

# 10 QUESTIONS WITH ANDREW FREEDMAN



**Andrew Freedman** is Olshan Frome Wolosky's Co-Managing Partner and Chair of its top-ranked Shareholder Activism Practice, where he represents many of the world's leading activist inves-

tors, hedge funds, and newly launched activist firms. Widely recognized as one of the foremost lawyers in shareholder activism, he advises clients on proxy fights, hostile takeovers, 13D filings, corporate governance matters, M&A strategies, and board engagements. Over the course of his career, Andy has led hundreds of high-profile activism campaigns across the U.S., Canada, Europe, and Asia, helping clients replace more than 1,000 public company directors and achieve landmark victories at companies including Darden Restaurants, Gildan Activewear, Tempur Sealy, and Suncor Energy. Known for his strategic and results-driven approach, he is regarded as a leading tactician in complex proxy contests and shareholder campaigns.

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**13DM//** Olshan is one of the few legal advisors in this area that exclusively acts on behalf of activist investors. What was important to you and Steve Wolosky when making that determination to act solely on the investor side of shareholder activism?

**AF//** Shareholder activism is a practice area unlike any other. There is an adversarial element to it that you just don't see in other areas of corporate law. In the early 2000s when Steve and I were building out our practice, the tactics on the defense side started to become extremely aggressive. Companies were adopting new advance notice bylaws

and finding ways to weaponize them, 13Ds were scrutinized with attendant threats of undisclosed group litigation, and poison pills were being implemented with artificially low thresholds to stymie activist investments. This shift in defensive strategies had a polarizing effect on the practice and drew a clear line between lawyers supporting shareholders and those acting against them. For us, it was a no-brainer how we would position ourselves. Steve and I have always been ardent supporters of shareholder rights and have fiercely protected the shareholder franchise. We wouldn't have it any other way. There's no room for a middle of the road approach in this area. You're either with shareholders or you're against them. We don't think our clients would take too kindly to the idea of us representing public companies against an activist investor, even if there's no direct conflict with any one client.

The philosophical divide between both sides creates a holistic conflict for those who try to straddle the line. How can you possibly advise a public company, on the one hand, to adopt onerous advanced notice bylaws and use them to threaten to invalidate a nomination notice or undermine legitimate shareholder engagement, while at the same time representing an activist investor who may have to challenge similarly aggressive nomination requirements and alleged deficiencies in another situation? And this is just one of countless examples. You can see why it doesn't work. It's the height of hypocrisy. Yet, there are lawyers in our space who represent some of the most notorious board entrenched and offenders of proper governance, while simultaneously advising some well-known activist investors. I just don't know how you square it. You certainly won't find Olshan doing that. Our successful track record exists not just because of our legal and strategic expertise, but also because we live and breathe this space on one side of the table every single day. Steve and I both believed from the outset that if you are going to be truly great at something, you commit to

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it fully. That philosophy is what has helped build this practice into an activist and shareholder-centric powerhouse.

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**13DM//** It seems that even though the institutional vote has proven quite difficult for dissidents to secure in proxy contests, activist investors are nevertheless waging as many campaigns as ever. How do you reconcile that?

**AF//** It's like I always tell my clients when they're contemplating an activist campaign at a company where the shareholder base may seem stacked against them or where other structural impediments may exist. If you do nothing, you can be sure that the status quo will persist and nothing will change. When you do nothing, you're virtually guaranteed to lose. But there is a lot of power to being on the right side of the issues and committed to making your case for change. If you get the ball rolling by launching a campaign and you put the company's issues out there in the open, it becomes almost impossible for them to ignore. This is especially true where there is prolonged underperformance and serious corporate governance issues. I can't recall the last time a company just batted away a threatened proxy con-

test and took things right to the vote without making any responsive changes to address the investor's concerns. You force a company to respond meaningfully to its issues when you go public. A good example of a recent campaign where the voting odds made it impossible for the activist investor to prevail was Engine Capital's proxy fight at Unifirst. But that didn't stop Engine Capital's Arnaud Ajdler from nominating and using the proxy contest as a platform to mount pressure from all sides on the Croatti family and independent directors to do the right thing and negotiate a sale with Cintas for a massive all-cash premium. The Croatti family had been rebuffing huge premium offers from Cintas for years, hiding behind its dual-class majority voting control. Engine got widespread support from the proxy advisory firms and non-Croatti shareholders, and within three months of the Annual Meeting, Unifirst announced a deal to be acquired by Cintas for \$310 per share in cash and stock. On the day that Engine nominated its slate in late October 2025, Unifirst shares closed at \$156.42. On the day the Cintas deal was announced, they closed at \$274.89. This is just one of many examples where an activist investor launched a campaign and achieved success where the odds were against them.

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**13DM//** Not intending to get political, but in American politics it seems each side has a “base” who almost blindly supports their candidate. Are index funds becoming the “Corporate Base” and how will pass-through voting programs change this?

**AF//** It seems like politics is finding its way into every discussion nowadays. It’s true there has been a growing conversation in the activism community about whether the major index funds have effectively become a structural baseline of support for management because of how they’ve been voting in recent years, generally showing a deference to the incumbents and reluctance to support substantial near-term changes.

There is some truth to the concept of a “Corporate Base”, but it shouldn’t be mistaken for automatic or unconditional support for incumbents. When an incumbent board has earned credibility through sustained engagement, sound governance practices, transparent disclosure, responsiveness to feedback, and a credible long-term value creation record, large index-oriented holders, particularly Vanguard, but also BlackRock, State Street, and Geode, have served as a stable source of support for the incumbents in proxy contests.

However, we’re starting to see some cracks develop in this incumbent-friendly “base” this proxy season, including due to emerging pass-through voting initiatives and restructuring of engagement and voting teams at firms like Vanguard, which may put voting decisions in the hands of audiences more receptive to activist arguments.

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**13DM//** Since 13D Monitor has provided its Activist Vulnerability Ratings over a year ago, the median rating of a company engaged is over 80 out of 100. Yet we find that many companies are generally surprised when they are engaged. Should they be?

How should companies think about shareholder engagement before an activist shows up?

**AF//** We’re at the point by now where no company should be surprised when they are approached by an activist investor. We know that many companies are conducting off-season activist preparedness sessions with advisors where they are being educated on ‘how to be their own activist.’ Yet very few of these companies end up proactively addressing the potential vulnerabilities that are raised. Boards are small, relationship-driven groups. Topics like board refreshment, CEO succession planning, and declassification can be uncomfortable, and so they tend to slip until there’s urgency. But when an activist investor shows up, it’s already too late, and the company is negotiating from behind. If I were on the other side, I would advise companies to at least do sensible preemptions when they are in a ‘clear day’ to remove some of the low-hanging fruit for activist investors. But I acknowledge it’s a tough position for the company’s advisors to be in. Advisors can only push so hard for their clients to make difficult changes without risking that they’ll just be replaced with someone that won’t rock the boat, unless there is a looming threat. So it’s not that boards are always digging their head in the sand and ignoring their governance weaknesses. They’re just deprioritizing them until there’s a cognizable cost for not acting. I could give away the whole activist engagement playbook here, and I still know that most companies wouldn’t follow it.

As far as ‘clear day’ engagement, companies would be well served to have a track record of strong substantive investor engagement centered around transparency and responsiveness. Companies that maintain regular, substantive engagement with their largest holders; that have demonstrated a willingness to address investor concerns; and that have built a credible record on governance and absolute long-term value creation are

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generally better positioned to secure support from those shareholders in proxy contests. Treat engagement less like a road show for optics-sake and more as an opportunity for thoughtful dialogue with your most valuable constituents. You don't want to leave anything open to interpretation as to how your key holders may be thinking about you when an activist investor comes knocking.

**13DM//** How has the universal proxy card tangibly shifted leverage between activists and incumbents in contested situations?

**AF//** The universal proxy card has been one of the most significant structural changes to the proxy contest landscape in decades, and it has had an impact on the leverage dynamic between activists and incumbents in minority slate proxy contests. But let's start with a key misconception of the universal proxy system, and one that the defense bar got woefully wrong when predicting how a universal proxy would change proxy contests in Corporate America. In no way has the universal proxy served to open the flood gates to waves of proxy contests by small mom-and-pop investors. This notion

completely ignored the fact that you have to submit a nomination notice, file and clear your own proxy materials with the SEC and disseminate proxy materials to holders representing at least 67% of the outstanding shares. It takes substantial resources to undertake these activities. It's not like you can just raise your hand, provide some names and get access to a company's proxy.

Now that's out of the way, we've seen the universal proxy card have an important impact on contests, especially where the activist has nominated a smaller number of candidates (ex., one to three). Before universal proxy, the mechanics of a contested election were inherently tilted toward incumbents in ways that had nothing to do with the merits of either side's platform. Shareholders who wanted to split their votes between management nominees and dissident nominees — a rational outcome in many situations — were largely unable to do so without physically attending the annual meeting. That friction benefited incumbents. It meant that even shareholders who had real concerns about the existing board composition would often default to voting the management card simply because the mechanics made a nuanced outcome more difficult to achieve. Activists

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were fighting not just the substantive battle, but the structural one as well.

Universal proxy eliminated that friction entirely. Now every shareholder can mix and match from the full slate of candidates on a single card. That is a fundamental realignment of power. It means the contest is now decided almost purely on the merits: which candidates are most qualified, which vision for the company is most compelling, and which slate best reflects the changes shareholders want to see. It also means that activist investors can single-out and look to pick-off the weakest incumbent board members. This has resulted in the leverage shifting towards the activist in small-slate contests, and is a big reason we have seen so many settlements over the past three proxy seasons.

Olshan was at the forefront of testing the universal proxy card before it was even formally mandated. We achieved the first successful use of a universal proxy card for a control slate in the United States, and we represented Hestia Capital in the first control slate proxy contest to go to a vote under the universal proxy card regime, winning four board seats at Pitney Bowes. Those experiences gave us early, hard-won insight into how the new rules change campaign strategy, nominee positioning, and shareholder communication.

The honest answer for incumbents is that the universal proxy card raised the cost of complacency significantly. You can no longer count on procedural inertia to protect underperforming directors or shield an entrenched board from accountability. Shareholders have the tools to make surgical decisions now, and activists who bring credible nominees and a compelling thesis are far better positioned to see those nominees get appointed, especially through cooperation agreements. The playing field has genuinely leveled in ways that matter.

**13DM//** There has been a movement to curb proxy advisors, and JP Morgan Asset Management recently announced that it will stop relying on voting recommendations of external proxy advisory firms, relying instead on their own AI-powered platform to analyze governance data and support voting decisions. Do you see the power of proxy advisors declining in the future and, if so, what effect does that have on companies and activists?

**AF//** The proxy advisory firms have been getting a bad rap lately. They serve a critical function in all contested situations. Without ISS and Glass Lewis, election contests would become more difficult for both companies and activists to manage. There's a level of clarity and accountability provided through their reliably thoughtful, unbiased analysis and recommendations. Dissidents and companies have to think twice about deploying certain tactics or coming off as unreasonable in settlement discussions. I've always likened the proxy advisory firms to referees in a sporting event. You may not like all of the calls they make, but they keep both sides honest and make sure things don't get out of hand. I can't imagine a proxy fight without the proxy advisory firm meetings one month out from the vote with both sides filing competing investor decks and then waiting with bated breath for the reports to come out a week or two later. These are decisive moments in a campaign. For the dissident, a favorable ISS recommendation has historically been close to a prerequisite for winning a contested election at a large-cap company. For management, an adverse recommendation can be the moment a campaign tips, as we just saw in Impactive's contest at WEX, where settlement discussions intensified in the wake of the reports.

The amount of automatic voting linked to ISS and Glass Lewis recommendations has been waning for several years. Many subscribers have taken their votes in-house, but this idea alone doesn't diminish the importance of the

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proxy advisory firms in contested situations. So while JP Morgan's recent announcement may be signaling a rise in AI-powered voting platforms across other institutions, these are no substitute for the important intermediary function that the proxy advisory firms play in sifting through all of the tit-for-tat and thousands of pages of filings and arriving at their well-reasoned conclusions.

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**13DM//** 15 years ago, activism was primarily done by activists. Today, you have a lot of non-activist funds occasionally engage with management. What are the respective challenges and benefits between these two types of activists?

**AF//** One out of every four of our activist campaigns these days are being undertaken by non-activist investors. Traditional activist funds have the benefit of experience with the typical issues and players that you see while running a contest, so they can be ready to move forward quickly on a situation without a steep learning curve. Also, being a known entity to other investors and company advisors can be helpful as the activist engages with other shareholders to earn support. When company advisors believe that the activist is willing and able to follow through on the contest, and will do well in meetings with other shareholders and proxy advisors, that goes a long way in terms of getting the parties to the table on a reasonable settlement. Companies are reluctant to go toe-to-toe with some of the big-name activist investors, and many would-be activist campaigns are settled before they even see the light of day for this reason.

Non-traditional activists, on the other hand, do not enjoy this same institutional credibility and generally have to work harder to get to similar results. Companies and defense advisors will test their mettle and willingness to escalate an engagement into a full-blown public campaign. Non-traditional activist in-

vestors also have to learn the ropes to be successful, which makes hiring the right advisors early on key. However, their non-activist background, which may include a history with the company or as a typically passive investor, can be an asset. A non-traditional activist may have an easier time convincing other shareholders, and members of the company's board and management team evaluating next steps, that they're looking to build long-term value for the company and their interests are aligned with other shareholders.

When a large long-only fund or a fund not typically associated with activism expresses concern about a company's governance or performance, it often lands differently with boards and management than the same message delivered by a known activist. A campaign is usually a last resort for investors of this type because confrontation is not in their DNA. This also means their threat-credibility is lower. Boards sometimes calculate that an actively engaging passive fund is unlikely to run a full proxy contest, file a withhold campaign, or sustain the public pressure necessary to force real accountability. That calculation can make management teams less responsive than they should be, and it can leave the occasional activist in a frustrating middle ground where they have show their willingness to escalate before the board will take them seriously. That's why there are so fewer early-stage settlements with non-traditional activist investors.

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**13DM//** What separates a successful quiet engagement from one that escalates into a proxy fight?

**AF//** Not seeking to remove the CEO, not seeking a majority control of the board, reasonableness on both sides, solid, unimpeachable candidates, and ultimately a co-operation agreement.

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**13DM//** What's the most underappreciated trend in shareholder activism that we should be paying attention to right now?

**AF//** The limitations of relying on AI as a tool for activist campaigns. Just about everyone by now has seen firsthand the power of AI assistants like Claude in researching, drafting and strategizing various aspects of a company or potential campaign. But this area of practice is so nuanced that even AI can't possibly untangle all of the elements of a proxy contest or important features or deadlines embedded within advance notice bylaws. In the past few weeks alone, we have had to correct the record for several clients who were relying on AI for key deadlines like director questionnaires and proxy proposals. This doesn't mean we shouldn't be exploring the contours for how AI can streamline and expedite certain workstreams in an activist campaign, but rather that we shouldn't be relying too heavily on the AI results.

For fun, I prompted ChatGPT this question, and here's its top 3 underappreciated trends in shareholder activism and its "bottom line":

- 1) The rise of "one- or two-seat" activism (not control fights)
- 2) Board quality is now the primary battleground; and
- 3) Quiet settlements are winning more often than public fights

## Bottom line

The biggest missed trend is this shift: From high-drama, binary outcomes to low-drama, incremental wins that accumulate over time

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**13DM//** We're coming down the home stretch of the 2026 proxy season. What has struck you most so far?

**AF//** What I find most encouraging is that activist investors continue to secure more board seats each year, which has been fueled primarily by settlements rather than contested votes. To me, that's a sign that the process is working as it should to keep boards accountable and add value for all shareholders. It means that companies are responding to activist pressure with a willingness to embrace change rather than reflexive resistance. At the same time, activist investors have become more measured in terms of the changes they are seeking, which has paved the way for a settlement-friendly environment. I expect this trend to continue for years to come.