

# Activist Spotlight: Blackrock, Voting and Insurgencies



BlackRock manages \$9.5 trillion in assets. Michael Vi/Shutterstock

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**Advisers offer mixed views about whether the mega-index fund manager's plans to give 850 big institutional clients with \$1.5 trillion in assets the power to vote shares will help activists win director contests.**

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**By Ronald Orol**

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**BlackRock Inc.** (BLK) earlier this month surprised the proxy voting community by **announcing** that in 2022 it will give roughly 850 of its biggest institutional investor clients with \$1.5 trillion in assets the option to vote shares connected to their investments.

Activist advisers are cautiously optimistic that the shift could be good news for insurgent managers and their director contests, since BlackRock has historically, for the most part, **voted its large**, often make-or-break, positions against insurgent-backed dissident director nominees in contests that have gone the distance.

For example, in the 2020-2021 proxy season, the giant index fund manager with \$9.5 trillion in assets voted on the activist's card for at least one dissident director candidate in only two of 14 contests, or roughly 14.3% of cases, down from backing dissidents in three of 12 contests, or 25%, in the 2019-2020 season, according to research firm Insightia. (This year BlackRock supported dissidents only in Engine No. 1's ESG battle at **Exxon Mobil Corp.** (XOM) and in New Mountain Vantage Advisers LLC's effort at Virtusa Corp., which was **settled**.)

"Given BlackRock's penchant for supporting management in election contests, this transfer of voting power could lessen BlackRock's vast influence in proxy contests by opening up opportunities for shareholder activists to solicit such votes from the ultimate investor," wrote **Olshan Frome Wolosky LLP** partners Andrew Freedman and Ron Berenblat, two top activist advisers, in a recent note.

According to BlackRock, about 40% of the \$4.8 trillion in index equities — about \$2 trillion invested by pension funds, 401(k) retirement funds, university endowments and others — will be eligible to vote shares allocated with the fund. Already about 150 institutional investor clients with about \$500 billion in assets have set up separately managed BlackRock accounts and have been permitted to vote those shares.

The shift might appear to be a big deal, as BlackRock is often the largest or among the three largest investors in a corporation and the index fund manager's support or opposition can be critical in deciding the outcome of an activist campaign.

Some proxy solicitors and bankers, though, are not so sure that the shift will help activists too much, at least not in the near term. A key question involves how many big investors that are permitted to vote their shares will take the initiative.

“The power of their vote gets diluted with each step,” one institutional investor said. “Only 40% of BlackRock's index equities will get to vote shares, and only some percentage of those will review the situation, and only some of those will vote to install dissident directors.”

He noted that if Blackrock owns 10% of a company, then about 4% of shares could soon be eligible to vote — and possibly a smaller percentage of those would potentially vote for dissident directors.

“If you are Carl Icahn or Nelson Peltz running a big contest at Procter & Gamble in the news, and you can convince institutional investors to care, I think this new vote authority can make a difference,” the banker said. “These contests often come down to a few percent, and these kinds of things can swing a vote, but in limited cases.”

A proxy solicitor who advises both companies and activists noted that some large university endowments or pension funds with BlackRock money may want to take the initiative to review an activist situation and vote their shares.

He added, however, that the “law of averages” suggests that many institutions will be happy to hide behind BlackRock and avoid voting. (BlackRock, The Deal has learned, will continue to vote shares held by these investors based on its own stewardship group's recommendations if no instruction is given.)

The solicitor added that in some cases, especially when an investor may not want to vote in line with proxy adviser recommendations, the voting authority could make a difference. “Would it change the outcome? Maybe?” he added.

Another problem: It may be hard to identify these BlackRock client investors. Proxy solicitors advising companies and activists in director contests may have difficulty reaching out to these investors since BlackRock doesn’t disclose their names.

Even so, big pension funds, endowments and other funds that directly hold shares in companies may also have large funds allocated with BlackRock index funds.

“Some big investors in a stock will also have shares with BlackRock,” the institutional investor said. “You won’t know who they are, but when you solicit them, you can also find out they have BlackRock shares. If they have their own voting infrastructure, they may be up for deciding themselves on how to vote shares held with BlackRock.”

Beyond proxy fights over M&A, the proxy solicitor noted that the voting authority could be embraced by some endowments or pension funds eager to vote to support environmental or social-oriented shareholder proposals. In addition, BlackRock's own stewardship team has been more **supportive** of environmentally focused proposals lately.

“If I’m an endowment for Brigham Young University, Columbia, Yale or Harvard and care enough about a particular issue and have talked about it publicly, I may want to vote,” he said. “But conversely, some funds may support BlackRock’s policies and be happy to hide behind BlackRock.”

The proxy solicitor added that at this stage he wasn’t sure the new voting authority would make that much of an impact. Nevertheless, he added that solicitors involved in contests or other hot-button issues probably will reach out to some pension funds



and other investors that previously were ignored because their investments were allocated to BlackRock.

## **SEC Disclosure Rule's Impact**

Still, he argued that a proposed Securities and Exchange Commission rule seeking to improve institutional investor voting and share lending transparency could have a more transformative impact on activism and fund voting.

One provision in the proposal requires disclosure of “the number of shares the reporting person loaned and did not recall.” Many big institutions, including BlackRock and other big index fund managers, lend shares out for fees but don’t recall shares in time to vote them at corporate meetings.

“The SEC is considering whether or not funds should be reporting on the investments they have out on loan and how they voted or whether they are voted at all,” the proxy solicitor said. “That may have a bigger impact than BlackRock’s voting move, and it could encourage big investors to recall shares they have out on loan and vote them.”

## **Follow the Leader**

Even so, fellow big index fund owners **Vanguard Group Inc.** and **State Street Corp.** (STT) are expected to follow BlackRock’s lead and give big institutions that allocate funds with them the right to vote shares, advisers following the situation said. Technological developments have made it easier for BlackRock and other funds to facilitate voting, the proxy solicitor added.

A move by other big index fund managers to give big clients the authority to vote shares could have an even bigger effect on activism and governance — as the two other major index fund managers hold large stakes in corporations and also historically haven’t been overly friendly to activist director candidates.

According to Insightia, **Vanguard** voted on the dissident card in 28.6% of cases in 14 contests this proxy season, while State Street supported one dissident or more in 15% of 13 contests over the same period.

“It wouldn’t surprise me if **Vanguard** or State Street make the same offering too because the move could help them accumulate assets,” the proxy solicitor said.

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## COMPANIES MENTIONED

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Exxon Mobil Corp.

Virtusa Corp.

New Mountain Vantage Advisers LLC

U.S. Securities And Exchange Commission

Olshan Frome Wolosky LLP

BlackRock Global Investors

BlackRock Inc.

Engine No. 1

Procter & Gamble Co.

Harvard Investments

State Street Corp.

Brigham Young University (BYU) - J. Reuben Clark Law School

Vanguard

Vanguard Group Inc.

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## PEOPLE MENTIONED

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Andrew M. Freedman

Nelson Peltz

Carl C. Icahn