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The Long Arm of Governance Activism: U.S. Investors Look Abroad

As U.S. public pension funds – longstanding proponents of corporate governance and shareholder proposal-style activism in the U.S. – and other U.S. investors allocate capital throughout the world, they are increasingly considering whether and how to apply their strategies and tactics for increasing shareholder power, changing governance norms, influencing boards and management teams and driving the adoption of their preferred best practices across the full global footprint of their investments. This phenomenon is illustrated by the ambitious plans of CalPERS, America's biggest public pension fund, to extend their U.S. "focus list" of targeted companies globally and drive changes worldwide in investor rights, board membership and diversity, executive compensation and corporate reporting of business strategy, capital deployment and environmental, social, and governance practices. CalPERS' [Investment Committee](#) and [Global Governance Policy Ad Hoc Subcommittee](#) formally consider these matters later this week.

CalPERS experimented in 2015 with this new brand of global governance activism by selecting a particular non-U.S. market – Japan – to target. Notably, one of the reasons cited by CalPERS for choosing Japan is the marked increase in foreign ownership of Japanese shares relative to the mid-1990s. In fact, this phenomenon of companies having to confront a rapidly changing investor base increasingly populated by U.S. investors is by no means confined to Japan. The measures applied by CalPERS to their selected Japanese companies would be familiar to U.S. companies: (1) correspond with the company; (2) seek in-person meetings with executive management; (3) seek in-person meetings with board members; (4) advocate that specific governance changes be adopted; (5) vote their shares, potentially against incumbent board members or otherwise in opposition to board and management recommendations; and (6) escalate their efforts if desired changes are not enacted. While not, so far, deploying more aggressive tactics such as "naming and shaming," leaks to the press, use of the media or other pressure and publicity tactics, CalPERS has been actively engaging with influential organizations in Japan throughout the process. Examples of topics raised by CalPERS in these very early rounds of engagement in Japan include: increasing board independence, quality and diversity; defining narrower independence standards for directors; director biographies, skill-sets and expertise and disclosure thereof; changing director search and recruitment processes; and seeking comprehensive disclosure of cross-shareholdings.

Other U.S. investors that are well-known governance activists will increasingly adopt the same approach of engaging with non-U.S. companies directly, including at the senior executive and board level. This is occurring in parallel with the globalization of hedge fund economic activism and the proxy advisory firms seeking revenue opportunities in non-U.S. markets, as illustrated by ISS recently expanding its coverage, staffing, voting recommendations and governance assessments beyond the Americas, further into Australia, Europe and Japan and newly into China, India and South Korea.

On the governance front, these dynamics will require companies in all markets to, at a minimum: (1) carefully evaluate the demands of U.S. corporate governance activists and deal effectively with their requests for meetings; (2) consider changes that will actually improve governance and create sustainable value; (3) resist changes that they believe will not be constructive; and (4) study the approaches that have been developed by U.S. companies, investment bankers and law firms to deal effectively with activists. As the long arm of U.S. governance activism is extended globally, we encourage investors and proxy advisory firms to avoid imposing one-size-fits-all approaches across jurisdictions; consider local norms, customs and country- and company-specific circumstances (and accept those where appropriate); and in all cases engage constructively and pragmatically.

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