

Overseeing the Greater Image: A Fresh Outlook on Shareholder Activism

Dr. Subhajit Chakraborty¹, Dr. Rashmi Pradhan², Sarbani Bhowmik³, Shibayan Chattopadhyay⁴

¹Assistant Professor, Xavier Law School, St. Xavier's University, Kolkata

²Principal, University Law College, Vinoba Bhave University

³Assistant Professor, Amity University, Kolkata

⁴Assistant Professor, Seacom Skills University, West Bengal

Abstract

The present paper evaluates the landscape of shareholder activism, observing that while explicit forms of shareholder participation have been widely studied, a concrete gap exists in a comprehensive study that addresses shareholder activism. The paper highlights a new hypothetical framework that views shareholder advocacy as a culmination of diverse depictions—each defined by discrete purposes, mechanisms, and structures—rather than solely concentrating on remote illustrations. Furthermore, the present study suggests a holistic overview of shareholder activism, exemplifying its numerous procedures in the US and some other countries worldwide. The paper also invokes and attracts responses from academics, experts, and policymakers for governing improvements regarding shareholder activism. Additionally, the research paper provides an impetus for existing regulatory suggestions to be either too slender or too broad in scope. Likewise, few focus entirely on companies like hedge funds deprived of bearing in mind how such actions impact other stakeholders. In contrast, others support implementing governing tactics from overseas jurisdictions without accounting for the full diversity of activism models in play.

The study attempts to highlight the research gap through a comparative examination of corporate governance mechanisms of ten countries wherein the key disputes concerning the regulatory changes desire to be framed with a clear understanding of the different replicas of activism. By suggesting a technical framework for deliberating shareholder activism, it delivers a more stable method to regulatory reform and one that holds for the intricacies and diversity of activism approaches applied in multiple jurisdictions.

Keywords: Shareholder Activism, Corporate Governance, Accountable, Transformation.

Introduction

Since the decade, the significance of corporate governance has gained impetus both in practical and academic discussion with more stress on its recent trends and developments. Key incidents, like the court order granted to a hedge fund contesting Apple Inc.'s governance practice, and the sharp swings in stock prices triggered by the public clash between activist investor Carl Icahn and hedge fund manager Bill Ackman over Herbalife, serve as evidence of the increasing role of activism in corporate affairs.¹

The aspect of shareholder participation in the meetings of publicly listed companies has been a matter of highly debatable and complex in nature. Shareholders are a critical component of corporate systems globally, and the conversation has evolved from whether the primary objective should be maximizing shareholder value to how governance structures, laws, and shareholder engagement can most effectively achieve this aim.² Moreover, when a distinct legal system demonstrates corporate governance frameworks and agency cost in their way, involvement of shareholder

¹ Jennifer Ablan & Poomima Gupta, 'Einhorn Sues Apple, Marks Biggest Investor Challenge in Years' Reuters (7 February 2013)

² Margaret M. Blair & Lynn A. Stout, 'A Team Production Theory of Corporate Law' (1999) 85 Virginia Law Review 247, 247–328.

participation becomes one of the uniform factors in shaping good corporate governance.

Despite ongoing academic debates on the extent of shareholder encouragement in business affairs, there is comprehensive accord that shareholder assignment plays a key role in progressing corporate governance and increasing shareholder value. Consequently, the focus has shifted from questioning whether shareholder activism is necessary to examine which forms of activism are productive and which are harmful.³ Given the rising influence of shareholders, particularly through hedge fund activism, it is crucial to assess the proper role shareholders should play in corporate affairs.⁴ In response to the growing wave of shareholder activism in the U.S., there have been calls from scholars, business leaders, and lawmakers for new regulations to manage the shift.

The research study reports extensive corporate governance lacunae by invoking different shareholder advocacy models practiced in this global world. The vital disagreement is that while the upsurge of protruding futuristic stockholders like hedge funds has impelled genuine discussions, the projected regulatory variations are frequently defective: too slender by pointing precise players such as hedge funds without bearing in mind other procedures of shareholder involvement that might also be pretentious, and too extensive by deriving regulatory representations from other authorities without bearing in mind the exclusive context of these representations.

In addition, the study also examines whether improvements are desirable and, if so, what form those restructurings must take. It enlarges the current business governance outline by considering the extensive series of stakeholder activism, satisfying an imperative gap in the present study. The investigation contends that though the increase of prominent activists like hedge funds has flickered compulsory

argument, present deliberations on regulatory fluctuations are blemished in two ways: firstly, they are too barely fixated on specific actors, such as hedge funds, without identifying the wide-ranging spectrum of activism that could be exaggerated, and secondly, they are too approximately founded in importation of regulatory outlines from other nations without apprehending the discrete backgrounds of these structures. To discourse these matters, the paper suggests an original philosophy that opinions shareholder activism as an assemblage of miscellaneous models, varying in areas, approaches, and edifices. This method delivers a deeper, more logical consideration of activism as a model, not just as remote events, and demonstrates the worldwide existence of diverse activism models through a review of practices in ten countries.

Steering the Escalation of Shareholder Activism in U.S. Business

Today, business ownership in US public listed companies is mainly comprised of equity shareholders wherein the management and the board of directors are likely to direct and conduct the affairs of the companies. Over 80 years ago, Adolf Berle and Gardiner Means introduced agency theory, which examined the challenges posed by the dispersed ownership model of American public corporations.⁵ Both of them pointed out a perilous agency price between the management and shareholders, ascending on or after the circumstance that investors have insignificant stakes in any specific firm. In accordance to the conventional approach, this ownership diffusion diminishes the enticement for shareholders to control management, as the aids of better corporate presentation would not validate the costs of supervision management. As a consequence, management frequently became overriding, with diminutive burden from shareholders to mediate or

³ Lynn Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* (2012) 63–73.

⁴ Martin Lipton & Steven A. Rosenblum, 'Election Contests in the Company's Proxy: An Idea Whose

Time Has Not Come' (2003) 59 *Business Lawyer* 67, 69.

⁵ Adolf A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (1932) 6-9.

remove them. This nonexistence of oversight permitted executives to deter the assets of the company for personal advantage, accept high incomes unconnected to their authentic performance, and chase unproductive goals like mounting the company unreasonably.⁶

The lawful and organizational aspects of shareholders' equity benefit extant several blockades that often outcome in unreceptive posture among shareholders. Though, some investors vigorously pursue to encounter the board of directors and management by working out their rights to generate a system of checks and balances. This participation is essential owing to the probable misalignment of benefits between management and shareholders, known as the agency problem. While the board of directors is commended with preservation shareholder interests, it does not continuously thrive in addressing the gap between these comforts.

Since more than three decades, one of the fundamental concerns of the academicians, lawmakers, and courts has been discovering ways to diminish the agency costs that ascend from the common dispute. Some have turned to external free-market mechanisms—such as corporate control markets, share markets, management markets, and product markets—as solutions to the agency problem.⁷ Others argue that debt financing can act as an effective constraint by limiting the financial flexibility of managers and subordinating them to the interests of creditors.⁸ Most academicians believe that the budding involvement of institutional investors in the securities markets will possibly help alleviate these agency costs. Finally,

another proposed solution is to improve the financial incentives of upper management to better align their interests with those of shareholders.⁹

From Philosophy to Realism: The Fruition of Shareholder Activism

In common parlance two key factors influence shareholder activism as a means of sound corporate governance. In the first phase, the motivation for shareholders to become active depends on the profits that they are supposed to gain from their movements related to the expenses (financial and otherwise) involved. The second factor is what this study mentions as "exogenous factors"—the former rules and legal or financial barriers that might distress a shareholder's readiness to be involved in activism. These two aspects are interrelated and cannot be considered separately.¹⁰ Likewise, a shareholder's requirement for better incentives becomes more pressing in an environment with high external obstacles to activism, and vice versa. While these elements can support each other, they can also limit each other.¹¹ For instance, reducing external barriers to shareholder activism may encourage more participation from smaller shareholders, but it could also dilute the influence and potential profits of large institutional investors, thereby diminishing their incentive to be active.¹²

The connection between various governance processes and the firms that use them is multifaceted. The advent of one issue may occasionally decrease the role of another, although in other circumstances, one issue will initiate the growth of the other. Therefore,

⁶ Lucian Bebchuk & Jesse Fried, Pay without Performance: The Unfulfilled Promise of Executive Compensation (2004) 159–64

⁷ Ronald J. Gilson & Bernard S. Black, The Law and Finance of Corporate Acquisitions (2nd edn, 1995) 135–81.

⁸ Sharon Hanes, 'Private Benefits of Control, Antitakeover Defenses, and the Perils of Federal Intervention' (2005) 2 Berkeley Business Law Journal 263, 283.

⁹ John C. Coffee, 'The SEC and The Institutional Investor: A Half-Time Report' (1994) 15 Cardozo Law Review 837.

¹⁰ Lucian A. Bebchuk, 'The Case for Increasing Shareholder Power' (2005) 118 Harvard Law Review 83

¹¹ Martin Lipton & William Savitt, 'The Many Myths of Lucian Bebchuk' (2007) 93 Virginia Law Review 733.

¹² Daniel R. Fischel, The Corporate Governance Movement, 35 VAND. L. REV. 1259, 1264 (1982).

accomplishing an optimum equilibrium of members and tools for shareholder enablement is more intricate than it may originally seem.

Formerly, it was expected that outdated institutional investors would perform as a protection for stockholders before the new upsurge of futuristic investors originated into play. Though, their effect was mostly vague but these investors faced limitations on the sum of equity which they could hold in any one business and were forced by their recompence models. Additionally, conflicting interest and political compressions condensed their capability to be dynamically involved in governance, fading their incentive to determine developments.

In comparison, hedge funds and private equity firms are not restricted by these guidelines. They can obtain significant stakes in corporations, function with enticement driven return, and are free from dogmatic or business constrictions. Their rising incidence has altered activism from somewhat rare to a fundamental theme in business governance and corporate practices. This swing has not only amplified the contribution of these fresher organizations but has also fortified conventional investors to become more involved, leading to an upsurge in shareholder activism.

One of the vital complexities in the US corporate sector is the dialogue for agency cost and agency problem between shareholders and management as it has been observed that there is gray area with respect to shareholder participation in management of the companies. Here, the majority shareholder can extract private benefits from their control.¹³ However, the same agency cost can be diminished with respect to Minority shareholder activism if structured in a proper framework to defend the unauthorized autonomy of majority shareholders.¹⁴ Hence, a more erudite method to shareholder activism is desirable to address agency

problem in both the U.S. and other nations where these problems differ.

The Intensifying Space of Shareholder Activism

Shareholder involvement with firm's dealings can be perceived as a gamut, extending from comprehensive disentanglement to vigorous participation. From single perspective, some regular investors do not take share in business decisions, with their system of activism being restricted to purchasing or vending stocks in a manner known as the "Wall-Street Walk."¹⁵ On the contradictory end are practical shareholders who not only pursue to mark corporate governance but also turn out to be reliably involved in the company's day-to-day operations. Some studies categorize shareholder activism primarily with those at the more involved end, treating more passive roles as non-activist.¹⁶ Nevertheless, this study takes a more comprehensive style, identifying all systems of shareholder actions as forms of activism, providing they are allied to governance mechanisms.

The study also demonstrates the significance of the term "shareholder" and endeavors to crop out a debatable issue on whether activism should only confine shareholders or other stakeholders for decision taking. This paper provides a comprehensive description of shareholder activism, accenting the incentives and methods behind the actions rather than strictly adhering to formal categories.

Additionally, the second issue that arises concerning the term shareholder activism is whether it shall include traditional shareholders or bondholders. The research takes a wider perspective of activism, ordering the reasons and tools used by participants over rigid formalities and classifications.

Analytical Comparison of Diverse Activism Models

¹³ Rafael La Porta et al., Investor Protection and Corporate Governance, 58 J. FIN. ECON. 3 (2000)

¹⁴ Lucian A. Bebchuk, A Rent-Protection Theory of Corporate Ownership and Control (Harvard Law and Economics Discussion Paper No. 260, 1999), available at <http://ssrn.com/abstract=168990>

¹⁵ Anat R. Admati & Paul P. Pfleiderer, The "Wall Street Walk" as a Form of Shareholder Activism, 22 REV. FINAN. STUD. 2445 (2009).

¹⁶ Robert Parrino et al., Voting with their Feet: Institutional Ownership Changes Around CEO Turnovers, 68 J. OF FIN. ECON. 3 (2003).

Cataloging and investigating different models of activism is appreciated not only from a reasonable position but also intended as a planned framework in an arena that currently lacks clear nomenclature. Founding such an arrangement could subsidize a more well-versed prescriptive assessment of prevailing legal constructions. This study observes ten countries to underline the position of distinguishing diverse representations of activism. It is not envisioned to be a comprehensive study of every nation's legal outline or activist groups, nor does it effort to propose an inclusive account of each representation's full scope. The objective is not to present non-doctrinal data or to contend for the preeminence of one model over another, but relatively to validate that manifold activism models exist, and understanding their intricacies and relations is vital for proceeding with the present debate.

United States of America: Recently, hedge funds have developed a focal strength in shareholder activism in the United States. Notwithstanding receiving noteworthy consideration for their activist stratagems, most hedge funds are not decently activist by nature. However, their remuneration structures and the skill to upsurge their equity situations through erudite financial tools like derivatives often drive them into active participation. Classically, hedge funds involved with companies by intimidating or occasionally initiating proxy fights to press for variations. They also use legal tactics, such as seeking court orders to block management's proposals or making public statements about their goals.¹⁷ The core objective behind these efforts is usually the maximization of short-term returns, which can sometimes undermine long-term business growth.¹⁸ On the contrary, though equally determined by fiscal interests, private equity funds adopt fundamentally different models rather than merely monitoring companies.

Conventional financial organizations exercise an unlike form of activism. Public pension funds, for example, are often vigorous in corporate governance, but political apprehensions rather than economic interests commonly stir their participation. Unlike private equity and hedge funds, which are inclined to accept more destructive strategies, traditional organizations like mutual funds are classically involved in corporate governance by performing behind the scenes and having familiar interactions with management.¹⁹ An interesting twist in the mutual fund industry is that economic factors may play a lesser role in voting decisions due to establishing independent voting committees that operate separately from the fund's finance teams.²⁰ This departure detaches activism from financial enthusiasm, creating a separate form of activism. Some fresh theoretical outlooks even recommend that the unpretentious act of being able to sell shares could be measured as a form of activism in its own right, adding a new feather to the collective activism model.

U.S. societal players often force their schedules by presenting determinations on corporate ballots, an exercise generally observed among nongovernmental organizations (NGOs). These establishments usually influence media, civic relations, and corporate governance mechanisms to impact companies' verdicts on socially significant subjects. This method of activism, which merges internal corporate machinery and external pressure strategies, is known as a hybrid model. Likewise, one of the simple examples is Friends of the Earth (FOE) exertion to hold Exxon answerable for ecological damage after the Valdez oil spill. Additionally, dissenting outside Exxon's headquarters and politicization in Washington, FOE used corporate governance tools such as capitulating shareholder resolutions, hovering inquiries at annual meetings, and using proxy advisors

¹⁷ Rene' Stulz, *Hedge Funds: Past, Present and Future* (Fisher Coll. of Bus., Working Paper No. 2007-3, 2007), available at <http://ssrn.com/abstract=939629>.

¹⁸ Jeremy C. Stein, *Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior*, 104 Q. J. OF ECON. 655, 664 (1989).

¹⁹ Josh Lerner, Felda Hardyman & Ann Leamon, *Venture Capital and Private Equity: A Casebook* (3d ed. 2005).

²⁰ Vanguard Guide- Lines of Governance, <http://www.boardoptions.com/vanguardproxy.htm> (last visited Dec. 3, 2013)

to pressure Exxon's leadership. They even exasperated to avert Exxon's merger with Mobil by objecting at Mobil's shareholder meeting. The U.S. has industrialized various shareholder activism representations, opposing the common credence that profit-intensive investors rule it. Involvement in the U.S. incorporates many players, including for-profit and nonprofit organizations, specific activists, and activist groups. Enthusiasms behind this activism differ widely, with approximately few activists looking to maximize pecuniary value and advance governance, while others emphasize their financial interests that may not make parallel with those of the company or other shareholders

South Korea: Through the lens of South Korea, activism varies meaningfully as compared to the United States, basically due to the construction of the nation's Chaebols, which consequences in agency costs between majority and minority shareholders. Another key dissimilarity is in the methods of shareholder involvement.²¹ The People's Solidarity for Participatory Democracy (PSPD), a non-profit organization, is persuasive in South Korea's corporate governance landscape.²² Lacking considerable economic resources, PSPD implements a characteristic procedure of activism. The body identifies underachieving companies, obtains the minimum amount of shares compulsory by law, and files derivative proceedings against the corporation's management. In some examples, PSPD also asserts criminal charges against the directors, prompting a criminal probe. This authorized plan is envisioned to endorse better corporate governance by holding poorly managed companies responsible.²³ The South Korean

activism tactics differ from the U.S. model in various aspects. Primarily, activism is fronted by an external party with no direct economic stake in the corporation, possibly creating a conflicting interest with other minority shareholders. Subsequently, rather than trusting shareholder voting or intimidations of voting power, PSPD's activism principally involves lawful action, predominantly within the judicial framework, marching outside traditional corporate governance frameworks.²⁴

Israel: Israel demonstrates the hitherto alternative discrete model of shareholder activism. Like Korea, a principal activist group in Israel is a non-governmental entity—the Movement for Quality Government in Israel (MQG). Nevertheless, unlike traditional activists, MQG does not hold shares in the targeted firms, not even as a formality. Since the government monitors a substantial percentage of Israeli companies, MQG's actions emphasize addressing governance matters and exploitation in both private and publicly traded government-owned corporations. The association frequently acts either on behalf of shareholders or by straightly filing matters before the Supreme Court of Israel. This method of involvement, which has no fiscal interest at stake, avoids the role of official shareholders, while actual shareholders may occasionally recruit MQG as their representative. It similarly functions outside the distinctive corporate and securities law outline, using administrative law to encounter governance practices.²⁵ Current examples of such activism embrace MQG's participation in hindering the selection of the CEO and chairwoman of Bank Leumi, Israel's second-largest, partly government-owned bank. The Israeli Supreme Court

²¹ Jeong Seo, Who Will Control Frankenstein? The Korean Chaebol's Corporate Governance, 14 CARDOZO J. INT'L & COMP. L. 21 (2006);

²² Woochan Kim et al., Group Control Motive as a Determinant of Ownership Structure in Business Conglomerates: Evidence from Korea's Chaebols, 15 PAC.-BASIN FIN. J. 213 (2007).

²³ Ok-Rial Song, The Legacy of Controlling Minority Structure: A Kaleidoscope of Corporate Governance

Reform in Korean Chaebol, 34 LAW & POL'Y INT'L BUS. 183 (2002).

²⁴ Woon-Youl Choi & Sung Hoon Cho, Shareholder Activism in Korea: An Analysis of PSPD's Activities, 11 PAC.-BASIN FIN. J. 349, 351 (2003)

²⁵ Jooyoung Kim & Joongi Kim, Shareholder Activism in Korea: A Review of How PSPD Has Used Legal Measures to Strengthen Korean Corporate Governance, 1 J. KOREAN L. 51, 53 (2001).



governed MQG side, rendering to the removal of the CEO's recommendation. In alternative case, MQG upstretched alarms with the Israeli Securities Authority concerning the Israel Electric Corporation, which is principally preserved by the government, enquiring the trustworthiness of its fiscal disclosures. These instances exemplify a diverse type of shareholder activism, where an outward association mediates in key governance subjects, such as the sorting of company executives and overseeing the financial reports, and practices administrative law instead of outdated corporate legal conduits. This procedure of participation is slightly analogous to the U.S. condition during the economic crisis, when certain government-based corporations also confronted public inspection, however on a lesser scale.

United Kingdom: Similar to the United States, the United Kingdom also is characterized by a substantial number of listed companies, with shareholder involvement playing a significant part in their corporate governance. In the UK financial organizations and other institutional buyers are inclined towards larger portions of corporate equity stake and are also attached to the day-to-day administration of corporations. This dissimilarity twigs moderately from scarcer guidelines governing these organizations, as well as the U.K.'s more sympathetic attitude toward shareholder rights in commercial law. As a result, shareholder activism is more pronounced in the U.K. compared to the U.S.²⁶ Notwithstanding this, the high charges of beseeching votes and the ownership requirements make it essential to partake in activism confining the engrossment of minor investors and social revolutionary associations. Assuming these outlays,

official shareholder suggestions are stereotypically observed as a last recourse, with casual methods of engaging with administration being more communal. In the U.K., activism tends to be continuous and defensive, focusing on ongoing oversight, whereas in the U.S., activism is often triggered by specific events or issues.²⁷ Another key difference is the way U.K. activism is typically organized, with multiple institutional investors coordinating efforts to monitor management, a feature not commonly found in the U.S.²⁸ These operational variances are subjected to disparities in governing frameworks neighboring economic organizations and shareholder rights, rendering to separate models of activism in each nations.

Brazil: Brazil's commercial scenery has practiced an exceptional progression over the earlier span. The nation's old public marketplaces confronted substantial encounters owing to a deficiency of unswerving external funding, which left companies reliant on on bank advances, short-term loans, and reserved earnings.²⁹ This economic dependance led to the upsurge of a regulatory minority structure in which many publicly listed companies issued both voting and non-voting shares. This arrangement permitted the creation of families or central parties to recollect power while reducing their ownership stake. Commercial law revolutions expected at shielding minority shareholders and necessitating multi listings for positive Brazilian firms which were eventually unproductive. In answer, São Paulo's stock exchange-initiated action by presenting a new market intended to create two discrete corporate governance representations. This market, which operates keenly for publicly traded corporations, presented key restructurings such as the one share one vote system, tag-along rights, improved answerability, boards

²⁶ John Armour, Enforcement Strategies in U.K. Corporate Governance: A Roadmap and Empirical Assessment, (ECGI Working Paper No. 106, 2008), <http://ssrn.com/abstract=1133542>.

²⁷ Bonnie Buchanan et al., Shareholder Proposal Rules and Practice: Evidence from a Comparison of the United States and United Kingdom, 49 AM. BUS. L.J. 739, 800 (2012).

²⁸ Thomas W. Briggs, Corporate Governance and the New Hedge Fund Activism, 32 J. CORP. L. 681, 697–98 (2007).

²⁹ Bernard S. Black, Antonio Gledson de Carvalho & E'rica Gorga, Corporate Governance in Brazil, 11 EMERGING MKTS. R. 21 (2010).

independency, and enhanced fluidity. Additionally, the new market applied machineries for stopping outsiders from receiving a governing stake without paying a control premium. One such mechanism is enforcing shareholder contracts, which approve coordination among shareholders on crucial corporate suppositions.³⁰ These contracts have allowed the advent of a transitional ownership framework, similar in emerging economies, where numerous shareholder associations are linked through these arrangements. This procedure safeguards shareholders from external attempts to grab control and permits them to mutually bear the expenses of supervising management. The consequence is enhanced management oversight and decreased agency costs. This governance structure represents a new form of activism where contractual agreements enable shareholders to maintain their ideal ownership levels while aligning their interests for effective monitoring and, if necessary, activism.³¹ This typical activism changes the attention from the precise nature of activism to its organizational framework, permitting shareholders to improve their assets and activism without promising to any specific form of activism in repetition.

China: Activism in China is molded by a distinguishing combination of financial reform and state autonomy. The current years in China has progressively unlocked its markets for both local and foreign investors, with many public-sector enterprises now offering shares for public subscription.³² This enduring conversion realizes the Chinese government was trying to balance the rewards of overseas

investment with its local social supremacies. Originally, company law improvements permitted public-sector companies to issue shares, making a bicameral scheme of share programs: non-tradable shares, typically measured by the government accessible to the public and overseas investors. The government's double role as a controller and majority shareholder confounds activism dynamics. With its central position in many companies, the government may be less motivated to endorse guidelines that benefit minority shareholders, which could conflict with its interests.³³ However, the request for stouter defenses from overseas investors—such as exit rights and protections against self-dealing—has increased, and the administration must discourse these apprehensions to endure foreign capital. Institutional investors, including insurance firms, pension funds, and foreign investors trading through Qualified Foreign Institutional Investors (QFIIs), are becoming more dynamic in China's markets.³⁴ Fascinatingly, the discrepancy between tradable and non-tradable shares has given marginal shareholders an exceptional advantage.

Australia: Australia represents an increase in shareholder participation through shareholder selection, largely through the "one hundred shareholders rule," which permits collections of 100 shareholders to recommend determinations. Though combinations have not continuously succeeded in passing their resolutions, they have used this platform to push management into higher-level discussions.³⁵ The key to this activism is "dual stake" agents—

³⁰ Gilson et al., Regulatory Dualism as a Development Strategy: Corporate Reform in Brazil, the U.S., and the EU (Stanford Law and Econ. Olin Working Paper No. 390, 2010).

³¹ Morten Bennedsen, Kasper Meisner Nielsen & Thomas Vester Nielsen, Private Contracting and Corporate Governance: Evidence from the Provision of Tag-along Rights in Brazil, 18 J. CORP. FIN. 904 (2012).

³² Donald. C. Clarke, Corporate Governance in China: An Overview, 14 CHINA ECON. REV. 494 (2003).

³³ Guy S. Liu, Comparative Corporate Governance: The Experience Between China and the U.K. Corporate Governance, 13 Corp. Governance: An International Review. 1 (2005)

³⁴ Michael Rawling, Australian Trade Unions as Shareholder Activists: The Rocky Path Towards Corporate Democracy, 28 SYDNEY L. REV. 227, 240 (2006).

³⁵ Brian R. Cheffins, Comparative Corporate Governance, and the Australian Experience: A Research Agenda, in Key Developments in Corporate



employees who are also shareholders—who can influence decisions and access critical information.³⁶ With money from outside groups like trade unions, these activists stress issues such as policymaking rewards, arguing for benefits both from employees and shareholders.

Japan: Japan had a focused ownership tower, with the banking segment extremely intricate in corporate governance through cross-shareholding in the Keiretsu system. This system served as an antitakeover device providing mutual sustenance for businesses. Nevertheless, throughout the "lost decade," the Keiretsu scheme debilitated, corporate cross-ownership declined, and foreign investor involvement grew.³⁷ This modification happened with corporate governance alterations, counting the submission of U.S.-style board structures with independent directors and the legality of poison pills as defensive tools. Shareholder involvement in Japan has strengthened, determined through residential and overseas players with changing plans. U.S. hedge fund Steel Partners is recognized for its belligerent tactic, aiming at 'small to mid-sized companies, taking substantial stakes, and compelling them to release currency.³⁸ Japanese futuristic Yoshiaki Murakami, provisionally, has followed hostile takeovers through several funds. On the additional side, some East Asian funds favor a more concerted method, working with organizations to advance governance and processes. Japan's Pension Fund Association (PFA) also involves involvement, but with a more positive style, concentrating on

endorsing companies with robust governance rather than challenging poorly overseen firms.³⁹ This method relies on marketplace services, filling to focus on good governance practices and letting the market recompense them.

Italy: Italy's corporate scenario is measured by domestic control, with multifaceted pyramids that intensify agency costs between minority and majority stockholders. Financial improvements associated with European standards have distended foreign assets in Italy. In 2003, Italy transformed its commercial law, giving boards more executive inspiration, but shareholders still remember substantial voting rights, largely over the stability sheet, dividends, auditor appointments, and director prize.⁴⁰ The improvements aimed at more elasticity in corporate governance, letting stockholders adopt practices, but defending minority shareholders continue, as well as the right to demand special meetings, contest decisions, and register suits. Since 2007, minority shareholders to consume the right to select board and auditor members.

As a consequence, hedge funds—both resident and overseas—are the chief protestors in Italy. Contrasting U.S. hedge funds, which can influence takeovers or proxy competitions, Italian hedge funds depend on their boosted minority rights to work with governing shareholders. Numerous hedge funds yield a submissive method, positioning with the governing shareholder's selections for board members to find entry to administration.⁴¹ Hence such "participatory

Law and Equity: Essays in Honour of Professor Harold Ford 13 (Ian Ram-say ed., Butterworths 2002).

³⁶ Harold Ford, Robert Austin & Ian Ramsay, Ford's Principle of Corporate Law 219 (12th ed., 2005).

³⁷Takeo Hoshi, Anil Kashyap & David Scharfstein, Corporate Structure, Liquidity, and Investment: Evidence from Japanese Industrial Groups, 106 Q. J. OF ECON. 33 (1991).

³⁸ Yoshiro Miwa & J. Mark Ramseyer, The Fable of the Keiretsu, 11 J. ECON. & MGMT STRAT- EGY 169 (2002).

³⁹ Legal Reform and Shareholder Activism by Institutional Investors in Japan, 13 CORP. GOVERNANCE: AN INT'L REV. 377 (2005).

⁴⁰ Matteo Erede, Governing Corporations with Concentrated Ownership Structure: Can Hedge Funds Activism Play Any Role in Italy? 3 (CLEA Annual Meeting Paper, 2009), available at <http://ssrn.com/abstract=1397562>.

⁴¹ Marco Ventoruzzo, Experiments in Comparative Corporate Law: The Recent Italian Reform and the Dubious Virtues of a Market for Rules in the Absence of Effective Regulatory Competition 3-4 (Bocconi

activism” intends to impact corporate conclusions from the inside, relatively than compelling modification from the external.

Germany: In current centuries, Germany has seen momentous variations to its commercial law, shimmering wider EU trends. While banks still wield considerable influence in corporate governance, this power appears to be in decline, with growing interest from foreign investors in German companies.⁴² Germany's business administration is exceptional, presenting co-determination, which vests laborers a significant ability to speak in policymaking. The managerial board habitually comes to decisions through negotiation, and corporate title inclines to be focused among a few chunk holders, with banks enduring to show a major part as both creditors and shareholders.

Shareholder campaigning in Germany functions through manifold networks. Banking sectors are observed as playing the dual role of owner and custodian which influences the structure of the managerial and supervision boards, acting as shields of minority shareholders. Yet, this increases apprehensions about "empty voting,"⁴³ where voting by the banks is done without inevitably bearing fiscal menaces. Marginal shareholders also have significant rights, such as the capability to add recommendations or call special meetings if they hold minimum five percent of the company's shares, further simplifying activism.

An exceptional character of German corporate governance is the part of the special archetypal (besonderer Vertreter), which could assist as a means

for activist shareholders, nevertheless it is hardly used in practice. Selected by shareholders, this representative can administer claims for indemnities against members of the management or managerial boards, or even against a controlling shareholder. The special representative has the authority to act autonomously, as the regulatory shareholder's voting rights are omitted during the appointment. This could make the position a influential device for minority shareholders and activists. Banks, acting as double mediators—both shareholders and creditors—play a protruding role.⁴⁴ Additionally, with the increasing effect of other stakeholders like employees and bondholders, minority shareholders, particularly overseas investors, are possibly to increase the use of their official rights to wield pressure on companies, counting the right to suggest resolutions and demand for special meetings.

France: In the last fifteen years France's Company law has changed from a family-conquered, severely planned system to a more denationalized and diverse market. The governance mechanism in French companies is multipurpose, with three board edifice choices: one-tiered, two-tiered, and two-tiered with a separation between CEO and chairman.⁴⁵ After the 2001 reorganizations, shareholders hold strong rights, such as scrutinizing company accounts, voting at general meetings, and eliminating the board without reason. Minority shareholders are also given veto power: resolutions with over one-third opposition are blocked. The outline of proxy voting has elevated apprehensions about inactive shares being used for backing management, encouraging suggestions for independent representatives to vote these blank

Legal Studies, Research Paper No. 06-02, 2004), available at <http://ssrn.com/abstract=556601>.

⁴² Klaus J. Hopt & Patrick C. Leyens, Board Models in Europe – Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France and Italy, 1 EUR. CO. & FIN. L. REV. 135 (2004).

⁴³ Gary Gorton & Frank A. Schmid, Capital, Labor, and the Firm: A Study of German Co-Determination, 2 J. EUR. ECON. ASS'N 863 (2004).

⁴⁴ Mark J. Roe, Some Differences in Corporate Structure in Germany, Japan, and the United States, 102 YALE L. J. 1927, 1938 (1993).

⁴⁵ Kaal A. Wulf & Richard W. Painter, Initial Reflections on an Evolving Standard: Constraints on Risk Taking by Directors and Officers in Germany and the United States, 40 SETON HALL L. REV. 1433, 1472–73 (2011).

proxies.⁴⁶ French legal framework also permits unswerving and derivative suits, making directors personally accountable for breaches of duty, including criminal and bankruptcy obligations. This confirms that directors' responsibility of care cannot be relinquished or insured, holding them answerable.

Making a Comprehensive Taxonomy: Policy Deliberations and Impressions

Diverse replicas of shareholder activism can coincide under similar peripheral situations, as deep-rooted in the U.S. Concentrating public discussion entirely on one precise form of activism and disregarding other types may previously happen or rise from governing changes. This slender emphasis could lead to guidelines that errand a kind of activism while unintentionally affecting others. The clue that shareholder activism is not standardized is essential in the contemporary U.S. debate, where deliberations and projected improvements mainly target hedge fund activism. Improvements should then identify the explicit types of activism they aim to boost or limit corporate governance. The economic crisis has emphasized the hazards of applying an unbending, one-size-fits-all approach to shareholder power. Numerous recent calls to regulate hedge funds and curb shareholder impact are based on the belief that financial institutions are pushed to take extreme risks due to shareholder demands and incentive-based compensation. Nevertheless, this standpoint flops to distinguish the diverse interests of different categories of shareholders, including their divergent short- and long-term priorities. Although some shareholders are mostly attentive to short-term gains, others are attentive to long-term steadiness and profitability. Financial restructuring should be pursued to fortify the position of long-term investors over short-term speculators, rather than uniformly restricting all shareholder power.

Various Drivers of Influence: Dividing activism into discrete models and apparent categories offers a treasured tool for policymakers. As an alternative way for applying quick fixes to the glitches created by definite types of activism, this outline provides richer insight into how policymakers can control activism more effectively. Meanwhile, the reasons behind activism can't be directly measured, policymakers have two main levers they can regulate when considering improvements.

The first device is the direct guidelines of the activists themselves. Policymakers can label activists based on their activities being destructive, valuable, or advantageous only under certain conditions. This classification helps policymakers to adjust which methods of activism should be circumscribed and which should be stimulated. Once this examination is done lawmakers can both negative regulation (limiting harmful activism) and positive regulation (offering enticements for necessary forms of activism). This guarantees that destructive activism cannot be substituted by other detrimental forms when present happenings are constrained.

The second tool includes changing the controlling environment to affect the devices and incentives accessible to activists. As an alternative to regulating the activists themselves, representatives can regulate how protestors function, eliminating destructive tactics and endorsing actions likely to benefit the social order. This process concentrates on the kind of activism rather than the uniqueness of the activist, which is aimed at more targeted and sustainable policy interventions.

Spinning Philosophy into Reality: The Significance of Comparative Review in Changing Processes

The present study gives an outline for policymakers to approach regulatory change. Nevertheless, while policymakers can recognize actions that are either necessary or detrimental, it is approximately

⁴⁶ Klaus J. Hopt & Patrick C. Leyens, Board Models in Europe – Recent Developments of Internal

Corporate Governance Structures in Germany, the United Kingdom, France and Italy, 1 EUR. CO. & FIN. L. R. 135, 156 (2004).

implausible to forecast with inevitability how a ground-breaking symmetry will develop once any of these regulatory levers are pragmatic. A significant fact elevated here is the probable hazard of "Band-Aid" regulations aiming at specific activist performances (such as those of hedge funds). These kinds of guidelines can be too detailed by directing too barely on one form of activism while ignoring the broader range of possible models. Contrariwise, they can also be too general by smearing solutions that are not personalized to the definite dynamics of activism in practice. A reasonable examination over time can suggest valued visions into possible regulatory solutions and help legislators comprehend the likely significance of specific variations on the overall symmetry of activism.

Fetching It All Together – Practical Applications

This study has exposed that activism can be understood through numerous models, with policymakers having the competence to outline these models through direct and indirect guidelines. By regulating the mix of activists and activism models, policymakers can impact the spectrum of activism. Nevertheless, a comprehensive investigation must not only ponder the active players but also account for those potential activists who are currently inactive within the prevailing regulatory symmetry, as these actors could appear if regulatory circumstances change. Hence, policymakers should approach transformation with consideration to both the ex-ante process—how changes are intended, projected, and approved—and the ex-post examination—assessing whether these improvements sufficiently reflect the variety of activist models. An equilibrium between the specificity of the actions and a wider procedural context offers deeper identifications into whether a projected transformation has completely taken into account the implications of regulatory mechanisms on both reform targets and the comprehensive activism scenery.

Conclusion

Conventionally, shareholder activism is comprehended as shareholders endeavoring to affect

corporate practices or results. Nevertheless, legal scholarship has mainly overlooked how diverse shareholders, determined by varied motivations through using a range of strategies are involved with one another as worth of these connections. The present study contends that the inadequate attention given to the diverse field of activism models in legal and public discourse can result in suboptimal legal reorganizations. Regulatory variations determined by explicit shareholder activities may inadvertently limit the development of more competent activism models while allowing the rise of less operative ones.

The projected taxonomy in this current study identifies activism as composed of three central essentials: motive, type, and exogenous factors. This framework serves as a tool for assessing activism's impact and guiding regulatory reforms. The study underlines the defects in present methods to activism and shows how the taxonomy can aid in circumventing unreasonably specific regulations—those that mark a single procedure of activism without seeing the wider implications. It also restraints against the implementation of regulations that disregard the specific traits of the system which are envisioned to regulate. By retaining this context, the paper demands for a more nuanced kind of shareholder activism, which would promote more erudite discussions among regulators, market intermediaries, and academic researchers.

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