

Legal 500

Country Comparative Guides

Legal Landscape | Shareholder Activism

United States- Shareholder Activism

Contributor



Latham & Watkins LLP



Christopher Drewry

Partner, Global Co-Chair of the firm's Shareholder Activism & Takeover Defense Practice | christopher.drewry@lw.com

Josh Dubofsky

Partner, Global Co-Chair of the firm's Shareholder Activism & Takeover Defense Practice | josh.dubofsky@lw.com

Michele Anderson

Partner, SEC National Office | michele.anderson@lw.com

Adam Tamzoke

Counsel, Shareholder Activism & Takeover Defense | adam.tamzoke@lw.com

For a full list of jurisdictional Q&As & hot topic articles visit legal500.com/guides/

United States- Shareholder Activism

Shareholder activism in the United States has reached historic levels. The United States remained the epicenter of global activist activity in 2025, accounting for more than half of all campaigns worldwide – the highest total for any single country. U.S. campaign volume jumped 23% from the prior year, driven by market volatility, favorable financing conditions and a rebounding M&A environment. Amid this surge, the regulatory framework governing shareholder activism is undergoing a profound transformation, reshaping the dynamics between companies, activist investors, proxy advisors, and institutional shareholders.

The Current Legal Landscape for Shareholder Activism in the United States

The legal landscape is defined by several converging forces: the maturation of the U.S. Securities and Exchange Commission's ("SEC") universal proxy card ("UPC") rules; a significant pullback in the SEC Staff's review of shareholder proposals; regulatory actions targeting proxy advisory firms; and the evolving stewardship frameworks of major institutional investors. The practical effect is a proxy environment in which process rules and the composition of a company's shareholder base increasingly shape outcomes as much as corporate performance.

The Universal Proxy Card Rules

Prior to the 2021 adoption of the SEC's UPC rules under Rule 14a-19, shareholders faced an "all or nothing" choice between voting on a company's proxy card for management nominees or an activist's card for the activist's nominees. Under the UPC rules, both sides must use a universal proxy card listing all nominees, allowing shareholders to "mix and match" from among management and activist nominees on a single ballot.

As a result, investors can evaluate individual nominees without being forced into an all-or-nothing slate decision, making director qualifications, board composition, and campaign messaging central to both sides. In practice, the UPC has made activism less of a "winner-take-all" contest and more of a battle over a small number of seats, often framed as the "weakest" sitting director(s) against the "strongest" activist nominee(s). The UPC rules have resulted in more negotiated settlements earlier in campaigns and a lower rate of proxy fights going to a vote.

The SEC's Retreat from Shareholder Proposal Review

On November 17, 2025, the SEC's Division of Corporation Finance announced it would no longer substantively respond to most no-action requests if the requests are to exclude shareholder proposals submitted under Rule 14a-8 from company proxy cards and proxy statements. Citing resource constraints following a lengthy government shutdown, the SEC's retreat means that, at least at the time of writing, companies must independently determine whether a proposal is excludable based on existing guidance and judicial decisions, and companies will not be able to receive direct no-action relief from the SEC Staff.

As companies decide whether or not to exclude a shareholder proposal, they assume litigation risk if a shareholder challenges the omission, potentially resulting in significant expense, delays, and negative

publicity. During the 2026 proxy season, six lawsuits challenged exclusions, producing three settlements in which companies agreed to include or implement the challenged proposals, one court order compelling inclusion, one denial of injunctive relief, and one voluntary dismissal. Rule 14a-8 is therefore becoming less an SEC-mediated channel and more a test of private ordering, litigation budgets, and state-law arguments.

Evolving Proxy Advisor Landscape and Stewardship Reorganization

Proxy advisory firms Institutional Shareholder Services (“ISS”) and Glass Lewis face heightened scrutiny from multiple directions: a December 2025 executive order directing federal agencies to curtail their influence; an ongoing FTC antitrust investigation into whether the firms have leveraged their market dominance; and active state-level enforcement actions and litigation in Florida, Missouri, and Texas. ISS announced it would no longer generally recommend voting “for” environmental and social proposals, instead evaluating them on a case-by-case basis. Glass Lewis similarly shifted its guidance on climate, diversity, human rights and political spending proposals to case-by-case evaluations.

Simultaneously, the largest passive investors have reorganized their stewardship and voting functions. Until recently, BlackRock, State Street, and Vanguard each maintained a single centralized stewardship team with unified voting policies. As a result, companies and activists developed a practice of treating each of those major index fund managers as a single voting bloc, engaging with one team at each institution and expecting that the institution’s entire share position would be voted according to the decision of the stewardship team – a single “house view.”

In 2025, BlackRock split its internal stewardship and voting functions into two groups, BlackRock Investment Stewardship for index portfolios and BlackRock Active Investment Stewardship for active investment teams. Similarly, State Street divided its governance and voting functions into a core Asset Stewardship Team, which applies its standard global proxy voting and engagement policy across all investment strategies, and a new opt-in Sustainability Stewardship Service with a separate policy focused on climate, nature, human rights, and diversity for institutional clients that prioritize sustainability outcomes. Vanguard split its funds between two wholly owned advisors: Vanguard Capital Management, which oversees fixed-income and passive multi-asset funds, and Vanguard Portfolio Management, which oversees actively managed stock and multi-asset funds – each with its own distinct investment stewardship team.

These structural changes mean that voting outcomes may become more uncertain, and votes at a given shareholder meeting may even be inconsistent within any individual institution, as separate teams within the same institution potentially reach different conclusions based on differing priorities and methodologies, even with respect to investments in the same company originated by different asset management groups. For companies and activists alike, the old shortcut of predicting a single institutional “house view” is becoming less reliable as index fund managers internally redefine their own management and stewardship teams, voting procedures, and policies.

State Corporate Law and the Reincorporation Debate

Delaware remains the dominant state of incorporation for U.S. public companies, and its corporate law

generally seeks a balanced approach – empowering boards while preserving meaningful shareholder rights, including the ability to challenge conflicted transactions and hold fiduciaries accountable through Delaware's well-developed body of case law and specialized Chancery Court. However, a wave of reincorporation activity toward Texas and Nevada has emerged, driven in part by perceptions that those jurisdictions offer more company-friendly statutory frameworks with less expansive judicial oversight. According to ISS data, for meetings held from January 2025 to May 2026, 33 Delaware corporations proposed redomiciling to Nevada (24) or Texas (9). The trend has met significant resistance. Only six of fourteen reincorporation proposals at non-controlled companies were approved during this period; the remaining eight failed or were withdrawn. ISS or Glass Lewis recommended against reincorporation in each of the proposals that failed, and in 2025, the largest index fund managers generally did not support moves to either Nevada or Texas. Where to incorporate and whether to move state of incorporation is becoming a live governance issue, with implications for takeover defenses, fiduciary duty standards, and the shareholder rights framework that underpins activism itself.

Beneficial Ownership Reporting Developments

In February 2025, the SEC Staff published revised guidance under Regulation 13D-G, clarifying when a greater-than-5% shareholder's engagement with a company could trigger the more disclosure-intensive Schedule 13D filing requirement rather than a short-form Schedule 13G. The guidance had an immediate chilling effect on investors, leading many institutional investors to temporarily suspend engagement before resuming it on a more limited basis. While some institutional investors have returned to their usual engagement, others have continued to limit their stewardship activities, including by not initiating outreach and engagement with companies, not expressing their views and voting policies as general principles, and by declining to comment on a company's specific governance or performance. Even routine investor-company dialogue may now be scrutinized for whether it signals an investor's intent to influence control and potentially jeopardize its ability to use Schedule 13G. While the SEC has not taken enforcement action under this guidance, Chairman Atkins has publicly defended the SEC Staff's interpretive position.

Three Essential Pieces of Advice for Clients Involved in Shareholder Activism

Prioritize Proactive Shareholder Engagement and Board Preparedness

One critical lesson from recent proxy seasons: companies that proactively earn the support of institutional shareholders through regular engagement and responsiveness to governance or business concerns may be able to effectively deflect activist shareholders or limit their campaigns – even if those activists secure the support of proxy advisors. Boards and management teams should treat shareholder engagement as a year-round discipline, not a reactive exercise confined to proxy season or a strategy only implemented once an activist approaches. In an environment of record activism levels and changing voting dynamics, advance preparation and engagement, as well as a cohesive narrative about the business are essential. The best defense is almost always built before the activist arrives.

Understand and Adapt to the New Regulatory Terrain for Shareholder Proposals

Companies must adapt to the dramatically altered U.S. regulatory environment. With the SEC stepping

back from substantive review of shareholder proposal exclusions, a company that excludes proposals assumes greater risk of litigation brought by shareholder proponents to force the company to include the proposal in its proxy materials. Such litigation poses not only significant financial costs and management distraction, but risks a disruptive annual meeting process and potential reputational harm if the exclusion is perceived as heavy-handed or as suppressing legitimate governance concerns. For that reason, companies that choose to exclude proposals must ensure that their reasoning is supported by existing guidance and judicial precedent. At the same time, the decline in ESG-related shareholder proposals suggests this mechanism of engagement is shifting. Parties on both sides should evaluate whether direct, private engagement may yield better outcomes than the traditional Rule 14a-8 shareholder proposal process.

Prepare for Unsolicited and Hostile Acquisition Activity

Hostile and unsolicited takeover bids in the United States made headlines in 2025, as part of a modest increase in hostile and unsolicited M&A activity over the prior year. Activist investors have also been outspoken in encouraging boards to consider strategic alternatives, including sales or spin-offs, creating additional pressure across the market to explore M&A and other strategic opportunities. Responding effectively to an unsolicited approach – whether from a potential buyer, an activist investor, or a combination of the two – requires advance preparation and quick reaction: boards that have not recently reviewed their takeover defenses, assessed the viability of structural protections such as a stockholder rights plan (or “poison pill”), or stress-tested their response protocols risk being caught flat-footed when a bid arrives and letting any news cycle get ahead of their defense. Companies should know their “on call” advisors and regularly engage with advisors on vulnerability assessments, so that when the call comes, the board is ready to act from a position of strength rather than improvisation.

Greatest Threats and Opportunities in Shareholder Activism Over the Next 12 Months

Threats

The most significant activism threat facing companies is the growing sophistication of activist campaigns. Seasoned activist funds have developed a deep understanding of corporate defense tactics and have become adept at countering them. Leading activists now routinely leverage activism-focused reporters and financial media to deliver hard-hitting public messages that pressure boards even before a formal proxy fight begins, using press coverage as a force multiplier to shape institutional investor sentiment. In addition, activists are increasingly partnering with private equity funds to submit unsolicited acquisition proposals, combining an activist's public pressure campaign with a credible financing backstop to push for near-term sales or take-private transactions. As a result, companies face not just more activist campaigns, but harder hitting, more strategically complex campaigns.

The fracturing of the proxy voting ecosystem poses another substantial threat. The 2026 proxy season has ruptured many of the assumptions that issuers, activists, and advisors relied upon for more than a decade. With proxy advisors shifting to “case-by-case” evaluations of Rule 14a-8 proposals, institutional investors supporting governance changes that they had resisted in the past, and the SEC retreating from its traditional mediating role in the shareholder proposal process, voting outcomes have become markedly less predictable. Compounding this challenge is the concentration of voting power in a small number of

large index fund managers (e.g., BlackRock, Vanguard, State Street, Fidelity) whose stewardship teams are splitting into separate units with distinct mandates and voting frameworks. Because these institutions collectively own dominant positions in U.S. public companies, their shifting voting trends and internal fragmentation make it harder for companies and activists alike to predict how the most consequential blocks of shares will be voted in any given contest.

Regulatory uncertainty itself is a threat, and is virtually certain to continue. The SEC's decision not to substantively respond to most Rule 14a-8 no-action requests is one example of the changing practical risk calculus for both companies and proponents. Recent court decisions enabling more direct presidential control over agency leadership may accelerate policy shifts between administrations, resulting in an increasingly unstable and unpredictable regulatory environment for shareholder activism.

Opportunities

For companies, the current environment presents meaningful opportunities to build stronger, more direct relationships with institutional shareholders. As voting frameworks become less predictable, companies that initiate outreach and invest in credible engagement and clear disclosure may generate greater leverage to shape outcomes on their own terms. The current environment also creates an opportunity for constructive engagement. Parties that engage early may preserve more flexibility than parties that wait for a public fight.

Perhaps most importantly, the current environment rewards companies that prepare on a "clear day" – before any activist has surfaced. Companies should use periods of relative calm to develop a coherent and cohesive business plan with clear messaging to the market, conduct a thorough review of governance vulnerabilities, assess their defensive profile (including charter and bylaw provisions, advance notice requirements, and the viability of a stockholder rights plan), and establish relationships with their core advisor teams across legal, financial advisory, investor relations, and communications. Companies that have done this work in advance are far better positioned to respond credibly and swiftly if an activist or unsolicited bidder appears. The most consequential activism outcome may be the contest that never reaches the ballot because the company was already prepared.

Technological Advancements Reshaping Shareholder Activism Law

AI-Powered Proxy Voting and Stewardship

The most transformative technological development in shareholder activism is the possibility that artificial intelligence will become a more influential interpreter of proxy contest materials. As institutional investors, proxy advisors, companies, and activists all experiment with data-driven tools, the legal and communications strategy around contested elections is likely to focus more on quantitative information.

On the activist side, AI is lowering the cost and speed of campaign development. Shareholders can now use large language models to evaluate a public company's activism vulnerability, analyzing governance structures, financial performance, peer comparisons, as well as disclosure gaps to generate the scaffolding of a campaign thesis with a few prompts and modest editing. What previously required weeks of analyst work and significant advisory fees can now be prototyped in hours, making it easier for a broader range of investors to test whether an activist campaign is worth pursuing.

Research indicates that when prompted to act as proxy advisors, AI large language models have demonstrated significantly lower support for incumbent management slates than ISS (which supports incumbents 56% of the time) and Glass Lewis (55%). This suggests that as AI tools increasingly inform voting analysis, outcomes could shift in ways that are difficult to predict using historical precedent. The next influential proxy recommendation may come from a model rather than a memo.

AI as a Narrative and Risk Tool

AI can also help both companies and activists pressure-test campaign narratives, identify disclosure gaps, and compare governance arguments across peers. In an increasingly data-rich market, the winning thesis may be the one that turns common information into a sharper narrative. The technology does not replace judgment, but it changes how quickly judgment must be exercised.

Implications for Clients

Companies can use AI-enabled analytics to model voting outcomes, test disclosure themes, and identify cases in which investor concerns may arise before an activist campaign becomes public. Activists can use similar tools to refine their thesis and communications strategy. The risk is that, if investors increasingly rely on proprietary AI tools, companies and activists may have less visibility into how voting decisions are being shaped and which arguments are most persuasive. Future proxy contests may therefore turn as much on data quality, analytics, and model-readable disclosures as on boardroom advocacy.

Best Practices for Companies Engaging Advisors to Prepare and Respond to Shareholder Activism

Companies engaging outside legal, financial, or communications counsel to prepare for and respond to shareholder activism should seek practices that can anticipate, respond quickly, and draw on deep institutional knowledge. Given that activism activity reached record levels in the United States in 2025, legal practitioners must operate on a year-round basis, providing continuous monitoring and readiness services.

Integrated, multidisciplinary advice spanning corporate governance, M&A, securities regulation, litigation, and investor relations requires advisors who understand the full range of activist tactics – from private engagement and exempt solicitations to withhold campaigns, as well as full-scale proxy contests – and who can counsel boards on evaluating and responding to each tactic.

With the SEC's retreat from the Rule 14a-8 no-action process, changes to proxy advisor policies, and stewardship reorganization at major asset managers, companies face unprecedented complexity and need outside counsel who are fluent enough with the evolving regulatory landscape to translate regulatory changes into actionable guidance.

In a field in which outcomes can turn on a handful of institutions, data is no longer a supplement to judgment. Legal practitioners must leverage comprehensive datasets from multiple sources to deliver evidence-based counsel encompassing activism trends, settlement dynamics, voting patterns, and peer comparisons.

Conclusion

In this rapidly evolving landscape, advance preparation remains one of the most important steps a company can take. Building relationships with experienced legal, financial, and communications advisors before an activist campaign or unsolicited bid materializes enables boards to respond thoughtfully and efficiently. Companies that invest in year-round readiness – including governance reviews, vulnerability assessments, and ongoing shareholder engagement – are far more likely to control the narrative, protect shareholder value and respond from a position of strength when activism arrives.

Contributors

Christopher Drewry

Partner, Global Co-Chair of the firm's
Shareholder Activism & Takeover Defense
Practice

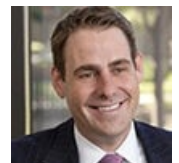
christopher.drewry@lw.com



Josh Dubofsky

Partner, Global Co-Chair of the firm's
Shareholder Activism & Takeover Defense
Practice

josh.dubofsky@lw.com



Michele Anderson

Partner, SEC National Office

michele.anderson@lw.com



Adam Tamzoke

Counsel, Shareholder Activism & Takeover
Defense

adam.tamzoke@lw.com

