

Coronavirus and the 2020 Proxy Contest Season

In 2009, the US market saw a record 43 proxy contests that went all the way to a vote. Although the number of activist campaigns continued to rise over the decade that followed, the number of contests making it to a vote declined as the settlement process became increasingly fine-tuned. Between 2013-2016, the numbers hovered in the low 30's; this was followed by three consecutive years in the low 20's.

Much like the 2009 surge in contests coincided with the recovery from the 2008 financial crisis, we may see an uptick in full-blown contests in 2020/2021, once the market begins to climb out of the coronavirus dip, even if we are unlikely to break the 40-contest mark again.

The pandemic has already delayed some campaigns, like Xerox's pursuit of HP, Inc., and it could altogether derail others – particularly in severely impacted sectors, where the path to profitability has likely been extended by several years. But for activist funds with significant war chests, the market decline could also create an opportunity to acquire much larger positions of potential

targets, as Carl Icahn demonstrated by recently snapping up more shares of Occidental Petroleum. Occidental reacted swiftly, putting a poison pill in place (15 percent trigger/20 percent for passive investors). Advisors have reportedly been urging other potential target companies to consider similar defensive measures. Dave & Buster's Entertainment, Inc., which saw KKR & Co. increase its stake above 10 percent earlier this year, also adopted a pill this week.

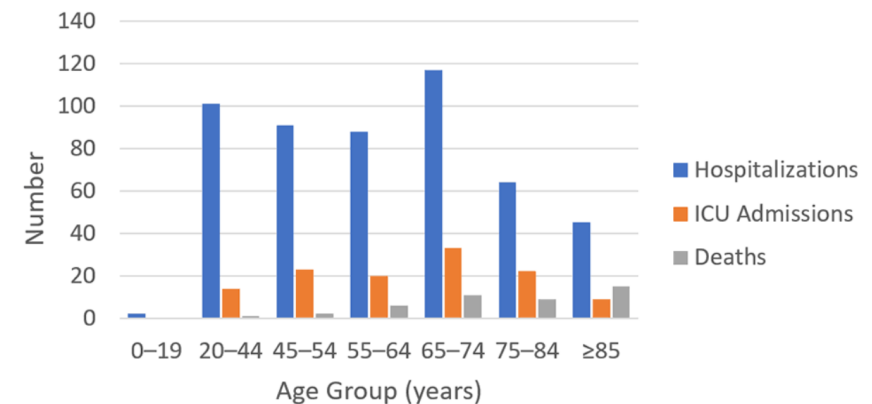
It seems reasonable to assume that activists could leverage the fact that target boards and management teams may be preoccupied with coronavirus response to their advantage. Still, boards contemplating defensive maneuvers may want to consider that an effective response to the pandemic could be more advantageous than any pill. Although the outbreak of COVID-19 may not have been as predictable as the rise in cybersecurity breaches over the past several years, the risk oversight function of many boards will similarly be under a microscope once the market begins to emerge from this downturn and activists sift through the wreckage for

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Companies mentioned in this Note

- ◆ Xerox Holdings Corp (XRX)
- ◆ HP, Inc. (HPQ)
- ◆ Occidental Petroleum Corporation (OXY)
- ◆ Dave & Buster's Entertainment, Inc (PLAY)
- ◆ Target Corporation (TGT)
- ◆ Equifax Inc. (EFX)

Chart Focus: US Hospitalizations, ICU Admissions, and Deaths from COVID-19



Source: CDC; February 12–March 16, 2020

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new targets. In the wake of their respective data breaches in 2013 and 2017, for instance, the boards of Target Corporation and Equifax Inc. faced low shareholder support for the reelection of certain directors at their subsequent AGMs. Companies that fail to safeguard the health of their employees, or whose business continuity plans prove to be inadequate, could eventually face similar opposition.

Succession planning, which played a prominent role in several activist campaigns in 2019 (AT&T Inc., Argo Group International, EQT Corporation, and Gannett Co., Inc.), is a related board function likely to remain relevant over the next few years. The issue will unfortunately be magnified by the disproportionate impact that coronavirus appears to have on older individuals. The recent warning by the Centers for Disease Control and Prevention (CDC) that adults 65 years old and older accounted for 80 percent of US deaths associated with coronavirus serves as a stark backdrop for the fact that the median age of S&P500 directors, as well as CEOs, is currently 62 (per ISS data); the median for the Russell3000 is slightly lower, at 61.

Along with the common sense notion that we should all do our part to slow the spread of this disease, the aforementioned informs our decision to suspend all in-person engagements for contested meetings for this proxy season.

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We will continue to monitor this situation and market trends, speak with interested parties and, where relevant, issue additional *Special Situations Research* notes to provide further information and guidance for clients.

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