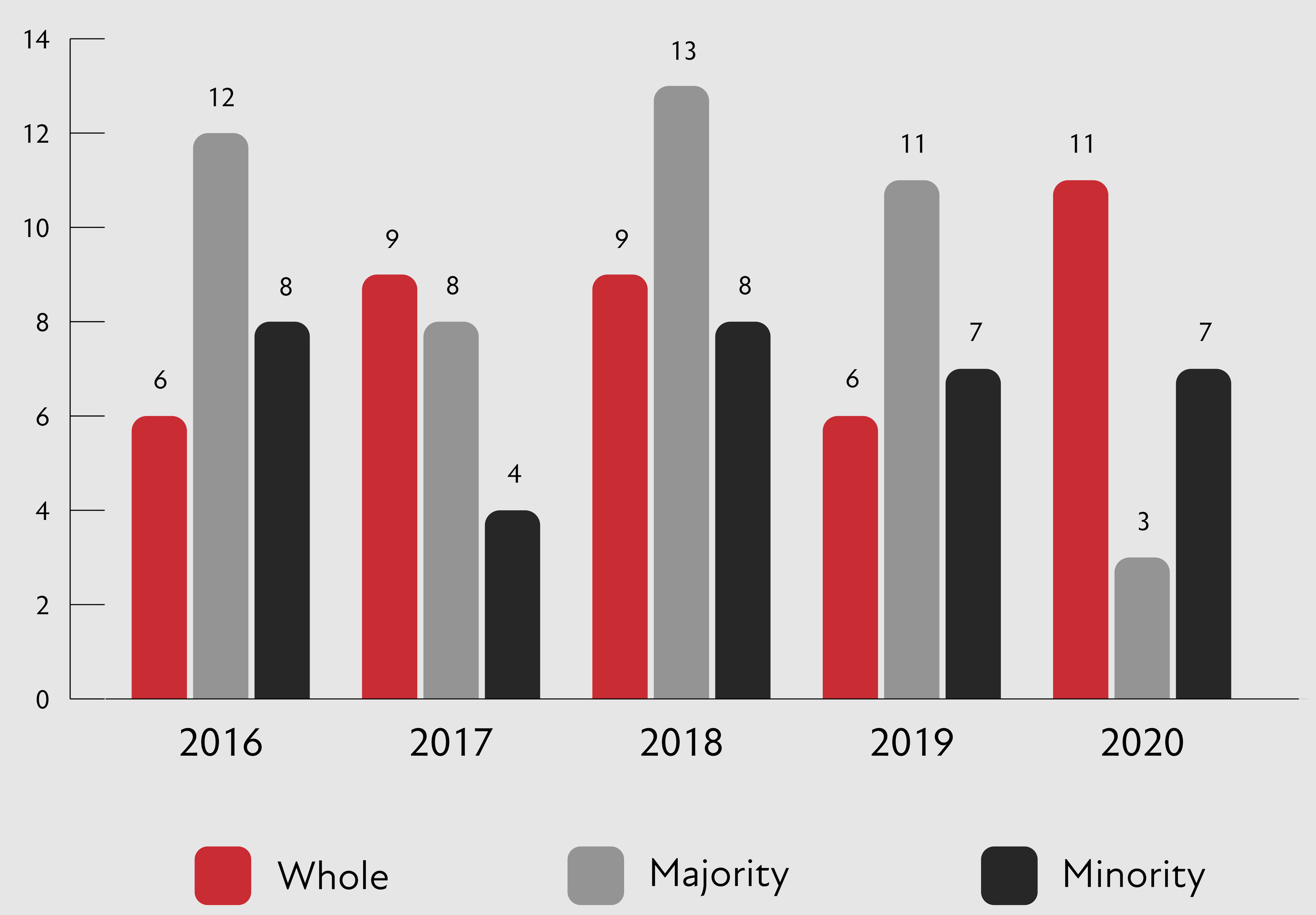
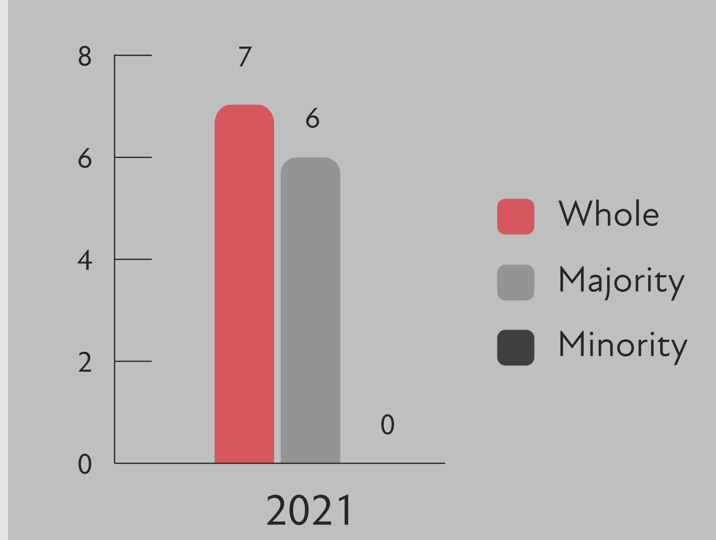


fig. 20

2021 PREVIEW – SLATE TYPES

(COVID Period: July 1– November 30, 2020) *



ACTIVISM DURING COVID-19

PERCEPTION OF ACTIVISM

At the start of the pandemic, as companies globally navigated through uncharted environments and were forced to focus on keeping the lights on, an activist attack would likely have been perceived as tone-deaf. As we enter a new world, activists have had the opportunity to better assess who underperformed and is vulnerable, namely those who have thus far mismanaged the crisis, providing openings for activists to attack.

IMPROVING SHAREHOLDER VALUE

Arguing that your activism is an attempt to enhance shareholder value for all would have been a tough sell at the outset of the pandemic when even the best companies were left reeling and management was struggling to respond. With companies focused on business continuity and staying afloat, shareholder activism would have been easily positioned as impeding. Activists would have been hard-pressed to prove that their actions would add value at that stage, and it would likely have been very challenging to sway support in their favour unless the targets have a history of underperformance or problematic governance practices before the pandemic. Now that a path forward is in sight, activist investors can point towards ways that they can increase value.

NORMALIZING VIRTUAL BUSINESS

Just as companies have relied on new technologies and methodologies to move forward and maintain profitability, activists have also learned new tricks to drive the change they seek. The rapid adoption of virtual communication technologies allows activists to have an extended reach and enhanced coordination amid a landscape of normalized digital engagement. Video conferencing has become widely adopted making it easier and cheaper to connect than in-person meetings, not to mention more effective. In fact, this simple and low-cost way to unite may present a new advantage for activists.

SURVIVAL OF THE FITTEST

Asset sales, M&A activity, and balance sheet restructuring are all on the table to maintain or maximize value. Companies that do not consider these alternatives are at a greater risk of shareholder activism. Companies need to show that they have a grasp on the available options and, more importantly, they can discern which will best drive the business moving forward.

BETTING ON A SETTLEMENT

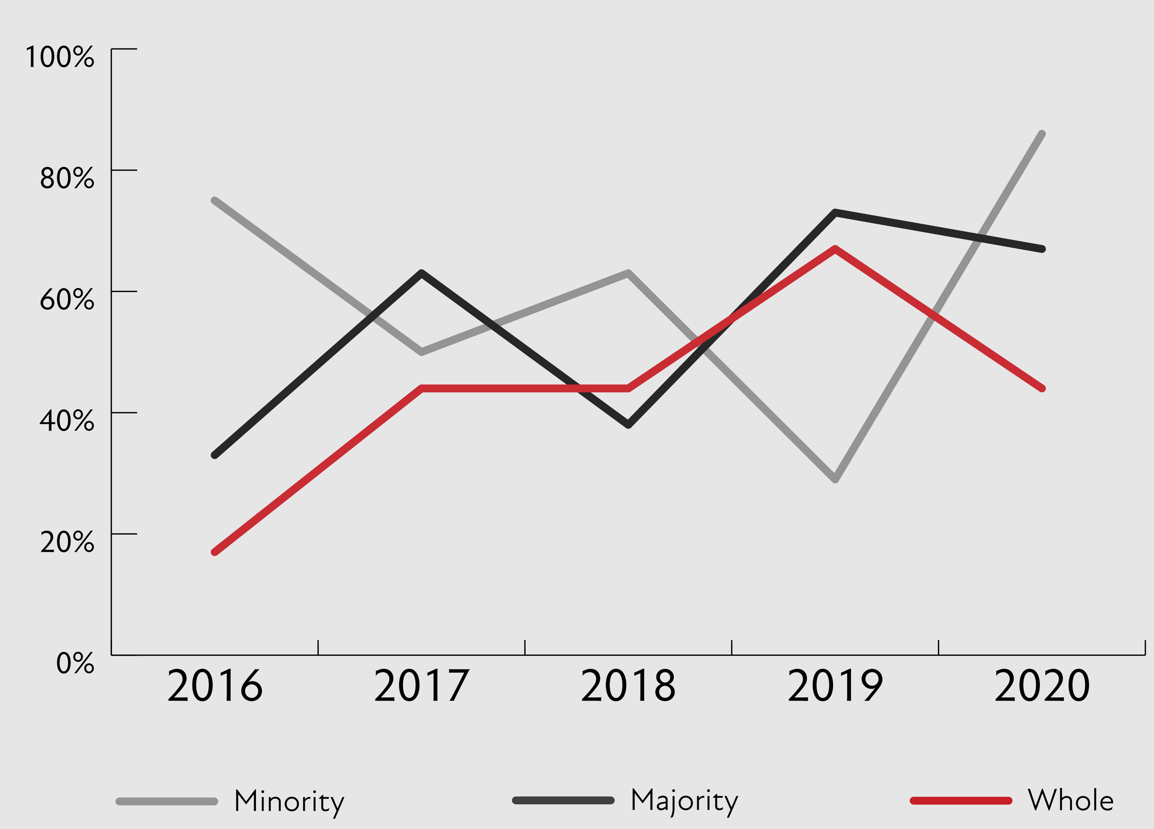
For some activist investors, the current climate has them believing that companies would rather settle than fight – and they may be right. The opportunist activist has always lurked in the shadows waiting to strike, and a post-COVID landscape when a company is already weakened is a near-ideal scenario.

SLATE TYPE vs WIN RATE

Five board-related 2020 proxy season campaigns concluded during the COVID Period, including one minority, one majority, and three complete board replacement demands by the activist. All led to a management win, except the contest at Australis Capital where management nominees did not stand for election and the activist gained all five requested seats at the November meeting (i.e. whole board replacement).

fig. 21

RELATIONSHIP BETWEEN ACTIVIST SLATE TYPE AND ACTIVIST WIN RATE*

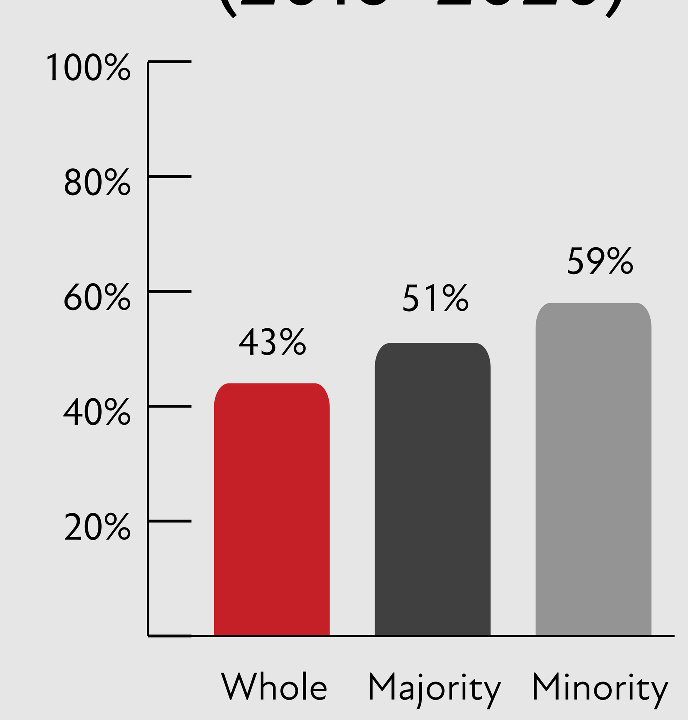


WIN RATE vs SLATE TYPE

Although not a reliable correlation when considering year-over-year volatility, it appears that minority slates have enjoyed a greater degree of success in recent years. While the often-assumed principle of proportional representation, especially vis-à-vis ISS and GL, may make it easier for minority slates to win, activists will weigh the minority slate strategy against the number of directors they believe they need on a board to create meaningful change. Even though the sample size and unique nature of contests make it difficult to extrapolate a convincing conclusion, when no change of control occurs, an incumbent board is more amenable to concessions.

fig. 22

WIN RATE vs SLATE TYPE (2016–2020)*



MAJORITY VOTING POLICY
Those Who Failed and Where They Are Now?

In Canada, a majority voting policy is often coupled with a resignation policy requiring a director to immediately tender their resignation if they receive less than 50% support at an election.

During the 2020 proxy season, we observed four instances of directors triggering majority voting policies at Canadian companies (Goldgroup Mining Inc. (TSX: GGA), Patriot One Technologies Inc. (TSX: PAT), NextSource Materials Inc. (TSX: NEXT), and Dynacor Gold Mines (TSX: DNG)), a slight decrease compared to five in the 2019 proxy season.

Since we started tracking majority voting in 2015 (the first year during which the TSX majority voting policy was in effect), we have noted a total of 43 directors at 26 different issuers failed the majority voting. Among these, the board accepted the resignations of 25 directors and rejected 18 resignations. One director refused to tender his resignation but was later removed by the board via a resolution at a special meeting.

Bill C-25, *An Act to Amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*, includes majority voting amendments under which public companies will be required to implement a majority voting standard in uncontested director elections for all public CBCA-incorporated companies (including those listed on the TSX Venture Exchange).

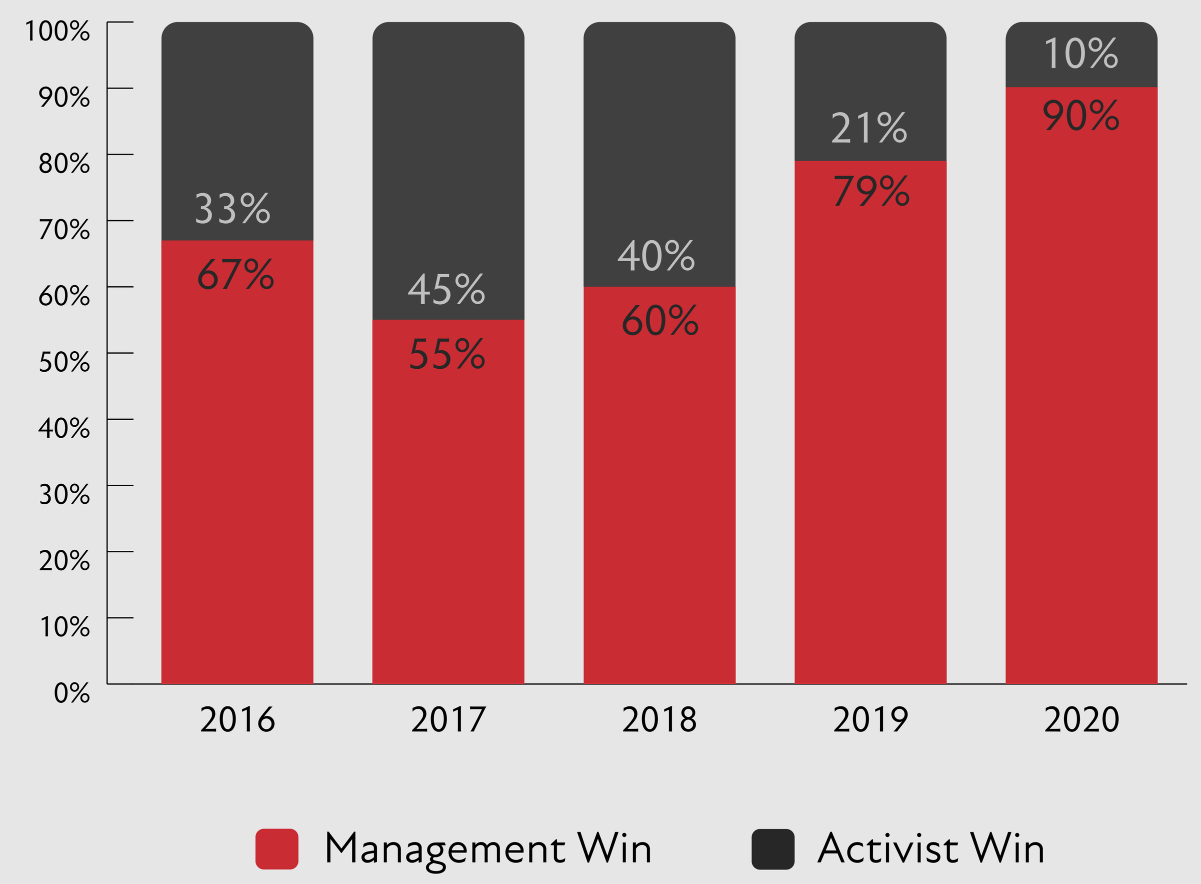
DIRECTORS TRIGGERING MAJORITY VOTING POLICIES IN 2019 AND 2020

COMPANY	MEETING DATE	VOTE RESULT		OUTCOME
Baylin Technologies Inc. (TSX: BYL)	May 14, 2019	David M. Gelerman	29.13%	• Gelerman refused to resign • Parties filed applications with the Ontario Superior Court of Justice • Court found Gelerman entitled to complete term in January 2020 • Company appealed the ruling before the April 2020 AGM
Jaguar Mining Inc. (TSX: JAG)	June 4, 2019	Richard Falconer Edward Reeser	32.28% 32.28%	• Both directors tendered their resignations
Street Capital Group Inc. (Delisted)	June 19, 2019	Duncan Hannay (President and CEO)	35.73%	• Hannay tendered his resignation • Board refused the resignation due to his role in a previously announced statutory plan of arrangement • Street Capital was subsequently acquired by RFA Capital Holdings Inc. on October 18, 2019
Trez Capital Senior Mortgage Investment Corp. (TSX: TZS)	June 19, 2019	Gregory S. Vorwaller	49.51%	• Vorwaller tendered his resignation
Steppe Gold Ltd. (TSX: STGO)	June 28, 2019	Lewis Marks	40.22%	• Marks refused to tender his resignation • TSX indicated that they may conduct a review of his suitability • A resolution for removing Marks as a director was approved by shareholders at a special meeting held on August 23, 2019. Marks was removed from the board
Goldgroup Mining Inc. (TSX: GGA)	July 31, 2019	Harry Burgess Keith Piggott	11.04% 11.58%	• Neither director tendered their resignation until November 2019
Patriot One Technologies Inc. (TSX: PAT)	November 5, 2019	Scott Shepherd (Board Chair)	29.62%	• Shepherd tendered his resignation which the board accepted
NextSource Materials Inc. (TSX: NEXT)	December 2, 2019	John Sanderson Dalton Larson	16.2% 34%	• Both directors tendered their resignations
Dynacor Gold Mines Inc. (TSX: DCG)	June 17, 2020	Marc Duchesne	45.7%	• The Company has not disclosed that Duchesne has tendered his resignation but, pursuant to the Company's website, he is currently not on the board and has been replaced by a new director

TRANSACTION-BASED ACTIVISM WIN RATES

fig. 23

TRANSACTION WIN RATES 2016–Present*



Management holds the advantage when it comes to transaction-based activism. This advantage is due to many factors, including various defence mechanisms (e.g. shareholder rights plan), the implementation of the new M&A regime in Canada in recent years, and proxy advisor firms' inclination to support a transaction recommended by management.

Two transaction-related campaigns concluded during the COVID Period and both led to a management win:

- SolGold's (TSX: SOLG) unsolicited bid for Cornerstone Capital Resources Inc. (TSX: CGP) expired on October 14 as it failed to meet the minimum tender requirement.
- Simply Group Acquisition Corp. ("Simply Green") successfully took up Dealnet Capital Corp.'s (TSX: DLS) shares on October 15 with activist Capital Partners Corporation and Municipal Home Service Inc., who opposed the offer from Simply Green early on, tendering their shares to the offer.

THERE'S NO SUCH THING AS A FRIENDLY DEAL

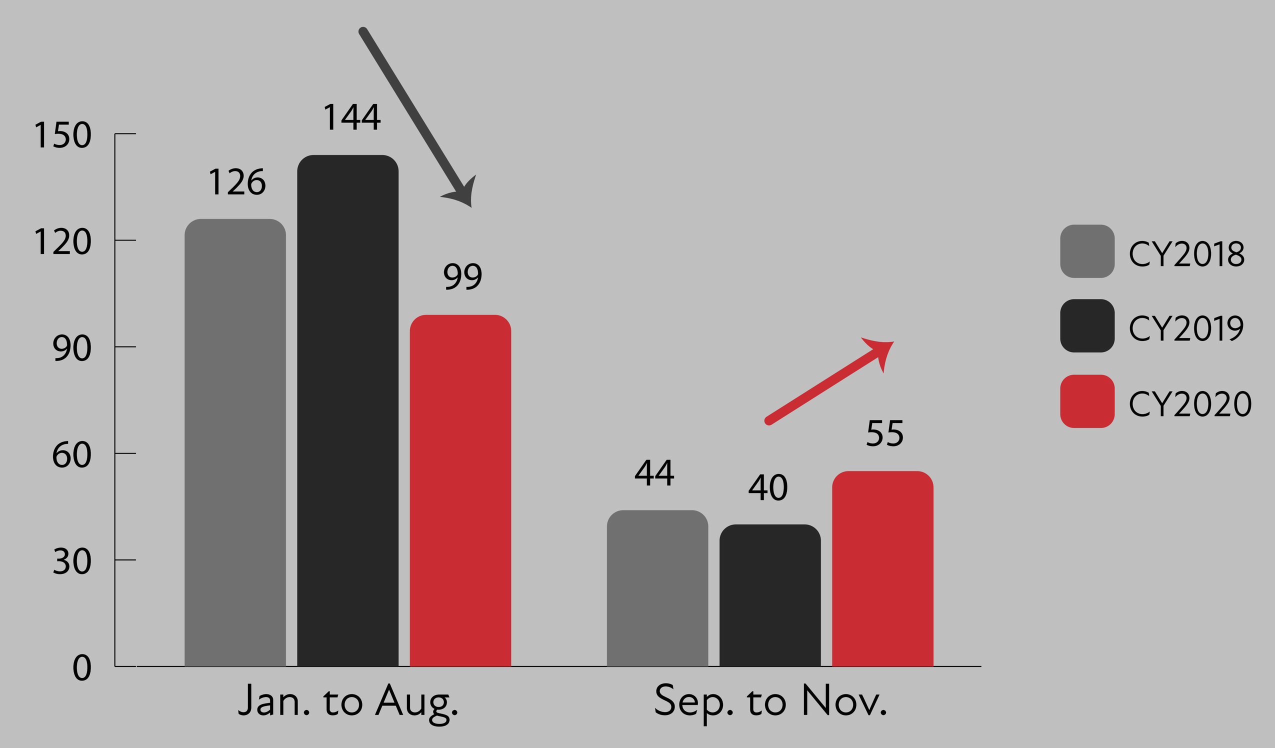
The initial uncertainty around the pandemic slowed down numerous areas of business, including M&A activity. At the onset of the pandemic, the rate of M&A activity dropped by 27% compared to the average of the last two years (n=135), as companies funneled resources into maintaining their business (as shown in fig. 24 when measuring the total number of M&A deals during the first eight calendar months of each year). But as markets recovered, there was a flurry of activity, as seen in recent months (September to November), as the number of M&A deals in these months totalled 55, a 31% increase compared to the average of the last two years over the same period (n=42).

Despite an overall lower level of M&A activity in the 2020 calendar year, we are tracking an increased level of contested deals so far this year (eight compared to six in 2019 and only one in 2018, and a total of 15 over the course of the approximately three-year period from January 1, 2018 to November 30, 2020).

These recent activities highlight a growing trend: the end of the straightforward, friendly deal, with even the most seemingly routine merger or plan of arrangement coming with an increased set of risks.

fig. 24

NUMBER OF CANADIAN M&A TRANSACTIONS *



2020 CONTESTED M&A

BLACKBERRY vs DORSEY R. GARDNER

Longstanding BlackBerry shareholder Dorsey R. Gardner publicly opposed the company's recapitalization transaction with Fairfax Financial Holdings. BlackBerry later made amendments and completed the transaction, despite continued opposition from Dorsey R. Gardner.

CALFRAC WELL SERVICES vs WILKS BROTHERS

Facing Calfrac's recapitalization transaction, the Wilks Brothers launched a campaign to promote an alternative recapitalization transaction, and subsequently, a hostile takeover offer of $0.18 per Calfrac share. Calfrac responded with an amended transaction for $0.15 per share and two common share purchase warrants. Despite ISS and GL's recommendation to vote against Calfrac's proposed transaction, the company received support from both shareholders and unsecured noteholders.

DEALNET CAPITAL vs CAPITAL PARTNERS CORPORATION & MUNICIPAL HOME SERVICES

After Capital Partners stated their intent to replace Dealnet's incumbent directors and publicly opposed the $0.16 offer from Simply Green Home Services, the activist accepted a takeover bid from Simply Green.

DOREL INDUSTRIES vs MULTIPLE SHAREHOLDERS

Both Brandes Investment Partners and Letko, Brosseau & Associates publicly opposed the go-private transaction of Dorel Industries, citing that the proposed offer was opportunistic and significantly undervalued the company. The contest was ongoing at the time of publication.

GREAT CANADIAN GAMING CORPORATION vs MULTIPLE SHAREHOLDERS

Multiple shareholders, most notably BloombergSen, have opposed Apollo Global Management's $2.1-billion takeover of Great Canadian Gaming Corporation. The contest was ongoing at the time publication.

HUDSON'S BAY vs CATALYST CAPITAL

Catalyst Capital Group's block of HBC's privatization by the retailer's chairman, Richard Baker, resulted in an increased offer from $10.30 per HBC share to $11.00 in cash per share.

ROCKY MOUNTAIN DEALERSHIP vs BURGUNDY ASSET MANAGEMENT

Burgundy publicly opposed Rocky Mountain's go-private transaction with its chairman and CEO, Matthew Campbell. Rocky Mountain and AcquireCo responded, increasing the cash purchase price to $7.41 from $7 per share and announcing voting lockups from over 32% of outstanding shares. The contest was ongoing at the time of publication.

SHERRITT INTERNATIONAL CORP. vs AD HOC COMMITTEE OF SENIOR UNSECURED DEBENTUREHOLDERS

After public opposition from the Ad Hoc Committee, Sherritt amended certain terms of the transaction, relating to its Ambatovy JV partner loans to obtain the necessary vote approvals to complete its capital restructuring.

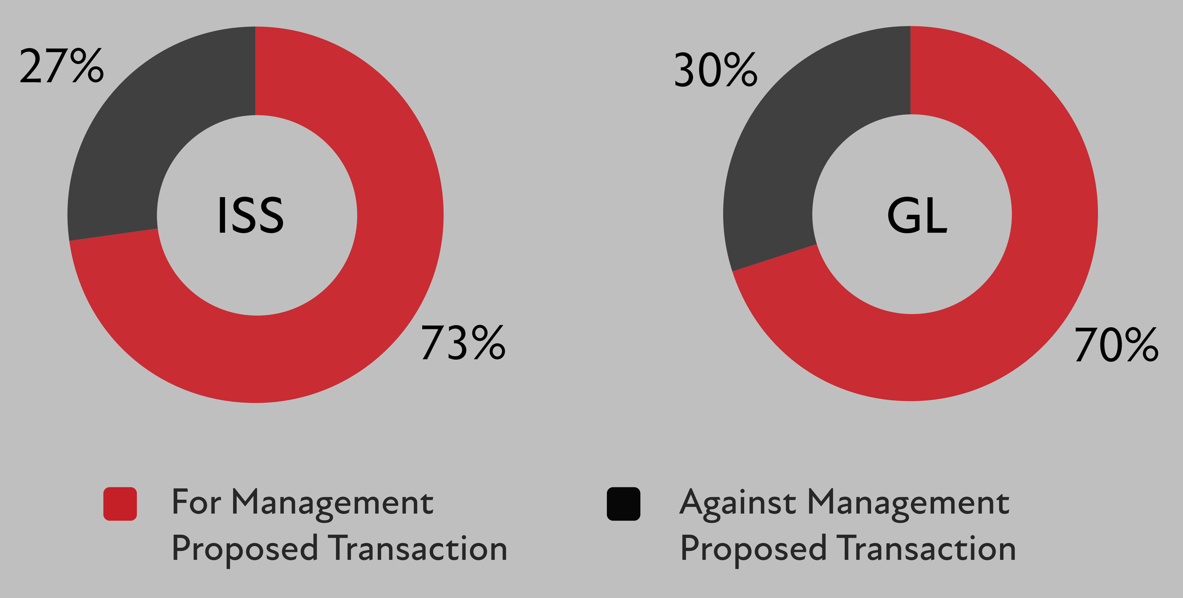
ISS AND GL RECOMMENDATIONS ON CONTESTED DEALS

Of the 15 contested deals from January 1, 2018 to November 30, 2020, ISS has opined on 11 transactions while GL provided recommendations on 10. The overall endorsement rates are similar between the two proxy advisors at a low 70% range.

Activists see themselves as real-time matchmakers who work with all parties involved to get a solution. In their eyes, it's simple: every buyer wants to buy something at the lowest price they can get and it's their job to make sure they pay as much as possible.

fig. 25

RECOMMENDATIONS ON CONTESTED M&A DEALS
Calendar Years 2018–2020 to Date *



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