

Closed-End Funds Proxy Fights

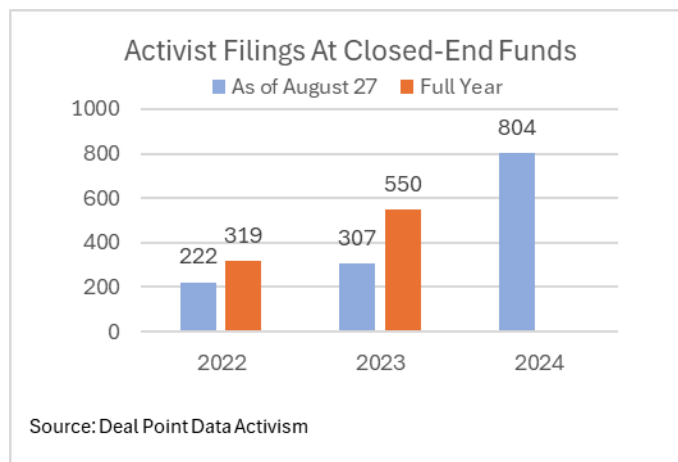
August 28, 2024

A review of the frequency and outcomes of proxy fights against closed-end funds and the potential effects of a proposed New York Stock Exchange rule change.

The New York Stock Exchange (NYSE) recently proposed a rule change subject to Securities and Exchange Commission (SEC) approval that would exempt closed-end funds (CEFs) from the requirement to hold annual shareholder meetings (i.e., amend Section 302.00 of the NYSE Listed Company Manual). The NYSE cited the protections already available to CEFs under the 1940 Act, including the requirement that shareholders elect directors and approve other material matters (e.g., an investment management agreement, a change from closed-end to open-end status). The proposed rule change would apply to most CEFs, as the NYSE is the overwhelming choice for CEFs that list on a stock exchange. As we await the SEC’s decision, we review the frequency and outcomes of proxy fights against CEFs and what effect the rule change may have.

Proxy Fight Volume and Filings Are Up

According to Deal Point Data (DPD), the number of activist campaigns against CEFs so far in 2024 is running close to last year’s volume. One noticeable change, however, is the significant increase in the number of proxy fights. Based upon the proxy fight’s associated shareholder meeting date (i.e., the date the meeting was held or scheduled/expected to be held), the number of board seat proxy fights this year increased to 47 versus 15 and 13 in 2023 and 2022, respectively. This year’s volume represents a whopping 262% increase from 2022 levels. As a reminder, the now two-year old universal proxy card rule does not apply to CEFs, so any change in proxy fight volume is unrelated to that rule. Saba Capital Management, L.P. has been responsible for 77% of this year’s proxy fights. A proxy solicitation involves considerable communication, as both the company and the activist make their respective cases to shareholders. Any written communications must be filed with the SEC, thus this year’s increase in proxy fights has resulted in a tidal wave of activist filings. As of August 27 – with over four months still left in the year – DPD has tracked 804 activist filings as part of campaigns. For comparison, there were 550 activist filings in all of 2023. CEF activists have also been upping their communications game of late. While social media posts and the creation of campaign websites are commonly associated with corporate proxy fights, these communication tools had been less frequently employed by CEF activists in past years. Activist proxy filings (i.e., Form DFAN14A) disclosing social media posts increased to 357 so far in 2024 versus 61 such filings in all of 2023. Additionally, ten proxy fights at CEFs in 2024 included the creation of a campaign website (all at BlackRock funds), whereas only one proxy fight in 2023 included a campaign website.



CEF Proxy Fight Outcomes

The most striking data point when comparing CEF proxy fight outcomes against corporate proxy fight outcomes is the complete lack of settlement agreements that include the granting of board seats. Deal Point Data has not identified a single proxy fight at a CEF over the last three years that was settled for seats. Nearly one-third of corporate proxy fights over the same time period were formally settled with terms that included the granting of at least one board seat. The fact that activists face more of an uphill battle to win these elections may explain the lack of settlements. The company win-rate at CEF proxy fights going to a vote was over 71% versus about 61% for corporate fights. We suspect the corporate win-rate is artificially low, as many of the companies that believed they were likely to lose would be inclined to settle for seats. Certainly, some of the unique governance rules at CEFs also play a part. For example, the vote standard to elect directors in a contested corporate election is almost universally a plurality requirement, meaning whichever directors get the most "For" votes are elected. Even corporates that have adopted a majority vote standard to elect directors will almost always include a plurality carveout in the case of a contested election. CEFs often set a higher bar, including requiring a dissident nominee be supported by a majority of *all* the outstanding shares. That means any abstention or even a failure to vote at all will have the same practical effect as a vote *against* the nominee.

Proxy Fight Outcome	2022		2023		2024	
	# Campaigns	% Total	# Campaigns	% Total	# Campaigns	% Total
Formal Settlement (Non-Seats)	1	7.7%	1	6.7%	5	10.6%
Formal Settlement (Seats)	0	0.0%	0	0.0%	0	0.0%
Nomination Rejected (Ended)	0	0.0%	1	6.7%	0	0.0%
Pending	2	15.4%	0	0.0%	9	19.1%
Went to a Vote (Company Win)	3	23.1%	4	26.7%	18	38.3%
Went to a Vote (Dissident Partial Win)	0	0.0%	0	0.0%	1	2.1%
Went to a Vote (Dissident Win)	4	30.8%	2	13.3%	3	6.4%
Withdrawn - Disclosed	2	15.4%	5	33.3%	10	21.3%
Abandoned without Announcement	1	7.7%	2	13.3%	1	2.1%
Total Campaigns	13	100.0%	15	100.0%	47	100.0%

Board seat proxy fights announced at closed-end funds based on annual meeting date year. 2022 includes two "Pending" proxy fights where the meetings that have been adjourned and reconvened, without conducting any business, on several separate occasions as a quorum was not present. Pending in 2024 includes fights where the outcome has yet to be disclosed. CEFs are not subject to the 8-K requirement to file vote results shortly after the meeting. Source: Deal Point Data Activism

Proxy Fight Venue

The NYSE highlights Section 16(a) of the 1940 Act that states that "No person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for that purpose". However, as prolific CEF activist Saba Capital Management, L.P. noted in its comment letter on the proposed rule, absent annual meetings, "CEF directors could effectively serve in perpetuity" making it "nearly impossible for shareholders to unseat directors, as doing so would require calling a special meeting". A switch from requiring an annual meeting – providing shareholders with a venue to exercise their voting rights, including to elect new directors – to an off-cycle shareholder actions model would be a sea change in the way CEF activism is waged. For example, every CEF board seat proxy fight over the last three years involved nominations at an annual meeting. No activist attempted to call a special meeting at a CEF to remove or replace a director over that period.



About Deal Point Data

Deal Point Data is transforming the way M&A, securities and corporate governance research is done. Deal Point Data streamlines the process of identifying precedents and analyzing market trends. Our data-driven applications enable the world's leading law firms and investments banks to save countless hours of manual research while getting answers faster than ever.