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Shareholder Activism and Financial Institutions

Historically, aggressive shareholder activism, proxy contests and hostile takeover proposals have been relatively rare for financial institutions. Proxy contests have been more prevalent at smaller banks, but even they have been infrequent compared with proxy contests involving non-financial companies. Perhaps the leading example of a proxy contest conducted against a larger bank involved Relational Investors and Sovereign Bancorp several years ago.

The recent shareholder activist campaign against JPMorgan Chase & Co. demonstrates, however, that even the largest financial institutions need to be prepared for shareholder activism in the current environment. This is particularly true in the case of companies in which large institutional holders, including mutual funds, hedge funds and socially active pension funds or similar groups, hold significant amounts of voting stock.

It remains difficult to mount outright proxy contests against financial institutions. With respect to major institutions, this has been the case in part because of their large market capitalizations (although this is less of a barrier in some cases than once was true). Also, the regulatory framework that applies to banking and other financial institutions provides a significant measure of protection against individual institutions acquiring large stakes (over 9.9% in the case of banks, for example) or acting in concert with other investors whose holdings would aggregate above such levels. The regulatory framework also imposes in many cases passivity or similar requirements on large shareholders.

Notwithstanding the regulatory barriers, we are now seeing investors seeking to influence corporate policy through shareholder proposals or through campaigns to remove (or not re-elect) director nominees. These investors are likely to hold shares well below the usual regulatory trigger points.

Given these developments, we believe that financial institution managements and boards would be well advised to engage in reviews of their shareholder profile, as well as their corporate governance structure, practices, policies and strategies for investor communications. In addition, we believe it prudent for institutions to keep abreast of further developments related to shareholder activism as part of regular strategic reviews.

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