

## SHAREHOLDER ACTIVISM

# Will the Tariffs Be a Poison Pill for Proxy Contests This Season?

**By Kai H.E. Liekefett and Derek Zaba**

On April 2, the announced tariffs on certain imported products into the United States are expected to go into effect. While it remains to be seen whether they will be beneficial for the US economy in the long term, tariffs already have begun to impact the national and global economy. Will they also impact the 2025 proxy season?

The vast majority of public companies in the United States hold their annual shareholder meeting between April and June. Most of these companies require, in the bylaws, advance notice of director nominations by shareholders. These nomination deadlines typically are between January and April. In other words, now is the time of the year when activists are forced to “put up or shut up.” However, both companies and activists face the potential impact of tariffs on a wide array of businesses, as well as the current volatility in the stock market driven, at least in part, by the tariffs.

In this context, it is important to understand that if activists launch a proxy contest, they generally must be prepared to remain in the stock for the foreseeable future—at least until the shareholder meeting and, if successful in obtaining board seats, at least 6-12 months beyond that. While there are no legal restrictions to the contrary, as a practical matter, it is untenable for an activist to initiate a proxy contest and then to sell or materially reduce its position shortly thereafter. Activists who do this

become more susceptible to being portrayed as a “short term” investor in future activism campaigns.

It is even more difficult to exit a stock if a principal or an employee of the activist fund, rather than candidates that are at least nominally independent, takes a board seat. In those situations, any material nonpublic information received by the activist designee on the board is imputed to the activist fund, thereby restricting the fund’s ability to trade in the stock—thereby eliminating the activist’s flexibility to “cut and run.”

For these reasons, from an activist’s perspective, now is a risky time to make a multi-year commitment to a particular company. The problem is compounded for those activists who have concentrated portfolios or whose funds do not adequately limit redemptions. For an activist with a limited number of positions, the impact of a decline in a single portfolio company is significantly amplified relative to more diversified peers.

Additionally, if the stock markets continue to deteriorate, funds without adequate liquidity constraints might face significant capital redemptions from their own limited partners without adequate ability to sell their investments. As a consequence, activists may be wary about making such commitments this proxy season. We already have seen more than a dozen cases where activists decided against moving forward with a competing slate, including several large and mega-cap situations.

Now, this does not mean that the number of proxy fights will be low this year; there are still a significant number of contests underway, and several more that have yet to enter the public arena. However, the tariffs and resulting economic uncertainty may chill some activity this proxy season, particularly in

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economically heavily exposed industries where an activist can run a perfect proxy campaign, but still lose money on its investment.

Finally, once there is more clarity surrounding the tariff wars, Corporate America should expect shareholder activists to attack with a vengeance. It's likely that the dislocation and uncertainty in the stock market will create mismatches in stock price vs. long-term value of some of the companies that

are most impacted by the tariffs. Additionally, structurally challenged or undermanaged companies can sometimes hide in a bull market, but a market correction tends to make clearer whose management team is performing and whose is not.

Therefore, we might see more proxy fights again as early as this fall when public companies with an off-cycle fiscal year hold their annual meeting of shareholders.