Donnelley Financial Solutions

MERGERMARKET

VENUE

VENUE® Market Spotlight

CORPORATE GOVERNANCE

April 2017 Edition

CONTENTS

METHODOLOGY

In April 2017, Mergermarket interviewed 25 global dealmakers from across the corporate, PE and investment banking communities for their views on issues related to corporate governance, shareholder activism and M&A. Respondents were split between the US (36%), Europe (32%), and APAC (32%).

WELCOME

Dear Valued Reader,

Welcome to the April 2017 edition of the *Venue Market Spotlight*. This month, we will examine the latest trends in corporate governance, shareholder activism, and M&A.

It was a record-breaking year for shareholder activists in 2015, and while activity slowed in 2016, the number of activist campaigns continued to be steady. Headlines continue to be dominated by activist campaigns and predictions are that 2017 won't fail to deliver more activist-led deals.

With this constant flow of shareholder activity, corporate governance has risen up the priority list for corpoate boards – particularly when it comes to preparing and executing an M&A deal. Boards will also be anxiously awaiting a verdict on the Securities and Exchange Commission's controversial universal proxy proposal, which could see more freedoms granted to shareholders, making it easier for activist investors to gain a place on corporate boards.

Over the past quarter, while global M&A dealmaking has seemed to remain resilient, companies have continued to look for innovative and new ways to complete deals. At Donnelley Financial Solutions, we remain committed to serving the global dealmaking community by not only providing the most cutting-edge deal technologies to support these deals, but also by continuing to expand our product portfolio to make every deal process as efficient as possible.

As always, please enjoy this month's *Spotlight*.

Sincerely,

Craig Clay
President, Global Capital Markets
Donnelley Financial Solutions

FOREWORD

Following a year of high shareholder-activist-led M&A activity globally in 2015, last year's activity was more restrained. However, 2016 activist campaigns still totaled the third-highest annual count since 2009.[1]

Rather than continuing to target large-cap businesses, many investors looked to smaller firms, with activist funds increasingly focused on investor relations and increasing liquidity. According to Harvard Law School's Activist Investing Annual Review 2017, the number of European companies publicly facing activist demands in 2016 increased to 97, up from 72 in 2015, and in Asia it rose to 77, up from 52 in 2015. [2]

After Britain voted to leave the European Union in July 2016, rather than the anticipated slowdown, a pricing fall spurred on even more M&A activity. Dissatisfied shareholders called for a number of mergers to be re-evaluated in the UK. And in Europe, we have seen several high-profile examples of activists obtaining boardroom seats — including companies within the FTSE 100.

In the US, 456 activist demands were made on businesses in 2016, compared to 418 in 2015. In Japan, the number of companies targeted by activists increased from nine in 2015 to 15 in 2016. The Japanese surge was expected by many, as favoring shareholder activism was part of Prime Minister Shinzo Abe's plan to revive the country's economy. In Singapore, it increased from nine to 12, in China from eight to 11, and in South Korea from two to five.

Other key findings include:

72%

of respondents predict that shareholder-activist-driven M&A will increase in the coming 12 months (32% believe significantly so).

The main drivers of this increased activity are the pressure to merge with competitors, the pressure to spend cash on acquisitions (both selected by 52% of those surveyed), and pressure to do alternative deal types (40%)

Financial services is the sector cited most likely to receive the highest amount of activist-driven M&A activity in the next 12 months (44%).

1. https://insight.factset.com/2016-shareholder-activism-trends
2. https://corpgov.law.harvard.edu/2017/02/21/the-activist-investing-annual-review-2017/

SURVEY

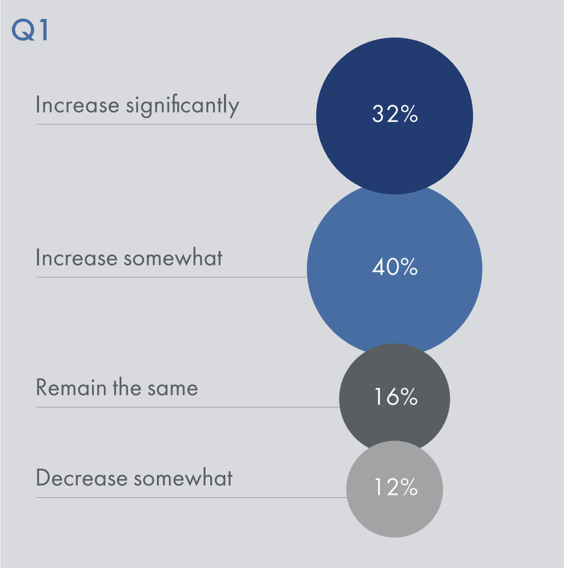
Q1 What do you think will happen to M&A driven by shareholder activism in the coming 12 months?

The activist appetite for M&A seems to be far from waning, with some 72% of respondents predicting that shareholder-activist-driven M&A will increase in the coming 12 months, and 32% believe significantly so.

"The confidence in M&A deals is increasing as the level of drivers has increased significantly," said a chief corporate development officer from the US, who believes there will be a significant increase in activist-driven M&A in 2017. "Economic recovery and easing regulatory and compliance policies are favoring businesses to perform more M&A deals, and the shareholders are backing these strategies aggressively as they want to make the best of these attractive market conditions to earn higher returns on their investments."

Already in 2017 we see evidence of this as activists continue to raise funds, such as SpringOwl and Spruce Point, which launched new funds in late 2016. However, not all respondents agree: 16% believe activist-driven M&A activity will remain the same, while 12% believe it will decrease somewhat.

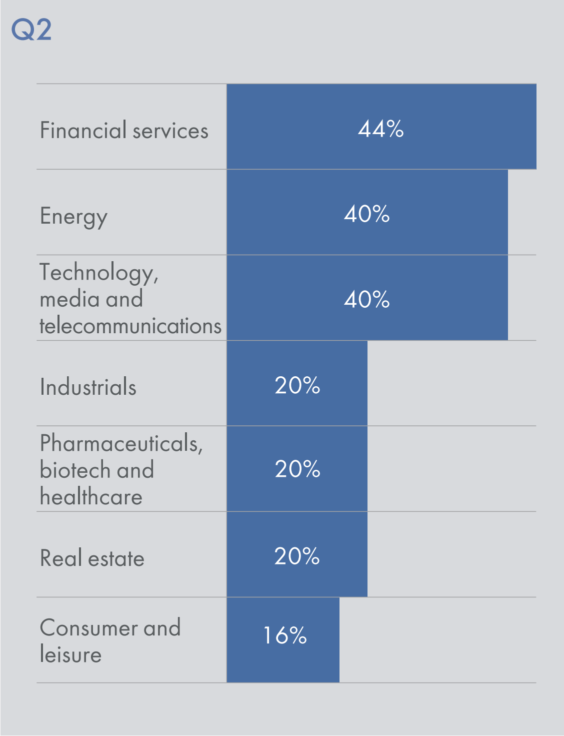
One managing director of a US-based corporate explains: "Corporates have developed strategies to deal with shareholders and to reduce their influence over the company and its decisions. The management of companies will have the most influence when deciding on M&A deals. They will only take the feedback of shareholders and devise ways to make sure they can develop the company with minimal influence."



Q2 Which sectors do you think will have the most activist-driven M&A activity in the coming 12 months? (Select top two)

Financial market instabilities and rising competition are the main reasons respondents gave when naming financial services as the sector they believe will see the most activist-driven M&A in 2017. Some 44% selected this sector, followed closely by the energy and technology, media and telecommunications sectors (40% each).

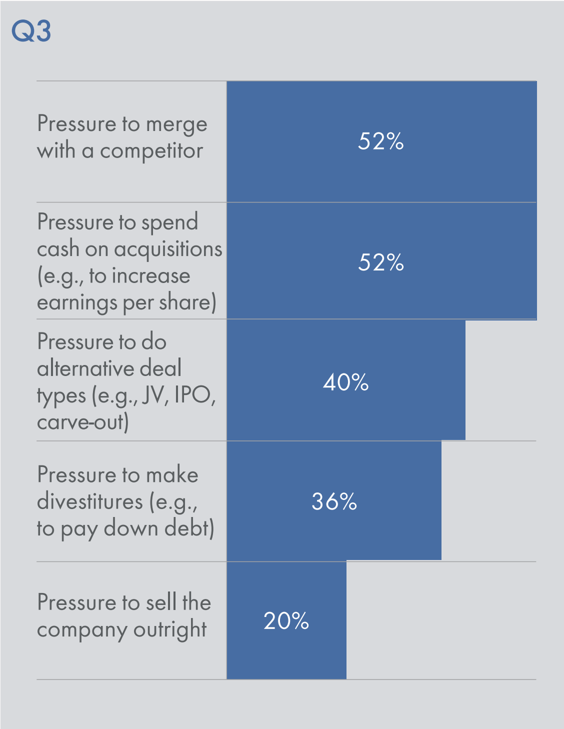
Last year saw muted activist activity in the technology sector – only16%. This is despite headline-grabbing challenges that appeared briefly to pose threats of a full board contest before reaching settlement. Meanwhile, 21% of activity was in financial services – a percentage respondents expect to increase for 2017.



A partner at a UK PE firm commented: "The financial sector has witnessed a significant downfall due to several uncertainties and geopolitical concerns that have affected the capital markets considerably, thus impacting business performances and valuations. And now, as the economy is improving, there are far better chances to transform business activity mainly through M&A growth strategies, which are being pushed forward by shareholder activism."

Losses and instability were also cited as reasons that the energy and technology, media and telecommunications sectors may also be ripe for activist interest.

Q3 What will be the main drivers of activist-related M&A activity over the coming year? (Select top two)



Pressure to merge with competitors and to spend cash on acquisitions were each cited by 52% of respondents as the main drivers of activist-related M&A. Many commented on the desire to fuel rapid growth opportunities, with some 40% saying that pressure to carry out alternative deal types, such as joint ventures, carve-outs and IPOs, would drive activity.

A partner at a Singapore-based PE firm explained: "Shareholders and other institutional investors are increasingly pressuring organizations to carry out M&A of high- and low-profile competitors, recognizing this as the next big step to take to increase returns significantly. Shareholder activists are no longer playing small and want the most from their investments. Another key driver for M&A deals is aimed toward selling the company outright, especially companies with large cash reserves and existing problems with corporate governance."

52% OF RESPONDENTS SAY SHAREHOLDER ACTIVIST M&A ACTIVITY WILL BE DRIVEN BY PRESSURE TO MERGE WITH COMPETITORS

Q4 As cross-border M&A activity grows, what do you think will happen to shareholder challenges to international M&A deals?

With increased cross-border deal activity comes increased challenges from shareholders to these international deals, according to 36% of respondents. This was not a clear majority however, signifying some uncertainty as 32% said challenges would remain the same and a further 32% said they would decrease.

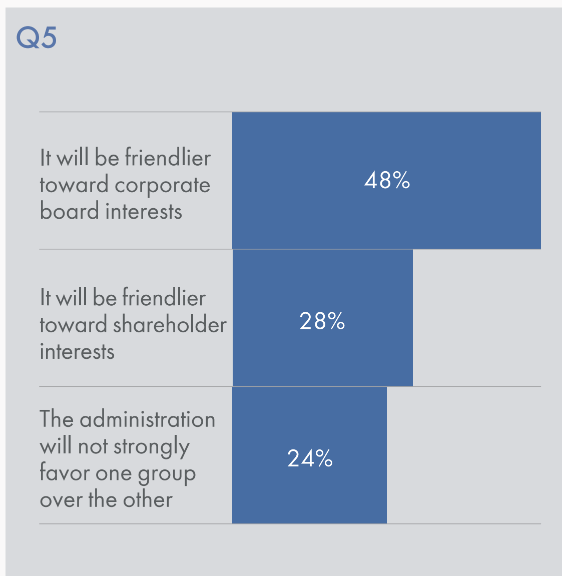
A point of contention between participants was whether different geographical jurisdictions and legislation were creating more or less challenges. While some argued that a lack of uniformity across various jurisdictions would make it very complex for companies to perform cross-border deal activity, others felt that international markets were making efforts to standardize legislation and businesses were devising strategies to deal with international shareholders.

"Companies need to explain the reasons and be clear about their expansion goals. This is necessary to avoid problems from shareholders when trying to carry out an international deal," said a managing director at a PE firm in China who believes challenges will remain the same. "Companies have become better at managing shareholders. They have developed strategies to manage shareholders and to carry out international M&A without any interference or objections from shareholders."

Q5 Overall, do you think the new US administration will be friendlier toward shareholder interests or corporate board interests?

Corporate boards are deemed to be the clear winners with the new administration in the US, with 48% of those surveyed believing it will be friendlier toward their interests.

"The new administration has not been very supportive of the shareholders' activism," commented one managing director of a US investment bank. "And with a new SEC head, shareholders' rights will be restricted. The US president has not been very pro-activist, and under the new head of the SEC the number of shareholders carrying out votes will be reduced. Corporate board interests will get a major boost because of this and corporates will have better control over decisions in the company."



Opinions were divided however, with 28% saying the administration will be friendlier toward shareholder interests and 24% saying the administration would not strongly favor one group over the other.

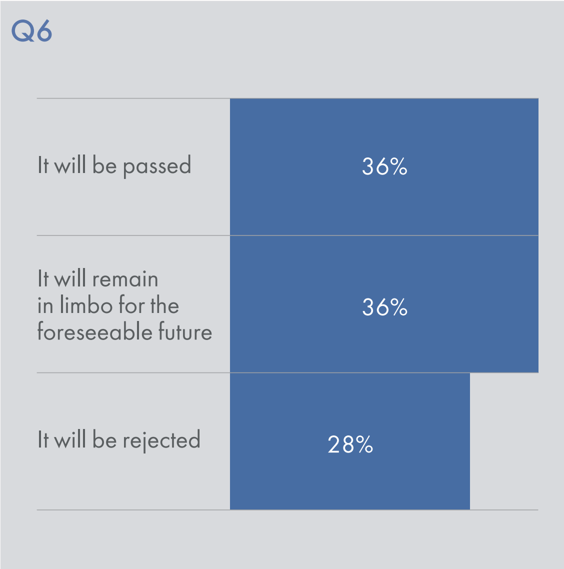
Q6 What do you think will happen to the SEC's universal proxy proposal under the new US administration?

Respondents are uncertain when it comes to predictions on the SEC's universal proxy proposal. The proposed amendment would give shareholders the ability to vote by proxy, rather than having to vote in person. This may make it easier for dissident candidates to be elected to corporate boards and would likely change corporate governance practices and activist negotiating strategies.

Our survey showed that while 28% believe this proposed amendment will be rejected, 36% said it would be passed, while another 36% expect the situation to remain in limbo for the foreseeable future.

It is interesting to note that the majority of those who expect the proposal to remain in limbo also cited that the administration would not favor either corporate boards or shareholders over the other.

One director of M&A at a corporate in Germany who expects there will be no decision on the proposal in the near future said: "The new government is unlikely to have sufficient information and the data that is required to successfully roll out the approval for the universal proxy proposal. Until they have the necessary data-analysis abilities, the proposal will remain in limbo."



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CISCO
— *Acquires* —
APPDYNAMICS
$3.7B
MARCH 22, 2017

Financial services

KKR AND CDPQ
— *Acquire* —
USI
$4.3B
MARCH 17, 2017

Computer software

SNAP INC
IPO
$3.4B
MARCH 2, 2017

Biotechnology: Medical

ALLERGAN
— *Acquires* —
ZELTIQ
$2.475B
FEBRUARY 13, 2017

Financial services; Rental: leasing

INVITATION HOMES
— IPO —
$1.54B
FEBRUARY 1, 2017

Computer services

HEWLETT PACKARD ENTERPRISE
— *Acquires* —
SIMPLIVITY
$650M
JANUARY 17, 2017

Energy: Oil & Gas

NOBLE ENERGY
— *Acquires* —
CLAYTON WILLIAMS ENERGY
$2.7B
JANUARY 16, 2017

Computer software

MICROSOFT
— *Acquires* —
MALUUBA
JANUARY 13, 2017

Computer services

CLEARLAKE CAPITAL GROUP
— *Acquires* —
LANDESK
$1.15M
JANUARY 3, 2017

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