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THE UNFULFILLED PROMISE OF HEDGE FUND ACTIVISM

Abstract

Hedge fund activism has mostly disappointed. While hedge fund activists are good at motivating sales of companies to potentiallyoverpaying acquirers, hedge fund activism is neither the threat to corporate strength that hostile commentators have claimed nor a meaningful force for better corporate performance. Instead, more than a decade of research shows hedge fund activism to be economically unimportant to corporate performance one way or the other. Hedge fund activists have disappointed their investors as well, generating unimpressive returns. I explore three reasons why hedge fund activism has mostly disappointed. First, hedge fund activists have no comparative advantage in generating ideas for meaningful competitive advantage at target firms. Second, hedge fund activists likely suffer from a form of winner's curse where the hedge fund activist is too pessimistic about the firm it targets. Third, hedge fund activists often target declining firms, the equity in which is often unsalvageable by the time the activist has taken notice. In the end--and in the spirit of Edison's famous comment about his failures on his way to inventing the light bulb--we have learned little more from a decade of research on hedge fund activism than one additional way that shareholder activism does not work.

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*318 I. Introduction

> "And another one gone, and another one gone"
>
> -Queen, *Another One Bites the Dust* (1980).

IT is probably the case that "outside" shareholders have been angling for change since the first time a corporation distributed stock outside its management group.[1] Up to the mid-2000s, however, there was little persuasive evidence that shareholder activism generates any economically meaningful improvements in share prices or the operating performance of corporations.[2]

Commentators pinned the failure of shareholder activism on the poor incentives of the shareholder activists of the time, notably public pension funds.[3] Hedge fund activism--shareholder activism by hedge funds--was supposed to be different.[4]

***319** Hedge fund managers have powerful financial incentives.[5] They not only collect a healthy management fee on the assets they manage, but they can earn 10%-20% or more of the profits the fund makes.[6] Early academic work on hedge fund activism by financial economists and corporate legal scholars proposed that these powerful economic incentives would lead hedge fund activists to focus on changes that would benefit shareholder value, unburdened by the political agendas of past shareholder activists like labor unions or public pension funds.[7]

Early research did show that the announcement of a hedge fund activist's targeting of a firm, on average, generated stock price increases of around 7%.[8] It turned out, though, that most all of that average return was driven by the minority of hedge fund activism campaigns where the activist pressured the company to sell itself or take some similar action.[9] Aside from encouraging takeovers, however, hedge fund activists seem to have little impact on the companies they target. Return on assets--a measure of how much the ***320** corporation earns on its assets in place--improves a little at target firms,[10] but this effect is just a reversal of minor declines in prior years.[11] Targeted firms reduce research and development expenditures.[12] Though some researchers argue that this reduction does not decrease the efficiency of research and development efforts,[13] to date no significant innovation can be tied to a corporation targeted by hedge fund activists that reduced research and development.

Despite its minor economic importance outside generating takeovers, hedge fund activism has generated a large amount of public debate. On one side are the hedge fund activists[14] and their academic cheerleaders,[15] both arguing that hedge fund activism is good for shareholders and society at large. On the other side are companies,[16] their law firms[17] (who smell a good ***321** marketing opportunity supporting the wishes of their corporate clients), politicians who see a scapegoat for wider problems of corporate decline,[18] and, of course, the commentators (including academics[19] and even judges[20]) who sympathize with and support them. Yet a decade's worth of research now shows hedge fund activism to be a mostly ankle-biting affair. Hedge fund activists are neither the threat to corporate strength that opponents decry nor the power for positive change that activists and their supporters claim.[21]

Hedge fund activism has been equally unimpressive for investors in hedge fund activist funds. Many hedge fund activists suffer from a "physician, heal thyself" problem of the first order. For example, Elliott Management, the best-known activist firm, eked out just better than 2% in 2018.[22] For all its ***322** sturm and drang around the world, Elliott has not returned more than 16% in any year since 2009.[23] Activist Third Point LLC--headed by the comicallyabrasive Dan Loeb--lost 11% in 2018.[24] Activist investors as a group, as measured by industry indices, have dramatically underperformed the S&P 500 index in the last several years.[25]

In this article, I explore three possible reasons why hedge fund activism has disappointed. Part I argues that hedge fund activism is unimpressive because hedge fund activists have no comparative advantage in generating ideas for meaningful change at target firms beyond the sale of the firm. Of course, selling the firm--especially for more than it is worth--is good for target shareholders. But other price catalysts and improvements that hedge fund activists advocate--including changes in corporate governance mechanisms--tend to generate no meaningful returns for hedge fund activists or target shareholders. That hedge fund activists lack comparative advantage is unsurprising, since virtually none are experts in the businesses of the firms they target and the former executives[26] they sometimes rely on for expertise ***323** likely have less insight into the business than executives actively competing in the field.

Part II argues that hedge fund activists underperform because they probably suffer from a kind of winner's curse, where the hedge fund activist is too pessimistic about the firm it targets. There is much evidence that corporate managers may be too

optimistic about their businesses, but little evidence that this optimism harms the corporation. Hedge fund activists, on the other hand, are likely to be too pessimistic since the competition for activist targets likely results in the most pessimistic--and therefore most incorrect--activist being the one to appear at a given firm. If this is the mechanism matching hedge fund activists to firms, it is unlikely to match the most valuable "outside" view with the corporation that could benefit from it.

Part III argues that hedge fund activists often target declining firms, the equity in which is often unsalvageable by the time the activist has taken notice. Such efforts are often a sort of "preliminary vulture capitalism" where the hedge fund activist seeks to expropriate other corporate stakeholders before bankruptcy. But these distressed corporations are frequently beyond salvage without a bankruptcy reorganization, so the efforts of activists at these corporations are often unsuccessful.

A short conclusion follows Part III. I conclude that hedge fund activism presents potential investors with a good story, and stories seem to be a necessary part of raising money from investors. The most prominent activists appear able to keep substantial assets under management despite mediocre returns relative to much cheaper index investing. But while fools and their money will always find a path away from each other, hedge fund activism mostly has turned out to be economically unimportant, neither particularly harmful, nor particularly useful. I suggest instead that--in the spirit of Edison's famous comment about his failures on his way to inventing the light bulb--we have probably learned little more from a decade of research on hedge fund activism than one additional way that shareholder activism does not work.

*324 II. Hedge Fund Activists Lack Any Comparative Advantage

"This is just a little samba, built upon a single note"

- João Gilberto, *One Note Samba* (1960).

Hedge fund activism is not rocket science. Hedge fund activists are price speculators. Price speculators try to buy assets that are worth less when they buy them than they are worth when they sell them. What distinguishes hedge fund activists from other sorts of price speculators is that hedge fund activists are, as their name says, active and not passive. One who speculates on the price of oil, for example, has no choice but to be passive. Not even a large oilproducing *nation* can have much impact on the price of oil. A price speculator in the oil market can take a view on whether the price of oil will increase or decrease but cannot do anything to move that price herself.

Hedge fund activism is different. A price speculator in publicly-traded common stock can take actions that may move the price of the stock, even if all that person does is publicize their analysis. This is possible because the price speculator's analysis and willingness to invest in persuasion can make other investors expect something to happen that will increase the stock price. The largest stock price increases can be divided into two groups: (1) stock price increases that occur when another company acquires the corporation at a premium to its stock price before the acquisition announcement; and (2) stock price increases from organic growth of successful corporations, like Apple or Google or Amazon.

Hedge fund activists focus most of their actions--and virtually all of the action that is successful from the standpoint of generated returns--on the first category. In the first large study of hedge fund activism, Alon Brav of Duke University and his coauthors compiled a database of hedge fund activist campaigns from 2001 to 2006.[27] The only form of hedge fund activism they found to generate statistically-significant positive returns was activism that helped generate the sale of the company or substantial asset spin-offs from the company.[28] In a leading follow-up study, Robin Greenwood of Harvard Business School and Michael Schor, then of Morgan Stanley, determined that returns for other types of activism were indistinguishable from zero.[29]

***325** That hedge fund activists play a role in facilitating takeovers is not evidence of socially valuable behavior, of course, since considerable evidence suggests that acquirers systematically overpay for target firms they buy.[30] But at least this part

of hedge fund activism is valuable for shareholders of the target firm, less any loss from the shareholders' ownership of the acquiring (that is, overpaying) firm.

Consider the case of Family Dollar. In 2014, hedge fund activists Carl Icahn and Nelson Peltz's Trian Fund Management pressured Family Dollar to sell itself.[31] Dollar Tree Inc. bought Family Dollar but now appears to have overpaid for what has become a struggling asset.[32] Ironically, by January 2019, another activist, Starboard Value LP, was pressuring Dollar Tree to sell Family Dollar.[33] By March, Dollar Tree had announced that it would close hundreds of Family Dollar stores.[34] Activist Carl Icahn is most interesting in this regard, routinely advocating for the purchase of targets he owns[35] and against the purchase of other companies *by* companies he owns.[36]

The zero-to-very low returns to activism not involving the sale of the activist's target suggests that activists cannot crack the second method of increasing stock prices significantly: increasing organic growth. Indeed, such efforts have resulted in some of the most humiliating losses for hedge fund activists who have proposed changes at already successful firms.[37] In addition, ***326** hedge fund activists often focus on actions known *not* to generate meaningful returns--most notably, corporate governance initiatives.[38] For example, the Brav et al. sample found a number of campaigns seeking a change in the chief executive officer or chairman position (5.6% of the Brav et al. sample),[39] seeking various corporate governance changes regarding the board of directors (15.0% of the Brav et al. sample),[40] and changes in pay practices for senior officers (4.7% of the Brav et al. sample),[41] none of which tended to have, on average, a statistically significant effect on corporate valuation.[42]

The problem is likely that hedge fund activists lack any comparative advantage in idea generation beyond the sale of the company. Hedge fund activists are almost never experts in the business of their targets. One can only smile at a recent quote from an activist who has taken on the role of Chairman of the Board of Directors at Papa John's International Inc. stating, "This has been a fun due diligence process for me and my office. We've been bringing in Papa John's pizza and rivals' pizza and doing taste tests in our office several times a week[.]"[43] While I suspect this comment is tongue-incheek, one wonders what possible comparative advantage the hedge fund activist has in leading a nationwide pizza chain.

III. Hedge Fund Activists Are Probably Too Pessimistic

"'Cause when you worry your face will frown. And that will bring everybody down."

-Bobby McFerrin, *Don't Worry Be Happy* (1988).

Hedge fund activism is unlikely to be successful unless an activist with realistic and good ideas for corporate change matches itself with a firm that can benefit from those ideas. But that is unlikely to occur, because the hedge fund activist that selects a particular target is likely to be too pessimistic about the target. This pessimism arises because it is the most pessimistic (about the target) hedge fund activist that is likely to emerge at any particular firm.

***327** The winner's curse is a well-known problem in economics.[44] The basic idea is simple. Consider an auction where bidders have each valued the item up for bid. If the valuation occurs with error, then some will undervalue the item, some will get it about right, and some will overvalue the item. Even after they try to correct their valuations for possible error, some error probably will remain. The bidder who wins the auction is the bidder who assigns the highest value to the item up for bid. But this, of course, also is the person who most overvalued the item up for bid. The "winner's curse" is the problem that by winning the auction you reveal yourself to be the person who probably most overvalued the item. You win, but you get something that is probably worth less than you paid for it.

A version of the winner's curse likely manifests in target selection by hedge fund activists. When a number of potential activists compete to evaluate corporations for possible intervention, the hedge fund activist who forms the most pessimistic view about the target may be the activist who initiates a campaign against management. This problem likely becomes worse as more potential activists evaluate the same set of target firms. As entry into hedge fund activism increases, more activists look for "bad" companies, raising the likelihood of more and more pessimistic--but mistaken--views of the target firm's strategy and its likelihood of success.

The pessimistic view that hedge fund activists have of corporate management is one that fits well, however, with the view in the ivory tower where many of the activists earned business and law degrees. That view--known as the theory of "agency costs"--is that managers are inherently unfaithful to shareholder value maximization and will take any opportunity they have to shirk their duties and make decisions that are good for them and bad for shareholders. This view became popular among financial economists and corporate legal scholars after the publication of a landmark (though not entirely original) paper in 1976 by economists Michael C. Jensen and William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*.[45]

***328** The agency cost view of managers is a dark one, but, despite its influence, more than 40 years of active research has yet to uncover any good evidence that managers are systematically disloyal to shareholders.[46] It should not surprise us, then, that agency cost theories have so little influence outside the academy and the offices of hedge fund activists. The notion of corporate directors and managers looking for every self-serving opportunity to shirk their duties in favor of flying the corporate jet to an Aspen ski vacation--or acquire the next unnecessary company to build their empire like a Lego project--strikes directors, officers, and their professional advisers, like bankers and lawyers, as flatly untrue.

It is possible, of course, to find isolated examples of corporate management that indulges in excessive perks and avoids tough decisions However, most top corporate managers--up before dawn, sacrificing family relationships and health to their work, and fighting day after day in competitive markets--react with justified scorn to the notion that academic theory views them as people who, as Jensen and Meckling put it, avoid the search for profitable projects "because it requires too much trouble or effort on [their] part to manage or to learn about new technologies," which "result[s] in the value of the firm being substantially lower than it otherwise could be."[47]

Of course, some corporate decisions are highly questionable, but the best research shows that the culprit is not self-serving, conscious disloyalty but rather is the effect of a cognitive bias that affects most of us: excessive optimism.[48] As two leading researchers put it, "A large and growing body of evidence suggests that a substantial share of top corporate executives exhibit symptoms of overconfidence in their decisions."[49] Individuals are not only confident in the validity of their current beliefs but also are confident that others, given sufficient time, will come around to seeing the correctness of those beliefs as well.[50]

Interestingly, the existence of pervasive managerial optimism likely does create a need for an "outside" view, one capable of realizing all the reasons ***329** the "inside" view might be wrong.[51] Unfortunately, however, hedge fund activists plagued with their own pessimistic biases will only sometimes be in a good position to play that role. When managers are excessively optimistic and hedge fund activists are excessively pessimistic, hedge fund activists sometimes correctly and sometimes incorrectly identify good opportunities for change. In either case, the hedge fund activists precipitate a canvas of broader shareholder opinion, whether informally in discussions or formally in a proxy contest. When hedge fund activists are correct, the other shareholders go along and pressure corporate management to change course. When hedge fund activists are incorrect, the other shareholders largely ignore the hedge fund activist's call to action and do not get in the way of existing corporate decision making.

IV. Hedge Fund Activists Often Target Unsalvageable Firms

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"Soy un perdedor"

-Beck, *Loser* (1993).

Hedge fund activism works only if the target firm is capable of some change that will increase its stock price. We already have seen two problems hedge fund activists run into when they move beyond encouraging the sale of the firm: (1) the problem that they have no comparative advantage in improving performance and (2) the problem that the activist that shows up at a target is likely to be too pessimistic about the target's prospects. In this Part, I consider a third problem: that in the search for undervalued targets, hedge fund activists happen upon too many unsalvageable firms.

Most corporations do poorly in the long run. They decline and merge into other companies or, though less frequently, declare bankruptcy. Longrun good performance is rare. As two Harvard economists put it in a colorfully-titled article, *Survivorship and the Economic Grim Reaper*, "firm death is not an unusual or aberrant phenomenon, but a common feature of a capitalist economy."[52] Their study found that among U.S. firms listed on the New York Stock Exchange or the American Stock Exchange between January 1963 and December 1995, only about 6% of the firms traded for the entire 33-year period.[53] Over 55% of the firms that traded during the period delisted.[54]

***330** A 2014 study from J.P. Morgan found that between 1980 and 2014, 320 companies were taken out of the S&P500--the most widely-watched index of large U.S. public companies--because of business distress.[55] In a groundbreaking 2018 article, Hendrik Bessembinder of Arizona State University found that the majority of U.S. listed common stocks since 1926 return less than one-month Treasury bills over their listed life.[56] Just 4% of listed U.S. companies account for the gains of the entire U.S. stock market from 1926 to 2016.[57] This is a dartboard with a very, very small bullseye.

That corporations decline should hardly come as a surprise. After all, every major corporation traces its existence to some early effort to seize a promising profit opportunity. Those opportunities never last forever. Competitors emerge. Times change. New technologies replace old ones. Rare is the company that can innovate and compete over and again for decades. Poor, eventually, are most companies that try. Consider Polaroid Corporation. In a famous Delaware Court of Chancery opinion upholding a defensive measure, the Court wrote:

Because of the nature of its business, Polaroid has always devoted a significant portion of its resources to research and development. Although the technological advances generated by this work sometimes lead to successful commercial products, that is not always the case. In addition, it may take years of research and development before a new product is introduced and begins generating income. In short, research and development cuts into Polaroid's short term profits but provides the basis for anticipated long term growth.[58]

Polaroid went bankrupt twelve years later in 2001.[59]

***331** These facts present a severe challenge to hedge fund activists. On the one hand, the fact of corporate decline might present opportunities for activists to help turn things around. On the other hand, the fact of corporate decline may be too powerful a force for activists to overcome.

To shed some light on this question, I obtained a comprehensive list of U.S. hedge fund activism campaigns for the period 1996 to 2015 from Alon Brav of Duke University.[60] I then obtained a list of U.S. public-company bankruptcy filing dates since June 1, 2001 from Bloomberg. I matched companies that have a bankruptcy-filing date on or after June 1, 2001 through January 29, 2018 with hedge fund activism campaigns that were followed by a bankruptcy filing from six months to five years later. More than 100 hedge fund activism campaigns met this criterion, suggesting that many hedge fund activists show up to unsalvageable firms.

V. Conclusion

"Oh, I might have to wait. I'll never give up."

-Michael Bublé, *Haven't Met You Yet* (2009).

Hedge funds, like other asset managers, are most successful in raising funds from investors when they have a good story for their investing approach.[61] Hedge fund activists have a good story. The story goes like this: The smartest guys in the room--they often are guys--will pore over research on potential target firms, identify good candidates for change, then call other shareholders to arms to increase shareholder value. The strategy is firmspecific and so less correlated with market returns, which investors like. And the strategy is both easy to understand--unlike, say, a black-box quant strategy--and comes with a certain splashy quality of seeing your hedge fund manager at work in the trenches when the business news flocks to cover the activist campaign.

Unfortunately, the story turns out to be pretty uninteresting. Hedge fund activists appear to do one thing that matters: encourage companies to sell themselves. That's about it. Hedge fund activists are otherwise more or less impotent to effect meaningful change at corporations. There are no great activist success stories, no one or two companies we look at in agreement that ***332** it was hedge fund activism that turned the company around or took a good company to a significantly higher level. The large-sample empirical evidence is equally unimpressive. While an academic cottage industry emerged to study hedge fund activism from every possible angle, the effect sizes this research documented--that is, the magnitude of changes in observable quantities of interest at hedge fund activism targets--are economically small and unimportant except when the company is up for sale. When it can facilitate the sale of companies, hedge fund activism is likely to benefit target shareholders, though investors must consider whether the companies acquiring the targets are also in their portfolios and merely overpaying, so that money is simply shifting from one part of their portfolio to another. But the rest of hedge fund activism finds itself sitting with past rounds of shareholder activism of which it is only the latest manifestation. Like those past forms of shareholder activism, it just doesn't seem to matter much.

In a prescient 1992 article, a then-professor at Harvard's Kennedy School of Government, John Pound, pondered the likely evolution of shareholder action following the collapse of the hostile takeover and leveraged buyout waves of the 1980s.[62] Pound wrote at a time when the high-yield (junk bond) market had dried up, institutional investors seemed incapable of effective shareholder activism, and corporate managers appeared to be well-entrenched and protected from outside interference. Looking back on corporate history, however, Pound saw no reason to believe that corporations would escape the watchful eyes of shareholders. While some time might pass after the 1980s tactics, history taught that "market participants devise new tactics that reflect changes in the legal, political, and economic environment, and a vital free market in oversight reasserts itself."[63] Pound expected the same would occur soon.

Pound expected an evolution toward tactics that would be "less overtly hostile and less often aimed at achieving quick and complete control."[64] He saw the prospect of "critical examination of current corporate strategies, the articulation of alternative corporate plans, and the mounting of limited voting challenges,"[65] each of which forms a critical part of hedge fund activism. At the time he wrote, the "hedge fund" was little-discussed in academic circles and that term (and thus the term "hedge fund activist") does not appear in Pound's article.

***333** Pound's most interesting prediction was that due to the growing importance of large institutional investors, the next wave of activist investors might find themselves less in the role of takeover artists and more in the role of information providers, persuaders, and advocates for change to larger investors who would have the real say with corporate management in the form of their votes or threatened votes.[66] Corporate managements would then have to refute those arguments if they could.

The power of persuasion does play a more important role than anything else in the phenomenon of hedge fund activism. Despite the vigorous debate in the press and academic journals, however, it now seems clear that capital market participants and corporate directors and officers need not be fearful of the challenges of hedge fund activists. Poorly formed criticisms fail, as they mostly have in prior waves of shareholder activism. We are, in the end, reminded of the famous response attributed to Edison about his failures (to that point) to discover a way of making an adequately-working light bulb. Edison is said to have responded that he had not failed, but rather discovered yet another way not to make a light bulb. With hedge fund activism, we may--in the last decade or so--simply have discovered another way that shareholder activism does not work. Whether anyone will eventually hit on something more useful, as Edison did, remains to be seen.

Footnotes

d1 J.B. Heaton, P.C., jb@jbheaton.com. Most of the ideas presented here came to me when I taught a seminar, Hedge Fund Activism, at Duke Law School in 2016, and I am very grateful to the students in that course for their lively interaction on the material.

1 For an excellent, concise treatment of the evolution of corporations from closely-held to publicly-traded, see John Micklethwait & Adrian Wooldridge, The Company: A Short History of a Revolutionary Idea (2003).

2 For evidence on the meager returns to shareholder activism, see Bernard S. Black, *Shareholder Activism and Corporate Governance in the United States*, in 3 The New Palgrave Dictionary of Economics and the Law 459 (Peter Newman ed., 1998); Stuart L. Gillan & Laura T. Starks, *The Evolution of Shareholder Activism in the United States*, *in* U.S. Corporate Governance 202 (Donald H. Chew & Stuart L. Gillan eds., 2009); Matthew R. Denes, Jonathan M. Karpoff & Victoria B. McWilliams, *Thirty Years of Shareholder Activism: A Survey of Empirical Research*, 44 J. Corp. Fin. 405 (2017) (suggesting that activism only became associated with increased share values and operating performance in the first decade of the twenty-first century); Michael P. Smith, *Shareholder Activism by Institutional Investors: Evidence from CalPERS*, 51 J. Fin. 227, 228 (1996) (reporting changes in stock market capitalization of about +1% (-1%) for firms that settled (did not settle) with CalPERS-initiated corporate governance proposals).

3 The seminal study is by Roberta Romano, *Public Pension Fund Activism in Corporate Governance Reconsidered*, 93 Colum. L. Rev. 795 (1993) (concluding that public pension funds are driven by political considerations in their shareholder activism); *see also* Sunil Wahal, *Pension Fund Activism and Firm Performance*, 31 J. Fin. & Quantitative Analysis 1 (1996) (finding that activism by pension funds was likely an insufficient substitute for an active market for corporate control); Yong Wang & Connie X. Mao, *Shareholder Activism of Public Pension Funds: The Political Facet*, 60 J. Banking & Fin. 138 (2015) (finding that public pension fund board members are influenced by a desire to increase their political capital). Some authors find more positive evidence of public pension fund activism. *See* Diane Del Guercio & Jennifer Hawkins, *The Motivation and Impact of Pension Fund Activism*, 52 J. Fin. Econ. 293 (1999).

4 *See, e.g.*, Brian R. Cheffins & John Armour, *The Past, Present, and Future of Shareholder Activism by Hedge Funds*, 37 J. Corp. L. 51, 103 (2011) ("It also appears that hedge funds will be the key practitioners of offensive shareholder activism for the foreseeable future. An investment fund with a suitable mandate provides a convenient means for a practitioner of offensive shareholder activism to raise the capital required to address the financing costs and transaction costs associated with activist campaigns and the explosive growth the hedge fund industry experienced between the early 1990s and mid-2000s meant that hedge funds were well-placed financially to step forward as dominant players in the market for corporate influence in the 2000s."); Marcel Kahan & Edward B. Rock, *Hedge Funds in Corporate Governance and Corporate Control*, 155 U. Pa. L. Rev. 1021, 1022 (2007) (asserting that "hedge funds hold great promise as active shareholders").

5 Alon Brav et al., *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. Fin. 1729, 1735 (2008) ("Hedge fund managers have sharp incentives to generate positive returns because their pay depends primarily on performance.").

6 *See* Mengqi Sun, *Hedge Funds Are Having a Volatile 2018*, Wall St. J. (July 9, 2018), https://www.wsj.com/articles/hedgefundsarehavingavolatile201815311859 ("Hedge funds typically bet on or against stocks, bonds or other securities, often using borrowed money and charging hefty fees--2% of assets under management and 20% of profits.").

7 *See* Brav, *supra* note 5, at 1734-36 (arguing that hedge funds are not subject to the same problems that faced earlier shareholder activists).

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8 *Id*. at 1729.

9 *Id*. at 1731. Even clinical studies of the most successful activists show only modest success in activism campaigns. *See, e.g.*, Marco Becht et al., *Returns to Shareholders Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund*, 22 Rev. Fin. Stud. 3093 (2009) (finding a median return to one activist's campaigns of 4.8%).

10 See Alon Brav, Wei Jiang & Hyunseob Kim, The Real Effects of Hedge Fund Activism: Productivity, Asset Allocation, and Labor Outcomes, 28 Rev. Fin. Stud. 2723, 2725-26 (2015).

11 *See generally* Lucian A. Bebchuk, Alon Brav & Wei Jiang, *The Long-Term Effects of Hedge Fund Activism*, 115 Colum. L. Rev. 1085 (2015) (documenting the reversal of minor prior year declines in return on assets).

12 *See* Alon Brav et al., *How Does Hedge Fund Activism Reshape Corporate Innovation?*, 130 J. Fin. Econ. 237, 238 (2018) (documenting reduction in research and development expenditures at target firms).

13 *Id*. (documenting additional patent filings and citations but not any relationship between patent counts and citations and corporate wealth improvement).

14 *See, e.g.*, Paul Singer, *Efficient Markets Need Guys Like Me*, Wall St. J., (Oct. 19, 2017), https://www.wsj.com/articles/efficient-markets-need-guys-like-me1508454427?mod=searchresults&page=1&pos=1 (op-ed by founder of Elliott Management defending hedge fund activism).

15 *See, e.g.*, Bebchuk, *supra* note 11, at 1122 (arguing that hedge fund activism benefits corporations).

16 *See, e.g.*, *In re* PLX Tech. Inc. S'holders Litig., No. CV 9880-VCL, 2018 WL 5018535, at *9 (Del. Ch. Oct. 16, 2018) (quoting response by company to activist, stating: "'[w]hile we can appreciate that, as an activist hedge fund with a relatively short-term horizon, you would like to be able to force an event that would allow you to profitably liquidate the position you have been accumulating,' the Board had a fiduciary obligation to 'consider the interests of the holders of PLX stock that you do not represent, particularly the holders that may have a longer time horizon than Potomac Capital"') (citation omitted); *In re* Appraisal of Dell Inc., No. CV 9322-VCL, 2016 WL 3186538, at *9 (Del. Ch. May 31, 2016), aff'd in part, rev'd in part sub nom. Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd, 177 A.3d 1 (Del. 2017) ("According to Mr. Dell [founder of Dell Inc.], these initiatives could best be accomplished in an environment without quarterly earnings pressure and the risk that shareholder activists might attempt to disrupt the Company's plans. Mr. Dell stated that a transaction was in the best interests of the Company's shareholders because they would receive a portion of the potential upside from these initiatives without bearing the risk."); Sharon Terlep, *Procter & Gamble, Activist Disagree on Progress Shown in Latest Results*, Wall St. J. (July 27, 2017), https://www.wsj.com/articles/proctergamblestrugglestoseerevenuegrowth (discussing CEO's criticisms of activists plans).

17 *See, e.g.*, Martin Lipton, *No Long-Term Value from Activist Attacks*, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (Oct. 4, 2018), https://corpgov.law.harvard.edu/2018/10/04/no-long-term-value-from-activist-attacks/. Mr. Lipton is a founder of Wachtell, Lipton, Rosen & Katz.

18 *See* Alon Brav, J.B. Heaton & Jonathan Zandberg, *Failed Anti-Activist Legislation: The Curious Case of the Brokaw Act*, 11 J. Bus., Entrepreneurship & L. 329 (2018) (analyzing the misrepresentations of Senator Tammy Baldwin regarding hedge fund activism and the closing of a paper mill in Brokaw, Wisconsin).

19 *See, e.g.*, John C. Coffee, Jr. & Darius Palia, *The Wolf at the Door: The Impact of Hedge Fund Activism on Corporate Governance*, 41 J. Corp. L. 545, 550 (2016) ("[W]e are concerned that hedge fund activism is associated with a pattern involving three key changes at the target firm: (1) increased leverage, (2) increased shareholder payout (through either dividends or stock buybacks), and (3) reduced long-term investment in research and development (R&D).").

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