

UNIVERSIDADE FEDERAL DO RIO DE JANEIRO  
INSTITUTO COPPEAD DE ADMINISTRAÇÃO

**SILVIA MAURA RODRIGUES PEREIRA**

**ACTIVISM AND ENGAGEMENT:  
Brazilian Institutional Investors Perspectives**

RIO DE JANEIRO

2021

Silvia Maura Rodrigues Pereira

ACTIVISM AND ENGAGEMENT:  
Brazilian Institutional Investors Perspectives

Tese de Doutorado apresentada ao Instituto COPPEAD de Administração, da Universidade Federal do Rio de Janeiro, como parte dos requisitos necessários à obtenção do título de Doutor em Administração.

Orientador: Ricardo Pereira Câmara Leal

Rio de Janeiro

2021

## CIP - Catalogação na Publicação

P436a      Pereira, Silvia Maura Rodrigues  
              Activism and Engagement: Brazilian Institutional  
Investor Perspectives / Silvia Maura Rodrigues  
Pereira. -- Rio de Janeiro, 2021.  
              193 f.

              Orientador: Ricardo Pereira Camara Leal.  
Tese (doutorado) - Universidade Federal do Rio  
de Janeiro, Instituto COPPEAD de Administração,  
Programa de Pós-Graduação em Administração, 2021.

              1. Governança Corporativa. 2. Ativismo. 3.  
Investidor Institucional. 4. Engajamento. 5.  
Mercados Emergentes. I. Leal, Ricardo Pereira  
Camara, orient. II. Título.

**Silvia Maura Rodrigues Pereira**

**Activism and Engagement: Brazilian Institutional Investor Perspectives**

Doctoral thesis presented to Instituto COPPEAD de Administração, Universidade Federal of Rio de Janeiro, as part of the requirements to award the title of Doctor in Administration.

Approved on 30-junho-2021



Ricardo Pereira Camara Leal, D.Sc - Advisor  
COPPEAD



Celso Funcia Lemme, D.Sc  
COPPEAD



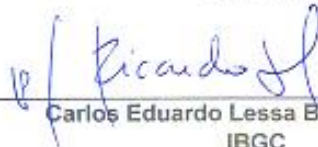
Renato Dourado Cotta de Mello, D.Sc  
COPPEAD



Luciano Rossoni, D.Sc  
UNIGRANRIO



Rosilene Marcon, D.Sc  
UNIVALI



Carlos Eduardo Lessa Brandão, D.Sc  
IBGC

Rio de Janeiro

2021

## **Acknowledgements**

I would like to thank my advisor, Ricardo Pereira Câmara Leal for the opportunity, support and trust and Patricia Bortolon, for her incentive for me to embark on this journey. Also, Coppead's administrative and library staff who were always very friendly and willing to help.

To board members, colleagues and professional friends Isabela Saboya, Lucia Casasanta, Maria Cristina Sá, Mauro Rodrigues Cunha e Renato Chaves, for helping to identify and put me in contact with people in the investment houses who could respond and agree to participate in this research.

To the executives and partners of the Assets Management Houses and Pension Funds, not named to preserve their identities, for accepting to be interviewed and being generous with their time and opinions.

To my parents, Alice, and Mauro, who, from the early years of my childhood, taught me to value books, reading, learning and knowledge, for the opportunities they made available for me before reaching adulthood and for their unconditional support; and for my sister, Marta, a constant friend, for revising parts of the text, providing opinions, training me for presenting my defense and for putting up with my anguish and stress.

Finally, I would like to thank the Brazilian tax-payer, myself, among them, for paying for my tuition. I hope to be able to continue to make their money's worth.

## Resumo

Rodrigues Pereira, Silvia Maura. Ativismo e Engajamento: Perspectivas de Investidores Institucionais Brasileiros. Rio de Janeiro, 2021. 195 folhas. Tese de Doutorado em Administração – Instituto Coppead de Administração, Universidade Federal do Rio de Janeiro, 2021.

Este estudo investiga as percepções sobre ativismo e engajamento, bem como as preferências de governança de três grupos de investidores institucionais brasileiros. Analisa as narrativas de 18 entrevistas confidenciais com sócios e executivos dessas entidades. O ativismo é associado ao confronto e os investidores preferem relacionamentos colaborativos com as empresas, apenas os fundos de pensão públicos e grandes usam o termo ativismo para descrever suas ações. O confronto é evitado pelo escrutínio prévio das empresas e da sua governança, e quando ocorre o ativismo é reativo, um mecanismo de defesa, já que os investidores não acreditam na eficácia da prática quando as empresas possuem controladores claramente definidos. Colaboração para votar ficou mais comum, mas não é nem frequente, nem regular e nem com as mesmas partes. O ativismo proativo é limitado e associado principalmente aos fundos de pensão públicos proporem candidatos para assentos em conselhos, requisitarem eleições em separado para minoritários e preferencialistas e para conselhos fiscais. A transparência do voto está melhorando entre os *assets* não-independentes e fundos de pensão públicos, mas o *stewardship* é incipiente. Os *assets* independentes votam caso-a-caso de maneira que são poucos os votos fazendo com que a visibilidade e condição para medir o ativismo continue pequena. Investidores, como um mecanismo externo de governança, permanecem fracos apesar da melhoria na proteção para o investidor que ocorreu nos últimos 20 anos. Portanto, se a efetividade do sistema de governança depende da complementaridade dos mecanismos internos e externos, melhorar a proteção do investidor sem medidas que desafiem a concentração da propriedade, sugere que o sistema de governança permanecerá fraco e o problema principal-principal se mantém sem remédios satisfatórios. Este estudo é o primeiro a levar em conta a visão dos agentes, principalmente da categoria de *asset managers*, independentes e não-independentes. Contribui para a literatura sobre o ativismo e governança corporativa em mercados emergentes e informa discussões em outros ambientes onde também há o predomínio da propriedade concentrada. Contribui para a literatura sobre o ativismo, heterogeneidade do investidor e da governança comparativa.

**Key words:** Ativismo, Engajamento, Propriedade, Governança Corporativa, Mercados Emergentes, Brasil

## **Abstract**

Rodrigues Pereira, Silvia Maura. *Activism and Engagement: Brazilian Institutional Investor Perspectives*. Rio de Janeiro, 2021. 195 pages. Tese de Doutorado em Administração – Instituto Coppead de Administração, Universidade Federal do Rio de Janeiro, 2021.

This study investigates perceptions on activism, engagement, and corporate governance preferences of three groups of Brazilian institutional investors. It analyses the narratives from 18 confidential interviews with partners and officers of these entities. Activism is associated with confrontation and investors prefer collaborative relationships with companies, but large public pension funds use the term to describe their actions. Confrontation is avoided through prior scrutiny of companies' governance and activism is reactive a defense mechanism, since investors do not believe it is effective when companies have clearly defined controlling shareholders. Collaboration on votes is becoming more common but is neither frequent, regular or with the same parties. Pro-active activism is limited to and primarily associated with public pension funds proposing candidates to board seats, requesting separate elections for minority or preferred shareholders and fiscal boards. Voting disclosure is improving among non-independent asset managers and large public pension funds but stewardship is incipient. Independent asset managers vote on a case-by-case basis. So, voting turnouts will remain low impacting the visibility and ability to measure investor activism. Investors, as an external governance mechanism, remain weak despite improvements in investor protection over the past 20 years. Thus, if governance system effectiveness depends on the complementarity of internal and external mechanisms, improving investor protection without measures that effectively challenge strong ownership concentration, seem to suggest that the overall governance system remains weak, and the principal-principal problem remains without satisfactory remedies. This study is the first to take practitioners views into account, specifically that of non-independent and independent asset managers. It contributes to the literature on activism and corporate governance in emerging markets and informs discussions of other institutional environments where concentrated ownership dominates. It adds to the literature on activism, investor heterogeneity, comparative governance.

**Key words:** Activism, Engagement, Ownership, Corporate Governance, Emerging Markets, Brazil

## TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION .....</b>	<b>11</b>
<b>2</b>	<b>THEORETICAL FRAMEWORK AND LITERATURE REVIEW .....</b>	<b>16</b>
2.1	SHAREHOLDER VALUE .....	16
2.2	INSTITUTIONAL THEORY .....	16
2.3	AGENCY THEORY .....	18
2.4	CORPORATE GOVERNANCE .....	20
2.4.1	<i>Corporate Governance Mechanisms .....</i>	<i>21</i>
2.4.1.1	Internal Governance Mechanisms .....	22
2.4.1.2	Competitive markets for products and services, managerial labor, and corporate control.....	23
2.4.1.3	The legal system.....	24
2.4.1.4	Activism and Engagement.....	27
2.5	OWNERSHIP.....	29
2.6	DETERMINANTS OF INSTITUTIONAL INVESTORS ENGAGEMENT.....	31
2.6.1	<i>The purpose of the institution .....</i>	<i>35</i>
2.6.2	<i>Investment strategy .....</i>	<i>35</i>
2.6.3	<i>Portfolio structure.....</i>	<i>36</i>
2.6.4	<i>Fee structure .....</i>	<i>36</i>
2.6.5	<i>Political and social objectives .....</i>	<i>36</i>
2.7	PROCESS.....	37
2.7.1	<i>Engagement - Ordinary course of business .....</i>	<i>38</i>
2.7.1.1	Private Meetings with top executives .....	38
2.7.1.2	Voting .....	40
2.7.2	<i>Activism - Extraordinary course of business .....</i>	<i>41</i>
2.7.2.1	Voting against management .....	42
2.7.2.2	Shareholder Proposals .....	42
2.7.2.3	Activism as a step-by-step process of escalating belligerence and costs .....	43
2.7.2.4	Exit as a governance mechanism.....	43
2.7.2.5	Shareholder coalitions .....	44
2.8	SELECTED CASES OF EARLY PENSION FUND ACTIVISM.....	44
2.9	MUTUAL FUNDS ARE NOT EXPECTED TO BE ACTIVISTS.....	47
<b>3</b>	<b>THE BRAZILIAN INSTITUTIONAL SETTING AND CONTEXT: CAPITAL MARKETS AND CORPORATE GOVERNANCE .....</b>	<b>49</b>
3.1	CAPITAL VARIETIES APPROACH TO COUNTRY COMPARISONS. ....	50
3.2	CORPORATE OWNERSHIP IN BRAZIL.....	53
3.3	LEGAL FRAMEWORK.....	54
3.4	IMPORTANT REGULATORY CHANGES.....	56
3.5	VOLUNTARY GOVERNANCE REGULATION .....	66



3.6	STOCK MARKET FEATURES .....	67
3.7	THE INVESTMENT INDUSTRY IN BRAZIL .....	68
3.8	ACTIVISM IN BRAZIL .....	68
<b>4</b>	<b>METHODOLOGY .....</b>	<b>74</b>
4.1	RESEARCH QUESTION .....	74
4.2	RESEARCH DESIGN .....	74
4.3	SELECTION OF INSTITUTIONS FOR INTERVIEWING .....	75
4.4	CONTACTING POTENTIAL INTERVIEWEES AND CONFIDENTIALITY .....	76
4.5	THE INTERVIEW PROCESS .....	77
4.6	DATA ANALYSIS .....	79
4.7	LIMITATIONS .....	82
<b>5</b>	<b>INDEPENDENT ASSET MANAGERS (IAS) .....</b>	<b>84</b>
5.1	INTRODUCTION .....	84
5.2	BACKGROUND .....	85
5.3	ANALYSIS OF THE INTERVIEWS .....	87
5.3.1	<i>History</i> .....	88
5.3.2	<i>Activism</i> .....	90
5.3.2.1	Activism has a negative connotation. ....	90
5.3.2.2	Investors are adamant in saying they are not activists! .....	90
5.3.2.3	Activism requires spending scarce resources, distorts focus and is ineffective. ....	90
5.3.2.4	Activism is a defense mechanism. ....	92
5.3.2.5	Activism increasing with the rise in the number of “corporations”. ....	93
5.3.2.6	Exit is inevitable. ....	94
5.3.2.7	Collaborative activism. ....	94
5.3.3	<i>Investment Process</i> .....	95
5.3.3.1	Entry scrutiny before voice, loyalty or exit. ....	95
5.3.3.2	Governance Analysis Focuses on Substance .....	96
5.3.4	<i>Engagement</i> .....	97
5.3.4.1	As active engagers, access to the C-suite, the board and controlling shareholders is key. ....	97
5.3.4.2	Management is the primary source of (“soft”) information. ....	98
5.3.4.3	Collaboration is materialized in exchanges with management. ....	98
5.3.4.4	Personal relationships and networks are important sources. ....	98
5.3.4.5	Private meetings offer more potential than group encounters. ....	99
5.4	VOTING .....	100
5.4.1	<i>Voting requirements</i> .....	100
5.4.2	<i>General Meetings</i> .....	101
5.4.3	<i>Voting has been much facilitated but is still expensive</i> .....	101
5.4.4	<i>Collaboration among investors has become easier</i> .....	102
5.4.5	<i>Participation on boards is exceptional</i> .....	102

5.5	SUMMARY AND CONCLUSION .....	103
<b>6</b>	<b>NON-INDEPENDENT ASSET MANAGERS (NIAS) .....</b>	<b>105</b>
6.1.1	<i>Introduction .....</i>	<i>105</i>
6.2	BACKGROUND.....	106
6.3	ANALYSIS OF THE INTERVIEWS .....	108
6.3.1	<i>Activism.....</i>	<i>108</i>
6.3.2	<i>Investment Process .....</i>	<i>111</i>
6.3.2.1	Two-pronged standardized investment processes: fundamental and ESG analysis.....	111
6.3.2.2	ESG is not eliminatory. ....	112
6.3.3	<i>Engagement .....</i>	<i>113</i>
6.3.3.1	Engagement is less personal.....	113
6.3.4	<i>Voting.....</i>	<i>115</i>
6.4	SUMMARY AND CONCLUSION .....	117
<b>7</b>	<b>PENSION FUNDS .....</b>	<b>121</b>
7.1	INTRODUCTION .....	121
7.2	BACKGROUND.....	122
7.2.1	<i>Brazilian Pension Funds.....</i>	<i>123</i>
7.3	ANALYSIS OF THE INTERVIEWS .....	126
7.3.1	<i>Shareholders' agreements are no longer as interesting. ....</i>	<i>126</i>
7.3.2	<i>Pension funds are de-risking, seeking liquidity and focusing on core competencies.....</i>	<i>126</i>
7.3.3	<i>Outsourcing enables different investment strategies, cost and return maximization. ....</i>	<i>128</i>
7.3.4	<i>Engagement and Activism: full benefits of size .....</i>	<i>129</i>
7.3.4.1	Outsourcing relationships.....	133
7.3.4.2	Activism directed at the improvement of the market.....	133
7.3.5	<i>Voting.....</i>	<i>134</i>
7.4	SUMMARY AND CONCLUSION .....	136
<b>8</b>	<b>DISCUSSION .....</b>	<b>139</b>
8.1	ENGAGEMENT EXPECTATIONS .....	139
8.2	OWNERSHIP CONCEPTS.....	147
8.3	PERCEPTIONS ON ACTIVISM AND ENGAGEMENT (EXTRA-ORDINARY COURSE OF BUSINESS) .....	148
8.4	ENGAGEMENT PROCESS – ORDINARY COURSE OF BUSINESS (MEETINGS WITH THE COMPANY AND VOTING) .....	151
<b>9</b>	<b>CONCLUSION .....</b>	<b>156</b>
<b>10</b>	<b>REFERENCES.....</b>	<b>159</b>
<b>11</b>	<b>APPENDIX 1.....</b>	<b>169</b>
<b>12</b>	<b>APPENDIX 2.....</b>	<b>203</b>

# 1 Introduction

Institutional investors are important players in developed and emerging capital markets (Khorana, Servaes, and Tufano, 2005; Ferreira and Matos, 2008). Total net assets under management worldwide were US\$48 trillion in the first quarter of 2020. China, Brazil, and Korea host the largest investment management industries among emerging economies (IIFA, 2020)

This study explores attitudes towards activism, the corporate governance preferences, and more broadly, the engagement process of the Brazilian investment industry by interviewing partners and officers of three groups of Brazilian institutional investors: pension funds (PF), the investment units of financial institutions such as commercial and investment banks, non-independent asset managers (NIA) hereafter, and independent asset managers (IAs), who are mutual stock fund managers and for whom investing in equities represents a substantial proportion of their business.

While pension funds cater primarily to Brazilian employees of state-owned and private companies, financial institutions and asset managers have a broader client base: domestic and foreign pension funds, endowments, high net worth individuals, and retail investors. To the extent that these investment institutions depend on equities for their overall performance, it might therefore be expected that they would be keenly interested in improving investee performance and possibly wish to influence firm governance and encourage shareholder engagement.

The relevance of examining institutional investors' perspectives and attitudes towards their engagement with investee companies is related to the exercise of their rights and obligations as owners and fiduciaries, but also, stewardship towards correcting company direction thereby contributing to the efficient allocation of resources. Investors are expected to make merit-based resource allocation and pressure poor performing managements to correct their course (Hoskisson *et al.*, 2002). Additionally, shareholder activism may be viewed as an external corporate governance mechanism that works towards the fulfillment of three corporate governance objectives: protection and enforceability of stakeholder rights, mediation of internal and external stakeholder relationships; and guidance on strategic and ethical matters (Aguilera, et al., 2015).

We have left out three groups of important institutional investors in this study: hedge funds, private equity, and foreign investors. There are reasons for this. Hedge funds sharing the regulatory freedom that is possible in the United States, do not exist in Brazil because the current regulation requires all funds to be registered with the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários – CVM), compute the price of the fund's shares daily and other requirements that US hedge funds do not have. Private equity funds generally invest in private companies and are

usually insiders. Foreign investors (usually from the US and UK) are probably key players in fostering improvement in emerging markets engagement and governance practices in emerging markets. Activist investors have been found to be influential to the improvement of corporate governance in emerging markets when they come from countries with strong activist traditions (Kim, Sung and Wei, 2017). We know they own more than 40% of listed companies capital in Brazil and were responsible for the largest trading volume in the Brazilian stock exchange although their presence fluctuates depending on how Brazil is weighted in the emerging market indices (De La Cruz, Medina and Tang, 2019; B3 – Operating Report). We exclude them, however, because there is no source of information that allows us to compare the size of their investments in Brazil relative to that of local entities, they are more difficult to access, and their behavior is widely explored in the US and UK literature.

Activism in Latin America and Brazil is under-researched, unlike in the United States and Europe (Crisóstomo and González, 2006), and even a meta-analysis of articles on corporate governance and performance in Latin America failed to uncover papers on activism up to 2015 (Maranho and Leal, 2018). However, there is a growing but number of papers on the subject and Vargas, Bortolon, Barros and Leal (2018) report a growing presence of the topic in the specialized media (Vargas *et al.*, 2018). Most studies have focused on the relationship between activism and corporate governance, efficiency and performance (Vargas *et al.*, 2018; Guimarães *et al.*, 2019; Maranho, Leal and Bortolon, 2020; Collares, 2020) and on major institutional investors – Brazilian pension funds and on BNDESPar, the investment arm of the country’s national development bank (BNDES), (Crisóstomo and González, 2006; Punsuvo and Kayo, 2007; De Oliveira, Leal and Almeida, 2012; Sonza and Granzotto, 2018; De Almeida and Leal, 2020; Lazzarini and Musachio, 2010; Duarte and Leal, 2021).

In this research we ask what meanings partners and officers of institutional investors attribute to the terms, “activism” and “engagement”? Which corporate governance practices investors value most and why and, as a result, would: a) serve as criteria for investment decisions; b) be a matter for regular engagement, and c) prompt them into action.

This paper adds to the literature by highlighting practitioner narratives on the topic. It innovates by considering the views of independent and non-independent asset managers, a group of growing significance, but who is usually dwarfed by the importance of pension funds.

To conduct this research, we adopted two criteria. The most important was size because larger funds are more likely to engage in activism (Ryan and Schneider, 2002, Admati and Pfleider, 1994; La Porta *et al.*, 1999). The second was size of their stock assets under management.

Individuals of eighteen entities offered their views under confidentiality agreements. They include some of the largest institutions in the country in each category.

Our first conclusion is that both IAs and NIAs do not consider themselves activists because the term has a negative connotation. IAs, think it distorts focus, it is not up to them to tell management what to do and they are not paid to spend their scarce resources on something that is ineffective because most Brazilian companies have controlling shareholders. They focus on collaboration and want to be close to their investees with whom they take great care building relationships. However, if they disagree with the direction a company is taking, they will first attempt to talk but if that fails, the preferred route is exit. Scaling up the fight will happen if they need to defend their rights in a position that is large in their portfolios. Voting practice varies but most consider it on a case-by-case basis and for reasons other than fiduciary duty.

NIAs also want to put their engagement efforts in a positive light and focus on ESG where they participate on their own or in PRI organized groups. As signatories of PRI principles, they are concerned with ESG risks and have similar approaches as to how they incorporate ESG in the valuation of their investees. Engagement is less personal and institutionalized, and they seek information they want the companies to disclose on official documents. Exit for them is more difficult because they need liquidity in an already small market. They have committed to Stewardship, so they are becoming more assiduous in their voting practice and disclose their vote direction for every company.

Pension funds are a more diverse group. All are early PRI signatories and have long been incorporating ESG issues in their practice. But they differ in activist practice depending on how they manage their funds. Some have outsourced the equity exposure entirely. Their role, in fact the role of pension funds towards the outsourced portions of their portfolios, is inducing asset managers who serve them to increase formality, accountability and ESG responsibility. When they are insiders – part of a shareholders' agreement or in a private equity fund – they have great leeway to implement their ideas and objectives. It is in internally managed portfolio where they may take an activist role. Even so, some pension funds are in the process of but not yet structured to vote their shares. Some very large pension funds have always been very active – they describe their actions as activism - and for companies they have enough votes to elect board members they will propose a candidate through whom they will try to persuade to influence the company in what they have in their agenda. When they do not have enough votes, they may also try to influence other investors to support their candidates. In fact, all investors recognize that collaborating to elect board candidates (either board

of directors or fiscal boards) is becoming for frequent and may be a measure of where Brazilian institutional investors are becoming more active and where minority shareholder may even dispute for candidates. Some pension funds will make their voting direction public.

Excepting a few pension funds that manage investments internally, investor discourses suggest the concept of ownership that best matches their attitudes is one of legal owners who view their obligations with the investee firm in terms of a set of rights and obligations, as “active owners” in McNulty and Nordberg’s (2016) path a. As such they do not necessarily see that it is their responsibility to pressure managements of poor performing companies to improve. However, according to Hoskisson, Hitt, Johnson and Grossman, (2002) this is considered one of the critical functions expected of institutional investors. The other is allocation resources based on the merits of individual investments. However, since most companies in Brazil have a controlling shareholder, that is not their responsibility either. So institutional investors in Brazil, are a weak external governance mechanism.

True enough in their private conversations IAs may influence companies. In the same manner, all ESG engagement efforts may also be effective. But because these happen in private spheres, and lack observable indicators, it will be difficult to ascertain effectiveness. Furthermore, voting is not obligatory in Brazil, so voting turnouts will not be as large as in the United States where it is mandatory. To the extent the voting direction is important for the measurement of activism, we can expect manifestations to remain low.

The perspectives are consistent with predictions and findings in the literature namely, that ownership concentration subdues activism (Schleifer and Vishny, 1997; La Porta, 1999) and that diversification and performance metrics (Gilson and Gordon, 2013), profit-seeking and short-term liability structures are prone to less activism (Çelik and Ikbosson, 2013; Ryan and Schneider, 2002). They corroborate with the view that investor size enables investors to wage activism (Ryan and Schneider, 2002; Rubach and Sebor, 2009) and that, mutual funds, are the least active of Brazilian investors (Maranho *et al.*, 2020). They also support the view that activism in Brazil is still low but increasing (Vargas *et al.*, 2017). However, investor perspectives permit us to see how those that are making decisions make sense of their world, understand their limitations, expose their frustrations, and describe their actions.

This document is organized as follows: Chapter 2 sets the theoretical framework and the literature review that organizes the base for the analysis. Chapter 3 describes the Brazilian context. Chapter 4, the methodology. Chapters 5, 6 and 7 contain the analysis of the interviews and a structured

in four parts – introduction (summary of interpretations); background (about each investor group), the analysis of the interviews and conclusion. A final discussion can be found in chapter 8 and the conclusion in chapter 9.

## **2 Theoretical Framework and Literature Review**

The objective of this research is to gain insight into investor attitudes and values towards engagement and activism as well as on their corporate governance preferences. Such preferences are those related corporate governance practices and the processes through which investors may act. This enquiry is focused on “financial activism” as opposed to “ESG activism” (Goronova and Ryan, 2014).

### **2.1 Shareholder Value**

The theoretical starting point of this study is the shareholder value approach to corporate governance. “Shareholder value” prioritizes the owners of the property of a firm over that of other stakeholders on the argument they are the providers of capital: they finance the corporation, bear the investment risk, and are entitled to the political and economic rights of ownership however disperse and passive they might be. The importance of this perspective for this study is that it legitimized the ongoing relationship between owners of stock and managers of investee companies and brought this relationship – i.e., shareholder engagement - to the forefront of discussions (Martin, Casson and Nisar, 2007, pg 3).

The view that companies should be managed primarily in the interests of its shareholder is rooted in the belief that competitive markets are more efficient and fairer than politics and administration in distributing economic rewards (Dore, 2000). Shareholder value influenced much finance theory development, e.g., the efficient capital market hypothesis (a market in which security prices fully reflect available information) and much of the corporate practice since the 1980s (Martin *et al.*, 2007).

### **2.2 Institutional Theory**

Additionally, this study borrows concepts from institutional theory’s economic and sociological perspectives. According to Richter, the term “New Institutional Economics (NIE)” is associated with academics who theorized about property rights, transaction costs economics, agency theory, analysis of the law, collective action, public choice theory, the theory of relational contracts, and comparative economic systems. These theorists, although preserving neoclassical foundations of “methodological individualism and individual rational choice given a set of constraints”, believe “institutions” make a difference and influence outcomes. The institutional framework, instead of given, is an object of research and believed to impact economic behavior (Richter, 2005). In NIE,



institutions are the “formal rules, the informal norms and their enforcement characteristics” which define the “way the game is played”, while “organizations”, in turn, “are the players” (North, 2008).

Thus, when investigating institutional investor behavior and engagement process, consideration needs to be made to the institutional environment in which these organizations – institutional investors and investees - companies are embedded.

Table 2-1  
Institutional Theory

#	Theoretical Proposition	Sources
1	The institutional environment in which organizations are embedded, matter.	Richter, R. (2005); North, D. C. (2008)
2	Institutional investors are organizations that seek legitimacy. To comply and be perceived as legitimate, they will adopt structures and procedures that make them alike other organizations in the same field.	DiMaggio & Powell (1983)

Note, however, that broadly defined, NIE accommodates different strands that vary in how they depart from neoclassical economics. The differences appear in the concepts of uncertainty (types of uncertainty), rationality (maximization/bounded rationality/creativity), and the influence of institutions on the economy (restrictive/cognitive functions). In certain strands, “the separation between NIE and neoclassical economics is not clear-cut, namely agency theory, economic analysis of the law, and public choice theory”, because these theories maintain the neoclassical notion of utility maximization. Alternatively, bounded rationality is assumed in transaction cost analysis, property rights theory, and “in the new institutional approach to new economic history” (Dequech, 2006, pg. 122).

DiMaggio and Powell (1983) are proponents of the sociological perspective of institutional theory (Richter, 2005). They note that organizations are alike and argue that powerful forces come into play when organizations are structured into a field. Organizations are subjected to a process of isomorphism – constraints “that force one unit of the population to resemble other units that face the same set of environmental conditions”. Organizations face 1) coercive isomorphism arising from political influence and legitimacy needs; 2) mimetic isomorphism due to standard responses to uncertainty and 3) normative isomorphism resulting from professionalization. They further argue that while homogeneity may facilitate transactions, attract appropriate personnel, help recognition as legitimate and reputable, and enable organizations to become eligible for public and private grants or contracts, adopting similar structures does not necessarily make them more efficient or better than deviant peers (DiMaggio, and Powell, 1983 pgs. 149, 153-154). What is relevant in their theory for

our purposes in this study, is that institutional investors, as organizations belonging to a field, will adopt similar structures and procedures due to isomorphism.

Note that Hambrick, Finkelstein, Cho, and Jackson (2005), argue and illustrate that in the period between 1980 and 2000 companies in the US within the same industry became more heterogeneous. They consider that the forces that act towards homogeneity proposed by DiMaggio and Powell (1983) are correct but argue that the macro-social trends leading to isomorphism moved in the opposite direction resulting in enhanced intra-sectorial diversity.

This study views the voluntary act of adhering to widely accepted codes of principles or best practices issued by reputable local or international entities such as the Principles for Responsible Investment (PRI)<sup>1</sup> as inducers of isomorphism. Usually, signatories of the principles and codes are required to go beyond a formal commitment and adopt standard procedures and reports. Such propensity for standardization is illustrated by a quote from the investment director of Petros, one of Brazil's largest pension funds, at the time of his appointment to the executive board of the Associação dos Investidores no Mercado de Capitais (AMEC)<sup>2</sup>. Petros is a signatory of AMEC's Stewardship Code:

"We are using AMEC's Stewardship Code as our main reference on engagement issues and environmental, social and governance (ESG) principles. The document is very clear with respect to criteria for engagement with companies regarding social and environmental themes..." Investidor Institucional 28/9/2020" (free translation)<sup>3</sup>.

## 2.3 Agency Theory

"Agency theory provides the underlying theoretical rationale for shareholder value corporate governance" (Martin *et al.*, 2007, pg.6). Agency problems between owners and managers arise when the former (principals) delegate decision making power over their property to managers (agents) who have different interests and risk profiles. In distancing themselves from day-to-day management, owners have less information about the business subjecting themselves to a situation of information asymmetry. They will have to draw up a contract establishing manager prerogatives and

---

<sup>1</sup>PRI - <https://www.unpri.org/>

<sup>2</sup> AMEC acts in the defense of the interests of minority shareholders in Brazil

<sup>3</sup> "O diretor de investimentos da Petros, Alexandre Mathias, passa a integrar a diretoria executiva da Associação dos Investidores no Mercado de Capitais (Amec), entidade que atua em defesa dos acionistas minoritários. A Petros é signatária do Código Stewardship da Amec. O código, segundo Mathias, é um importante guia para questões de engajamento e de práticas ambientais, sociais e de governança (ESG): "Estamos tomando o Código Stewardship da Amec como nossa principal referência nas questões de engajamento e nos princípios ESG. O documento é bem claro no que diz respeito aos critérios de engajamento das empresas em temas socioambientais"...Investidor Institucional 28/9/20".

responsibilities which, nevertheless, will never be able to cover all possible decision-making situations and will leave room for managers to exercise judgment (imperfect contracts). Therefore, ensuring agents make decisions in the best interest of principals requires the implementation of control and information systems, and standards to enable monitoring. There are costs and limits for what monitoring can achieve.

Thus, this (positivist) line of inquiry of agency theory focuses on the contract between owners of the corporation and managers, rather than on the broader phenomenon of agency problems (employer-employees, lawyer-client, buyer-supplier, etc.). It aims to identify the most efficient contract governing the relationship between principal and agent given several behavioral assumptions (Eisenhardt, 1989).

It does so because agency theory views the firm as a set of contracts. “The private corporation or firm is simply one form of legal fiction which serves as a nexus for contracting relationships, and which is also characterized by the existence of divisible residual claims on the assets and cash flows of the organization which can generally be sold without permission of the other contracting individuals” (Jensen and Meckling, 1976, pg.311).

Regarding behavioral assumptions, Jensen and Meckling (1976) describe both parties as rational - deliberate utility maximizers. As such, agents will not always act in the best interests of principals who will remedy this risk by making use of mechanisms such as 1) incentives for agents to align interests (e.g. compensation); 2) monitor costs to put a check on agent misbehavior (e.g. accounting practices, control systems, budget restrictions, and a professional board of directors whose members operate in the stockholders' interest) and 3) incentivize the agent to spend resources to ensure he will not take actions that harm the principal and to compensate the latter if they do so (bonding costs). However, since it is not possible to ensure that, at zero cost, agent decisions will always be optimal for principals, there will always be a residual loss. Ultimately, what these authors refer to as agency costs is the sum of monitoring and bonding costs, and residual loss, all of which will be entirely borne by the principals.

This perspective of agency theory recognizes an inherent conflict-of-interest between shareholders and managers (Davis and Thompson, 1994). However, it does not problematize owner/shareholder behavior and does not predict expected behavior. The theoretical proposition it makes regarding owner behavior arises from its core assumption: owners are rational, self-seeking utility maximizers, a party to the nexus of contracts comprised by the firm. This conception contrasts

with that of the legal view (discussed below) where owners are entitled to legal and moral rights (and obligations) of ownership (Hendry *et al.*, 2006).

In their seminal work, Berle and Means (1991) note the dispersion of ownership and the corresponding loss of power over the property owned. Instead of “physical assets”, ownership of the company is held in the form of “rights and expectations” (Berle & Means, 1991, pg. 64) over the company. They argue owners have no control over the physical assets that generate their wealth and have, thus, become “passive”. As a result, owners have less incentive to exercise ownership rights making it easier for managers to increase influence. Berle and Means propose that owners have three interests: a) “to earn the maximum profit compatible with a reasonable degree of risk”, b) to receive a generous and equitable share of the profits, and (c) to market his stock freely at a fair price” (Berle and Means, 1932, pg. 114-122). So, ownership dispersion leads to a portfolio management perspective towards ownership. Note, however, that in their introductory comments to the 3rd edition of the *Modern Corporation and Private Property*, Weidenbaum and Jensen remark the authors may have exaggerated on the extent common stockholders might have lost control of their assets (Berle and Means, 1991, pg. xi).

## **2.4 Corporate Governance**

Under the shareholder value approach, the main goal of “corporate governance” is to ensure executives will manage the company well and in the interest of shareholders. Thus, corporate governance deals with the relationships among those at the top of the company: the shareholders, the board of directors, and the executive board, and, specifically, the distribution of authority between the board and the CEO (Roe, 2008, pg. 371). In its core, corporate governance is intended to handle the agency problems associated with the separation of management and shareholders (Martin *et al.*, 2007). And thus, corporate governance mechanisms are the legal and economic institutions that deal with the way the owners, as suppliers of capital, assure themselves they will get a return on their investment (Shleifer and Vishny, 1997).

These institutions enable shareholders to address the risk of managerial self-serving and shirking (principal-agent conflict), problems that could be amplified by the possibility of free-riding behavior on the part of distant and dispersed shareholders. One such mechanism is ownership concentration. Both the magnitude and the nature of agency problems are related to the configuration of the company’s ownership (Gillan and Stark, 2003). When ownership is highly dispersed no one, shareholder will bear the cost of monitoring management to the benefit of all. In turn, large holders

could have the incentive for more effective monitoring and countries where ownership structures are characterized by concentration of few large holders may have less agency issues related to the separation of management and control. And yet, ownership concentration may lead to another dimension of governance problems: that between dominant and minority shareholders (or principal-principal conflict). In this situation, the risk is that large shareholders expropriate the smaller ones (Dharwadkar and George, 2000; La Porta *et al.*, 1999). Thus, when private benefits of control exceed those of cashflow rights entitled by equity ownership, there will be an incentive to enhance control rights. This is typically achieved via dual-class shares, pyramid structures and cross holdings which are common around the world where concentrated ownership prevails (Denis and McConnell, 2003).

Beyond the shareholder value/agency theory models, corporate governance tackles a wider scope of issues such as the company's need for legitimacy (Roe, 2005); the protection and enforcement of stakeholder rights; the mediation between the different stakeholders' interests and demands; the assurance of appropriate disclosure and transparency standards; and the provision of strategic and ethical guidance for the firm (Aguilera *et al.*, 2015). Irrespective of the scope of issues (narrow or wide) included in what is expected from corporate governance, the mechanisms (institutions) by which governance is exercised are essentially the same.

### **2.4.1 Corporate Governance Mechanisms**

Internal governance mechanisms are those that emerge from within the firm and, when effective, aim to align managerial interests with that of shareholders and improve financial performance (the board of directors, managerial incentives, and ownership concentration). Internal mechanisms interact with phenomena which is external to the firm. External mechanisms include competitive markets, particularly the market for corporate control, the legal, political, and regulatory systems (including independent auditing requirements, bankruptcy laws, and disclosure requirements) (Jensen, 1993). Other authors emphasize the gate-keeping role of external players such as lawyers, accountants, and underwriters because they help outside shareholders interpret and trust the information provided to price securities, to make decisions on corporate control transactions to take legal action and understand related party transactions (Roe, 2005), and the role of entities whose relevance has grown in the past 3 decades such as rating agencies (including proxy advisors, and security analysts), the media and institutional investor activism (Aguilera, 2015).

The major cultural precondition for efficient markets is contractual trust – the expectation parties will honor the “written commitments, underwritten by third parties and the legal system”

(Martin *et al.*, 2007). Personal trust may be important but is based on private rather than transparent and equal-to-all information that is needed for efficient capital markets.

#### **2.4.1.1 Internal Governance Mechanisms**

The board of directors is the main body of internal governance and is particularly important in companies with dispersed ownership where shareholder interests need to be well represented and protected. The board is elected by the shareholders and is accountable to them. They have fiduciary duties of care and loyalty<sup>4</sup>. The board makes key strategic and business decisions, hires/fires the chief executive officer (CEO) and monitors senior executives. In some broader concepts of corporate governance, the board is seen as guardians of corporate principles and values, the charter and governance system.

Board effectiveness is the desirable outcome and best practices codes make recommendations as to member qualification, nomination and evaluation processes and autonomous thinking and action. Board independence is the observable proxy for autonomy and has received more attention from the literature. Managerial incentives – usually executive compensation and contingent pay – are intended to align the interests of top executives with that of shareholders. Empirical evidence around the world seems to support the view that smaller boards are associated with better performance while outside directors are not. However, outside directors have had a positive impact on important matters such as acquisitions, executive compensation, and CEO turnover (Denis and McConnell, 2003).

Ownership concentration is another key internal governance mechanism under the argument that larger participation will not only provide incentives but also power to monitor and advise managers and the board. However, empirical evidence that this is true is lacking (Dalton *et al.*, 2003). In addition, ownership concentration is associated with the legal system, specifically whether the country adopts common or civil law and the level of investor protection (see 2.4.13 below).

Internal corporate governance mechanisms have varying degrees of effectiveness in ensuring that the firm will always be managed in the best interest of the shareholder. For example, the board of directors may not always be effective because of information asymmetry between them and the CEO who has great power to control the information provided to the board. Legal risks may bias board members to walk well-treaded paths instead of seeking profit maximization and, board interests

---

<sup>4</sup> Brazil's Corporate Law, Law 6,404/76 Chapter XII, Section IV lays out Director duties and responsibilities. In addition to the duty of care and loyalty, directors have the duty to inform to the market (Art.157): (i) how much shares of the company they own and have traded and (ii) any material changes in the company's affairs.

might not be aligned with that of shareholders. Additionally, if the CEO is also Chairman of the Board, he can curtail its independence. Therefore, there are several reasons why internal governance mechanisms might not be sufficient for good governance. External corporate governance mechanisms are equally important either to complement or even replace internal mechanisms and allow for the achievement of optimal decisions (Roe, 2005, pg. 387).

#### **2.4.1.2 Competitive markets for products and services, managerial labor, and corporate control**

Competitive markets for products and high-level executives are important external corporate governance mechanisms. Competition provides the opportunity for recuperation when inefficiencies arise (Hirshman, 1970). When customers may change supplier or find substitutes for the product or service, and executives can be easily replaced, at low cost, the conditions for “exit” are fulfilled and that route will send a clear message to the firm. But exit is not always possible because markets are imperfect. Monopolies, oligopolies, and product differentiation may make replacement impossible or too costly. Furthermore, markets may deal with gross imperfections but will be less effective for some governance tasks. For example, an effective board may help the company make a speedier adaptation to market changes and curb actions by managers before they cause harm (Roe, 2008). Furthermore, while product and factor markets may discipline companies, they are slow to respond, and the reaction may come too late to save the company from failure avoiding the waste of resources.

The market for corporate control, on the other hand, would be an efficient and speedier way to promote correction of deviant companies. Thus, Jensen (1993) argues that the existence of a market for corporate control is necessary condition for capital markets to perform the role of efficient capital allocation (Jensen, 1993). Underperformance by publicly traded companies exposes them to the threat of a takeover which would provide an incentive for its management to improve performance so to prevent replacement or, if not, the execution of a takeover or other market for corporate control activity such as mergers, buyouts, divestitures, would displace them.

The discussion as to how effective the market for corporate control is as an ex-post corporate governance mechanism is relevant under the assumption that capital markets may pressure underperforming companies who may be taken over. However, these conditions might not be widespread in countries where the ownership structure is characterized by over-50%-of-voting-capital control stakes. Furthermore, capital markets funding may compete with other sources of financing such as government and bank lending.

### 2.4.1.3 The legal system

The legal system impacts all dimensions of corporate governance and its mechanisms. The law normally defines the types of legal entities that are possible, requires a statement of the company's purpose, establishes the rights and responsibilities of firm owners and management (including the types of shares and their corresponding rights), the decision-making process of how the firm's wealth is to be distributed and disclosure requirements. The legal system includes the structures (e.g., regulatory bodies) and processes put in place to enforce formal laws but also to principles and norms of voluntary adoption. (Aguilera *et al.*, 2015). The latter include codes of governance, environmental social and governance (ESG), ethics and stewardship, standard reporting and engagement practices put forward by interest groups, professional organizations, standard setters, international coalition and networks, and market entities.

Since corporate governance systems vary considerably around the world and capital markets may or may not have much relevance in corporate financing, scholars have devoted efforts to provide explanations for such differences and their consequences. One mainstream view relates to the quality of the corporate law. In their seminal work of the late 90s and early 2000, La Porta, Lopez-de-Silanes, Shleifer and Vishny (LLSV), examined company and bankruptcy laws in several countries focusing on investor and creditor rights. Their goal was to identify the differences across countries and infer their implications to corporate finance. They assume investor protection contributes to external financing of firms and in consequence to economic efficiency.

Shareholder rights include “the right to receive dividends on pro-rata terms, to vote for directors, to participate in shareholders' meetings, to subscribe to new issues of securities on the same terms as the insiders, to sue directors or the majority for suspected expropriation, to call extraordinary shareholders' meetings, etc.” (La Porta, 2000). They conclude that countries with common law traditions offer more protection to shareholders than those with civil law. Among countries with civil laws, those following the French Civil law tradition such as in Latin America, afford the least protection to shareholders. They argue that the fact that the corporate law in these countries requires mandatory dividends is a remedy for providing few other protections to shareholders (La Porta, *et al.*, 1998).

They also examine the quality of law enforcement by looking at the efficiency of the judicial system, rule of law, corruption, risk of expropriation based on data from credit agencies and the quality of the accounting standards. While Scandinavian Civil Law tops the list in terms of enforcement and accounting standards, French Civil Law continues at the bottom. Their last



conclusion is that the quality of shareholder protection (voting rights/process) is associated with ownership concentration, i.e., more shareholder protection, more dispersion. Their empirical verification supports the view that ownership dispersion is more widespread in countries where the legal system better protects shareholders (La Porta *et al.*, 1999). However, they recognize that even in countries where capital dispersion is widespread, ownership concentration in large companies may be of more concern (Schleifer and Vishny, 1997).

La Porta *et al.* (2000) predict that investor protection encourages the development of financial markets and countries that enforce these laws have stronger and more valuable capital markets. They concur with the view that developed financial markets accelerate economic growth by enhancing and channeling savings to real investments, and improving resource allocation (La Porta *et al.*, 2000, pg.15). Thus, they argue in favor of extensive legal, regulatory, and judicial reform towards the adoption and enforcement of investor and creditor protection measures.

A country's law and enforcement should protect shareholder rights to have an efficient capital market (Martin *et al.*, 2007; Black, 2001). But law quality requires that an extensive list of legal capabilities be in place to ensure quality information and protect against owner self-dealing. This non-exhaustive list includes: 1) a securities regulator and a judiciary that are honest, competent, adequately staffed to handle complexity, to intervene and avoid expropriation, and to produce decisions in a timely fashion. 2) regulation that requires disclosure of related party transactions in detail, conflict of interest policies and practices, and trading activity by insiders. 3) a securities law that imposes liabilities on accountants, investment bankers if they bring to market securities with false or misleading information and on companies and insiders if they do the same or if they approve self-dealing transactions; and civil and criminal liability for insiders who violate self-dealing rules and intentionally mislead. 4) a stock exchange with relevant listing requirements, the will to and the power to enforce them (Black, 2001). Voluntary governance norms and best practices standards proposed by market players such as stock exchanges or other groups in society may also influence corporate governance quality (e.g., the comply or explain codes of governance, codes of ethics, sustainability reporting, etc.) (Aguilera *et al.*, 2015).

Another perspective to law quality considers politics as determinant to corporate governance arrangements in different parts of the world. According to Gourevitch (2003) and Aminadav & Papaionannou (2020), Roe and Rajan-Zingales are major proponent of the strength of politics in shaping countries' corporate governance (Gourevitch, 2003; Rajan and Zingales, 2003). Roe's rationale is that corporate governance mechanisms within the firm interact with politics. He argues

that the quality of the legal system alone is not enough to determine why different governance systems coexist. The role played by competition in product and capital markets are also key ingredients of the governance system. When competition is strong there is less opportunity for monopoly rents. In turn, rents are disputed not only by firms, but also within the firm by insiders: shareholders, managers, and employees. Lack of competition, thus, implies higher agency costs (in the broader agency theory perspective) and will provide incentives for the maintenance of direct control to ensure entitlement to those rents.

However, to Roe, politics determines the level of competition in markets, and ultimately, corporate governance. To him, the key distinguishing political variable related to governance structure is social democracy. The proposition is that strong social democracies are associated with weaker shareholder rights which favors ownership concentration. The argument is that where labor rights are strong, ownership remains concentrated and, in fact, empirical verification presents a correlation between strong labor protection/low dispersion versus weak labor protection/high dispersion (Roe, 2008).

Rajan and Zingales (2003) also consider competition to be a key element for development and propose an interest group theory of financial development. They argue incumbents influence politics to deter financial development because the latter helps competition (Rajan and Zingales, 2003).

A recent study by Aminadav & Papaionannou (2020) uses a large sample of firms around the world and finds that both legal origin theories of corporate control, e.g., La Porta *et al.* (1998) and political theories of corporate control (Roe, 2008; Rajan and Zingales, 2003) are supported. They find ownership concentration/dispersion to be systematically associated with the country's legal origin and quality of shareholder protection. They also find labor market protection (e.g., restrictions in overtime and firings) have strong correlation with corporate control and suggest "that linkages between finance and labor markets likely reflect the political equilibrium" (Aminadav and Papaionannou, 2020, pg.5).

More important than the academic debate, the quality of law approach has influenced international development initiatives by the World Bank and has induced leading emerging markets and Europe to adopt "market dominated systems for organizing economic life" (Aguilera and Williams, 2009, pg. 1424). This policy-making influence of the law quality perspective is relevant for the Brazilian context because the country has been, over the past 20 years, adopting rules and practices for better investor protection.

Other institutional preconditions for capital market efficiency include the availability of enough information on the corporation for investors to comfortably price the instrument (stock), i.e., evaluate company's performance; understand and evaluate related party transactions; and know the company's ownership structure (types of shares, rights and large shareholders). Information must be accurate, timely, and credible. Towards that end, there should be quality disclosure, particularly with respect to accounting standards, and trading prices (Martin *et al.*, 2007).

In addition to content, effective communication with investors involves accessible channels, such as company websites where all information provided by the company can be obtained at low cost; routinized communication events and procedures, such as earning releases and conference calls, participation in investor conferences; dedicated professionals to attend to investor needs; and access to management and the board. Such activities, which can be broadly referred to as "Investor Relations", go well beyond what is legally required of public companies.

#### **2.4.1.4 Activism and Engagement**

Activism is viewed as an external corporate governance mechanism (Aguilera, 2015; Roe, 2008; Gillan and Starks, 2003). The literature uses the term "activism" as an all-encompassing word for outsider action towards companies as "external pressure (...) to influence company policy and practices" (Aguilera, 2015, pg.534). As such, it includes efforts by not only shareholders but stakeholders in general, as well as opposing attitudes such as confrontation and collaboration. The term "activism" carries no negative or positive connotation. For practitioners, however, the term might not be as neutral.

The definition of "activism" varies. For example, "shareholder activism" as "actions taken by shareholders with the explicit intention of influencing corporations' policies and practices," clearly excludes activism by other stakeholders as well as "latent intentions implicit in ownership stakes or trading behavior" (Goronova and Ryan, 2014, pg.1232). "Activism" can be defined as a process referring "not only to shareholder 'voice' interventions but also to exit and loyalty" (Sikavica, and Hillman, 2008, pg.1), - using Hirshman's (1970) terminology. Alternatively, "activism" may also be viewed as a "decision process consisting of a sequential set of tactics" (Gantchev, 2013) which escalate in terms of belligerence and cost. In addition, "activism", can be considered as special type of behavior under the broader practice of "investor engagement". The latter term is frequently used interchangeably with activism but can be regarded as a broader concept which includes a wide range of activities: from basic information gathering to active intervention in the company's strategy and policy development by investors. Martin *et al.* (2007) considers "engagement" as "the use of residual

control rights to influence the management process of a given portfolio company (Martin *et al.* 2007, pg. 19). In this study we take the view that activism is a specific behavior within the wider spectrum of the engagement process, the latter including the wide range of activities mentioned above.

In their thorough review of the literature on activism, Goronva and Ryan (2014), portray an evolving landscape since the 1970s. Their review includes activist proponents and issues, and theoretical underpinnings – where agency theory predominates; its targets; empirical findings; processes and outcomes. They distinguish between two streams of activism: “Financial activism” which targets company’s governance and performance, and “social activism” which seeks to affect social, political, and environmental matters. The former is legitimated by shareholder primacy and is theoretically grounded on agency theory while the latter is associated with stakeholder concerns and theory. The authors also organized the literature in three main categories: a) antecedents, relating to the issues that motivate activism such as firm performance or investor objectives; b) processes, referring to the means by which activism is realized, including managerial responses to activist pressure, the mechanisms used by investors to voice their demands and the types of demands that are made, and finally c) the outcomes of actions to the firm and for the investor and the environment (Goranova and Ryan, 2014).

Financial activism seeks better performance, but it can be reactive as when its demands are for better governance practices or shareholder rights or pro-active when it targets specific managerial actions seeking short term returns to shareholders. The latter is typical of more recent hedge fund activism (Goronova and Ryan, 2014). In this study we focus on financial activism, activist level motivation and the processes through which financial activism might be exercised.

We note that since the 2019 Davos World Forum, the term “stakeholder capitalism” seems to have become the standard vocabulary associated with the idea that “capitalism” needs to solve “the world urgent challenges”<sup>5</sup>. Blackrock’s Larry Finks February 2020 Letter to CEOs – A Sense of Purpose -, sent a strong message to the market that ESG was an integral part of the investment criteria. Whether these movements, and the popular term “stakeholder capitalism” means that “agency theory” has been replaced by “stakeholder theory” or simply that investors have understood ESG to be integral to the company’s financial performance, is beyond the scope of this work.

Despite the fact there is considerable research on the activism, insights on activism remain equivocal (Gillan and Starks, 2007; Aguilera, 2015), possibly because of considerable heterogeneity

---

<sup>5</sup>“The World Economic Forum's 50th Annual Meeting in Davos will focus on how stakeholder capitalism can solve the world's urgent challenges.” <https://www.weforum.org/focus/davos-2020-collection>

among activists who pursue diverse objectives and expect different outcomes (Goranova and Ryan, 2014). One source of heterogeneity is associated with ownership, a core governance construct, given that market mechanisms may fail to bring about timely corrections to company performance (Jensen, 1993). Concentration of ownership is thought of to bring about the necessary incentive for investors to act. But ownership conceptions differ in what is the expected behavior of owners.

## 2.5 Ownership

Singling shareholders as the primary recipient of a company's economic benefits highlights the rights and obligations associated with ownership. Monks and Minow state that "the central tenet of the Western concept of ownership is that, to the extent that individuals own property, they will have the incentive to manage that property in a manner that is compatible with the interests of society as a whole". Thus, (...) "the best way for a nation to achieve prosperity is to create a society of individual property owners pursuing their own interests" (Monks and Minow, 2004, pg.101). Owners may use property as they wish. Some important rights are access to information and participation in key decisions; the right to regulate others' use of their property and the right to transfer their shares/property. However, while the rights of ownership appear to be clear, the responsibility of ownership, particularly as to the effect it has on others, is not so obvious (Monks and Minow, 2004). And yet, two critical functions expected of investors as owners: 1) allocation of scarce resources based on the merits of differing investment opportunities and 2) pressuring managements of poor performing firms to do better by exiting or voicing their concerns (Hoskisson *et al.*, 2002 pg.698). Owners performing these functions are key for fulfilling the capitalist tenet and achieving more efficient and fairer allocation of rewards. So, moral pressure is put on owners to live up to these expectations (see UK and Amec Stewardship Codes).

Table 2-2  
Ownership Concepts

#	Theoretical Propositions	Sources	Theme/Code: Ownership
3	Owners will look after their own property by pressuring management to improve firm performance either by exiting or by voicing their concerns.	Monks and Minow (2004)	Legal
4	Legal owners view their relationship with the investee firm as a set of rights and obligations (Active owners - Path a)	McNulty and Nordberg (2016)	Active A
5	Owners are traders whose interest is in maximizing financial returns.	Hendry et al., 2006	Traders
6	Owners of stock are primarily concerned with maximizing profits relative to risk, distributing profits equitably, and being able to sell stock freely at fair prices.	Berle and Means (1991)	Portfolio maximizers
7	Owners (shareholders) are rational, self-seeking utility maximizers.	Jensen and Meckling, (1976)	Utilitarian
8	Universal owners will prefer to engage rather than exit.	Hawley and Williams, 2000, 2007	Universal
9	Owners have a psychological relationship with the investee because it fulfills a psychological need.	McNulty and Nordberg (2016) (Sikavica & Hillman, 2008)	Active B

The view that investors are owners and fiduciaries, and managers are agents, as discussed above, predominates. Legally, investors, as owners, have responsibilities and are granted property rights, such as having the company managed for their interest and benefit. Under this conception, management self-seeking is morally and legally wrong. In contrast, agency theory (Jensen and Meckling, 1976) sees investors as owners of equity capital (principals) who hire managers (agents), but both are economic actors seeking to maximize utility and no moral judgements are involved goal. A third concept originating in economics describes investors as “traders” whose interest is maximizing financial returns. Company shares is just one among other financial instruments that may be used towards that goal (Hendry *et al.*, 2006). These authors argue that this concept prevails among fund managers and company managers.

“Universal owners” refers to large investors with a long-term outlook whose holdings are diversified geographically, across asset classes, and investment opportunities, who are exposed to the economy and to positive and negative externalities. Consequently, it is in their interest to support reforms that improve the economy and reduce exposure to social and environmental impacts costs (Hawley and Williams, 2000, 2007). For these investors, the option to exit may be difficult so engaging might be a better option. They would seek 1) the improvement in corporate governance quality, 2) the minimization of negative externalities arising from corporate production activity and 3) that corporations contribute to the economy (Martin *et al.*, 2007 pg.5).

McNulty and Nordberg (2016) refer to “active ownership” and say ESG applies to long-term investors willing to conciliate financial returns with positive social and environmental externalities. To capture investor heterogeneity, they distinguish between two investment attitudes. The first, path (a) includes the traditional notion of legal owners exercising exit and voice; “traders” pursuing only financial interests, index or algorithmic investing; opportunistic activism; and those who exit when disagreeing with company business policy. The second path (b) is differentiated because it involves “psychological ownership” and thus cognitive and affective mechanisms make investor engagement qualitatively different from path (a) (McNulty and Nordberg, 2016, pg.348). Psychological ownership refers to the relationship between the person/entity and the owned thing and is materially different from the legal view that arises from the rights and duties of contracting parties (Sikavica and Hillman, 2008).

Certain of these views on ownership are associated with the idea that the owner is an individual, however, the current configuration of ownership is that most shares are held by institutional investors who are the record holders on behalf of – ultimately individuals – the beneficial owners. This gives rise to another layer of agency issues with implications to governance (Gilson and Gordon, 2013), and as a result, institutional investor behavior towards governance may have determinants other than the rights and duties arising from ownership.

## **2.6 Determinants of Institutional Investors Engagement**

Institutional investors are agents - intermediaries between the beneficial owner of the shares and the company. They add a layer of management and a double set of agency issues – that between the manager of the investee company and the institutional investor and that between the latter and the beneficial owner. Institutional investors’ business models may steer them away from the traditional legal owner perspective and they may have little interest in or capacity to reduce the agency problem in investee companies or act on behalf of better corporate governance.

According to Gilson and Gordon (2013) there were 3 political factors that led to the growth in institutional investor activity and ownership of shares in the United States: 1) the decision to fund the pension system privately instead of through social security; 2) the enactment of the Employee Retirement Income and Security Act of 1974 (ERISA); and 3) the subsequent move of employer-funded pension from defined benefit, where the risk of underfunding is borne by the employer, to defined contribution where managing such risk is up to the employee. This not only fostered the growth of the mutual fund industry but also allowed substantial pools of money to be invested with

diversification. Other factors that contributed to the concentration of ownership in institutional hands were tax incentives for pension investing under institutional schemes and the development of “portfolio theory”. The latter was underpinned by the findings that “(i) diversification improves risk-adjusted returns; (ii) the broader the portfolio, the greater the diversification; and (iii) since secondary markets in seasoned equities are highly efficient, the fixed cost of research is best spread across large portfolios” (Gilson and Gordon, 2013 pg.885). Institutional investors are expected to incorporate learnings from portfolio theory in their portfolio design, thus construct diversified portfolios.

The obvious approach to institutional investors propensity towards activism is classifying them by legal type. Ryan and Schneider (2002) developed a model for investor propensity towards activism electing four types of investors: pension funds (public and private), mutual funds, insurance companies and banks. In a more recent approach, Çelik and Isaksson (2013), enlarge the list of “traditional” types by adding “alternative” investors such as hedge funds, private equity firms, exchange-traded funds, sovereign wealth funds and asset managers who have become important players in the past 20 years. They note, however, there are several empirical difficulties to observing institutional investor behavior towards ownership responsibilities. Lack of information and double counting are two of them. Pension funds may invest through private equity and mutual funds as well as outsourcing funds to asset managers, who themselves might be arms of other traditional investors such as insurance companies and financial institutions (Çelik and Isaksson, 2013). Thus, cross-investments, outsourcing of management and developments in trading practices (dark pools and off-exchange platforms) have added complexity to the analysis.

One type of ownership outsourcing is hiring proxy advisors, who offer the service of providing voting recommendations and exercising the proxy voting. This is a cost effective way for investors to vote their shares and meet their obligations under United States of America ERISA Act of 1974. However, cost effectiveness is enabled by standardized analysis of companies which does not consider company specifics and context and might lead to the non-fulfillment of the aim of regulating company behavior.

However, some empirical work has already pointed towards the difficulty of using legal types as the sole distinguishing factor for ownership behavior or governance preferences since all investor types preferred better governed firms or very few portfolios were governance sensitive (Chung and Chang, 2011; Bushee, Carter and Gerakos, 2014).

Employing a comprehensive corporate governance index, Chung and Zhang (2011) analyzed the association between institutional ownership and governance in the United States. They found that



all types of institutional investors preferred companies with better governance structures. Additionally, institutional ownership increased as governance improved, and that board composition and operation, and shareholder rights were the most attractive governance mechanisms (Chung and Zhang, 2011).

Bushee *et al.*, (2014) investigated the relationship between board of director features, shareholder rights, and portfolio composition. They found that only 10% of investors were “governance-sensitive” and portfolio weights reflected such preferences. They also found strong evidence that both prior period and ongoing changes in governance mechanisms were associated with changes in governance-sensitive institutional ownership. Firms with a highly governance-sensitive ownership showed significant improvements in shareholder rights, suggesting some activism by shareholders (Bushee *et al.*, 2014).

Rubach and Sebora (2009) tested some variables of the Ryan and Schneider (2002) model namely, fund size, time horizon, non-financial goals, pressure-sensitivity, legal restraints, internal/external management.

Fund size is expected to create propensity for activism because large investors are likely to have enough assets to spread risks and expenses of activism (Admati and Pfleider, 1994; La Porta *et al.*, 1999); the power to gain access to management; and the ability to gain public attention. They found that size is associated with a higher propensity for activism.

Table 2-3  
Propensity for activism

#	Theoretical Propositions	Sources	Theme/Code: Determinants
10	Larger funds are more likely to engage in activism	Ryan and Schneider (2002), Admati et al., (1994), La Porta <i>et al.</i> , 1999)	Size
11	The more predictable and longer-term liability structure is associated with a higher propensity for activism	Ryan and Schneider (2002), Rubach and Sebora (2009), Çelik and Isaksson, (2013)	Liability structure
12	Internal management internally has more propensity for activism.	Ryan and Schneider (2002) Rubach and Sebora (2009)	Internal Management

Time horizon or liability structure is another key variable because some funds will be pressured by liquidity needs because they face more competition in their businesses: mutual funds, insurance companies and banks may lose clients if their short-term performance is not satisfactory, whereas pension funds may have captive audiences. They found that the liability structure – more predictable and longer-term outflows are associated with higher propensity for activism.

Internal/external management implies in more/less activism. Rubach and Sebor (2009) test two hypotheses: first that external management makes activism more likely and second that, instead, internal management makes activism possible because internal managers have already devoted resources to monitoring in their portfolio selection activity. They have found that internal management is associated with more activism.

They have found that legal restraints, pressure-sensitivity and performance expectations were not statistically relevant as predictors<sup>6</sup>. Legal restraints are thought of as influencing propensity for activism because regulated institutions are subject to various rules that will restrict their investment options or make mandatory voting obligatory such as the ERISA Act mentioned above. In the US and UK pension funds, insurance companies, mutual funds are regulated while private equities and hedge funds are less regulated (recently the Dodd Frank Act/ 2010 introduced registration requirements for hedge funds with assets of US\$100 million under management).

Compared with the Ryan and Schneider (2002) model, the Çelik and Isaksson (2013) model for determinants of activism accommodates within legal-type differences. Their framework elects 7 features and 19 choices to define the institutional investors' business model and shed light on institutional investor interest in performing corporate governance functions associated with ownership responsibilities. The 7 determinants of ownership engagement are: the purpose of the institution, its liability structure, its investment strategy, its portfolio structure, its fee structure, the presence of social objectives and the regulatory framework for ownership engagement.

---

<sup>6</sup> Broad social or political goals: Institutions that pursue broad wealth goals such as creating jobs, expanding the economy, improving infrastructure and fostering a sustainable environment may be more prone to activism than those that are purely focused on financial returns; Conflict of interest: Institutions may also depend on whom they invest for other commercial relationships and the risk of harming those other commercial relationships would put pressure on the not to engage in activist practices they would therefore be characterized as "pressure-sensitive" while those that are not exposed to such challenges would be "pressure-resistant". Legal restraints: The type of legal restraints such as fiduciary duties under trust laws or responsibilities and duties under federal and state securities laws – specifically Employee Retirement Income Security Act of 1974 (ERISA), and bankruptcy laws in the United States - are expected to hamper these private pension funds and insurance companies' appetite for activism.

Table 2-4  
Determinants of ownership engagement (Çelik and Isaksson 2013)

Purpose	Not-for profit	Profit		
Liability structure	Long-term	Short-term		
Investment strategy	Passive Index	Passive Fundamental	Active	Active
			Fundamental	Quantitative
Portfolio structure	Concentrated		Diversified	
Fee structure	Non-profit	Performance	Flat Fee	No Fee
Political/social objectives	Political/social incentives		No political/social incentives	
Regulatory framework	Engagement requirements	Engagement limitations	No legal requirements or limitations	

Çelik and Isaksson (2013) model. The framework identifies 7 features and 19 choices to define the institutional investors' business model and shed light on institutional investor interest in performing corporate governance functions associated with ownership responsibilities.

### 2.6.1 The purpose of the institution

A major distinction is whether the institution is non-profit/profit seeker and the conditions it faces to attract capital. A public pension fund is not only a non-profit organization but is under no pressure to capture new clients. Pension funds have captive assets while other institutional investors compete for assets and need to deliver results for those who invest in their funds and for those who are owners of the investment company, be it its partners of another publicly traded institution. These institutions need to choose between spending resources to enhance the value of their portfolios or marketing activities.

As mentioned above, liability structure refers to the maturity of the products that are offered. Some, have long-term obligations while others have short term liquidity needs such as mutual funds that may have to sell shares to meet redemption requests and will be constrained if they sit on a board where they are legally impeded from trading the company's shares. Thus, liquidity requirements may have implications on the types of ownership engagement enacted by investors.

### 2.6.2 Investment strategy

There are many investment strategies however, four main types are distinguished:

Table 2-5  
Types of investment strategy (Çelik and Isaksson 2013)

Passive index	Passive index holds a portfolio that mimics a predefined index of shares. The implication is that investees are chosen because of their weight on the index and not on their fundamental merits.
Passive fundamental	Passive fundamental chooses companies based on individual merits but hangs on to them for longer periods. “Strategic” investments of sovereign wealth funds and close-end investment companies would fall into this category.
Active fundamental	Active fundamental buys and sells companies based on their fundamental merits and is associated with ownership engagement for the period the shares are held. Hedge funds are thought as having this type of strategy and been successful activists.
Active quantitative	Active quantitative are strategies that process information and use algorithms to determine long/short positions. This strategy has minimal incentives for investor engagement.

### 2.6.3 Portfolio structure

The key aspect of portfolio structure is concentration: if only a few companies are in the portfolio there is more opportunity for monitoring each one, however, if there are large amounts of companies in the portfolio, engagement and monitoring will have to follow some optimization rule or the fund manager may abstain from engagement at all. In this situation, using the services of proxy consulting firm that interprets the course of action based on a predefined formula, might be the way to minimize the costs of exercising fiduciary duties. Concentrated portfolios do not, however, necessarily imply engagement.

### 2.6.4 Fee structure

Profit making institutions usually charge either a flat fee or a performance fee or a combination of both or even no fee at all as in Exchange Traded Funds that remunerate themselves with rent from share lending. But the way the fee structure impacts ownership engagement is not straight forward and ultimately depends how the institution weighs the costs and benefits of ownership engagement to the improvement of share performance.

### 2.6.5 Political and social objectives

An institution may have political and social objectives inserted in their business models out of will, marketing and/or product differentiation strategies when they are profit makers. According to Çelik and Isaksson (2013) pension funds, sovereign wealth funds and endowments may have political and social objectives that may lead to kinds of ownership engagement that do not have efficient allocation of resources or “positions in specific governance issues” as principles.

The regulatory framework determines ownership engagement alternatives since some jurisdictions have perceived as mandatory requirement that institutions must vote their shares (example: US ERISA Act Pension Funds) others that completely forbidden to vote on their shares (example: Swedish AP7 pension fund). In addition, institutions may be subject to portfolio concentration limitations and companies may also adopt voting caps in their by-laws, both of which will limit investor voting power.

Owning shares does not imply institutions will practice engagement nor determine the level and type of engagement they will undertake. The range of activities involved in the engagement process is wide (some form of dialogue with the board, routine face-to face conversation, campaigns to persuade the company to change their behavior).

Table 2-6  
Engagement expectations (Çelik and Isaksson 2013)

#	Expectation	Explanation	Example
13	No engagement	Institutions that do not monitor individual investees, do not vote their shares and do not engage in any form of dialogue due to strategy, business model or legal restrictions	Passive quantitative
14	Reactive engagement	Institutions with formulaic voting behavior (via or not the use of proxy advisors)	Mutual funds under legal obligation to vote
15	Alpha engagement	Institutions that seek short and long-term gains above the benchmark	Active fundamental
16	Inside engagement	Institutions who undertake fundamental analysis, vote shares directly and assume board responsibilities	Private equities

Four broad categories of engagement are proposed: a) no engagement is expected by those institutions that “do not monitor individual investee companies, do not vote their shares and do not engage in any form of dialogue” due to strategy and business model or legal restrictions, e.g. passive quantitative; b) reactive engagement includes formulaic behavior towards voting on company proposals, frequently involving the services of proxy advisors, as well as supporting actions taken by other shareholders (see Gilson and Gordon, 2013 for reactive behavior); c) alpha engagement “seeks short and long term returns above the market benchmark”; lastly, such as for active fundamental; and d) inside engagement typically involves fundamental investment analysis, direct voting of shares and possibly assuming board responsibilities.

## 2.7 Process

Investor engagement involves ongoing communication between investors and the company. It comprises a wide range of activities within the scope of what is called “Investor Relations”. The engagement process includes routine communication activities such as annual presentations,

roadshows, webcasts, earnings-releases, and virtual/face-to-face meetings with company executives. A key component of this communications process is a dedicated Investor Relations website where mandated filings, voluntary and contact, information is provided by companies and easily accessible to anyone. Another key component of this process are private meetings between investors and the boards of executives and directors. Both written and vocal communication are part of a highly standardized disclosure and routine communication process that enable investors to monitor investee companies. This ongoing communication process institutionalizes investor/investee relationship and create an interpretative framework for meaning making (Martin *et al.*, 2007).

## **2.7.1 Engagement - Ordinary course of business**

### **2.7.1.1 Private Meetings with top executives**

Meetings with company senior management are central to investor relations management. These meetings are key for the adjustment of expectations about the company's strategy, its prospects and valuation (Barker, 1998). They allow investors to make personal judgements and assessment of management and gauge soft information (Martin *et al.*, 2007). Typically, meetings occur annually on a regular basis but can become more frequent if the company is going through a special moment like a merger, a spin-off, a large issuance of debt or equity. The recent Covid-19 pandemic scaled up one-on-one, one-to-few and one-to-all communication between management and investors. Unable to meet face-to-face, executives intensified virtual communications with investors enabling even retail investors to listen to the executive board real-time.

In private meetings investors ask questions about strategy and how it relates to company development and performance. They can follow-up on past promises, get updated on recent changes, compare it with competitors and understand industry trends and transformation. These interactions also allow investors to form subjective opinions on the credibility of management, their openness to dialogue, and the company's commitment to governance best practices and governance effectiveness (Holland, 1998).

Private meetings also serve the purpose for subtly influencing companies on investor performance expectations so that companies "internalize the interests" of investors "and align their policies and structures more closely to" investor "needs" (Holland 1998, pg.251). This influence is kept to investor areas of expertise: dividends, return of capital, financing methods, expected financial performance, and corporate governance best practices. However, this influence could become explicit when companies request for help, when adverse situations arise or when there is a breakdown in the

relationship between the investor and the company. Also, investors could become more forceful in their influence when the company needs their support for new issuances, requires their consent for dilution, asks for help in takeovers or wants to change the voting structure or the remuneration of top management and the board.

Table 2-7

Table #	Processes (ordinary and extraordinary)	Sources	Theme/Code:
17	Conduct private meetings with management	Barker, (1998), Holland (1998); McCahery, Sautner, and Starks (2016)	Meetings
18	Vote at shareholder meetings Theoretical proposition: Investors will exercise votes in an economically viable way when mandated by formal or auto-regulation or when they have a specific interest in voting.	Gillan and Starks, (2003); Eckbo, Paone, Urheim, (2011)	Voting
19	Escalate confrontation and costs	Gantchev, (2013)	Cost effectiveness
20	Exit as a governance mechanism.	Edmans, (2009); Edmans and Manso, (2011), Admati and Pfleider, (2009), Edmans, Fang and Zur, (2013), Gillan and Stark, (2003)	Exit
21	Unite in favor of shared interests	Crespi and Renneboog, (2010)	Coalitions/Collaboration
22	Submit shareholder proposals	Gillan and Starks, (2007) Thomas and Cotter (2007)	Proposals

McCahery, Sautner, and Starks (2016) surveyed 143 investors and found they preferred “behind-the-scenes” discussions with management and board members to overt voice channels. Additionally, long-term investors intervened in corporate governance and strategy more intensively than short-term holders. Voice and exit were used sequentially. Exit effectively disciplined management, conditional on the size of equity stakes; on whether there were other large shareholders or followers; and when there was managerial equity ownership. Due to this preference, the authors conclude that external indicators of activism would not reveal all of what goes on between investors and companies.

Although widely recognized, private engagement is only visible or measurable when private data is provided, as in Becht, Franks, Mayer and Rossi, (2009), Dimson, Karaka, and Li (2015), Rehbein, Logsdon, and Van Burren III (2012) and (Levit, 2018). However, the way that private communication between investors and investees is dealt with in the literature varies. One view is that of regular private meetings used to collect information on strategy, management quality and corporate governance processes. This information is used to make informed judgements on how these aspects

may impact financial performance, enable investors to anticipate issues or provide support when appropriate, and to exercise subtle influence (Holland, 1998). Another view differentiates all company-stakeholder communication from “Dialogue” with a capital “D”, defined as a “process where corporations and shareholder activist groups mutually agree to ongoing communications to deal with a serious social issue” (Logsdon and Van Burren III, 2008 p.354).

Private meetings can also be differentiated by motive: “traditional” pension, mutual, and hedge fund (entrepreneurial) activism, focusing on shareholders’ interests, versus “ESG activism” or “active ownership”, involving engagement on matters that interest a broader spectrum of stakeholders (Dimson *et al.*, 2015). The term “Engagement” seems to be used by ESG practitioners, is most often observed in ESG activism literature, and is sometimes used interchangeably with activism, as in McCahery *et al.* (2016) and Yamahaki and Fyrnas (2016). In this article, “private engagement” means any type of private meeting, irrespective of motivation.

The obvious implication of private engagement is that it generates private information and leads to asymmetry, which may enable higher average mutual fund returns (Cullen, Gasbarro, and Monroe, 2006). More importantly, it highlights the fuzzy line between private and material non-public information and the risk of inadvertent disclosure of the latter. Indeed, Durnev and Nain (2007) found that insider trading regulation reduced private information trading at the onset of restrictions but was less effective when there were differences between control and cashflow rights. However, precisely because formal private meetings are prone to suspicion, insider information is probably transmitted via informal routes such as social networks (Ahren, 2017).

#### **2.7.1.2 Voting**

Shares usually carry voting rights. In some jurisdictions most shares that are traded have voting rights on the basis one share one vote. This is considered the corporate governance best practice because political rights are proportional to the economic interest. However, companies may also issue shares with multiple votes or even restricted voting rights. The country’s legal framework will establish the types of shares that can be issued and their corresponding rights. It will also determine on which matters shareholders vote. Voting is one of the few rights shareholders have in public limited liability companies.

It is also the country’s legal framework that will indicate whether institutional investors are required or not to exercise their votes. As mentioned, the American ERISA and Pension Funds Act require investors to vote, while in the UK voting is a best practice recommended the ISC’s Responsibilities of Institutional Shareholders and Agents: Statement of Principles (2002). This has



implications to voting turnouts. In the US, voting turnouts are higher than in the UK and Australia (Gillan and Starks, 2003). In some jurisdictions voting by institutional investors were prohibited and then reinstated (Choi and Cho, 2003). Voting is not required by the Brazilian regulator (Instrução CVM 555), but funds adopt voting policies based on Anbima's best practices code.

While the right to vote per share is a valued governance practice, actual exercising of votes, as previously discussed, is not as straight forward. First institutional holders are not typically the beneficial holders of the shares, second, pension funds differ in their policies with regards to retaining or not voting rights when they outsource the fund management, and thirdly, stock lending transfers the right to vote to the borrower even without the knowledge of the beneficial shareholder.

Assuming however, that the shareholder wants to vote, he will need to devote time and resources to become sufficiently informed to make an independent judgement. If this is not enough to drive small investors away, they still need to go through the often complex and sometimes cumbersome voting processes. When cross-border voting is involved, the investors often navigate through complex country-specific rules and regulations that may further deter them from voting (Eckbo, Paone, and Urheim, 2011). Sometimes the economically viable way to exercise votes is hiring the services of proxy advisors.

When voting, shareholders may vote with or against management by simply saying no or submitting an alternative proposal. Studies have found mutual funds generally have and follow preexisting voting policies. However, fund families are less likely to vote against management when there are more business ties to portfolio companies (Davis and Ham Kim, 2005; Asharf and Ryan, 2012) and funds with managers who were from the same educational network as the firm's executives were more likely to vote with management and against shareholder-initiated proposals to limit executive compensation than out-of-network funds (Butler and Gurum, 2012).

### **2.7.2 Activism - Extraordinary course of business**

Extraordinary course of business refers to more forceful attempts by an institution to influence management and corporate boards, i.e., activism. It includes a range of voice actions such as threatening to exit, letter writing, meetings with management and board members, asking questions in shareholder meetings and using voting rights (voting against, voting no, requesting board representation, submitting proposals, conducting proxy contests). However, none of these actions presume an ultimate intent of taking over control.

### 2.7.2.1 Voting against management

Voting against management is the least expensive form of opposing management. But some activist investors may conduct “Just say no” campaigns attempting to convince other shareholders to withhold their votes as a sign of protest to communicate their dissatisfaction with the board. “Just say no” are public campaigns that may use press releases, letters, and electronic communication. They are less costly than other activist practices. Just say no campaigns were found to be effective in making boards to move (Del Guercio *et al.*, 2008) and in reducing excess CEO pay (Ertimur, Ferri and Muslu, 2011).

### 2.7.2.2 Shareholder Proposals

The US SEC Rule 14a-8 (1942) <sup>7</sup> permits qualified shareholders who own 1% of the company’s securities or shares with a market-values above US\$2,000 to put to vote proposals on corporate governance and social responsibility issues. The rule also establishes minimum voting requirements for proposals to be resubmitted. Proposals are advisory in nature and even if the win 100% of the votes, implementation is not mandatory.

Proposals are included in the company’s proxy statement and thus, the cost of distribution is low for the proposing shareholder because it is spread over all shareholders. According to Thomas and Cotter (2007) proposals are heavily concentrated on corporate governance issues such as anti-takeover defenses and executive compensation<sup>8</sup>. The authors state proposals facilitate investor scrutiny in important issues and can be an effective mechanism to bring about changes in management behavior (Thomas and Cotter, 2007).

Shareholder proposals are predominantly related to executive compensation, board independence, and eliminating poison pills, classified boards and supermajority antitakeover amendments from the corporate charter (Gillan and Starks, 2007).

Other countries have different rules. For example, in the UK, under the Company’s Act 1985, Section 376, at ordinary meeting, a shareholder or group of shareholders, with 5% of the total voting rights of all members or 100 or more shareholders (each of whom have paid more than £100 of paid-up capital) can propose a resolution to the annual meeting and to circulate a statement prior to the meeting. A group of shareholders with at least 10% of the company’s paid-up voting capital can

---

<sup>7</sup> Rule 14a-8, which was recently (September 23, 2020) amended by the SEC to make it easier for shareholder-proponents to engage with the company and other shareholders (<https://www.sec.gov/news/press-release/2020-220>)

<sup>8</sup> But other topics such as: remove staggered board terms, make shareholder voting confidential, separate the positions of chairman of the board and chief executive officer, among others are also requested.

request an extraordinary shareholders meeting (EGM) where the resolutions required by them will be voted (Becht et al., 2009).

### **2.7.2.3 Activism as a step-by-step process of escalating belligerence and costs**

Upon deciding to actively seek intervention in the company's management the investor faces a trade-off between the expected gains of the intervention and its cost. Gantchev (2013) ranks activist tactics in steps each of which represents a higher degree of confrontation from the previous one. These steps are 1) demand negotiations, 2) board representation, 3) a proxy contest threat and 4) a proxy contest. At each step, the investor reevaluates his chance of success against the cost of pursuing a more confrontational stance or selling at market price. These costs may "include disclosure, legal and other fees of hiring proxy advisors and solicitors, corporate governance experts, investment banks, public relations and advertising firms, in addition to unobservable costs such as the time and effort of the activist (Gantchev, 2013 pg. 614). The decision to proceed implies that the investor will achieve a net gain after the campaign costs. The author finds that a proxy fight costs US\$10.71 million on average and that mean abnormal returns decline by two-thirds due to them (Gantchev, 2013).

Another factor that may hinder activism by institutional investors is free riding by minority investors who will benefit from the appreciation in value of the stock but will not pay for the cost of interference. Even so, there may be other incentives for investors to interfere. Very liquid stocks, rather than inhibiting voice, may provide activists who intend to intervene with the opportunity to recover such costs by acquiring the devalued stock before the intervention, set in motion and sell it after the fact (Norli, Ostergaard and Schidele, 2015). Norli et al. (2015) argue that liquid stocks enable activists to build their positions without causing changes to the stock prices and reap significant returns by trading the stock.

### **2.7.2.4 Exit as a governance mechanism.**

Liquidity may also be instrumental to another form of activism: exit or its threat. Non-controlling block-holders are assumed to have the incentive to become informed and make accurate evaluations of a company's fundamental value. When such block-holders sell the stock, and compete in the process, the company's share price drops to reflect its intrinsic value. This risk encourages management to invest for long-term growth and prevent their own remuneration to be dampened by lower stock prices (Edmans, 2009; Edmans and Manso, 2011; Admati and Pfleider, 2009; Edmans, Fang and Zur, 2013)

Exit by a large institutional investor may also serve as a signal of bad news to other shareholders, precisely because large investors are thought to be better informed. Their departure from a company's shareholder base could lead to changes in its mix – more short-term rather than long term holders and influence changes in management (Gillan and Stark, 2003), possibly with implications on price volatility.

### **2.7.2.5 Shareholder coalitions**

Shareholders may unite to vote in favor of shared interests. These coalitions are loose, ad hoc, and established for a specific aim (e.g., to remove incumbent management, to react to a take-over announcement). Longer term arrangements are difficult to observe due to their confidential nature and the fact that disclosure of intentions requirements may apply. Crespi and Renneboog (2010) estimate the relation between executive board restructuring and different measures of shareholder concentration. They find that shareholder coalitions outperform other concentration measures. They also find that coalitions of executive directors succeed in repelling attempts to discipline underperforming management. Thus, unless management has sufficient relative voting power, managerial disciplining is made either by large corporations or by coalitions of institutions (Crespi and Renneboog, 2010).

## **2.8 Selected cases of early pension fund activism**

Understanding cases of early pension fund activism is important because there is a “pro-activity” aspect to their behavior in the sense that they do not refrain from investing in companies in which they identify issues they dislike. Instead, they invest and then try to influence management to make changes. This behavior is different from a “reactive” or “defensive” activism where the investor sees no issues with the company a priori and reacts when something that displeases them happens. Going forward we will make this distinction between pro-active and reactive activism.

One of the classical cases of pension fund activism is that of the Teachers Insurance Annuity Association–College Retirement Equities Fund (TIAA-CREF). Carleton, Nelson and Weisbach (1998) analyzed the private correspondence between TIAA-CREF and targeted firms (1992-96) and found its private efforts to persuade companies in promoting the desired changes turned out to be successful prior to TIAA-CREF submitting a resolution for vote. The benefits of activism varied depending on the issue at hand (negative onboard diversity, positive on the targeting date for blank check preferred issues; insignificant or no benefit on confidential voting issues and changes in

accounting measures of performance). The main takeaway from this study, however, is the importance of private negotiations between institutions and the corporations.

Another widely researched case of pension fund activism is that of California Public Employees' Retirement System ("CalPERS or the "System"). CalPERS activist practice initiated in 1986 and has changed over time. It was the main participant in the creation of the Council of Institutional Investors (CII)<sup>9</sup> in 1984<sup>10</sup> and was involved in shaping federal and state level policies. In those early days of activism, CalPERS targeted portfolio companies with both governance issues (e.g., poison pills), and poor performance. The size of the firm in their portfolio and whether it had high institutional ownership were also criteria for selection. Their targets would be subject to shareholder resolutions in the following proxy season. CalPERS also tested a less adversarial approach by sending letters to the Chairman of the Board or the CEO requesting a meeting where they would make their governance improvement requests prior to submitting the resolution to a vote. Coming to an agreement with the company was the preferred solution because even if the resolution won a majority vote, it would still be non-binding (Smith, 1996).

In 1992 it changed its approach by publishing its first Focus List with five to ten underperforming companies with poor governance they would watch during the year. This was the short list of a larger list of companies they contacted and established a dialogue with the CEO and other independent directors (Anson, White, Ho, 2004). Ten years later its approach changed again. Two lists were produced. The Monitoring list contained companies that had agreed with the implementation of reforms and the Focus List with those companies who did not. Only the Focus List became public (Smythe, McNeil and English II, 2015). Since 2010, CalPERS non longer publishes the Focus list and privately engages the targeted underperforming firms (Zheng and Zhong, 2017).

Smith (1996) found that firms targeted by CalPERS were larger, had poor stock performance, and more institutional ownership than his control sample. The pension fund succeeded in settling for the requested governance changes in most of the companies over the six-year sample-period, and, although the operating performance of those companies was positive, the increase was small. Similarly, those that did not settle had small negative variations in operating performance. Recent studies found that there was more value in the activism directed towards smaller companies that had performed poorly and had large boards (Smythe et al. 2015) and that operating performance of

---

<sup>9</sup> <https://www.cii.org/index.asp>

<sup>10</sup> The CII is a governance best practice non-profit organization serving the interests of member institutional investors and asset owners. It compiled and provided members with information on poor price performance companies

CalPERS's Focus List firms improved significantly over the 2 years following it being targeted by the fund (Zheng and Zhong, 2017).

The Hermes Focus Fund (HUKFF) is another classic case of pension fund activism. Becht, Franks, Mayer and Rossi (2009), found that when their engagement effort was achieved it was both economically large and had a statistically significant abnormal returns around the announcement date of the changes (Becht *et al.*, 2009).

HUKFF was set up as a separate entity from Hermes, who manages British Telecom Pension and the Post Office Staff Superannuation Schemes, because the trustees of those entities thought that intensified engagement required overweight positions in underperforming stocks which could not be achieved by their core investments. Thus, HUKFF has other investors and is run independently from Hermes. It conducts activism through private interventions rather than shareholder proposals or proxy statements. It will only embark on an activist trajectory towards a company, if three conditions are met. First, the company stock price should be underperforming. Second, HUKFF should believe it can engage the company successfully and third, it can expect a 20% appreciation over the company's current share price. If met, the fund would increase its position and engage management to present the changes it seeks (Becht *et al.*, 2009).

Engagement involved meetings and correspondence with the CEO and the Chairman but could also include other members from management such as divisional managers, head of investor relations, and non-executive board members. HUKFF also contacted other institutional shareholders to tell them of their engagement intentions and to seek support – especially if it was necessary to call for (or make a threat) an extraordinary general meeting which can be done with 10% of the voting capital under UK law.

Change objectives included restructuring operations mainly divesting of non-core activities and assets and limiting acquisitions, replacing the CEO or the Chairman, and increasing cash payouts to shareholders. The most favorable outcome was when management adopted the requested changes. HUKFF would then wait until changes were implemented, announced, and incorporated into the share price. It then divested with a profit. If the company's reaction was negative or mixed, HUKFF would escalate. It would try to remove the CEO or Chairman that was not in support of its changes. To strengthen its position HUKFF's ownership was higher and lasted longer, on average, in confrontational engagements. Other confrontational actions included threats to block rights issues, press campaigns, but generally actions were of a private nature – visits, meetings, phone calls, letter writing (Becht *et al.*, 2009).

These cases indicate that pension funds have, overtime, adopted different strategies but proactively approached companies' management requesting change and used more belligerent practices – publicity and shareholder proposals – to voice their plea if companies were not compliant.

## **2.9 Mutual funds are not expected to be activists.**

Despite holding large portions of equities and thereby having the power to pressure management, Gilson and Gordon (2013) state that mutual funds are not proactive in putting forward proxy proposals but will frequently join others opposing management on core governance issues (e.g., poison pills, staggered boards). They argue that this behavior is due to the agency cost of “agency capitalism”; i.e., profit seeking asset managers strive to achieve superior relative performance and minimizing costs is part of that process. Acting towards the improvement of the performance of the investee companies will benefit the beneficial holder of their funds but also that of their competitors so there is no incentive to pursue that route. In fact, the authors believe this behavior locks-in managerial slack and is an added agency cost. Their main claim is that governance rights are undervalued because to use them effectively funds will have to analyze and follow companies in detail and engage in expensive activism.

Factors that work against governance proactivity are: (1) Diversification. It leads to fragmented portfolios where individual company weights might be too low. So even if the investor is successful in his actions the improvement effect might not be enough to make a difference in his portfolio but will certainly add to its costs. 2) Evaluation of the fund based on relative performance. When performance is measured relative to a benchmark or peers, working towards improving the governance of one company will benefit all competitors and not necessarily allow the activist to distinguish himself. 3) Fund manager compensation. When compensation related to fund size and superior relative performance is what brings in more funds, there will be no incentive for activism. 4) Evaluation based on absolute performance. If evaluation is based on absolute performance the investment focus is most likely on asset allocation where equities is just one asset class. Thus, the analysis favors macro movements where the performance of individual companies may matter even less if submerged in general market movements. Mutual funds expect to be recognized by the quality of their portfolio management rather than by developing alternative better strategies for investee companies (Gilson and Gordon, 2013).

On the possibility that mutual funds might be conflicted in voting against management because investee companies might be their clients for managing company pension fund money, Davis

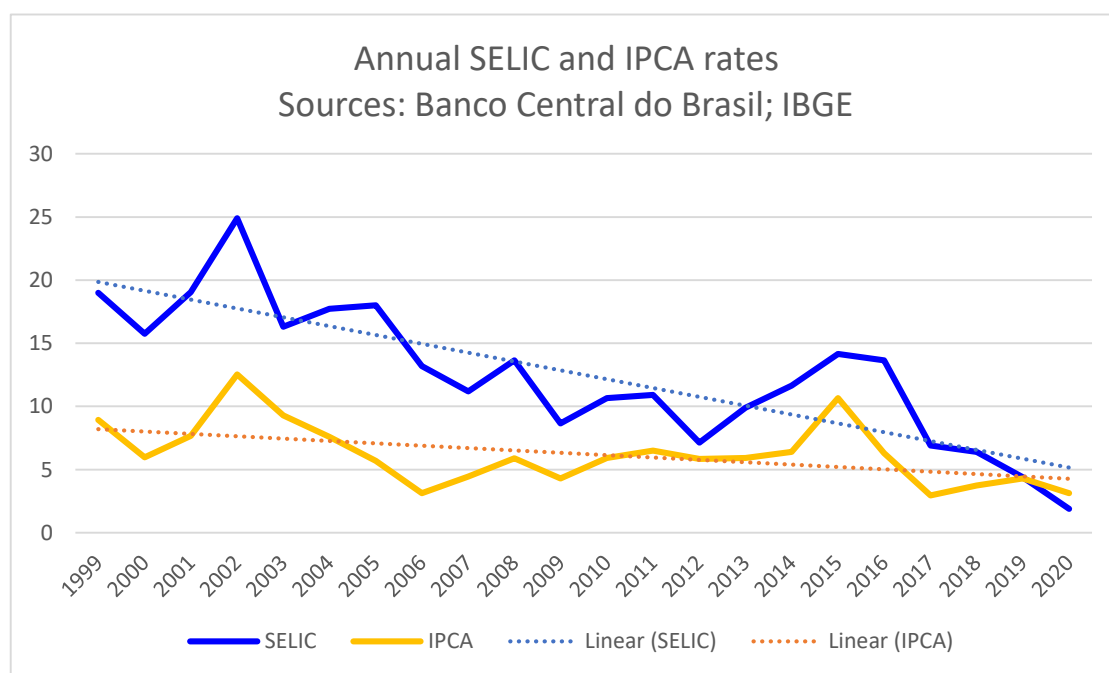
and Ham Kim (2005) found that funds generally followed a voting policy irrespective of the investee. Their findings did not support the hypothesis that funds voted with management when there were commercial ties with the portfolio company nor that investors were more prone to activism when the size of their holding was large. The authors state this result is not surprising because the research was done in the period after the SEC mandated disclosure of voting policies by mutual funds in 2004. However, they found that at the family level funds were less likely to vote against management when there were more business ties to portfolio companies (Davis and Ham Kim, 2005). These findings are corroborated with those by Ashraf and Ryan (2012) at the firm-proposal level, confirming the view that fund families with business ties vote with management at all firms, who suggest that “fund families with pension-related ties are less insulated from management pressures than fund families without ties” and that mutual funds would not be as “pressure-resistant” as initially proposed (Ashraf and Ryan, 2012). Funds that were in the same educational network as the firm’s executives were more likely to vote with management and against shareholder-initiated proposals to limit executive compensation than out-of-network funds (Butler and Gurum, 2012).



### 3 The Brazilian Institutional Setting and Context: Capital Markets and Corporate Governance

As stated, this research adopts the perspective that institutions – both formal and informal – are relevant for organizations and their behavior. In this chapter we describe the institutional framework and the market context in which Brazilian institutional investors operate. The rules of the game and market features combine to create opportunities and limitations for the operation and profitability of organizations.

In Brazil's recent history nominal interest rates were typically high. The main implication of this macroeconomic feature for capital markets was to make investments in private issuances riskier relative to "risk-free" government bonds. However, since the country stabilized its currency (Plano Real in 1994), nominal interest rates have been coming down. Graph x-1 illustrates the behavior of the country's base rate, SELIC and consumer price inflation, IPCA in the past 20 years.



Graph x-1: Annualized end-of-year (December) basic interest rate – SELIC - and consumer inflation – IPCA – rates for the past 20 years. Both interest rates and inflation have come down. The gap between nominal interest and inflation rates has narrowed pointing towards a decline in real interest rates.

The implication is that investing in stocks has become relatively more competitive. Individuals have realized that they need to take more risks if they are to receive real returns at all.

One example of this realization is that the Brazilian Stock Exchange (B3) saw a steep rise in the number of individuals trading in stock. Their retail investor base rose 84% since the beginning of 2020 reaching 3.1 million individuals in the third quarter (B3 – 3<sup>rd</sup> Quarter Earnings Release<sup>c</sup>). Another example is the share of funds invested in equities by institutional investors. According to Anbima Fund Manager Ranking Report, investment in equities represented 10% of total invested by institutional investors in November 2020 (Anbima<sup>b</sup>). This is still a small fraction of total amount invested by institutional investors however, the same figure was 5% in December 2015. If a low interest rates environment remains the norm for the foreseeable future, we are likely to see a structural shift in the weight of stocks relative to other forms of fixed income investments increasing the demand for equity in institutional investors' portfolios. However, these changes are too recent to infer longer term trends.

### **3.1 Capital varieties approach to country comparisons.**

The capital varieties approach compares capitalist economies placing firms as central actors. Firms are viewed as relational entities, whose success to produce products and services profitably depends on the coordination of relationships with other actors. The five key relationships which interact and must be coordinated are 1) industrial relations (wages, work conditions and productivity levels); 2) vocational training and education (the ability to obtain labor with suitable skills and the workforce's willingness to invest in developing such skills); 3) corporate governance (access to financing/assurance of returns on investment); 4) inter-firm relations (clients, suppliers, services – stable demand for products and access to technology) and 5) employees (ensure competencies and cooperation) (Halls and Soskice, 2001)

Different countries are characterized by the way this coordination is conducted with consequences to corporate governance. The latter is embedded in the country's institutional environment with implications as to how governance mechanism interact and are effective.

Two models typify developed economies: liberal market economies (LME) and coordinated market economies (CME). In liberal market economies, "firms coordinate their activities primarily via hierarchies and competitive market arrangements" where "market relationships are characterized by the arm's-length exchange of goods or services in a context of competition and formal contracting. In coordinated market economies, firms depend more heavily on nonmarket relationships to coordinate their endeavors with other actors to construct their core competencies. These non-market modes of coordination generally entail more extensive relational or incomplete contracting, network

monitoring based on the exchange of private information, inside networks, and more reliance on collaborative, as opposed to competitive, relationships to build the competencies of the firm” (Solstice & Hall, 2004 pg 8). The United States and Britain are the prime LME examples while Germany and Japan represent CMEs. Two other models typify other developed and undeveloped economies: family market or hierarchical market economies (FLME or HME) and state-led market economies (SLME).

Latin American countries are classified as FLME or hierarchical market economies (HME). Given the varieties of capitalism focus on corporate governance and labor relations, the core features of these economies are family-owned diversified business groups, multinationals (MNCs), atomistic labor relations and low skills (Schneider, 2009). The region lacks institutions to intermediate employment relations within firms and to incentivize investment in skills and training. Educational levels remain low with little public or private investment in training.

Large companies in Latin America are either diversified family-owned conglomerates or multinationals (MNCs). Domestic firms share four points in common: 1) they are diversified into subsidiaries that conduct activities with no market or technological affinities; 2) the group maintains hierarchical control over the subsidiaries; 3) a small number of huge groups control large portions of GDP; and 4) groups have been owned and managed by large families for several generations. Both diversification and family control introduce hierarchies in governance while large control blocks mean these families do not need to do much negotiating with other block-holders. Because these businesses represent large chunks of GDP it is likely they exert power over competitors, suppliers and clients (Schneider, 2009).

MNCs are the other group of large companies in Latin America. They also conduct hierarchical coordination for technology and capital transfers, and some relations with suppliers, clients, and trade. Much of their exchanges are intra-company emphasizing the hierarchical nature of coordination (Schneider, 2009).

Together domestic conglomerates and MNCs accounted for significant portions of GDP and were key channels for accessing capital, technology, and markets through verticalization and hierarchy. According to Schneider (2009), these two groups “impeded movement towards both markets in corporate governance and coordination in inter-firm relations” (Schneider, 2009, pg. 565). They substituted capital markets and slowed their development.

Comparing the role of corporate actors in the different types of capitalism, we note that in family market economies both managers and the board of directors protect the interests of the controlling family. If, on one hand, agency problems between controlling shareholders and managers

have less room to develop, the board of directors could be an ineffective mechanism to safeguard the interests of minority shareholders, whose interest might not be necessarily aligned with that of controlling shareholders. Examples of mechanisms through which controlling shareholders may expropriate minority shareholders are targeted issues and repurchases of securities, transfer of assets, entrenchment, exploitation of a business relationship with controlled companies through transfer pricing, seeking to fulfill personal objectives rather than the maximization of shareholder value (Volpin, 2001).

Under family market economies, both internal and external governance mechanisms offer weak protection to minority shareholders. The market for corporate control, for example, is non-existent. The implication is that one of the most effective mechanisms for the correction of company underperformance is simply not there to protect minority shareholders or consumers. The prevailing legal tradition is civil law which, in addition to offering less protection for investors, is usually not enforced with the satisfactory speed and outcomes (La Porta *et al.*, 1999). While the strong presence of owners in the companies' administration may work towards reducing classical agency problems between managers and owners, boards may not see themselves as representing the interests of minority shareholders. Thus, when company controlling shareholders are clearly defined and minorities shareholders are involved, principal-principal agency issues prevail. They occur because ownership is concentrated. In many emerging markets this conflict may be exacerbated by lack of the institutional infrastructure for appropriate governance and dysfunctional external governance mechanisms, which should operate in conjunction with internal mechanisms. Additionally, reliance on internal controls, as explained above, brings little relief (Dharwadkar and George, 2000).

The implication for emerging economies is subdued activism by investors since exit is optimal for minority shareholders. Young *et al.*, (2008) argue that principal-principal conflicts may increase monitoring costs in emerging economies because: ambiguous institutional structures make enforcement difficult; managers represent owners' interest and may circumvent monitoring mechanisms; and share prices carry less information due to small free floats and capital markets' less effective monitoring mechanisms. Furthermore, costs incurred by agents to ensure they will not harm principals (bonding costs) may also increase. The most typical of these are cross-listing (Young *et al.*, 2008) and premium listing segments.

In fact, Silveira and Dias Jr. (2009) measure the costs of conflicts between controlling and minority shareholders in Brazil by using event study methodology in 24 cases where such dispute gained the media. Their hypothesis is that when such disputes become public, relevant agency costs

are taking place. They find ample support for their hypothesis. Companies lose 6.6 percent of value on the publicity date. These losses reach 12 percent over the following fifteen days. They estimate that the value loss ranged from US\$ 325 to 497 million for each company (Silveira and Dias Jr., 2009).

### 3.2 Corporate Ownership in Brazil

Ownership concentration at the company level is observed in several markets in the world. The three largest shareholders own 50% of the capital in half of the world's listed companies and 30% in three quarters of these companies (De La Cruz, Medina and Tang, 2019).

Concentration in Brazil is even higher since on average, 61.27% of the voting shares of publicly traded companies is held by the largest shareholder (Sternberg *et.al.*, 2011). Concentration is higher in the regular, N1 and N2 listing segments (Leal *et.al.*, 2002; Gorga, 2009; Pinto, 2013) or via shareholder's agreements despite growing dispersion (Sternberg *et.al.*, 2011). The recent De La Cruz, Medina and Tang, (2019) study confirms that a single shareholder owns circa 50% of the company's capital and the 3 largest shareholders, over 60% in Brazil. The typical shareholder is a private corporation or a strategic individual. These two categories are the major shareholders of listed companies in the country (De La Cruz, Medina and Tang, 2019).

Table – 3 – 1 - Ownership Concentration in Brazil compared to the United States

Countries	Market capitalization weighted average ownership by category of investor, end-2017		Average ownership by category of investor, end-2017	
	Brazil	United States	Brazil	United States
Private Corporations*	34%	2%	25%	2%
Public Sector	13%	3%	11%	3%
Strategic Individuals**	8%	4%	21%	4%
Institutional Investors	25%	72%	22%	80%
Other, free-float	20%	19%	22%	11%

Source: De La Cruz, A., A. Medina and Y. Tang (2019), "Owners of the World's Listed Companies", OECD Capital Market Series, Paris, [www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm](http://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm).

\* include listed and unlisted private companies, their subsidiaries, joint-ventures and operating divisions

\*\* are physical persons that are either controlling owners or members of a controlling family or block-holders and family offices

Table 3-2 Compares Ownership Concentration in Brazil with the United States, a country where ownership is far more dispersed than in Brazil. Private corporations which include family-

owned holding companies as well as foreign entities are the largest category of owners. Their ownership stakes represent on average 34% of market capitalization. In contrast, this category only represents 2% of owners in the US. Institutional investors are 22% owners in Brazil and their share in the market capitalization is only slightly higher. In striking contrast, this category is the largest owner in the US with 72% shares in market capitalization.

Table 3-2 shows that private corporations, breaks-out this ownership between local and foreign capital highlight the importance of foreign investors as owners. Foreign private corporations and institutional investors predominate.

Table 3 – 2 - Domestic and non-domestic ownership, end-2017

		Brazil	United States
Private Corporations	Domestic	13%	1%
	Non-Domestic	21%	5%
Public Sector	Domestic	10%	1%
	Non-Domestic	3%	5%
Strategic Individuals	Domestic	6%	1%
	Non-Domestic	2%	2%
Institutional Investors	Domestic	6%	30%
	Non-Domestic	19%	32%
Other, free-float		20%	22%

De La Cruz, A., A. Medina and Y. Tang (2019), “Owners of the World’s Listed Companies”, OECD Capital Market Series, Paris, [www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm](http://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm).

The privatizations of the 1990s did not lead to ownership dispersion in Brazil because governments prioritized the value of State’s control premium. In 1997, Congress removed certain important rights from the Corporate Law<sup>11</sup>, weakening the protection of minority shareholders with respect to changes in control and created a favorable environment for delisting. Changes led minority shareholders not to receive the economic value of their shares in various freeze out offers. In those “dark ages”, investors were not the only losers. From 1990 to 2005, the Stock Exchange (B3) lost one third of its listings. Of 234 companies, half left between 1998 to 2001 (Source: B3<sup>a</sup>). In 2001, Congress reintroduced the rights that had been removed from the Corporate Law, granting voting shares 80% tag-along rights - Law 10303/2001 (De Almeida and Leal, 2020).

### 3.3 Legal Framework

<sup>11</sup> Law 6.404/76 or Lei das Sociedades Anônimas (or Lei das SAs.) is Brazil’s corporate law. It permits a dual class share system where ordinary shares have votes and preferred shares are non-voting (they only acquire the right on matters concerning their rights). Until 2001 up to two thirds of the capital could be issued through non-voting shares; with the reform in 2001, the ratio fell to 50%.

Brazil current Corporate Law – Law 6,404/76 (“Lei das SAs”) - dates from 1976, the same year the Brazilian Securities and Exchange Commission – Comissão de Valores Mobiliários (CVM) – was created. It follows the tradition of the French Civil Law, which according to La Porta *et al.* (1999), offers the least protection for investors. Companies that want to list their shares in the stock exchange must register with the CVM. The Law allows the issuance of dual class, ordinary and preferred shares. Ordinary shares have the right of one vote per share. Multiple voting rights per share is not permitted but the company’s charter may limit voting rights. Preferred shares may not have voting rights but, if so, are assured a minimum dividend (25% of profits or 3% the book value of the shares, or 10% higher than dividends distributed to the ordinary shares) and have precedence over ordinary shares on the return of capital. Preferred shares may acquire voting rights if the company fails to pay mandatory dividends for three consecutive years. They also have the rights to elect separately a member of the board of directors.

Initially, the Lei das SAs allowed the company to issue as much as two-thirds of its capital in preferred shares. This permitted family-owned companies and the government to raise capital in the market without losing control. The prime example of this usage was the state-owned telecommunications holding company, Telebras. The government’s control stake - a little over 50% of the company’s voting capital – only corresponded to 20% of its total capital! This control stake was sold at a premium in the privatization auctions in 1998. After that Law 10,303 of 2001 reformed the Lei das SAs, and limited the maximum of preferred shares that could be issued to 50% (Almeida and Leal, 2020).

The Lei das SAs defines and attributes responsibilities to the controlling shareholder including situations where there could be abuse of such power and conflict of interest (Art. 117, Section IV of Law 6404/76). It also allows shareholders representing at least 1/10<sup>th</sup> of the company’s voting capital to request cumulative voting for directors (Art. 141). Ordinary shareholders representing 15% of the total voting shares and preferred shareholders representing 10% of the total capital will be allowed to elect one member of the board each in a separate voting session where the controlling shareholder does not vote.

Brazil’s corporate law allows shareholders to elect a three-to-five-member Fiscal Board. This body may or not be permanent depending on the company’s charter – usually it is permanent in state-owned companies. When non-permanent, it can be requested in the General Ordinary Meeting (GOM) by 1/10<sup>th</sup> of the ordinary votes or 5% of the non-voting shares. The request is submitted in the electronic distance voting bulletin. The fiscal board is not a decision-making body. Its function is

to inspect the acts of the administrators, provide an opinion on the Annual Report and on proposals to be voted in general meetings, denounce to the GOM improper acts by the administration or frauds they may find out about, analyze balance-sheets and opine on the annual financial statement. The Fiscal Board can provide an effective protection instrument to outside shareholders if its members are qualified, independent and the administration does give them access to the materials they need to perform their work well. They also have the advantage of being able to make requests and opine individually because it is not a collegiate body as the board of directors. Its main weakness is not being permanent for most companies, and of course, just as boards, they can be filled with rubber stampers.

When the United States passed Sarbanes-Oxley Act in 2002, Brazilian companies who had cross-listed in the NYSE had to comply. Many of those were state or former state-controlled companies who already had a permanent fiscal board. Brazilian companies were able to convince the SEC to accept those who had permanent fiscal boards as SOX compliant. Thus, many may perceive the fiscal board and the audit committee to be bodies that perform the same function. In fact, Bortolon, Silva and Barros (2019) found that when a company has an audit committee, requests for the installation of a fiscal board were less frequent. They also found that these requests were more frequent in companies with large boards, worse performance (ROE) and who had shareholders' agreements (Bortolon, Silva and Barros, 2019). The key point with regards to the fiscal board is that it can be used by shareholders to monitor the companies more closely. Minority shareholders are assured a seat and it has a lower threshold of ownership to be met to be able to request its installment.

Enforcement of investor rights is a key element in investor protection. However, in Brazil, enforcement is deficient for two reasons. First, lawsuits dealing with violation of shareholder rights are handled by non-specialized State Court judges who lack both the know-how and jurisprudence due to the absence of precedent cases. Also, courts may take a considerable amount of time to reach a decision making it costly for the pleading party. The second reason are the limited powers of CVM. It can only access information that is protected by bank secrecy law on a case-by-case basis by requesting the judiciary to grant it access or through the cooperation of the Central Bank. It is also affected by personnel and financial constraints (Silveira and Dias Jr, 2009).

### **3.4 Important regulatory changes.**

Over the last 20 years, the Brazilian regulation evolved in the direction of better governance. We highlight some of these important steps.



Table 3 – 3 - Important Regulatory Changes

---

<i>Regulation</i>	<i>Description</i>
-------------------	--------------------

---

Laws 11,638/2007 and Law 11,942/2009	<b>Accounting standards</b> - Conversion of Brazilian accounting norms to IFRS
---	---

CVM Instrução 480/2009

**Disclosure** - Upgraded local publicly traded annual reporting requirements to a higher and standardized level of disclosure

CVM Instrução 481/2009, amended by nº 552/14, 561/15, 565/15, 567/15, 594/17, 609/19, 614/19, 622/20, 623/20 and by CVM Resolução nº 5/20

**General Meetings/Voting** - Regulated general meetings, including the information to be provided in the proxy statement, participation rights and proxy solicitations. It made participation easier by demanding that distance electronic voting be provided. The voting form allows the inclusion of shareholder proposals and demands for cumulative or separate voting for board members. In 2020, CVM allowed GMs to be entirely or partially remote so long as they be recorded and held in the city it is based.

CVM Instrução 586/2017

**Corporate Governance Compliance** - Introduced the Brazilian Corporate Governance comply or explain code.

Law 13,303/2016

**State-owned company compliance** - Known as the “Lei das Estatais” imposed restrictions on the participation of government officials, political party and union members to serve on government owned or controlled companies.

---

The first was the conversion of the Brazilian accounting norms to the International Financial Reporting Standards (IFRS) by Laws 11.638/2007 and Law 11.941/2009, making it easier for Brazilian companies’ financial statements to be compared internationally. The second was the introduction of the “Formulário de Referência” (FR), or reference form, by CVM’s Instruction 480/2009 and amendments. The FR upgraded Brazilian publicly traded companies’ disclosure standards to something similar and along the lines of the American 10-K. Prior to that, little information was required of them in annual reports. Only the country’s largest companies who had cross-listed in US exchanges were providing regular, thorough disclosures in their 20-F (equivalent of the 10-K for foreign issuers). Those companies that were only listed in the local exchange provided next to nothing of information. In addition to standardized disclosure, the FR speeded up follow-on issuance of stock or debentures since the company’s information would always be updated and issuances could combine the FR with information on the company with the prospectus with the specifics of the transaction.

The third important regulatory change was CVM Instruction 586/2017. It introduced the Brazilian Code of Corporate Governance and required companies to either comply with the code or explain why not on a specific section of their FR. The code was a bottom-up experience elaborated by 11 capital market entities – GT Interagentes<sup>12</sup> - among them representatives of pension funds, asset managers, investor relations professionals and the Instituto Brasileiro de Governança Corporativa (IBGC). It is a watered-down version of IBGC’s own governance code and is intended to be relatively easy to be complied with as way to incentive companies to accept and comply. It is expected to be upgraded from time to time. The regulator simply made the GT Interagentes proposal official. Having to report and explain is one mechanism that may help companies rethink their practices.

---

<sup>12</sup> Associação Brasileira das Entidades Fechadas de Previdência Complementar (ABRAPP), Associação Brasileira das Companhias Abertas (ABRASCA), Associação de Investidores no Mercado de Capitais (AMEC), Associação Brasileira de Private Equity & Venture Capital (ABVCAP), Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais (ANBIMA), Associação dos Analistas e Profissionais de Investimento do Mercado de Capitais (APIMEC), B3, Brasil Investimentos & Negócios (BRAiN), Instituto Brasileiro de Governança Corporativa (IBGC), Instituto IBMEC e Instituto Brasileiro de Relações com Investidores (IBRI). CVM and the Banco Nacional de Desenvolvimento (BNDES) were observers.

In 2016 Law 13,303/16 passed. Known as the “Lei das Estatais” (State-owned company law) it was Congresses’ response to the “Lava-jato” (Car Wash) corruption scandal in the country’s largest company, the state-owned oil producer, Petrobras. Lava-jato was a sophisticated corruption scheme involving construction companies, company managers and the illegal financing of political parties, including the then presidential party. The law is applicable to all state-owned (federal, state, and municipal) and those that are publicly traded and have private shareholders as well. Its main merit from a governance standpoint was to impose restrictions and requirements for the board of directors and fiscal board members. In addition to a relevant career and proven experience, board members cannot be government officials. They cannot be regulating agency officials or union workers; they cannot have occupied decision-making positions in political parties in the past 36 months or other positions where conflict of interest is possible. The law also requires companies to introduce a chartered audit committee and internal auditing reporting directly to the audit committee. It grants minority shareholders the right of electing one board member irrespective of reaching the minimum threshold for cumulative voting. This Law can be an important tool to improve governance of state-owned companies. This seems to have been the case in some publicly traded state-owned companies (Duarte and Leal, 2021).

Changes in the voting process in General Meetings (GM). Having to show up in person to vote was one of the items considered by La Porta et.al. (1998) as making it difficult for shareholders to exercise voting rights in comparison to countries where investors simply mailed-in their votes. In 2018 (Instrução CVM 561/15), the Brazilian regulator made the availability of electronic voting mandatory, so investors may “mail” their votes electronically using digital certification.

Instruction 481/2009 and subsequent amendments, regulates the procedures for companies to call for a GM. The GM is announced 30<sup>13</sup> days prior to the date. When announced, management proposal and the proxy statement is made public. The names of board candidates and shareholder proposals need to be submitted up prior to the GM, including the request for the formation of a fiscal board. The proxy statement is republished prior to the meeting and distance votes must be recorded prior to the meeting. Requests for cumulative voting must be submitted; the custodian delivers its proxy votes and company makes public a synthetic voting charts with the votes it received so far. On the day of the meeting the company publishes the GM proposals and summary voting chart and 7 days later it publishes the minutes of the meeting and a detailed voting chart. Shareholders are identified in the voting chart by some digits of their tax ID number, so it is, now possible, in theory,

---

<sup>13</sup> Altered by Medida Provisória N°1040, March 2021. Originally meetings were called 15 days prior.



to track how everyone voted. The most recent evolution, brought about by the force majeure of the Covid-19 pandemic, was to allow, online, real-time meetings and voting.

These improvements (distance voting, voting charts, and real time voting) are very recent and it is hard to know how they will impact investor voting behavior. We heard from our interviewees that some hurdles remain: 1) companies are only required to give 15 days-notice prior to meetings which does not give much time for funds with many hierarchical levels to process their recommendations; 2) documentation proving fund voting authority is not standardized and each company may ask for notarized copies of bulky documents, increasing costs; 3) the electronic system is operationally cumbersome. So further improvements may still be necessary for this action to become effective in reducing voting costs.

Despite the progress in regulation, over this period-of-time, some decisions by the regulator, CVM and insider trading cases that go unpunished by the public prosecutor<sup>14</sup>, reveal there is a long way to go before minority shareholders may feel adequately protected. One prime example of these episodes was the acquittal, by the regulator, of Petrobras' board members in five processes related to the Lava-jato corruption scheme. This was the largest corporate corruption scheme in the world. It "stole" US\$100 billion of value from shareholders (retirees, individuals, the Brazilian Federal Union, local and foreign institutional investors). It happened under the auspice of a supposedly "diligent" board. In the words of Mauro Rodrigues Cunha, an ex-Petrobras board member who was elected by minority shareholders after the scandal broke:

"It is unlikely that there be conditions that combine such obvious failures of governance and diligence as that of Petrobras. For years, the company made decisions motivated by corrupt intentions or politics (...), without any objection by those that should zeal for the company's interests and objectives. Irrespective of the difficulty of detecting well engendered frauds, the key to Petrobras' debacle resided in a culture of tolerance by those responsible for exercising checks and balances. It is a well-documented story: practically all decisions were unanimous. All members were subservient to the whims of the controlling shareholder, expressed by the voice of the chairman of the board<sup>15</sup>. Matters were approved without debate. Financial statements when submitted for approval, were never read (because they were thrown in front of the board member during the meeting for immediate approval)"<sup>16</sup> (...)].

---

<sup>14</sup> In Brazil, CVM does not have powers to put people in jail. At most it can punish insiders with fines and impede them from holding administrator positions in public companies. Although insider trading is considered a crime by Brazil's Penal Code, unless the Public Prosecutor, prosecutes and submits to judgement, proven insiders, may do no jail time.

<sup>15</sup> At the time, the Finance Minister

<sup>16</sup> Free translation - Mauro Rodrigues Cunha, "Responsabilidade de administradores: é hora de repensar o papel da CVM", Exame-in <https://exame.com/exame-in/responsabilidade-de-administradores-e-hora-de-repensar-o-papel-da-cvm/>, Publicado em: 09/11/2020 às 16h31Alterado em: 09/11/2020 às 16h50access\_time

### 3.5 Voluntary governance regulation

In 2000, to compete with cross-listings in the NYSE, and stanch the loss of companies, B3 launched premium listing segments that required better governance and disclosure practices. The most important was Novo Mercado (NM) where only a single class of voting shares is permitted (others were N1 and N2). In addition, shareholders were entitled to 100% tag-along rights, a practice of heightened importance in Brazil precisely because it safeguarded minorities in freeze outs. In fact, all NM rules intended to protect shareholders' rights in a principal-principal agency conflict environment and illustrates local institutional adaptation to context. Effective as of 2018, upgraded NM rules also address board quality, compliance, and control issues by mandating formal board evaluations, audit committees, internal auditing, and compliance departments.

NM listings soared between 2004 and 2008 due to IPOs (Gorga, 2009) and, after 20 years, NM can safely claim success. Not only because it attracts most of the new listings but because NM companies now account for 51% of the market capitalization in both main indices, Ibovespa and IBX-100. Contributing to this outcome was the fact that some large market caps such as Vale – one of the world's largest mining conglomerates – converted their preferred shares into ordinaries and joined NM. Also, both state-owned Banco do Brasil and Petrobras, when taking public their insurance and oil distribution subsidiaries, respectively, did so in NM. Only four Ibovespa companies remain in the regular market (Ambev, Santander, Telefonica Brasil and Cia. Siderúrgica Nacional) with a 12% share in the index. Several traditional, family, state, foreign corporation and strategic individuals, controlled companies, rushed to improve their reputations by joining the minor, differentiated governance segments (N1 and N2). Thus, NM succeeded in becoming a cheaper bonding alternative to cross-listings enabling large and small caps to access equity funding.

Foreign investors influence governance in emerging equity markets and the companies that trade in them (Gillian *et al.*, 2003). One such influence was the adoption of the investor relations practice. Some companies understood its essence: that building relationships involves ongoing communication with investors, including management, board members and controlling shareholders.

Thus, another important, and rarely mentioned, change in the market was the establishment of the Investor Relations practice. Back in 1993, CVM Instruction 202/93 instituted the Director of Capital Markets Relations. This was the name given to one of the chartered members of the executive board who would be responsible for providing the market with mandated disclosures. The nominee could accumulate the title with any other function and typically CFOs are given this responsibility. But in the late 1990s when Brazilian companies began listing in the NYSE and structuring their

investor relations departments, CVM changed the name of this executive board member to “Director of Investor Relations” (DRI) (CVM Instrução 309/99). When CVM instituted the FR, in a similar fashion to the Sarbanes-Oxley requirements, both the CEO and the DRI were required to certify that the information in the FR and Financial Statements accurately represented the company’s financial condition. The regulator also demands companies to keep a website and hold one public meeting per year. Strictly speaking DRI is a compliance function and is associated with but does not consist of, substantially, the voluntary activities that characterize investor relations. However, this regulator induced “syncretism” has led many to interpret that investor relations is obligatory in Brazil.

Irrespective of the conceptual mess, the voluntary practice of investor relations is firmly established. Most companies will designate professionals to form an investor relations team. Companies provide all mandated and voluntary information in readily accessible and, usually, quite standardized websites, many regularly hold earnings conference calls, issue press releases, and conduct all the routinized communication activities the comprise investor relations. Investors know they have a point of access to their investees, with people who are prepared to answer their questions and arrange meetings with their CFOs, CEOs and Board Members. This again has been another key structural change in the capital markets.

### **3.6 Stock market features**

With a market capitalization of US\$1.2 trillion, B3 was the world’s 19<sup>th</sup> largest exchange in 2019 (WFE-2019). Concentration in the top 5% of domestic companies is 56% and 47% in the top 10 most capitalized and traded of domestic companies (WFE-2019). These numbers, however, do not reveal some healthy structural changes that occurred in the past 20 years.

Back in 1998, Telebras was the dominant stock representing 40% of the Ibovespa. Commodity producers like Petrobras, Eletrobras, Vale and banks made up the rest of the market cap. At the year-end 2020, the largest market cap belonged to Vale with an 11% share of the index. Ten stocks accounted for 55% of the Ibovespa with a concentration in traditional banking conglomerates – Itaú (N1), Bradesco (N1), Santander (R) and Banco do Brasil (NM) in November 2020. So, while concentration is probably a feature that still characterizes the market, market cap is far more diluted. Both the Ibovespa and the IBX-100 have plenty of new-comers in non-traditional sectors such retail, health services, drugstores, electrical engineering, financial services, software, and education who are changing the face of the index away from a “commodity” driven stock market (Source: B3).

Another aspect to note is that we are still dealing with a small number of traded companies. B3 had at the end of December 2020, 402 listed companies, 173 in the regular market, 165 NM, 21 N1, 26 N2, and 17 companies in the “tiny cap” segment Bovespa Mais, intended for companies that want to try out their lives as public companies but who are not yet ready for the same level of disclosure and compliances of the main market (Source: B3<sup>b</sup>). Combined with the fact that the controlling shareholder stakes in the companies’ capital are high, actual free floats are tight. This has implications for liquidity and for many institutional investors particularly large ones. The number of investible vehicles is smaller than an already small base.

Corporate governance improved (Black et.al. 2014; Leal and Iervolino 2015). Indeed, Leal *et.al.* (2015) CGI’s Index captured an improvement in corporate governance between 2004 and 2013 (from 3.8 to 5.8), particularly on the dimensions of disclosure, board composition and shareholder rights. However, the general score is low, 5.8 out of 10, and low on ethics and conflicts of interest, 3.3.

Institutional investors account for 58% of the trading volume in 2020 (Source: B3<sup>b</sup>). Volumes traded by local institutions rose from 16% to 22% between 1994 and 2019 and by foreign investors from 21.4% to 38% in the same period. The large participation of foreign investors in trading volumes makes pricing and volumes in the Brazilian stock exchange vulnerable to foreign indirect investment and, as assets under management in ETFs have grown at fast – global/international exchange-traded funds grew at a compound rate of 41% p.a. between 1996 and 2019 (ICI Fact Book-2020 – table 11 pg.206 - ICI<sup>a</sup>) -, equity values become dependent on the country’s weight on the emerging market indices used as benchmarks.

### **3.7 The Investment Industry in Brazil**

Total net assets under management in the world, excluding fund of funds, were US\$56 trillion. US funds held 47% of this total followed by Luxemburg with 10% of assets. Brazil’s ranks 11<sup>th</sup> on this list with 2.0% share in terms of assets under management and a total of 12,252 funds of which 1,680 are equity funds (ICI-Q3 2020 Public Report - ICI<sup>b</sup>).

### **3.8 Activism in Brazil**

Crisóstomo and González (2006) stated that activism is under-researched in Latin America and Brazil. However, there is a growing but number of papers on the subject and Vargas, Bortolon, Barros and Leal (2018) report a growing presence of the topic in the specialized media (Vargas *et al.*, 2018). Most studies have focused on the relationship between activism and corporate governance,

efficiency and performance (Vargas *et al.*, 2018; Guimarães *et al.*, 2019, Maranhão, Leal and Bortolon, 2020 and Collares, 2020) and on major institutional investors – Brazilian pension funds and on BNDESPar, the investment arm of the country's national development bank (BNDES), (Crisóstomo and González, 2006; Punsuvo and Kayo, 2007; De Oliveira, Leal and Almeida, 2012; Sonza and Granzotto, 2018; De Almeida and Leal, 2020; Lazzarini and Musachio, 2010 and Duarte and Leal, 2021) .

Vargas *et al.* (2017) mapped various types and examples of activism, constructed an activism index, and related it to a corporate governance index for 2008, 2010 and 2012. They detected that despite an overall increase, activism remained low throughout the period and several index components held steady or declined. The activism indicators that presented more growth in the period were proposals presented by minority shareholders and cumulative voting requests to elect directors. They also noted a reduction in the number of proposals that were approved unanimously and the number of companies that did not experience at least one activist event. They found that activism was more frequent in larger companies and had a higher index score on those with poorer governance practices (Vargas *et al.*, 2017).

Guimarães *et al.* (2018) assessed the types of firms that were targets for activism and measured the impact of activism on efficiency. They used the Vargas *et al.* (2018) activism index and data envelopment analysis (DEA) to generate efficiency scores and bootstrapped truncated regression to assess whether activism targets less efficient firms. Their findings suggest activists targeted less efficient companies, but the level of activism did not predict future efficiency improvements (Guimarães *et al.*, 2019).

Maranhão *et al.* (2020) assume that the degree and form of engagement varies according to the investment objective of the institutional investor on the investee company, therefore, they score firm-investor pairs considering various activism markers and the impact on each firms' corporate governance practices. They found that the average score of their firm-investor index was lower than half of the maximum score possible suggesting that investor activism and independence is not high in Brazil even when large shareholders are involved. They were able to distinguish among investor types and origin and detected that asset managers were less active than other institutional investors. They also found that long term holders and foreign investors were related to better company governance practices while being a board member and signatory of a shareholders' agreement was associated with worse company governance practices possibly because these investors are insiders and therefore aligned with management. They found no significant impact of activism on corporate

governance either at the firm-investor pairs level nor at the company aggregated institutional investor score (Maranho *et al.*, 2020).

Collares (2020) scored manifestations of activism that were made public in minutes of shareholder meetings to create an index which was subsequently related to governance practices and company performance. She found a negative and significant relationship between activism and governance indicating that companies with better governance practices such as premium listing segments and particularly, independent board members suffered less activism. The relationship between activism and performance, however, was not significant and therefore inconclusive. The author infers that corporate governance, rather than performance, motivates investors to act in Brazilian companies (Collares, 2020).

Yamahaki and Fyrnas (2016) qualitatively investigated whether regulation encouraged private shareholder engagement in Brazil and South Africa. They interviewed institutional investors – mainly Principles of Responsible Investment (PRI) signatories. Their findings suggest that while legislation provided limited direct encouragement of private engagement, it did enhance asset managers’ understanding of and interest in Responsible Investment practices, thereby reducing pension funds’ concerns about failure to fulfill fiduciary duties. They concluded that regulation promoted an ‘enabling environment’ for ESG engagement (Yamahaki and Fyrnas, 2016).

Pension funds are important institutional investors. Investments from Brazil’s pension funds represented circa 14.1% of GDP in 2020 and investment in equities and equity funds represented 18% of total pension fund investment (Abrapp). Thus, much research has been devoted to this type of institutional investor. Crisóstomo and González (2006) investigated whether pension fund participation in companies improved performance. They observed there was an increase in the participation of pension funds in Brazilian companies’ shareholder base between 1995-2002 although the growth of their presence among the five largest voting shareholders was not significant in the period. They were not able to affirm that the presence of pension funds among the five largest shareholders had an impact on company performance, although, in 2002 companies with at least one pension fund among the five largest shareholder presented better performance indicator averages, and significant increases in dividend payout (Crisóstomo and Gonzales, 2006).

Punsuvo, Kayo and Barros (2006) investigated the influence of pension funds on companies’ corporate governance quality. They expected that when pension funds were part of the control block and frequently participated on boards, the relationship between pension fund participation and governance quality would be inverse. They found this relationship to be significant (5% level) and

negative and interpreted it to result from the fact that when there are few controlling shareholders, the larger their share in the total capital the less need to invest in governance quality. In that sense, when companies' ownership is concentrated, a large participation could function as a substitute for quality governance (Punsvuo et al. 2006).

De Oliveira, Leal and Almeida (2012) look into the relationship between three of the largest Brazilian pension funds (Previ, Petros and Funcef) as relevant shareholders and find that their presence is not associated with better company corporate governance. They note however that their scores are highly correlated with the stock exchange's premium listing segments and company size. They find it reasonable to expect that larger companies would have both the means and the incentive to implement better corporate governance practices. It is quite possible these large pension funds prefer to have their more relevant holdings in larger companies with consistent past profitability, which happen to be the same companies that have better corporate governance. Thus, it may well be that variables are endogenous and that these large institutional investors elect liquidity as their key investment criterion. They also consider it possible that these pension funds – which are sponsored by state-owned companies – make decisions based on the political criteria or priorities of the incumbent government. Such perspectives are not necessarily consistent with corporate governance best practices in which case the impact relevant shareholdings by these institutions may have on corporate governance practices might not be detected (De Oliveira et al., 2012).

Sonza and Granzotto (2018) question whether pension funds are good monitors. They find that pension funds participating in companies' control structures is negatively associated to efficiency measured by ROA and ROE and with market performance (Tobin's Q). They attribute this outcome to the lack of adequate monitoring skills by pension funds, who may, in fact create conflicts that go against maximizing company's value (Sonza and Granzotto, 2018).

De Almeida and Leal (2020) examine two cases where two state-owned company pension funds acted but were not entirely successful in their attempts to change the course of decisions made at their investee companies. The authors investigate whether the outcome in these cases arise from the lack of skills (Sonza et al., 2018), or of interest to engage (Punsvuo *et al.*, 2007), or due to alignment of interests with government policy in lieu of that of minority shareholders (Maranho *et al.* 2020). The cases are interesting because they reveal that it takes more than size and influence to be successful when advocating against the concentration of ownership or better governance practices. They highlight the fact that active investing is risky even for deep pocket players. In these cases, the negative outcome for the pension funds is attributed to their failure in anticipating the changes that

were about to happen in their investees (a major control reconcentration in one case; and a more aggressive management/strategic style coupled with legal issues relating to sanitary licenses in the other). Another important point observed in the study was that in one of the cases the two pension funds were at opposite positions. With respect the purpose of the investigation, the authors concluded that these funds showed a keen interest in acting. Because in one of the cases the two pension funds were in opposition, they suggest the funds were acting in the best interest of their beneficiaries rather than following political guidance from the government. Overall, they concur with the view of previous studies in that pension funds lack the necessary skills for effective activism (Sonza and Granzotto, 2018) and the presence of these institutions in companies' investor base does little for the improvement of their corporate governance or performance (De Oliveira *et.al.*; 2012, Punsuvo *et al.*, 2007; De Almeida and Leal, 2020).

A second major institutional investor which has been singled out in research is BNDESPar, the investment arm of BNDES. Lazzarini and Musacchio (2010) found that BNDESPar, as a minority shareholder contributes to the increase the company's return on assets possibly because their capital constraints are reduced with the banks long-term equity commitment and loans. However, this was not the case when this investment was made in state-owned companies, where government interference was possible or in private-domestic pyramidal groups, where there was potential for minority shareholder expropriation (Lazzarini *et al.*, 2010). Thus, deployment of tax-payer funds on equity positions of private or mixed capital companies does not render uniform results to all companies.

Duarte and Leal (2021) examine multiple cases where BNDESPar disputed with other investee controlling shareholders. Two cases concern a large protein producer JBS, whose international expansion received the support of BNDES equity and loans. The third and fourth were related to the Rio de Janeiro electricity distributor, Light, a company controlled by Cemig, the electricity producer and distributor of the State of Minas Gerais and who was controlled by the State with the same name.

In the first case, BNDESPar opposed JBS' board member compensation. The company's board had members of the family who controlled JBS through a holding company. The latter as well as key family members were involved in corruption and as the scandal unfolded with indictments and legal proceedings, JBS lost market value, hurting minority shareholders. When the case was escalated to the regulator, CVM, it became obvious that jurisprudence regarding the controlling shareholder's right to vote in conflict-of-interest situations was not consolidated. CVM's collegiate voted that it



was up to the controlling shareholders to declare themselves impeded. Despite BNDESPar substantial 13% share, CVM's decision left them at the mercy of the family's dominant 63.5% voting power.

In the second case, BNDESPar was successful in preventing the company from implementing a corporate restructuring that would result in transferring the company's fiscal domicile abroad. However, this success was only achieved because it was party to a shareholder's agreement that gave it veto rights. BNDESPar's position in this case was political: it wanted to prevent the denationalization of a company that had benefited from subsidized loans to reach its "national champion" status. In contrast to the first case where BNDESPar was perhaps aligned to minority shareholder interests, the second case revealed its priorities were elsewhere (Duarte *et al.*, 2021). We suspect BNDESPar needed to save face: they could not afford the construal of a narrative that they had wasted taxpayer money on a policy that facilitated a national champion to leave the country.

BNDESPar was also involved in two disputes with Cemig in their minority position in Light. The first was related to Light's financial performance. Here again, the bank lost its dispute due to Cemig's 51% share in the voting capital. The second dispute concerned the appointment of members to Light's fiscal board. Here BNDESPar was supported by the newly enacted "Lei das Estatais" which established nomination criteria for board members. They were able to reap a partial success (Duarte *et al.*, 2020).

The analysis of these cases enabled the authors to reach rich analytical conclusions:

- 1) Better corporate governance practices and mechanisms alone do not protect companies from being targets of activism.
- 2) Political interests guided BNDESPar in some of their activist moves.
- 3) Concentration does not align the interest between shareholders.
- 4) Being a minority shareholder did not hinder the bank from fighting its cause even though when they won, it was because they were able to rely on the strength of the law.
- 5) Ownership concentration was key for the outcome of activist moves but also to the instruments used by the activist shareholder to fight and resist.
- 6) It is difficult for activists to achieve their goals using corporate governance mechanisms when ownership concentration is high.

## **4 Methodology**

### **4.1 Research question**

What meanings institutional investors attribute to the terms, “activism” and “engagement”?

Which corporate governance practices investors value most and why and, as a result, would:

a) serve as criteria for investment decisions; b) be a matter for regular engagement, and c) prompt them into action?

These questions have underlying assumptions, namely: investors, as shareholders, have the legal right to vote on certain company matters and are entitled to the economic benefit yielded by their property. Their legitimacy arises from the shareholder value approach to corporate governance. We also assume investors will want to act to protect their positions from expropriation.

### **4.2 Research design**

To address these questions, a qualitative research project was chosen because it permits the exploration of meanings attributed by individuals on social issues (Creswell, 2010). The primary method of data collection was interviews because the objective was to capture attitudes, values, and preferences. Interviews enable the researcher to ask open-ended questions and better access the views, interpretations of events, understandings, experiences, and opinions and thus achieve greater depth and complexity (Silverman, 2006).

The philosophical approach to interview conduction and interpretation was constructionism. Like constructivism, constructionism is a postmodern approach that shares the view that no objective reality exists to be discovered. However, while constructivism is concerned with individual cognitive processes, constructionism emphasizes language use and communicative practices that occur in interpersonal exchanges (Rosa, Tureta and Brito, 2006).

The conventional view about interviews is that respondents are passive subjects who passively possess the information the interviewer wants. Such information is assumed to be uncontaminated. If contamination occurs, it stems from its setting, its participants, and their interaction, but not from the subject. Thus, interview technique has developed procedures that are to be followed for obtaining untampered facts. The validity of results depends on the successful application of these techniques.

The interviewer is somewhat active but should remain removed from the data to gather the information that is already there without biasing the respondent's answers. Self-control is essential

not to influence and not suggest frames of reference. Interviewers' neutrality is desired, and while they may use interpersonal skills to encourage expression, they should not help construct attitudes, sentiments, and information in questions, doing so would compromise the result.

Constructionism rejects this conventional concept of the interview because it considers social interaction to be constitutive, and participants to be constructive subjects. In an interview, participants are always actively engaged in constructing meaning - it is a process of co-construction. Thus, the interview is reconceptualized "as an occasion for purposefully animated participants to construct versions of reality interactionally rather than merely purvey data" (Gubrium and Holstein, 2003 pg. 32). The interview does not discover facts, realities, or truth, it uncovers accounts, or discourses, which are part of the world they describe. Experience is embedded in the social web of interpretation and reinterpretation – how participants create meaning. So, it is inappropriate to establish accuracy, reliability, and validity because these criteria presume one's objective is finding reality (Silverman, 2006). The research concern is to preserve "what" is being said but consider the "how" it is said is related to the experiences being studied.

### **4.3 Selection of institutions for interviewing**

The purpose of this study was to explore attitudes towards activism, the corporate governance preferences, and more broadly, the engagement process of members of the Brazilian investment industry by examining three groups of institutional investors: independent asset managers (IAs), non-independent asset managers (NIAs) and pension funds (PF). Legal type is commonly used to distinguish behavior of institutional investors because they have different investment objectives and are subject to different constraints.

The primary criterion for the selection of possible interview candidates was size of assets under management (AUM). Research has indicated that size is a critical enabler for activism. To identify the largest players in the industry two sets of ranking reports were used. The financial amount of these separate rankings cannot be added up because of possible double counting. Since pension funds outsource some of their investments, IAs and NIAs AUM could include assets that belong to pension funds.

Pension funds: The ranking of pension funds in terms of AUM was obtained from two institutions who provide almost identical data - Superintendência Nacional de Previdência Complementar – Previc, the pension fund regulating agency and Associação Brasileira das Entidades Fechadas de Previdência Complementar – Abrapp, the class association of the group. The ten largest

institutions account for approximately 51% of pension fund AUM. We selected candidates from this list.

**IAs and NIAs:** The ranking of asset managers in terms of AUM was obtained from Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais – Ambima, Institutional Investor ranking report of April 2018 (Anbima<sup>a</sup>). This ranking contained 556 asset managers and financial institutions. However, not all of them invest in stocks or only have minor portions of their businesses invested in stocks. So, we selected the subset ranking of entities based on the amount of stock assets under management (StockUM). There were 279 entities in this group managing US\$69 billion (R\$ 239 billion) of StockUM. This amount corresponded to 6% on average of the total AUM managed by those entities. We classified entities under two categories: 257 IAs and 22 NIAs. This classification was made by identifying those who were financial institutions while all the rest were considered asset managers even though there might be some family offices among them.

IAs manage approximately US\$37 billion, and their stock holdings were on average 54% of total AUM, a much larger percentage when compared with NIAs whose stock holdings were only 3% of total AUM. Since our aim was to canvas the perceptions of these independent asset managers for whom managing equity funds is a substantial part of their business, we targeted institutions which had a substantial amount of equity under management. We also targeted NIAs among the 10 largest.

#### **4.4 Contacting potential interviewees and confidentiality**

**Contacting interview candidates:** most of these institutions do not have institutional relationship structures to communicate with the public in general other than their own clients so sending emails to the “contact” address is usually unsuccessful because screeners are unprepared for atypical contacts. We used networking relationships with members of the Instituto Brasileiro de Governança Corporativa – IBGC who were board members and people from the investment management and broker industry to help us identify and put us in contact with those people in the organizations who could respond. Even so many did not respond or declined the invitation, but we were able to secure 18 interviews under the agreement that the names of the interviewees and the institutions would be kept confidential.

**Confidentiality:** confidentiality was proposed and accepted as a strategy for partners and officers to be free to express their views on matters. A confidentiality agreement was signed. To preserve identities, recording-labels were coded prior to transcription and all references of institutions and interviewees or other markers that could identify the spokesperson or the institution were

removed from the transcribed text. Investor citations are referred by the letters A, B and C and a number. Citations were freely translated from Portuguese into English by the author. Translations are not literal; they can be summarized but attempt to capture implicatures and expressive strength of statements. At times, citations were shortened to remove repetitions and reformulations of speech for parsimony, but the topical content was preserved. The Portuguese version of citations were provided in footnotes or in appendix 1 for the benefit of the reader.

We interviewed five of the ten largest pension funds (both public and private) and three among the ten largest NIAs. We also interviewed ten IAs whose StockUM averaged 74% of the total AUM which indicates their firms' business relies on the performance of equity portfolios for success. IAs interviewees managed 39% of StockUM by independent asset managers and 21% of all StockUM. This group includes both veteran and young institutions (average 17.5 years of age) and interviewees were portfolio managers and partners with approximately 20 years of experience in investment management and analysis. Most stated they were value investors.

Table 4-1

Based on Anbima's Institutional Investor Ranking Report (April, 2018)

Independent Asset Managers	StockUM Range (US\$ million)	Stock/AUM (% Average)
3 (of 17)	500-1,600	93%
3 (of 46)	100-499	88%
4 (of 122)	10-99	54%

Table 4-1 distributes the asset managers according to StockUM size range. The larger IAs depend heavily on the success of their stock portfolios, but even those that manage less than US\$100 million are more exposed to stocks than non-independent asset managers and pension funds.

Preference was given to entities located in the city of Rio de Janeiro to enable face-to-face interviews which enable in-depth approaches.

## 4.5 The interview process

Thirteen face-to-face and five over-the-phone interviews were conducted between May 5<sup>th</sup> and September 14<sup>th</sup> of 2018 and lasted 1:20 hours on average (table 4-2). All interviews were recorded.

Other than the linguistic cues manifested in voice (e.g., tone, pitch, sighs and pauses), over-the phone interviews lack the benefit of all non-verbal communication manifestations and will always carry less information than face-to-face encounters. However, since the focus of these interviews was topic oriented, the implicatures of non-verbal clues or verbal cues for that matter, to meaning making

were not specified in the analysis of the face-to-face interviews. Emotionally charged manifestations were identified when appropriate. Over-the-phone interviews were important because they accessed key players in the industry.

A semi-structured questionnaire was designed to capture both attitudes and beliefs as well as process and was previously discussed and validated with two academics and two board of directors' members. The questionnaire included questions relating to perspectives as well process matter such as relationship with the company and voting, and how they proceeded when they disagreed with the way the company was being conducted (Appendix 2). During the interview, respondents were given room to elaborate their narratives freely. The interviewer only asked questions to clarify points or to cover themes that had not yet been addressed spontaneously. A conversational tone was adopted.

Interviewees: table 4-2 lists the ranks of the professionals who were interviewed. Most IAs interviewees were partners. Because of their ranks and level of experience, their decision-making power can be expected to be high. Top ranks also make it possible that they have a holistic view of their businesses and their legitimacy to speak for the conduction of their companies is higher. Some pension fund professionals had substantial responsibility over investment decisions and occupied high ranks in their companies which render legitimacy to their speeches. NIAs professionals were the lowest rank amongst the group meaning that they were younger and had more partial views of their companies' business. Their speeches are constrained by their ranks. However, all three executives were responsible for analyzing proxy voting materials and making the first recommendation voting guidance. This puts them in an adequate position to discuss voting issues and process.

Table 4-2

## Interview details

Code	Type	Time	Date	Face-to-face/ Phone	Position/Rank
A1	IA	1:02:07	4/5/2018	Face-to-face	Partner
A2	IA	1:50:48	11/5/2018	Face-to-face	Portfolio Manager
A3	IA	1:42:11	16/5/2018	Face-to-face	Partner
A4	IA	0:58:19	17/5/2018	Face-to-face	Partner
A5	IA	1:36:20	18/5/2018	Face-to-face	Partner
A6	IA	1:07:03	5/25/2018	Face-to-face	Partner
A7	IA	1:40:49	14/6/2018	Face-to-face	Partner
A8	IA	0:42:22	15/6/2018	Over-the-phone	Partner
A9	IA	1:32:18	18/6/2018	Face-to-face	Partner
A10	IA	1:08:48	7/6/2018	Face-to-face	Partner
B2	PF	1:02:06	5/23/2018	Face-to-face	Chief Investment Officer/Director
B3	PF	0:38:19	5/30/2018	Over-the-phone	Financial Director
B4	PF	1:37:56	11/6/2018	Face-to-face	Governance and Securities Executive Manager
B6	PF	1:04:27	19/6/2018	Face-to-face	Governance and Securities Manager
B8	PF	1:08:42	11/7/2018	Over-the-phone	Stewardship Team Coordinator
C1	NIA	1:20:16	17/7/2018	Over-the-phone	ESG Head
C2	NIA	1:07:32	3/8/2018	Over-the-phone	ESG Analyst
C4	NIA	1:04:19	14/9/2018	Face-to-face	Head of Research

Transcriptions were outsourced but the text was revised by the author for corrections because the transcriber did not pick-up terms used in this category's professional discourse.

Other sources of information were used in this study: association reports, legislation and all materials that were made public in interviewee websites such as voting policies, annual report, letters to shareholders.

#### 4.6 Data analysis

Data analysis involved examining entity websites to identify the type of mutual funds they managed – and check their specialization of equities -, and what kind of materials they made public such as annual reports, policies, presentations, and letter to shareholders. Unlike publicly traded companies, pension funds and asset managers are not exposed to rigorous and detailed disclosure standards so there is great variability in what they provide. So systematic analysis of documents for comparability purposes would not provide meaningful results. All voting policies and “Formulários de Referência” – available for all asset managers – were checked. Voting policies were carefully examined but are virtually identical in critical aspects. Websites were checked to see if and how they

made their voting guidance available. Samples of letter to shareholders were also examined. Most of their communication is client directed and only occasionally would contain comments that were pertinent to the topics of interest.

Themes and topics for the analysis of interview content derive from theory. “Activism” was defined as “actions taken by shareholders with the explicit intention of influencing corporations’ policies and practices,” (Goronova and Ryan, 2014, pg.1232). This definition does not specify which “actions” are considered activism. “Engagement”, on the other hand, was defined as a process as in Martin *et al.* (2007) and as exposed in chapter 2.7 (Theoretical Framework). Investor engagement involves ongoing communication between investors and the company and is subdivided into ordinary course of business (in 2.7.1) and extra-ordinary course of business (activism) (in 2.7.2). Actions which are considered ordinary course of business considered in the analysis were: 1) Meetings with management (proposition #17) and 2) Voting in ordinary and extra-ordinary shareholder meetings (proposition #18). Extra-ordinary course of business or activism comprises the following actions: escalating confrontation (proposition #19), exit and the threat of exit (proposition #20), investor coalition and collaboration (proposition #21) and shareholder proposals (proposition #22). See table 2-7 for a schematic presentation and the authors used as reference for each action.

Thus, investors were not considered activists when they plainly stated they were not or when they described themselves as not wanting to change anything in the companies they invested. The explanation as to why they were not activists or did not approve activism was based on content of the discourse. Further, their attitudes towards voting, meetings with investees, exit, collaboration and escalation of conflicts were based on the content of their statements.

The analysis of proposition #1- Institutional theory prediction that the environment matters, was based both on the description of the institutional environment in which Brazilian investors operate – for example the prevailing civil law - as well as on statements made by investors that relate to such institutional environment.

The analysis of proposition #2 - isomorphism related to legitimacy and uncertainty management was based on the comparison and the finding of similarities in the description interviewees made of their approaches and practices.

The analysis of propositions # 3, 4, 5, 6, 7, 8 and 9 which relate to ownership concepts was based on both factual determinants of the environment as well on the interpretation of interviewee discourse content. For example, NIAs manage many types of funds, some of which whose purpose is to invest in a variety of assets (*fundos multimercado*); company stocks are possible assets. The



ownership concept that best describes managers of such funds is that of a “trader” who arbitrages among asset types to deliver the best returns. The analysis of propositions #10, 11, 12, 13, 14, 15, and 16 were based on the description provided by the authors of the models, facts and the interpretation of interviewee discourse.

A non-theory-based theme of “Investment Process” which comprises codes: “entry scrutiny”, “governance” and “elimination” was created to address research question sub-item “a” which relates to “governance preferences” and pertains to the investment decision process.

First treatment of interviews consisted of reading all transcripts, correcting transcription errors, and eliminating references of names. At this point initial markings of relevant text was done by hand. Treated transcripts were loaded in a computer assisted CAQDAS - Atlas.ti version 9. Each group was treated as a different project to facilitate separate analysis. However, all groups share some themes. Not all items that were coded were used in the analysis.

Table 4-3

Coding

	Pension Funds	NiAs	IAs
Quotations	153	110	638
Codes	78	46	252
Themes	9	6	17

First order coding cycle included structural and simultaneous coding. Structural codes are concept-based related to the topics of research investigation and theory. Simultaneous coding was applied to sections of the text that were related to more than one topic (Saldanha, 2009). Subsequently, codes were grouped into themes that were the focus of the analysis. Themes derive from theory and the object of analysis. They are the “whats” of the analysis. The “hows” are embedded in the interpretations.

The two quotes below exemplify how coding was done in Atlas.ti. In the first quote, the first order code was Exit, because the investor was talking about his response to when he identified something in the company he did not agree with “If I don’t agree I will sell (...) the advantage of having a liquid portfolio is that I can sell to stock on the following day, and will put my effort in something I am more aligned with, that’s it” (5:5 ¶ 20 in A05) and (5:12 ¶ 32 in A05). Exit, in turn is considered an “activist” action. Thus, this code was grouped under the “activism” theme. In the second quote, the first order code is meeting with management, the board and controlling shareholder:

“So, in these companies we like to speak with the executives and not only with the investor relations (...) Sometimes you have to go to the primary source (...)” (6:52 ¶ 86 in A06

6:53 ¶ 86 in A06). Meetings with the company are part of the engagement process, so that the code was grouped under the theme “Engagement”

#### 4.7 Limitations

One criticism of constructionism is narrowness. If what is produced in interviews is a description of reality and not reality itself, it denies the interview content of saying anything about reality. One counter argument to this criticism is that there is no other way of accessing this content other than that which is made available by the participants of the interview. Another counter argument is that it is possible to combine form (how) and content (what). Gubrium and Holstein (2003) are proponents of this view. In what they call an “active interview” they say that “meaningful reality is constituted at the nexus of the ‘hows’ and the ‘whats’ of experience, by way of interpretative practice – the procedures and resources used to apprehend, organize, and represent reality (Gubrium and Holstein, 2003 pg. 73). But according to Silverman (2006), this counter argument leads them to inconsistency because “what” questions are the realm of positivists and emotionalists. He questions whether using interviews to answer such questions will not take us back to earlier positions. Although important and complex this is an unresolved issue. So, constructivism is either narrow or inconsistent.

Constructionism is not typically claimed in business or even organizational studies. It is used in fields of social psychology, education, life studies and interactional linguistics. Thus, there is a lack of references when one wants to apply them to a different field. The challenge of employing it to a business studies context is one of execution. The pitfall is that it might not meet the standards of any field.

Qualitative analysis does not lend itself to generalizations. As put by Yin (2009), in reference to case method studies, they allow analytical generalizations. Another limitation is that one cannot consider interviewees to be representatives of their investor group. Candidate selection does not obey survey method stratification criteria and there is no assurance that interviewees are “typical” of their categories. At most one can affirm that the accounts and descriptions they profess are part of the plethora of accounts that might be out there. And while all interviewees were designated by their institutions to speak for the purpose of this research, their views might not entirely coincide with that of other employees particularly where opinions on certain issues are still under discussion. In

addition, perceptions are exposed by individuals who differ in ranks, activities, and experience. Their accounts will reflect those differences.

Confidentiality enabled interviewees to speak more freely and for this reason, participant identities were disguised. This limits the full contextualization of accounts. In addition, the rank of interviewees although similar per institutional investor category, differed among categories. Lower rank professionals are likely to be more constrained in speech and more partial in their views.

Lastly, meaning making is situated and attached to the circumstances in which it is produced in the interview process (interviewer, interviewee, date, etc.). Changes in circumstances as the passing of time implicate discourses may be different if exposed to the same topics.

## **5 Independent Asset Managers (IAs)**

### **5.1 Introduction**

Independent asset managers described themselves as not being activists because activism is negatively perceived, requires spending scarce resources, distorts the focus of their activity and is ineffective because most Brazilian companies have well defined controlling shareholders fighting against which is a lost cause. When companies take actions they dislike, they will talk to the company but if it does not accommodate their concerns exit, rather than fighting, is the preferred route. However, if the positions in their portfolios are significant and they understand their shareholders will lose, they will fight for their rights. To them activism is a defense mechanism. Having to defend their rights is not new because some veteran institutions initiated their histories as activists defending their rights and trying to convince controlling shareholders of the benefits of good governance. But today IAs attitudes towards activism can be considered reactive.

None the less, running the risk of having to get into a fight is not an option and they realize extreme scrutiny before making the investment. So, there is a fourth option to be added to Hirshman's (1970) exit, voice, or loyalty: non entry! They exercise extreme scrutiny prior to making investments and the company's governance, particularly who are the controlling shareholders, how is the decision-making process takes place are key aspects of the analysis. Personal relationships, networks and experience are important sources of information for background checks on company managers, board candidates and shareholders.

When looking at governance they go beyond form and focus on substance. So, aspects of form – controlled x not controlled, voting x non-voting – are not eliminatory while a controlling shareholder with a history of ill treatment of minority shareholders is.

“Reactive activists” does not mean passive monitors and these investors closely follow their investees. Proximity to the company is actively sought and the ability to speak to management, board members and eventually controlling shareholders in private meetings are clear governance preferences. Company relationship management is carefully conducted. It involves developing strategies to tackle topics and precautions not to embarrass management. They call themselves “collaborative activists” and appreciate companies where they are welcome. Management is a primary source of information from which they can explore insights and manage expectations which gives them a competitive edge on the investment.

Although all have voting policies, participation in meetings, with few exceptions, is not associated with fiduciary duty. They participate on a case-by-case basis when they judge matters to be voted to be important or there are other reasons to participate such as enhancing the relationship with the company, a means to join in interesting discussions and opportunity catch management off-guard.

Participation in company boards has happened but it is exceptional and not desired because of the trading restrictions it imposes. However, when asked, they collaborate in suggesting board candidates names and may collaborate with other investors in pooling votes to elect board member.

Table 5-1 Summary of interpretations

Theme	Interpretations
The past	Survival meant being activist
Activism	Has a negative connotation
	Requires spending scarce resources, distorts focus and is ineffective
	Is a defense mechanism
	Exit is inevitable
	Not activists! “Collaborative” activists
Investment Process	Entry scrutiny before voice, loyalty, and exit
	Governance focuses on substance
Engagement	Access to management is key
	Management is the primary source of (‘soft’) information
	Collaboration is realized in exchanges with management
	Personal relationship and networks entice trust
	Private meetings are preferred
Voting	Many reasons to participate in general meetings, fiduciary duty is not one
	Voting is still expensive
	Collaboration is easier, but no coalitions
	Participation in boards is exceptional, suggesting board candidate names is more frequent

## 5.2 Background

Brazil’s investment industry is relatively young (10-30 years) and structured under partnerships whose partners are first, or second generation. The independent asset managers who participated in this study are profit seeking institutions whose survival depends on performance track record. Most manage a small number of equity funds and are remunerated by both flat and

performance fees. They cater for both institutional and retail clients. One of the differentiating factors they highlight is the fact partners' money is invested in their own funds. Under this argument they believe fund manager interests are aligned with that of shareholders, "(...) so then, you are only going to invest in my fund, if you understand, that my money is invested in the fund, that I'll be losing money if you are losing money"<sup>17</sup>.

Brazil's securities and exchange commission (CVM) Instrução CVM 555 regulates fund constitution, management, operations, and disclosure. This regulation establishes portfolio concentration limits for investments in foreign assets, per issuer and asset class. Limits are percentages of the funds' net worth. Funds' allocation cannot exceed 20% if the issuer is a local financial institution or the fund manager's own company or part of its economic group; 10% if it is a local publicly traded company or another fund and 5% if the issuer is an individual or a non-publicly traded company. Limits by asset class are 20% on shares of other funds or funds of funds and 5% in funds or funds of funds of Direitos Creditórios Não-Padronizados – FIDC-NP or funds that are restricted to qualified buyers ("profissionais"). No limits apply for investment in government bonds, gold, local financial institutions and public issuers, corporate bonds, and derivatives (Instrução CVM 555). This instruction does not regulate voting, so Brazilian investors are free to adopt voting policies and criteria. Voting policies are identical – issues where voting is mandatory and exceptions – because they are based on Ambima's best practices code.

Although recognizing that the market has all sorts of styles – "the market has everything"<sup>18</sup>, most of the IAs we interviewed positioned themselves as long term investors seeking value – see table 5-2 in Appendix 1<sup>19</sup>. Only one fund was quite adamant in stating they were not value-investors, they did not have the typical "outlet complex" of buying things that did not fit just because they were cheap (8:1¶14 in A8– table 5-3). And yet, despite this positioning, it would be a stretch to interpret their liability structure equal to that of pension funds with captive long-term funding. These asset managers still publish fund share prices daily and while they may not have to provide next-day funds for redemptions, we preferred to continue to classify them as "short-term". However, it is clear that "long-term" is important to distinguish themselves in their communication with investees, "so that the company sees you as different" (1:112¶16 in A1- table 5-2) and thinks you are "cool", and

---

<sup>17</sup> *então pô 'você só vai investir no meu fundo, se você entender que pô eu tenho dinheiro no fundo, que eu tô perdendo dinheiro também se você tiver perdendo'* - 3:34¶38 in A3)

<sup>18</sup> *o mercado tem de tudo* (1:1¶4 in A1)

<sup>19</sup> Unless otherwise stated tables in this chapter can be found on appendix 1

“investor that interacts, brings ideas and criticism, and does it in a good way” (3:77 ¶72 in A3- table 5-2). It must also be relevant for marketing purposes (differentiation).

They consider value investing to be a difficult strategy to implement in Brazil because they have to be contrarians (6:12 ¶16 in A6 – table 5-3) at times in a market that is generally perceived as having a short-term focus and wait for price dips to buy stock from companies that are, otherwise, correctly, or over-priced (because of a small market) (1:76¶64 in A1 – table 5-3). And yet, value investing is thought to be rewarding despite market volatility because in the long-run quality companies out-perform the market by a lot (9:34¶281 in A9 – table 5-3).

Table 5-2 classifies IAs according to Çelik and Isaksson (2013) determinants of ownership engagement model. They are profit earning institutions remunerated on the basis of both flat and performance fees, they are diversified and have no legal restrictions or political or social objectives. Despite of the fact they position themselves as long-term investors, we have classified them as short-term because of the requirements of the Brazilian regulation. Given they classified themselves as value investor, the most appropriate investment strategy would be active fundamental. Given these classifications they would be considered alpha engagement. This classification is appropriate if what one constitutes engagement and monitoring is maintaining investee companies under close watch, however if engagement is understood to mean “activism” as in Goronova & Ryan (2014), they would have to be considered prone to reactive engagement as in Gilson and Gordon’s (2013).

Table 5-2: Independent Asset Managers / Determinants of ownership engagement  
(Çelik and Isaksson, 2013)

Purpose	Profit
Liability structure	Short-term
Investment strategy	Active Fundamental
Portfolio structure	Diversified (limitations to concentration)
Fee structure	Performance and Flat Fee
Political/social objectives	No political or social incentives
Regulatory framework	No legal requirements or limitations

Çelik and Isaksson (2013) model. The framework identifies 7 features and 19 choices to define the institutional investors’ business model and shed light on institutional investor interest in performing corporate governance functions associated with ownership responsibilities.

### 5.3 Analysis of the Interviews

### 5.3.1 History

In many of our conversations with veterans or not, investors commented on the initial years of Brazil's recent capital markets history and an activist past. In the late 90s, particularly between 1999 and 2001s, the period described by one of them as the “dark ages” of the Brazilian capital markets, activism meant survival. They had to practice an “*ativismo, ativista*”: visit the company with a copy of the Corporate Law “under the arm”, “request the installation of a fiscal council”. This was because in earlier decades companies had gone public solely for gaining “fiscal benefits”. Many were family-controlled companies with no knowledge of governance, valuation or investors, and no notion as to why they had gone public<sup>20</sup>. Those were hard times for investors also because of macro-economic factors: recent currency stabilization, macro instability, sharp fluctuations in the exchange rates, low liquidity and a securities law that did not adequately protect minority shareholders.

One described the period as a chicken and egg situation: company shares were undervalued because shareholders had no rights, but no rights meant shares would continue to be cheap. They would buy preferred shares (with not voting rights) and try to convince controlling shareholders that better rights and governance would bring about a lower cost of capital. It was a trial-and-error game to find out who was or not receptive. They encountered both open and closed doors.

But all-in-all one investor expressed his frustration with the energy spent on activism:

“Then it's like this, the recollection we accumulated from this experience, was this, ‘wow, how much energy we spent to have access to exceptional businesses. In the end investments were successful, but as we see it today, the reason why they were successful, is much more because of the fact the price was right and the business was very good, than because of the fact we were activists.’”<sup>21</sup>.

Three factors facilitated a change in the capital markets environment: 1) the reform of the corporate law in 2001; 2) the creation of the Novo Mercado voluntary governance segments by the stock exchange in 2000 and 3) the flagship IPO of the personal care products producer Natura in 2004. Better rules were in place, but this issuance made it concrete to controlling shareholders there was value to gain with better governance:

---

<sup>20</sup> “*não tinha nem noção de por que tinham aberto o capital*”

<sup>21</sup> *Então assim, memória que a gente acumulou dessa experiência toda, foi assim, ‘poxa, quanta energia para ter acesso a esses negócios excepcionais’. No final os investimentos foram bem-sucedidos, mas na nossa ótica atual, a razão pra eles terem sido bem-sucedidos, é ela está muito mais no fato de que o preço era adequado e o negócio era muito bom, do que no fato de que nós fomos ativistas”*



“So then, in fact, you created a neat sample, and we said ‘guys, this business of corporate law, it's good, everybody wins, the companies gain liquidity, in the market’, and we went in in that (...) and there was also the coincidence those were good years for Brazil, right?”<sup>22</sup>.

It became possible for these investors to change their behavior. Instead of a “formal” presence with board seats and lawyers, investors took on a more “natural” ongoing relationship with investees. “So, instead of a formal presence where you need to have a seat in the board, in order to try to change the way the company behaves, be close to controlling shareholders to force them to do something”<sup>23</sup>, they were able to focus on seeking quality investment opportunities. Many companies that went public after these regulatory changes had a different mindset and were open to ongoing dialogue with investors, “in these more modern companies, voice is a more natural thing, it is not something that needs to be imposed or that we need to hire lawyers to have it”<sup>24</sup>.

The Brazilian capital markets evolved substantially making it possible for foreign investors to come in and the investment industry to grow, “since then, I think the Brazilian market has evolved a lot, we really became open to receive investments from abroad, and today there is a large quantity of companies, funds and managers, competent people.”<sup>25</sup>. Thus, those activist funds managers fell-back to their vocation: identifying quality and correctly priced investment opportunities.

Despite implementing regulation along the lines of OECD recommendations, the Brazilian capital market retains one main feature: it is primarily made up by companies who have clearly defined controlling shareholders holding a substantial portion of the company’s capital (De La Cruz, Medina and Tang, 2019). Many companies remain controlled by families or other institutions (the state, multinationals) not changing the nature of Brazilian capitalism which remains predominantly hierarchical (Schneider, 2009). In addition, problems associated with common law – weak enforcement – continue to prevail (La Porta *et al.*, 1999; Black, 1999, Martin *et al.*, 2007). Under these conditions, as we will observe in practitioner perspectives, activism is low.

---

<sup>22</sup> “Então ali você criou, de fato, uma amostragem bacana, e a gente falou assim, ‘cara, esse negócio de regra societária legal, é bom, assim todo mundo ganha, as empresas ganham na liquidez, no mercado’ e a gente entrou naquele... também houve naquela coincidência dos anos bons do Brasil, né?”

<sup>23</sup> “E a presença, então, deixa de ser uma presença formal, em que você tenta ter um assento no conselho pra mudar a forma com que a empresa se comporta, e está muito próximo dos controladores pra força-los a fazer alguma coisa”.

<sup>24</sup> “nessas empresas mais modernas, essa voz é uma coisa natural, ela não é uma coisa que precisa ser imposta ou que a gente precisa ter um... que a gente precisa contratar advogados pra ter, vamos dizer assim.”

<sup>25</sup> “e desde então, eu acho que o mercado de capital no Brasil se desenvolveu muito, a gente realmente ficou aberto pra receber recursos de fora, e hoje você tem aí uma quantidade de empresas, de fundos, de gestores bastante grande, gente competente”

### 5.3.2 Activism

#### 5.3.2.1 Activism has a negative connotation.

In the academy the term “activism” refers to a body of literature dealing with the relationship between investors and companies. It carries a neutral connotation. For practitioners, however, activism means confrontation, belligerence, and opportunistic behavior. This negative connotation arises from the recent US experience (3:61¶114 in A3 -table 5-4), but also from some Brazilian cases that failed (5:36¶84/A5:39 ¶ 88 in A5 – table 5-4). In addition, moral or marketing pressure takes its toll when fund managers become activists without being totally prepared for comprehensive analysis of the situation and end up causing more harm than good to companies – “So, it’s like this, when we are invested in a listed company and a private equity buys into the stock, for us a red light turns on, what is this guy going to do?”<sup>26</sup>.

#### 5.3.2.2 Investors are adamant in saying they are not activists!

Considering “shareholder activism” as “actions taken by shareholders with the explicit intention of influencing corporations’ policies and practices,” (Goronova and Ryan, 2014, pg.1232), these asset managers are clearly not activists. Directly or indirectly, they state their non-activist standing. They prefer companies they can admire or learn from management (1:40 ¶ 6 in A1–table 5-6). They do not make investments hoping to change some things or the entire management (4:5¶14 in A4/6:26 ¶ 40 in A06 – table 5-5). In fact, if they think something needs to change in a company, they should not invest at all (5:65 ¶245 in A5- table 5-5). Their liability structure and size does not support the cost of activism, nor do they become activists just because using governance filters for investment is part of the investment philosophy (9:13¶40 in A9/ 2:45¶270 in A2 – table 5-5). This non-activist standing is recognized by AMEC in the introduction of their Stewardship Code<sup>27</sup>.

#### 5.3.2.3 Activism requires spending scarce resources, distorts focus and is ineffective.

The rationale as to why they are not activists varied. There was a wide range of reasons: size (too small as in 7:9¶29 in A7 -table 5-5), costs/time (as in 9:39¶307 in A9 -table 5-6), distortion of the investment focus, not knowing more than management and culture. However, all have pointed

---

<sup>26</sup> *Então assim quando a gente tá num investimento numa empresa listada que entra um private equity pra gente é um sinal vermelho, a gente “putz, o que que esse cara vai fazer?”*

<sup>27</sup> Amec – Stewardship Code (date of access 2/5/2021) <https://www.amecbrasil.org.br/stewardship/codigo/>

out that the overwhelming reason as to why activism makes little sense in Brazil is the fact that most public companies have defined controlling shareholders whose voting shares gives them a majority in meetings.

While the cost of hiring lawyers and having personnel to follow-up on situations may be costly for smaller funds, law enforcement, specifically the length of time the judicial process takes to reach final resolutions, takes too long for the span of time shareholders stay invested. The example of the incorporation of two telecom vehicles belonging to the same controlling shareholder but who had different minority shareholders illustrates the point:

“It was the incorporation of Temar by Telemar. Man, do you know when the result of this thing came out? Who knows, eight or nine years after. The fund had grown, initial shareholders were no longer the same, and that was a little dot at the bottom of the fund. Yet, it no longer made sense to be in that fight. Do you understand? Then that is what is difficult, man.”<sup>28</sup>.

Some clearly state activism distorts their investment focus. They believe being activists does not necessarily go in the direction of their shareholders best interest and they should be focusing their energy elsewhere (X-6).

They do not see themselves as competent to tell management what to do. Management follows the company day-to-day, is in a better position to make choices and develop strategy and it is not their role to interfere. Opinions and advise are related to their areas of expertise: capital markets, investor relations and capital structure. This is consistent with what Holland (1998) found in his case study with investors in the UK. Their ownership attitudes seem to be consistent with McNulty and Nordberg’s (2016) path (a) investors.

Two Brazilian cultural traits were mentioned: the habit of non-confronting controlling shareholders – Brazil is considered a non-confrontation culture (Meyer, 2015) -, “I think it is a bit part of our culture not to confront management or controlling shareholders”<sup>29</sup>; and too much leniency, “our culture is permissive”<sup>30</sup>, implying that because the market is too tolerant, things will take time to change.

---

<sup>28</sup> *Era a incorporação da Temar com a Telemar. Cara, sabe quando foi sair o resultado desse negócio? Sei lá, oito anos depois, nove anos depois. Fundo já tinha crescido, os cotistas iniciais já não eram os mesmos, e aquilo já era uma bolinha lá no fundo. Sim, não fazia sentido, depois de oito anos estar naquela briga. Entendeu? Então isso é que é o difícil, cara.”*

<sup>29</sup> *“eu acho que é até um pouco cultura nossa não confrontar as administrações, os controladores”*

<sup>30</sup> *“E aí nossa cultura também é uma cultura permissiva. Pra aspectos de gestão, ‘ah amanhã eu faço. Tá tranquilo. Deixa aqui que eu chuto’. Eu acho que é tempo. É tempo. Assim tá melhorando mas leva tempo as coisas acontecerem mesmo”.*

The overwhelming reason for activism making little sense in Brazil is that most companies have defined majority controlling shareholders. Fighting against a controlling shareholder is “unjust” and “ungrateful” (1:134 ¶ 6 in A1- table 5-8) even if you are a large shareholder. Uniting forces is a possibility but difficult because of different agendas. Many controlling shareholders still find minority shareholders a nuisance (6:38 ¶ 74 in A06 -table5-8) and the most that can happen is a minority shareholder voting against (5:6 ¶ 20 in A05- table 5-8) or making some noise in meetings (2:41 ¶ 257 in A02-table-8). Thus, activism is not seen as a force to transform businesses (10:13 ¶ 42 in A10 – table 5-8).

#### 5.3.2.4 Activism is a defense mechanism.

While not considering themselves activists, they showed no hesitation to act if fund shareholder interests were being harmed, if they saw distortions, and the size of their holdings justified it. They are happy that defense tools are in place if they need them<sup>31</sup>. Because some veteran players started out as activists and some large players have been practicing activism there is experience in the market to act. Thus, these investors are neither passive nor blindly loyal. When holdings are large, rights are not being respected or investees are being mismanaged, they will act. Thus, perceptions are consistent with the view that when private cooperation fails, one may move on to public methods of escalating belligerence (Gantchev, 2013). But also because of this attitude they are better placed in the category of “reactive engagement” (Çelik and Isaksson, 2013) behaving in line with theoretical expectations for mutual fund behavior (Gilson and Gordon, 2013).

If the ultimate expected gain from shareholder activism is attenuation of principal-agent problems due to absent owners (Gillan *et al.*, 2007), ownership concentration leads to less financial activism because it reduces the possibility of this conflict for large investors (Judge *et al.*, 2010; Punsuvo *et al.*, 2007; Shleifer *et al.*, 1997). However, in a context of principal-principal conflict and large control stakes, activism might not payoff. Since most companies have majority shareholders, trying to change may easily become a fight one is bound to lose even if one is a large minority shareholder (Duarte, 2021). Engagement needs to be sensitive and tactful in a culture that is affective, does not like confrontation (Meyer, 2015) and owners find it hard to listen to an outsider who has ideas about how to run the business. Engagement with controlled companies needs to be well thought and carried out, for emotions not to cause the loss of objectiveness. Thus, monitoring concentrated ownership companies is costly (Dharwadkar *et al.*, 2000; Young *et al.*, 2008).

---

<sup>31</sup> “as ferramentas estão aqui, se a gente precisar usar elas de novo, a gente vai usar”

### 5.3.2.5 Activism increasing with the rise in the number of “corporations”.

Activism makes sense when companies do not have controlling shareholders, and it is rising in Brazil because of a growing number of companies without controlling shareholders – colloquially referred to as “corporations” (4:16 ¶ 32 in A4 – table 5-10) - increasing activism was detected by Vargas *et al.* (2017). For a large fund, becoming an activist is inevitable (4:9 ¶ 14 in A04 – table 5-10). It is a matter of taking the lead and making sure the company has a proper board in place. Companies without controlling shareholders are prone to the classic agency problem (Jensen and Meckling, 1976). One investor illustrated the fact by saying their company had to accept a seat in the board to solve the problem of a “corporation” whose CEO was too generous with his own compensation.

But finding adequate board members and management are not the only new challenges large local long-term investors are facing with “corporations”. They perceive the investor market as being predominantly formed by investors with a short-term focus (see quotes below). This makes it difficult to build a board that is aligned, committed, and has continuity and cohesiveness. These problems arise from a volatile shareholder base:

“Why did we say that corporations .... they are a big investment risk when the board is not aligned, right? It is hard for the board to be aligned in corporations. Why difficult? Because shareholders elect the board, right? And shareholders of a corporation... there is a great chance that they will be completely different than the one that elected the previous board”<sup>32</sup>.

Brazilian investors (both individuals and institutional) are perceived to have short-term focus (x-11). While this may be partly due to the country’s economic volatility and by the fact the stock exchange has a history of very quick price appreciation sprees, it is also associated with a lack of investment culture. These are factors make investing and developing companies for the long-term more difficult.

---

<sup>32</sup> “Porque a gente falou assim uma corporação ela tem um... ela é um investimento de risco grande quando você não tem um board alinhado, tá certo? E é difícil ter um board alinhado numa corporação. Por quê que é difícil ter? Porque quem elege o board são os acionistas, tá certo? E acionistas de uma corporação eles... você tem chance grande que na próxima eleição ele seja completamente diferente dos acionistas que elegeram o board anterior”

### 5.3.2.6 Exit is inevitable.

When they believe the company is not being conducted in a manner that is aligned with the interest of minority shareholders, the preferred strategy is exit (x-12). Although, stating they will talk to the company before making their decision, there is no indication of using exit as a threat as in McCahery *et al.* (2016). The power to discipline management found in Edmans (2009), Edmans and Manso (2011), Admati and Pfleider (2009), and Edmans, Fang and Zur (2013) is possibly limited in an environment of large controlling shareholders and small free floats.

### 5.3.2.7 Collaborative activism

As strongly as they state they are not activists, investors characterize their behavior as collaborative. The terms *ativismo colaborativo* (collaborative activism) or *ativismo ao contrário* (the opposite of activism) or “friendly” (4:33 ¶ 98 in A04/5:53 ¶ 144 in A05 -table 5-13) have been repeated by different investors in this context. Collaboration has become possible with the evolution of the market since the frustrating relationships of the 1998-2001 period gave way to an *ativismo muito mais colaborativo* (much more collaborative activism) but also because of the realization that this is their best chance of convincing controlling shareholders of their views.

Investors remarked that approaching controlling shareholders required extra care (3:16 ¶ 4 in A03 - 5-13). The wrong form, aggressiveness, or insufficiently planned speech could quickly stir negative emotions and put all rationality at loss. They emphasize their collaboration by using the term in presentations and making sure the company understands they are not there to interfere. They cherish being well received by the companies and believe they provide value by offering their opinions when the companies have issues at hand. It may also allow investors to make suggestions without telling management what to do (McCahery *et al.*, 2016). These findings are consistent with Barker (1998), Martin *et al.* (2007) and Holland (1998).

Whether by the influence of foreign investors (Gillan *et al.*, 2003) or by realizing that good governance makes them more valuable, many companies captured the essence of investor relations: that building relationships involves ongoing communication with investors, including management, board members and controlling shareholders. This regular interaction between investors and the firm are integral to quality governance and make way for soft activism (Levit, 2018).

### 5.3.3 Investment Process

#### 5.3.3.1 Entry scrutiny before voice, loyalty or exit.

Asset management partnerships will deploy scarce resources should they need to protect fund shareholder interests. The difficulty in justifying such expenditure is exacerbated by the low chance of success when going against majority shareholders. Thus, as shareholders', they may sell their shares, voice dissatisfaction or remain loyal, but they may also not invest at all (Gillan *et al.*, 2003). For these investors, their first choice is neither one of the traditional "voice, loyalty or exit" (Hirshman, 1970), but of non-entry (table 5-14). IAs exercise extreme scrutiny prior to commitment. This is applied to business fundamentals (such as predictability of returns), quality of management (e.g., internal controls). This is consistent with the view that investors prefer companies with better disclosure and strong internal monitoring mechanisms because they reduce their cost of monitoring (Bushee *et al.*, 2000). This scrutiny goes beyond the technical quantitative and qualitative analysis of business merits and stock liquidity, but the company's governance. In addition to formal and informal filters, they make several objective and subjective judgements before modeling and valuing the investment opportunity.

Getting to know to know the company well before making the investment decision is top priority. It involves knowing formal political and economic rights of the investment instrument but also assessing whether the appropriate level of information and communication is and will continue to be available on an ongoing basis so that they can continue to track the investment. They evaluate whether collaboration is possible.

If matters look doggy or too complicated dismissal is the choice. Some investors expressed emotionally charged memories of prior bad experiences while defending their interests. The allusion to the metaphor "pandora box" in the expression "*caixinha difícil demais*" in (1:339 ¶ 6 in A1 – table 5-15) was used to describe companies that are eliminated because they are too hard to make out and the time that would be spent on them would be better used pursuing alternatives. Others stated staying clear of "problematic" or conflicted companies and those which may present incentives they judged to be "distorted" ("*torto*") (8:8 ¶ 18 in A08, 9:2 ¶ 12 in A09/9:10 ¶ 16 in A09- table 5-15). However, not all investors dismiss companies on governance issues, they may take precautions or require a larger discount to justify the investment (10:27 ¶ 84 in A10 – table 5-15).

Despite premium listing segments lending companies, a "quality seal" (Carvalho, 2002, pg. 2728), and legitimacy (Roe, 2008), it seems a that priori mutual distrust persists:

“But Brazil is like this: before companies were taken private by dumping the value of minority shares; that route got closed. But then, they used reverse takeovers to disguise a change of control avoiding the tag-along; that route got shut too; so, they will find another loophole”<sup>33</sup>.

Distrust is reduced through lifelong relationship building and thorough knowledge of market players, however, personal trust is based on private rather than transparent and equal-to-all information that is needed for efficient capital markets (Martin *et al.*, 2007).

### 5.3.3.2 Governance Analysis Focuses on Substance

When looking at the company’s governance, investors pay attention to the typical key problem areas: poison pills, tag along, related party transactions, and compensation (X-16). Most importantly they pay attention to who the controlling shareholder is, whether and what is included in shareholder agreements and the alignment between controlling and minority shareholders. While there may be use of ranking systems based on governance indices and eliminatory factors, it is clear they go beyond.

Knowing the company’s ownership structure allows focusing on the governance issues at hand. In controlled companies the controlling shareholder is critical. The owner’s history and reputation (8:11 ¶ 18 in A08 – table 5-16) – as making sure he is not a “crook” (“*pilantra*”/“*bandido*”) - enables them to make inferences as to what to expect in their relationship with, the treatment of and the transparency standards adopted with minority shareholders. They evaluate whether alignment of interests is possible or likely (7:8 ¶ 25 in A07 – table 5-16).

With respect to the Board of Directors, they investigate its dynamics – who are the board members, who appoints them, the decision-making process, the quality of member independence. Management competence is evaluated not only with respect to the conduction of the business itself but also in terms of the quality of internal controls and risk management (9:29 ¶ 259 in A09 – table 5-16). Concern with board composition and quality is consistent with what Bushee *et al.*, (2014) found their “governance-sensitive” investors to value.

One ownership characteristic that stood out as an eliminatory factor was state-owned companies (table 5-17). Despite the new state-owned company law being an improvement, investors feel that at the end of the day the government’s desire will prevail adding uncertainty to the

---

<sup>33</sup> *Mas aquele no Brasil sempre é o seguinte, tinha os fechamentos de capital dump, aí fecharam essa porta. Aí daqui a pouco tem uma outra coisa, e aí fecham essa porta. As incorporações de mercado, aí fecham essa porta, aí não sei o quê....*



investment. However, governance is not the only aspect as to why investors stay clear of state-owned companies. Many companies are in commodity businesses where margins and returns are less predictable while investors seek companies with more predictable and higher returns on capital.

It is clear asset managers focus on substance rather than form (table 5-18). Differentiated governance trading segments at the stock exchange may imply better minority shareholder rights but the labels alone do not sustain credibility and they verify whether the company means what it preaches. Equally, there is no preconceived opinion as to whether defined control companies are inherently better or worse than “corporations” and there is no prejudice in investing in preferred shares (no voting rights).

This crafted and subjective evaluation contrasts with the standardized approach foreign investors make when using proxy solicitation firms to guide their vote. Opinions with respect to this practice are usually negative. Locals find it hard to having to convince foreign investors to vote against the recommendation from the standardized approach. They know the particulars of the case which foreign investors do not. They criticize sending an attorney to meetings who robotically exercises the votes as ordered without any idea as to why the voting options were made.

### **5.3.4 Engagement**

#### **5.3.4.1 As active engagers, access to the C-suite, the board and controlling shareholders is key.**

Private meetings with management, the board and controlling shareholders is by far the most valued engagement mechanism. This finding is consistent with McCahery *et al.* (2016). So, building, close, and collaborative relationships, which takes time, is a major component of the engagement process. It is what allows theses independent players to gain a competitive edge.

Open communication channels are fundamental (table 5-19). The entry point is usually the company’s investor relations (IR) department where most of the data is gathered, analyzed, and clarified. However, IR departments are seen as compliance areas devoting much time to fulfilling the mandatory disclosure requirements (2:60¶411 in A2), who produce the “standard” discourses and are not necessarily the most experienced and knowledgeable about the company (7:13¶31 in A7). Nevertheless, they are the first point of contact when requesting meetings with management and some care is taken to comply with protocols (4:32 ¶ 96 in A04 – table 5-19), although sometimes investors go directly to managers, board members and controlling shareholders via personal relationship channels.

#### **5.3.4.2 Management is the primary source of (“soft”) information.**

Meeting management, the board and controlling shareholders are perceived primary sources of information and decision-making (6:53 ¶ 86 in A06 – table 5-20). The objective is not just information but understanding the vision and the mindset (5:29 ¶ 61 in A05 – table 5-20), the commitment, and to engage in more analytical and strategic discussions (1:115 ¶ 16 in A01 – table 5-20). Sometimes speaking to operational managers allows them to increase their depth of understanding of the business.

Direct contact with management, the board and controlling shareholders is also important so that companies listen to what the market has to say: their concerns anxieties and perspectives. This corroborates with the findings in Holland (1998).

Despite the fundamental importance of accessing primary sources, they recognize there is an inherent bias in management talk and need to complement their knowledge using secondary information coming from competitors and other sources.

#### **5.3.4.3 Collaboration is materialized in exchanges with management.**

Investors value the company’s receptiveness and recognition of the exchange and cherish when it asks for their opinion or help (table 5 -21). They perceive their feedback as “free advisory” (3:47 ¶ 76 in A03 – table 5-21) and criticize companies that do not understand that this exchange is a locus for the reduction in information asymmetry and thereby an ingredient in stock price formation (2:65 ¶ 464 in A02 – table 5-21).

Becoming close to the company is desired because it allows them to execute their long-term strategy and be tolerant to short-term earnings disappointments if they remain comfortable with long-run return prospects (Koh, 2007).

Proximity, however, has challenges. First, offering suggestions for betterment may be easily misconstrued by controlling shareholders accustomed to a lot of power. Approaches must be carefully thought out and worded (3:15 ¶ 4 in A03). Secondly, the relationship may bias assessment and make timely disinvestment difficult (10:30 ¶ 92 in A10 – table 5-21). And thirdly, proximity is a possibility in smaller companies but diminishes as they get bigger, and relationships become more institutionalized (7:12 ¶ 31 in A07 – table 5-21).

#### **5.3.4.4 Personal relationships and networks are important sources.**

Experience and soft knowledge from personal relationships play a big role in building personal trust. These investment managers were actors and first-hand witnesses of Brazil’s recent

capital market history. They also initiated careers in the same investment banks and brokers, went to the same schools and universities. They are geographically concentrated in the cities of São Paulo and Rio de Janeiro and frequently in the same financial neighborhoods. It is a relatively small community where personal networks go a long way.

Although social and anthropological perspectives are beyond the scope of this work, it is important to mention that Brazilian cultural traits and, therefore, unsaid rules – institutions – that govern how people conduct themselves in society and perceive life, could be grounding peoples' behavior in business. Specifically, the characterization of Brazilian society as “relational”, frequently mentioned in the works of celebrated anthropologists, Roberto da Matta and Livia Barbosa such as “A Casa e a Rua” (1997) and “Igualdade e Meritocracia” (2003), could be at play to explain the relevance of personal networks and the importance of the soft information obtained from people they know (and trust) personally. This may be an indication that Brazil's capital market is low on contractual trust, a precondition for efficient capital markets (Martin *et al.*, 2007).

So, investors rely on people they know to join forces to elect board members and to obtain soft information that cannot be transmitted in standard disclosure materials or by institutionalized information channels (table 5-22). What they have learnt from personal experience and their own senses are integral to forming judgement.

When such personal network is not available, they follow standard due diligence routes but complement them, to the extent possible, on personal sources they can reach. They make it their business to get to know who they are dealing with and develop personal relationships.

#### **5.3.4.5 Private meetings offer more potential than group encounters.**

When talking to management, private meetings are preferred for three reasons (table 5-23) – this is consistent with the preference for behind-the-scenes communication (McCahery *et al.*, 2016). First, they can achieve greater depth and press management to discuss sensitive matters without exposing the company. Second, knowing what and how to ask is quality differentiator skill that gives them a competitive edge (6:74 ¶ 86 in A06 – table 5-23). The third reason is a consequence of the second: other asset managers are competitors and do not want their questions to reveal insights and concerns (1:120 ¶ 27 in A01 – table 5-23). If possible, they would want the opportunities to remain hidden for a good amount of time. Group meetings were thought to be fine when the purpose was getting to know the business and get a sense of management (5:30 ¶ 72 in A05 – table 5-23).

As stated, private meetings generate private information but not, necessarily, material non-public information. And yet investors, who were not stimulated, were forthcoming in their statements

with respect to insider information. They added that in privileging private meetings, they were not seeking information to trade the stock on the following day because they were long term investors (1:45 ¶ 27 in A01 – table 5-23). Insider information was also a concern when a lot of it was obtained via personal relationships and non-institutional company sources (4:34 ¶ 110 in A04 – table 5-23). These comments reveal the challenge of private engagements for investor relations and investors themselves: inadvertent selective disclosure of material non-public information and giving rise to information asymmetry perceptions.

## 5.4 Voting

### 5.4.1 Voting requirements.

Voting is not mandatory by Brazilian Law, but asset managers may be signatories of Anbima's<sup>34</sup> best practices code and the independent asset managers in this study stated their voting policies were made in accordance with such code.

The code stipulates which topics voting is mandated when investing in stocks, bonds, or other funds. However, it makes way for exemptions and situations where voting is optional. The voting is not mandatory in exclusive funds (who must formally release the fund manager from the voting obligation), when the investee is located outside Brazil and when the investment is made via Brazilian Depositary Receipts. Voting is optional when the company's meeting is held outside a state capital or when it cannot be done electronically; when the costs associated with exercising the vote are incompatible with the participation of the company's securities in the fund; when the security represents less than 5% in all funds, in the portfolio and less than 10% of each individual fund; and if there are conflicts of interest. Thus, Anbima's code gives asset managers plenty of flexibility if they hold diversified portfolios.

In 2017 Amec<sup>35</sup> launched its Stewardship Code. It was inspired by The UK Stewardship Code (FRC – Financial Reporting Council) and similar codes already adopted in other jurisdictions and aims to promote the stewardship culture among Brazilian institutional investors. The Code, its regulation and implementation guidelines incite local investors to be active rather than activists,

---

<sup>34</sup> Anbima, Associação Brasileira das Entidades dos Mercados Financeiros e de Capitais represents financial institutions and works towards strengthening the country's capital markets so that it finances local economic and social development and influences global markets.

<sup>35</sup> Amec, Associação de Investidores de Mercado de Capitais, is funded by local and foreign institutional investors membership. Its mission is to defend the rights of minority shareholders by promoting company corporate governance best practices and value creation.

behave as “owners” and exercise their fiduciary duties. With 27 signatories to date, including some foreign funds, it is obvious there is a long way to go before the notion of fiduciary duty and active ownership becomes mainstream.

#### 5.4.2 General Meetings

Attitudes and beliefs towards participation in general meetings and voting are mixed and the rationale as to why they participate varies (table 5-24). Exercising fiduciary duties is not on top of the list as neither is voting to put “moral pressure” (1:55 ¶ 29 in A01- table 5-24) on the company. They will not participate in an act they perceive to be a “mere formality” and used the term “showmanship” (1:128 ¶ 29 in A01 -table 5-24) to put down those who attend meetings so “that their names appear on the list” (2:47 ¶ 270 in A02 -table 5-24).

Larger funds say they participate because of the size of the holdings in the company or the relevance of the position to their funds (4:8 ¶ 14 in A04 -table 5-24). Others do it out of conviction (6:23 ¶ 40 in A06 -table 5-24) or perceived obligation (8:25 ¶ 36 in A08 table 5-24). Most will participate when there is a topic of interest (5:49 ¶ 133 in A05-X-24) or their participation is important (1:51 ¶ 29 in A01 -table 5-24) – usually companies without controlling shareholders need a large enough turn-out to meet the minimum installation quorum. Smaller funds are very conscious that their stakes make no difference in the voting outcome (7:23 ¶ 71 in A07 table 5-24) and are a “mere formality” (1:53 ¶ 29 in A01 – table 5-24) in companies with majority shareholders.

Participation is also guided by relationship considerations and the fact that non-virtual general meetings present an opportunity to enhance relationships (10:36 ¶ 104 in A10 – table 5-24), talk to managers, board members and shareholders’ “when they might be more at ease” (10:36 ¶ 104 in A10 – table 5-24) and to “take part in interesting discussions” (3:50 ¶ 78 in A03 – table 5-24).

Asset managers’ approach to investment is compatible with the notion of legal-owners, active A (path a) (McNulty and Nordberg, 2016), traders (Hendry *et al.*, 2006), profit and utility maximizers (Berle and Means, 1991; Jensen and Meckling, 1976). It is not compatible with the concepts of universal owners (Hawley and Williams, 2000, 2007) nor psychological owners, path (b) in McNulty and Nordberg (2016).

#### 5.4.3 Voting has been much facilitated but is still expensive.

Operationalizing votes could present challenges across jurisdictions (Eckbo *et al.*, 2011) but also for local players. The voting process in Brazil has improved considerably with the introduction

of electronic distance voting (X-25). However, to the extent that the voting process needs to be smooth and relatively simple so that investors feel the incentivized to vote, more improvements need to happen. The electronic system is cumbersome (2:57 ¶ 368 in A02 – table 5-25) while costs are still high – specifically, funds need to deliver notarized copies of their rules for each meeting they intend to participate (3:75 ¶ 202 in A03 – table 5-25).

Another spectrum of evolution lies with asset managers themselves. There is a learning curve to be climbed so that their participation is effective and well received (3:24 ¶ 6 in A03 – table 5-25). They need to prepare and submit proposals in advance so that the companies have time to consider them with care and meetings are less “chaotic” (3:25 ¶ 6 in A03 – table 5-25).

#### **5.4.4 Collaboration among investors has become easier.**

Teaming up to vote in favor or against and quid-pro-quo arrangements to elect board members have become easier to form and more frequent but are neither regular, expected or with the same consorts (X-26). To that end, important information sources have become available. Knowing who are the other shareholders via Bloomberg services and/or by requesting the shareholder list to companies<sup>36</sup> has become commonplace and companies more responsive to provide them. Also, investors knowing each other, knowing who usually has enough votes to team up with and the ability to communicate with each other enable collaboration (4:20 ¶ 48 in A04 – table 5-26). The statements by several asset managers indicate they all have participated and sometimes initiated collaborative efforts. One even stated that that joining up votes was “not activism” but a “crowdfunding” for votes and it was “good” (5:55 ¶ 146 in A05 – table 5-26)! However, it would be a stretch to refer to this movement as coalitions (*Crespi and Renneboog, 2007*).

#### **5.4.5 Participation on boards is exceptional.**

Company case-specific situations and size of the holding in their portfolios determine the perceived need to elect a member of their choosing for the board or fiscal board. The participation of asset management partners in boards is regarded as highly exceptional (table 5-27). A situation that is neither sought for nor desired because of the restrictions it imposes on trading (6:32 ¶ 46 in A06 –

---

<sup>36</sup> Brazilian companies have total visibility of the beneficial holders of their shares except shares held through ADRs. Shares are registered in the name of the beneficial holder even when shares are held in the custody of a broker. The company pays a custodian for keeping the ownership record, paying dividends etc. This custodian exchanges information on ownership with the stock exchanges custodian company daily, so the company can see movements in ownership. In the US, companies only know their shareholders via the quarterly 13F filings.

table 5-27). But the concern goes beyond that of legal restrictions: participating in boards may jeopardize independent thinking and bias decision making (10:33 ¶ 92 in A10 – table 5-27).

Indicating members to the board of directors is also regarded as exceptional but may happen in cases in which the company has specific needs and collaboration among investors has enabled minority shareholders to elect appointees (3:48 ¶ 76 in A03 – table 5-27). What is more common is suggesting names for the company's management electoral slate. This suggestion is made at the request of the company's management (6:34 ¶ 49 – 50 in A06; 8:28 ¶ 56 in A08 – table 5-27).

## 5.5 Summary and Conclusion

In this chapter we have analyzed the perspectives of 10 independent asset managers whose business depends on the performance of their equity portfolios. These investors have classified themselves as value investors and their accounts cannot be generalized for the entire IAs group.

These investors reject the label of activists because it is negatively perceived. They view activism to distort focus, spend scarce resources and have little chance of success when dealing with majority-controlled companies. While they are not “activists” or at most “reactive activists” they can be considered active engagers since they follow companies closely and establish collaborative and close relationships with companies where exchanges are well received and mutually beneficial. In these relationships which they cultivate with care, they to put forward their views and suggest changes. When the company is not sensitive to their concerns they prefer to exit instead of any other escalation. However, they will fight if their positions are substantial, and they believe their shareholders will be harmed. Since voting is not obligatory and seen a mere formality, they will participate in meetings when there is a matter of interest or when it benefits their relationship with the company.

These perspectives are consistent with the theory that ownership concentration subdues activism (Schleifer and Vishny, 1997; La Porta *et al.*, 1999). They are also consistent with theories that argue that diversification and performance metrics (Gilson and Gordon, 2013), profit-seeking and short-term liability structure are prone to less activism (Celik and Ikbosson, 2013; Ryan and Schneider, 2002). They corroborate with the view that investor size enables investors to wage activism (Ryan and Schneider, 2002; Rubach and Sebor, 2009) and mutual funds are the least active of Brazilian investors (Maranho *et al.* 2020). They also corroborate with the view that activism in Brazil is still low but increasing (Vargas *et al.*, 2017).

In terms of ownership conception, independent asset managers perspectives are compatible with that of “legal owners” as in McNulty and Nordberg’s (2016) path (a); “traders” (Hendry *et al.*, 2006), and “profit and utility maximizers” (Berle and Means, 1991; Jensen and Meckling, 1976). They are neither compatible with the notions of “universal” (Hawley and Williams, 2000, 2007) nor “psychological” owners in McNulty and Nordberg’s (2016) path (b).

These interpretations have implications to the functions expected of investors as owners: resource allocation and monitoring companies (Hoskisson, Hitt, Johnson and Grossman, 2002). To the extent Brazilian publicly traded companies remain held by majority owners, resource allocation will remain the prerogative of controlling shareholders and how good a job they do will depend on the level of competition in the markets, the disruptive power of new technologies and the pressure environmental changes may exercise. If politics plays a role in the level of competition in markets (Roe, 2008), it will also impact the quality and the speed of change.

The external monitoring minority investors may exercise is likely not be strong enough to promote the correction of deviations. Independent asset managers with long-term focus may, through their ongoing relationship with investees, help only those companies in which they are successful in their convincing efforts. Acting only when they need to defend their rights and avoiding problematic companies are mechanisms that enable their survival but do little to cause corrections.

The implications for normative proponents – such as the OECD best practices and stewardship promoters – is that while efforts may need to continue because they contribute to enhance investor understanding of responsibilities (Yamahaki and Fyrnas, 2016) and provide yardsticks for governments and investors as to how to orient their practices, actual change is slow and uncertain.

For regulators, the implication is that regulation needs to improve to make the proxy voting process cheaper, easier to access and more transparent. This is also important for academic studies on activism since voting outcomes, requests for cumulative votes and the presentation of alternative names in board or fiscal board elections are measurable indicators for activism. Nevertheless, since most activity between investors and companies occur behind- the-scenes, it will continue to be hard to evaluate the evolution of activism.



## **6 Non-independent Asset Managers (NIAs)**

### **6.1.1 Introduction**

Despite their size NIAs can neither be considered pro-active or even reactive activists. They too do not use the term activism to describe their action towards companies. Instead, they use the term engagement and are committed and structured to incorporate ESG into company valuation purposes. All three organizations had similar approaches, vocabulary, and structures. We interpreted this behavior to be induced by their commitment to PRI since they internalize language and practices. Their analysis of ESG factors is standardized and ESG concerns are risk related, i.e., their impact on financial performance. Companies are ranked for comparisons and weights are considered in the fundamentalist analysis process. ESG engagement is made on a standalone as well as on a PRI group basis.

Commitment to international standards provides them legitimacy towards clients, investees and the general image of their parent companies who are publicly traded financial institutions. ESG is a big piece in their communication strategies are integral to their images.

Despite the ESG integration discourse, fundamentalist and ESG engagement is conducted separately. ESG factors are not eliminatory and may affect weights of companies in active portfolios but not indexed and single share portfolios. Engagement with investees is less personal and private since they participate in group meetings with other PRI members and rely on broker organized small meetings with the companies. Private meetings are also used to discuss specific matters.

All three institutions were committed to stewardship and exercising their fiduciary duties and producing stewardship reports. In addition to voting policies, these institutions disclose their voting direction on their website. They were also knowledgeable of shareholder collaboration in votes and may follow if the candidate met their own criteria. However, they are not yet prepared to be themselves proponents of board candidates.

Table 6-1

Theme	Interpretations
Subsidiaries	Subsidiaries of large publicly held financial institutions
Activism	Has a negative connotation and the preference is for engagement Focused on ESG (coercive and mimetic isomorphism) Standardized approach to ESG evaluation PRI engagement groups Potential for conflict of interest (within company)
Investment Process	ESG is not eliminatory Two-pronged approach (fundamental and ESG) ESG may impact weights on active but not on indexed portfolios
Engagement	Less personal Want public, not private information Regular contact by fundamentalist analyst but sparser ESG analysts Participation in PRI groups Private meetings to discuss specific ESG matters
Voting	Fiduciary duty consciousness – Stewardship commitment Voting guidance is made public Collaboration is recognized Participation in boards is not considered

## 6.2 Background

“Non-independent asset managers” (NIA) designates the asset management units – a separate legal entity - that manage funds for third parties but are subsidiaries of other financial institutions who may have substantial commercial and investment banking, brokerage, insurance, custodian services, and private and venture capital activities. Thus, their asset management business is only one of and not necessarily their primary source of revenue. The largest NIAs in Brazil (circa 25 organizations) include subsidiaries of state-owned and private publicly traded financial institutions and non-public state-owned, private, and foreign banks. Foreign NIAs are usually subsidiaries of publicly traded entities in their home countries.

NIAs manage institutional and retail money and may have a substantial retail base when they are part of commercial banking conglomerates where cross selling is easy because access and the infrastructure to handle retail is already set-up. This competitive advantage is only now being challenged by technology based “Fintechs” that function as retail outlets for independent asset managers.

Another important difference between IAs and NIAs that belong to publicly traded, financial institutions is the degree of formalism and institutionalization in their processes and in their communication with the public in general. This is due to size but also their disclosure standards may line-up with compliance requirements of the Central Bank and of publicly- traded companies. Thus, they provide comprehensive disclosure of their policies and practices in their websites. In addition to the “*formulário de referência*”, they disclose their ethics and conduct codes; order allocation, risk management and employee personal investment policies; and compliance practices, for example. All provide their voting policies and some how they voted in meetings – although the website routes to get to that information may not be obvious and the information remain available for short periods of time -, and state their commitment to integrate Environmental, Social and Governance (ESG) into their investment decisions.

Non-independent asset managers are large equity investors that manage a wide range of funds. Considering total assets under management (AUM), NIAs are much larger than IAs, but, on average, stock assets account for less than 25% of their total AUM<sup>37</sup>. Even so, they still rank among the largest equity asset managers in the country. They are large players, a feature that is compatible with propensity for activism (Ryan and Schneider, 2002). NIAs belonging to publicly traded financial institutions are among the largest.

In terms of determinants of ownership engagement (Çelik and Isaksson, 2013), it is possible to classify them as profit seekers, entities that do not pursue political or social objectives and have no legal limitations to exercise votes. But it is not possible to classify the asset management unit in terms of fee structure, diversification, and investment strategy because of the variety of funds they manage. Typically funds that are offered to the retail base are flat fee and short-term, however they also manage tailor-made funds which may have other fee and liability structures. The same is true for diversification and investment strategies. They may offer single share funds with zero diversification, indexed and active funds. Thus, it is not possible to classify, under this model, the engagement strategy they would be prone to follow. Thus, in terms of propensity to engage, one can rule out inside engagement and no engagement expectations. Despite managing active funds, they are probably better classified as reactive engagers even though their obligation to vote is moral rather than legal.

---

<sup>37</sup> Anbima, Ranking de Gestão de Fundos de Investimento (April 2018)

Table 6-2: Non- Independent Asset Managers / Determinants of ownership engagement  
(Çelik and Isaksson, 2013)

Purpose	Profit
Liability structure	Short-term
Investment strategy	Undetermined/various
Portfolio structure	Undetermined/various (include indexed and single share funds)
Fee structure	Undetermined/various
Political/social objectives	No political or social incentives
Regulatory framework	No legal requirements or limitations

Çelik and Isaksson (2013) model. The framework identifies 7 features and 19 choices to define the institutional investors' business model and shed light on institutional investor interest in performing corporate governance functions associated with ownership responsibilities.

Another aspect which makes it difficult to use this model is that NIAs risk assessment and decision as to whether to contact the company to express concerns is company related. Fund strategy (passive index, active fundamental, etc.) does not influence the decision. Relevance is evaluated by how much they hold of the company's stock or debt across all their funds. This is so not only because of voting commitments but also because of the level of risk. In addition to concentration, they also consider the materiality of the risk relative to its nature, probability and impact when making decisions about their engagement actions.

## 6.3 Analysis of the Interviews

### 6.3.1 Activism

Despite their size and therefore their ability to access management and to gain public attention (Admati and Pfleider, 1994. La Porta *et al.*, 1999), the non-activist perspective of IAs is shared by NIAs although with a different argument: the Brazilian market is not yet mature for the type of activism foreign investors practice:

"We do not have this profile here. We debated this a lot in the discussions to elaborate (Amec's Stewardship) Code, at many times we still understand we are not at a stage we can have this very strong activism, so we think it is more interesting, from the point of view of our business and for the company is to have a more constructive debate, right? Let's say, something more positive. This is a concern I've been observing not only here but by asset managers in general, is to have it in mind to have a more positive approach than to be activist and have very specific demands (...)"<sup>38</sup>.

<sup>38</sup> "A gente não tem esse perfil aqui. Isso foi uma coisa que a gente debateu muito na própria Amec, nas discussões que a gente teve na elaboração do Código, que muitas vezes a gente ainda entende que não tá nesse estágio de ter esse ativismo extremamente forte, daí a gente acha que é mais interessante do ponto de vista dos nossos negócios e pra própria empresa, é de ter esse debate um pouco mais construtivo, né? Digamos assim, um pouco mais positivo. E essa é uma

Another relevant difference between IAs and NIAs is the sole use of the term “engagement” to describe their interactions with investees. The term is used by international organizations such as the OECD and Principles of Responsible Investment (PRI) and the fact that seven of the ten largest Brazilian NIAs are signatories of the PRI probably means that they need to internalize the language to express their commitment to ESG integration into their investment process.

Brazilian NIAs that are signatories of PRI are either publicly traded or cater for an international investor public. Judging from the spotlight ESG is given in their websites<sup>39</sup>, they all make sustainable investment a big piece of their communication and, may include it in product offerings – e.g., BTGPactual Investimentos de Impacto, BB Ações Sustentabilidade. So ESG commitment is important for the organization’s legitimization which means they are subject to coercive isomorphism (Dimaggio and Powel, 1983). However, membership of PRI is also a way to deal with uncertainty since they will have guidelines, standards, and support, to handle issues that are relatively new to the investment field, so, here, mimetic isomorphism is also at play (Dimaggio and Powel, 1983).

Furthermore, partaking in these initiatives (such as PRI) goes beyond signing a piece of paper. Normally institutions are required to adopt procedures, standards and write reports to account for their actions. The end-result is that institutions look alike in their discourse, their processes, and approaches to issues (isomorphism).

In addition to all information provided freely, PRI signatories can participate in groups to discuss themes, sectors, and indicators. This supports professionals in their understanding of issues and complexities, in establishing priorities and exchanging experiences. Periodically PRI identifies the sectors of focus for discussion. Once that is done, they produce a letter, signed by all participants, with which they will meet with companies to express their concerns, the importance of the themes and solicit information and action. Institutions vary in how they participate in these activities. Some appreciate it because they think it produces a stronger front, “Then, we think there is more weight, because you are taking a group of investors that are interested in that theme, and then if anyone has any specific issue, they can treat it separately”<sup>40</sup>; others participate with less enthusiasm: “but despite

---

*preocupação que eu tenho observado assim, não só aqui, mas nas gestoras em geral, é de ter essa preocupação de ter uma postura um pouco mais positiva do que de ser ativista e ter demandas muito específicas que (...) (1:18 ¶ 42 in C1).*

<sup>39</sup> See BBDTVM, Itau Asset, Bradesco Asset, BTGPactual Asset, Vinci Partners and Santander Asset websites.

<sup>40</sup> “Então a gente entende que tem um peso maior, porque você tá levando ali uma... um grupo de investidores que têm interesse naquele tema, e aí eventualmente se tiver uma coisa específica, cada um trata separadamente.” (1:33 ¶ 80 in C1)

that we also participate – to a lesser extent – in what we call group engagements, right? Group engagement are usually PRI signatories (...) where we define a group of companies with which to engage”<sup>41</sup>; “we function as the door opener in the process, because we know the staff, the IR, the CFO and the CEO, so we link them (PRI)” (...) When we put them in touch with the company they try to imbue a more sustainable spirit in the company, more disclosure, write a sustainability report according to GRI standards (...) so there is also this activism with another area of our organization”<sup>42</sup>.

This form of approach enables investors to bring up new or difficult issues with companies using the PRI front while their own organization’s participation is diluted. For large publicly traded organizations, themselves easy targets of activism (Goronova and Ryan, 2002), this kind of protection may enable them to advance discussions they might otherwise be reluctant to start if pursued alone.

Amec is another institution that has been active in the defense of minority shareholders, “Obviously, we believe a lot in the work they are doing, right? In the past few years, it has been very good in protecting minority shareholders, right?”<sup>43</sup>. Amec can also express views without exposing its members but has also been instrumental in promoting discussion about issues that concern minority shareholders. In its Stewardship Code it proposes that the “role of institutional investors cannot be detached from the fiduciary duty they accept when managing resources on behalf of individuals”<sup>44</sup>. As PRI, Amec urges investors to be “active” rather than “activists” and state that not being “activist” does not mean being passive about fiduciary duties. The term “active” gives investors a way out for being forthcoming without acquiring the bad fame. As a relatively young code (2016), Amec’s list of signatories is not as extensive as their member base, however, some important

---

<sup>41</sup> “Mas apesar disso a gente participa também – mas aí em menor grau – do que a gente chama de engajamentos coletivos, né? Engajamentos coletivos são geralmente de signatários do PRI (...) onde a gente define um grupo de empresas que nós vamos engajar, né?” (2:20 ¶ 82 in C2)

<sup>42</sup> “Porque a gente conhece o staff, né, a gente conhece o RI, a gente conhece o CFO, conhece o CO então a gente funciona como um elo de ligação. (...) “Consigo” e aí a gente efetivamente coloca esse grupo de trabalho em contato com a empresa e a partir daí eles tocam o processo de tentar imbuir a empresa em um espírito mais sustentável, de maior disclosure nas informações, de fazer um relatório de sustentabilidade no padrão de GRI (...) tem também esse ativismo com outra área da empresa nesse sentido.” (3:17 ¶ 62 in C4)

<sup>43</sup> “obviamente assim acreditamos bastante no trabalho que eles vêm fazendo, né, que tem sido muito bom nos últimos anos no sentido de proteger acionistas minoritários, né?” (2:21 ¶ 92 in C2).

<sup>44</sup> “O papel dos investidores institucionais não pode ser dissociado do dever fiduciário pactuado ao assumir a gestão de recursos em nome de um conjunto de indivíduos.” Os investidores institucionais brasileiros rejeitam o rótulo de ativistas (...) Mas não ser ativista não justifica ser passivo no que diz respeito ao cumprimento de seus deveres fiduciários, no cumprimento de suas responsabilidades para com seus contratantes. O engajamento responsável na vida dos emissores de valores mobiliários faz parte do dever fiduciário dos investidores institucionais. Investidores ativistas não, mas ativos sim.” Amec – Stewardship Code pg 5 [https://www.amecbrasil.org.br/wp-content/uploads/2016/11/livreto\\_stewardship\\_port\\_site.pdf](https://www.amecbrasil.org.br/wp-content/uploads/2016/11/livreto_stewardship_port_site.pdf)

Brazilian investors have committed to the document setting the tone of the direction they desire to take and the image they want to portray for their investment orientation.

Commercial banks and insurance companies have been considered pressure-sensitive institutions because they have or may have commercial relations with companies. This creates potential conflicts of interests in exercising their fiduciary obligations (Brickley, Leash and Smith, 1988). Therefore, they would be less willing to vote against management. The question was put to NIAs, at first indirectly. This did not elicit any answers, so the question was put directly, and as expected NIAs response to this issue was along the lines of the separate legal entity, internal controls, and compliance. As separate legal entities they had the autonomy to make their decisions irrespective of the company in question. “Chinese walls”<sup>45</sup> were in place preventing the asset management company to have access to confidential information from the bank and vice-versa. To ensure that rules are followed, they had compliance areas, internal controls and auditing that monitors, tapes phone calls, tracks access and contacts to prevent conflicted actions. However, one NIA indicated they had to be careful with the possibility of conflicting views on voting direction on the funds they manage for third parties<sup>46</sup>. So, perhaps the relevant potential for conflict of interest might not be between the asset management and the banking or insurance arms of the business but among the interests of the asset management clients themselves. Indeed, Davis and Ham Kim (2005) and Asharf and Ryan (2012) suggest withing firm conflict of interest in their findings that fund families are less likely to vote against management when there are more business ties to portfolio companies.

### **6.3.2 Investment Process**

#### **6.3.2.1 Two-pronged standardized investment processes: fundamental and ESG analysis**

NIAs conduct two parallel processes of investment analysis. One is the traditional fundamentalist valuation, and the other is an ESG appraisal. They can be carried out by the same or different teams.

ESG analysis is quite standardized and usually involves the construction of a ranking system that allows analysts to compare issues and companies with or without the calculation of a quantitative measure of the ESG impact. Institutions also vary as to how they incorporate ESG their valuation

---

<sup>45</sup> Capital market jargon initially used in reference to the separation between proprietary and third-party trading desks.

<sup>46</sup> Voting policies differ in the detail they describe potential conflicts of interest and what is the prescribed treatment should they arise.

models, however fundamentalist analysts and portfolio managers have the final word as to how they choose to value and balance their portfolios,

“what is important is that they know the risks and opportunities which the companies present. I estimate the financial impact of this risk and give it to analysts and portfolio managers. So, they make better informed investment decisions”<sup>47</sup>;

and

“we talk, we exchange information, we discuss, we have monthly meetings, and we talk to the market every news that comes out, we have daily reports, about any important news. But effectively with respect to the portfolio management we act as consultants, (...) but both areas consider the (ESG) weight we put on the portfolio (...)”<sup>48</sup>.

Incorporating ESG and particularly quantifying ESG risk is no trivial matter especially for these large institutions that need to work with traceable decision making and communicate over many layers of hierarchy, so despite the discourse that ESG is transversal to the analysis of businesses, it is still carried out separately. However, NIAs are a step ahead of many IAs who only now have begun to systematically take ESG seriously into their investment processes.

### 6.3.2.2 ESG is not eliminatory.

Very differently from IAs, these institutions do not apply eliminatory criteria associated with ESG. They recognize financial institutions receive pressure to get out of high pollution industries, for example, but explain their position by saying that the Brazilian market is not ready for that:

“Then, in the US and Canada, you see large banks, even pension funds, being pressured to remove investments from coal, they say ‘look, you either take measures or we pull our money out’. In Brazil we still don’t have that attitude, ‘hey you, polluter industry, we don’t accept that anymore and will no longer invest in you’. We don’t have that level of maturity, yet”<sup>49</sup>.

---

<sup>47</sup> “O importante é eles terem ciência dos riscos e oportunidades e exigir que as empresa hoje apresentem, né? O impacto financeiro estimado disso, que é o que eu passo pra eles, e os gestores também. Assim, eles tomam decisões de investimento mais informados”(2:7 ¶ 44 in C2)

<sup>48</sup> “(...) a gente discute, a gente tem reuniões mensais formais, o dia inteiro os meus and analistas estão falando com gestores, qualquer notícia que aconteça, qualquer notícia que pinte, a gente tem relatórios diários que são soltados, a gente fala com o mercado quando surgem notícias importantes. Agora, efetivamente na gestão a gente trabalha como consultor (...), mas ambas as áreas levam em conta essa ponderação de peso que a gente faz na carteira, só que a gestão de ativos um pouco mais.” (3:21 ¶ 72 in C4)

<sup>49</sup> “Então assim, você vê grandes bancos que são extremamente pressionados pra tirar investimentos do setor de carvão, até mesmo de fundo de pensão grandes, nos Estados Unidos, no Canadá, que acabam tendo esse movimento e dizendo assim, “olha, a gente ou cobra de vocês que tem (tratativas) ou a gente tira o nosso dinheiro.” Isso é uma coisa que a gente não tem aqui no Brasil ainda, não tem essa postura, “ó, você como indústria poluidora, nós não aceitamos isso e não vamos investir mais em você.” A gente não tem esse amadurecimento eu acho ainda” (1:19 ¶ 48 in C1).



Furthermore, they recognize that knocking down entire sectors could have adverse social effects. Another explanation was that elimination is not the most modern approach. Instead ESG should be integrated into the analysis:

“So, we don’t believe in this “old” model, yes? Of exclusion of companies or sectors, also because our market here is not that big, it is very limited, right? The Bovespa has only 60 companies and if we start excluding there will be nothing left, right? So, the prescription is this, create value by integrating ESG cross-sectionally in the analysis of all companies we invest”.<sup>50</sup>

The fact that Brazil has a small market was also mentioned by IAs but none put it so bluntly as NIAs. As large investors, the liquidity problem is more acute for them. Coverage of 60 -120 companies indicates a small investable universe.

Fundamental and ESG issues have no impact on single-stock or indexed fund portfolios.

Despite their efforts to systematize and incorporate ESG factors in their fundamentalist analysis and make recommendations to portfolio weights, these assessments are only taken into consideration when they are managing active funds. They do not apply to funds that replicate indexes or invest in a single stock. So, were NIAs to consider exit strategies, they could not be applied to indexed or single stock portfolios.

In the case of these funds, NIAs face a similar condition as that of “universal” holders (Hawley and Williams, 2000, 2002) in that engaging might be a better option (Martin *et al.*, 2007). Thus, the choice of constituting engagement in terms of a “positive dialogue” or even a “‘Dialogue’ that occurs when corporations and shareholder activist groups mutually agree to engage in ongoing communications to deal with a serious social issue as an alternative to the formal vote on a shareholder resolution” (Logsdon and Van Buren III, 2008 pg. 345) might be the only possible route to take.

### 6.3.3 Engagement

#### 6.3.3.1 Engagement is less personal.

Ordinary course of business continues with the same two-pronged approach unless ESG analysis is made by the same team. While fundamentalists have intense interactions with investees, ESG engagement is sparser:

“the (fundamentalist) analysts have contact with the company throughout the year, right? Some companies are contacted more because they are investees. So, there is this (daily) channel with the company’s IR, right? And even in

---

<sup>50</sup> “Então a gente não acredita nesse modelo um pouco mais antigo, né, de exclusão das empresas ou dos setores inteiros até porque o nosso mercado aqui no Brasil, ele já é bastante limitado, né? Bovespa tem cerca de 60 empresas somente e se a gente começar a excluir sobra muito pouca coisa, né? Então a receita é essas, gerar valor pra integração ESG, né? Transversal na análise de todas as empresas que a gente investe.” (2:14 ¶ 56 in C2)

my specific demands that are environmental, social and governance, there is also the relationship with the IR team and eventually with other support areas, right?<sup>51</sup>.

The nature of this sparser contact also differs in intensity from simple phone calls to get information to meetings where they discuss a specific theme and ask the company to take-action. Given the “novelty” of ESG, analysts take care to explain the importance of the information, how they use it in their models and request the company’s feedback with respect to the adequacy of their approach<sup>52</sup>.

Possibly because of their professional ranks and their organizations, relationships with the companies are direct but not so personal or private. As large order placers they are well cultivated by the sell-side<sup>53</sup> and will always be contemplated in broker and company roadshows. So, they frequently attend small group lunches and investor days.

“It is as I told you, we call them on the phone because we know everybody. We get to know everybody in events (...), but contacting the company is made in a more moderate form, if I need, I will call, but as I am in constant contact with them in events and with the sell-side, I obtain information through them who are always in contact with the companies”<sup>54</sup>.

Because they are dealing with ESG, NIAs were more vocal about the insufficiency of information. They expressed frustration when the obligation to provide sustainability reports did not pass when the new Novo Mercado rules were approved in 2018. The need to raise ESG disclosure standards is way past due but there is disbelief that companies will upgrade voluntarily, so they hope the regulator will step in. Another aspect that was mentioned is the difference in disclosure between the Brazilian and the US market,

---

<sup>51</sup> “os analistas têm o contato com as empresas praticamente o ano todo, né? Algumas empresas que têm mais pros nossos fundos. Então, tem esse canal diretamente sempre (diários) com relação aos investidores, né? E mesmo nas minhas demandas específicas que são ambientais, sociais e área de governança também (existe a) relação com os investidores, eventualmente com as áreas que dão suporte, né” (1:24 ¶ 58 in C1)

<sup>52</sup> “Tem o engajamento mais superficial, quando falta algum tipo de informação que a gente precisa. Então a gente faz engajamento no sentido de entrar em contato com a empresa, explicar a importância dessa informação ambiental, social e de governança, né? Para que que a gente usa e pedir a informação, né? Acho que tem um engajamento mais profundo, que seria uma profundidade mediana que é a gente ir até a empresa, explicar os nossos modelos, mostrar as contas que a gente tem (estimado) pra cada tema e pedir feedback, pedir mais informações também, né? E eu acredito que tenha o engajamento que seja com profundidade máxima, que aqui seria procurar a empresa sobre um tema específico e mostrar pra empresa por que que a gente tem uma atenção nesse tema e, de fato, pedir pra empresa um plano de ação e uma mudança de comportamento com relação a esse tema ou fazer um trabalho em conjunto pra tentar aprofundar o entendimento de esse tema, quais são os impactos que isso tá tendo no resultado da empresa, e ao mesmo tempo, pedindo pra empresa, de fato, fazer algum tipo de mudança nos seus processos.” (2:3 ¶ 28 in C2)

<sup>53</sup> “Sell-side” is the jargon used to refer to investment analysts that work for brokers. Their role is to analyze companies, track them and make buy/sell recommendation to their clients the “buy-side”. Buy-side are investment analysts that work for investment companies.

<sup>54</sup> “Então, é o que eu te falei: ligação telefônica a gente faz até porque a gente conhece todos, né? Nos eventos a gente fica conhecendo todos,...). Agora, o contato com a empresa é feito de forma mais moderada, se eu precisar eu ligo, mas como eu tô em contato frequente através dos eventos, através dos próprios analistas sell-side, eu busco informações sobre as empresas, eles sim têm um contato muito mais frequente, né?” (3:23 ¶ 80 in C4)

“generally, if you compare the *formulário de referência* with the 20F of a Brazilian company with ADRs, you will notice that the 20F has twenty times more information, you understand? Not only with risk factors but in the implication of these risk factors, so there is room for improvement in the *formulários de referência* in Brasil”<sup>55</sup>.

Lack of disclosure implies they will be more conservative in their estimates penalizing the company’s valuation.

One specific type of information that was lacking in proxy-voting materials was the appropriate depth in board candidates’ curriculum vitae (CV). Short five-seven lines CVs were often not sufficient to weight candidates in their evaluation models. This contrasts to IAs who prefer to consult their networks. Another important aspect NIA’s spoke of was that they want the information to be public in proxy materials and official reports. This calls for a fairer and more professionalized, less personal market.

#### 6.3.4 Voting

NIAs voting policies are standard without any material differences to those of IAs because they all follow Anbima’s best practices. They do tend to highlight that their voting policy does not apply to tailor made funds which follow whatever is established in their own rules.

They are more transparent since the larger NIAs disclose their votes on their websites making it possible to track whether they are following their policies. Obviously, they are also more conscious that voting is part of their fiduciary duties,

“(…) we have to exercise this role, really, I think sometimes it is left aside because one does not have control or because votes have no weight, right? (...) But I think our market will have to evolve, yes, I don’t know how long it will take, but some large companies are in fact moving in the direction of becoming corporations, and then there will be other challenges, right?”<sup>56</sup>

The voting criteria follows Anbima’s best practices which guides them about which matters they need to vote. The initial recommendation is made by the ESG area but then it is submitted to other hierarchical levels for the final decision.

---

<sup>55</sup> “Olha, em modo geral, né, eu acho que assim: se a gente pegar uma empresa aqui brasileira, né, listada aqui e possui ADR, né, ela tem que publicar lá fora o 20F. Eu acho que um bom exercício pra comparar isso é você comparar o formulário de referência daqui com o 20F da mesma empresa lá fora, né? E você vai perceber que o 20F tem 20 vezes mais informações, entendeu? Tanto quanto em fatores de risco, quanto a explicação do desdobramento desses fatores de risco então eu acho que tem espaço pra melhorar os formulários de referência aqui no Brasil sim.” (2:24 ¶ 112 in C2)

<sup>56</sup> “É, e passa muito por aquilo que eu te falei, que a gente tem que começar realmente a exercer esse papel, eu acho que muitas vezes fica um pouco de lado ou porque não tem o controle ou porque não consegue de fato exercer um voto de peso, né? (inint 01:09:21) minoritários que é muito importante. Mas eu acho que o nosso mercado vai passar por essa evolução sim, talvez não sei quanto tempo, mas tem algumas grandes empresas que tão caminhando pra de fato ser uma corporation, e aí são outros desafios, né?” (1:52 ¶ 153 in C1)

“For each general meeting I analyze the proxy materials and make a recommendation to the portfolio managers as to what our vote should be. (...) They may or not follow my recommendation. It depends on what is their mandate in each fund.”<sup>57</sup>; or “the recommendation is made by my area, then passes by other decision-making levels (...) and based on their indication we direct our votes”<sup>58</sup>.

They also vote on shares held in index funds and single share funds such as those that were set up to allow people to invest part of their savings in the FGTS<sup>59</sup>.

There were very explicit comments as to where the entire voting process needs to improve. Two issues stood out: 1) time available for preparation prior to the meeting and 2) the cost of distance voting.

The Brazilian Corporate Law stipulated that General Meetings had to be announced 15 days prior to the meeting. This time is short for larger NIAs to prepare their votes due to several layers of approvals and leave little time for processing the submission of the votes. Very recently – in March 2021, the government issued the Executive Order 1,040 extending the announcement date to 30 days prior the meeting. This will give investors more time to prepare but *Medidas Provisórias* need to be ratified by Congress to become permanent, otherwise they are cancelled. So, a final decision is still pending.

Distance voting may have made it easier for foreign investors, but it is expensive because of the notarization of funds regulation. It represents a high cost because when they vote for one fund, they need to vote for all funds that hold shares of the same company. So, the authentication cost is multiplied by the number of funds. For locals, it may be cheaper to turn-up at the meetings. This same issue was brought-up by IAs, so it is an area that needs improvement.

Other issues that are not yet settled is how votes are counted and the possibility of investors being induced to error by the wording of the electronic bulletin. So, distance voting has facilitated, but as asset managers became more active in their voting practice other complexities have surfaced. On the negative side this means there might be a long way to go before voting is streamlined and becomes an easy process for smaller funds and even individuals to vote. The positive side is that these matters are getting more visibility and discussion and solutions are bound to be found.

Collaboration among investors is possible if their decision-making criteria are met.

---

<sup>57</sup> “E assim, cada assembleia de empresa que tem passa por mim a análise da pauta (...) e proponho pros gestores como é que poderia ser o nosso voto. (...) Eles podem seguir ou não a minha recomendação. Depende também muito do mandato, né, que cada gestor tem.” (2:17 ¶ 72 in C2)

<sup>58</sup> “Essa diretriz ela é elaborada pela minha área, pela minha divisão, ela passa pelas estâncias decisórias da empresa (...), e com base nessa diretriz é que a gente faz a orientação de voto.” (3:5 ¶ 36 in C4)

<sup>59</sup> Public severance fund.

NIAs also recognize that collaboration among investors on voting for board members is becoming more frequent. But they also admitted that many companies were contacting investors and giving more publicity to the fact they were naming more independent directors and minority shareholder representatives and, thus were active players in making board elections a more thoughtful practice<sup>60</sup>. When responding to the request by other minority shareholders to support them in the indication of a board member, they may do so if the name passes their approval criteria, the other minority shareholder has nothing to gain, and it is good for all minority shareholders. But this does not constitute a coalition of shareholder<sup>61</sup>!

They also admitted that submitting alternative names for board candidacies was not yet contemplated and that shareholder proposals were rare in Brazil.

## 6.4 Summary and Conclusion

In this chapter we have analyzed the interviews with 3 NIAs including some of the largest in the country. Interviewees were intermediary management professionals who were responsible for making the first vote direction recommendation for their companies, so they are intimately close to the proxy solicitation analysis. They were also responsible for their institutions' efforts to integrate ESG into the investment decision and participated in ESG engagement activities. Because of their rank and specialization, their views are segmented and yet precisely because of that they expose difficulties in the Brazilian markets with regards to information provided by companies especially in the risk and ESG areas.

Despite large and therefore more capable of waging activist efforts (Ryan and Schneider, 2002; Rubach and Sebor, 2009, Admati and Pfleider, 1994. La Porta *et al.*, 1999), NIAs are still minority shareholders and subject to the same limitations of IAs. They too do not want to be seen as

---

<sup>60</sup> “A gente teve alguns casos aí mais recentes que teve uma chamada grande por parte das companhias, né? De eleger conselheiros independentes, representantes dos minoritários, né? E acho que isso também vem nessa mão também, não só pelo lado do investidor que tá olhando isso com mais critério, mas até mesmo da companhia de fazer esse exercício aí de chamar e de divulgar muito mais. Eu tenho percebido esse movimento também por parte das empresas” (1:38 ¶ 94 in C1\_Treated)

<sup>61</sup> “Em determinado momento, vamos dizer, a gente tem engajamento com alguns outros minoritários que podem pedir o nosso auxílio em determinado momento pra indicação de conselheiro, geralmente é o que acontece, né?” (...) “a gente pode participar de uma votação desde que ele passe nos critérios definidos pela empresa”, se ele passar nos critérios definidos pela empresa e a gente entenda que o engajamento com outro minoritário é positivo é no sentido de cooperação mesmo porque ele não tem ganho nenhum em relação à isso, é mais no sentido de cooperação, é mais no interesse dos minoritários então a gente pode participar, não é uma votação em conjunto, é uma votação da (nome) com os mesmos critérios que nós temos internamente: ranqueando o candidato e aí indicando o nome dele.” (3:31 ¶ 120 in C4)

activists. Their size, the nature of their businesses and the fact they are subsidiaries of publicly traded institutions adds other layers of complexity to an activist stance.

For them diversification is not just a within fund feature but across a whole platform of funds since they offer open and close-ended funds for retail and whole-sale clients, different investment strategies which makes it difficult to rationalize the motivation for their engagement actions on investment strategy alone. There are several elements that would point to a lower propensity for activism: diversification, profit-seeking, and short-term liability structure (Gilson and Gordon, 2013; Celik and Ikabosson, 2013; Ryan and Schneider, 2002). But these are not the only ones. They also must manage fund objectives and client instructions when it comes to deciding vote orientation.

In terms ownership conception, NIAs perspectives are compatible with that of “legal owners” as in McNulty and Nordberg’s (2016) path (a); “traders” (Hendry, 2006), and “profit and utility maximizers” (Berle and Means, 1991; Jensen and Meckling, 1976). They are not compatible with the notions of “psychological” owners in McNulty and Nordberg’s (2016) path (b) nor “universal” owners (Hawley and Williams, 2000, 2007). However, NIAs face similar challenges to universal owners: their exit options are limited. They might not find equally liquid options in a small market like Brazil’s should they choose to exit. Therefore, engagement might be the route to manage the asset risk the face across several portfolios.

NIAs have another challenge yet. Many are the investment arms of large publicly traded financial institutions, themselves favorite targets of activism and the media. Whichever way they choose to go it will have to be consistent with the regulation entities of the group are subjected to and the image and reputation objective of the conglomerate. So, it is likely that NIAs chose what is safe and good for their image. They seek external symbols and adopt standards that have international recognition such as the PRI and join in to support through membership and participation entities like Amec. These institutions not only provide them with yardsticks to align their conduct but lend their fronts to engagement actions or to voice minority shareholders’ concerns. These movements pave the way for NIAs own individual engagement actions in the sense that when they happen, they will not be the only or first voice to be heard.

Their commitment is genuine and has substance. They hire dedicated and qualified teams, their employees participate in specialized discussions groups, write papers and reports, tackle the difficult task of integrating ESG into valuation models and portfolio orientation, and engage companies, making well-intended efforts to bring them on board. They have devoted resources to analyze proxy statements, make vote recommendations and vote. They have structured processes,

policies, approval levels and provide a great deal of disclosure on their websites. They look very much alike. But while this helps recognition and reputation, enables eligibility for business, adopting similar structures does not necessarily achieve the intended efficiency goals (Dimaggio, and Powell, 1983).

Implications with respect to the functions expected of institutional investors and for normative proponents are practically the same as those for IAs. However, they indicate that the regulator needs to act to improved disclosure on ESG and on transparency overall. While they have access to companies, they do not develop close relationships and favor a more institutionalized forms of relationship.

Their perspectives also evidence that evaluating the effectiveness investor monitoring will remain difficult because both IAs and NIAs prefer private meetings with companies. This is consistent with McCahery, Sautner, and Starks's (2016) survey where they found investors preferred "behind-the-scenes" discussions with management and board members to overt voice channels. Thus, it reenforces the view that external indicators of activism might not reveal all of what goes on between investors and companies.

A final point is that while integrating environmental and social risks and opportunities is important to evaluate current and future (pre) financial risks of a company, "traditional" governance quality and financial performance aspects seem to get diluted as if they lost relevance or were not fundamentally important to the company's ability to do better in environmental and social issues.

In terms of future studies one aspect that might be better elucidated is the nature and types of conflict-of-interest Brazilian asset management companies may face. Both Brickley *et al.* (1988), Davis and Ham Kim (2005) and Asharf and Ryan (2012) infer conflict of interest by analyzing pro and against management votes by banks and asset management families. While there might not be sufficient information to conduct similar studies in Brazil, it may be possible to qualitatively map out if such conflicts exist, their nature, magnitudes and how they are delt with. Do Brazilian banks have such critical lending exposures to companies? Is it a relevant conflict of interest? What are within asset management conflict of interests? Are compliance rules capable of avoiding them? Brazilian banks were never exposed to a "Glass Steagall Act, thus they have formed broader conglomerates than US banks have ever dreamed of. What conflict of interests might this create?

Another area that might be explored in an article is a thorough understanding of the voting process. It would need to include electronic bulletin content (how it is filled in and wording on its forms), documentation that needs to be submitted in electronic and paper form, how much that costs,

how proposals or alternative board member candidates might be submitted, timing and steps to be followed and very importantly how votes are counted. In relation to votes a governance issue that merits discussion is the presentation of board candidacy slates. What are the advantages and disadvantages? What might be the implications for the board functioning as a team.

A thorough understanding of these issues may help identify what to measure in quantitative studies.



## **7 Pension Funds**

### **7.1 Introduction**

Pension fund behavior is quite diverse even among large players. Some exert only indirect induction on ESG matters because they have entirely outsourced their equity portfolio. Others are at early stages of implementing their stewardship commitments and are figuring how exercise fiduciary duties in a cost-effective manner. Others implement different strategies depending on whether their portfolios are outsourced, managed internally or they are insiders.

Pension fund liquidity needs have increased as defined contribution plans gradually replace defined benefits plans, which are still substantial but will eventually be overtaken. Under defined contribution, employees, who no longer expect to spend their entire lives in the same company, choose asset class allocation reducing the pension funds' discretion. Thus, they need to ensure liquidity. Also, some large defined benefit plans are already net payers of pensions with higher liquidity needs so that being tied-up in long-term shareholder agreements is no longer as advantageous because they have less control over the appropriate selling moment.

They are comfortable in describing their actions as activism, but those differ according to investment strategy. In outsourced funds, they act as inducer of better practices requiring asset managers to become more formal, accountable and ESG minded. When they are insiders, they have better command and can appoint boards. And when they manage funds internally, they maximize the potential offered by the Brazilian regulation by requesting separate voting, the installation of fiscal boards and trying to elect their candidates of choice to the positions. Towards that end they may actively seek support from other investors.

Engagement is less personal and broker dependent research and organized small group meetings. However, they will contact companies directly if they see issues they want to discuss.

Table 7-1

## Interpretations - Summary

Theme	Interpretations
Shareholder Agreements	Participating in control blocks is no longer as interesting
Outsourcing	Enabling different investment strategies, cost and return maximization
Liquidity	Increasing need associated with defined and variable contribution plans and maturing defined benefit plans
Activism	Activism is OK Inducing asset managers to whom they outsource their business towards greater formalization, accountability, and responsible investment practices Acting towards the betterment of capital markets: creation of corporations, committing to ESG and Stewardship Maximizing the potential of their sizes in internally managed portfolios
Engagement	Less personal Broker organized small-group meetings Sell-side research is important
Voting	Notion of fiduciary responsibility is growing Influence company by electing board and fiscal board members Active in seeking collaboration

## 7.2 Background

Pension funds are entities that may adopt pro-active activist stances because they are non-profit purpose organization who do not need to compete for funds. They can count on a steady inflow of new funds from company employees or civil servants and their outflows are predictable and long-term. This puts them in a favorable position for activism (Ryan and Schneider, 2002; Çelik and Isaksson, 2013).

However, engagement criteria differ among institutional investors, and may change over time. For example, Carleton, Nelson, and Weisbach (1998) noted that, for US institutional investors, ‘the criteria for targeting [intervention] vary dramatically with institutions’. Some institutions, such as the Colorado Public Employees Retirement System, have targeted firms based solely on performance, whilst others, such as TIAA-CREF, target firms based on specific governance objectives.

What may lead pension funds towards activism are concerns akin to those that characterize “universal holders” (Hawley and Williams, 2000, 2007). Some pension funds have large and indexed positions in their portfolios which means that in practice they hold

illiquid portfolios. Thus, using “exit” a corrective measure for portfolio companies whose performance or governance is not compatible with desired standards might not be realistic. Activism is a route the pension fund may take to improve the quality of their portfolios (Carleton *et al.*, 1998).

On the other hand, there are arguments that pension fund propensity for activism is not as simple. Corporate (private) pension funds may have conflicts-of-interests to vote against other issuers’ management if they have business relationships with those companies. Public pension funds have other types of conflict that may limit the benefit of their activism. They may be subject to political pressure from their sponsors to make social investments that maintain employment levels or invest in infrastructure, for example, that may not be maximizing shareholder returns (Romano, 1993).

### 7.2.1 Brazilian Pension Funds

Over the past 20 years change in the pension fund industry is being influenced by the growth in defined contribution (or variable contribution plans); the privatization of former state-owned companies – which enabled the creation of “politics-free” large private pension funds -, the growth and diversification of the country’s capital markets, and the improvement in regulation to protect minority shareholders.

However, the participation of pension funds in GDP has remained under 15% implying that pension fund savings in the economy has not increased. Brazilian pension funds AUM amounted to US\$ 204 billion (R\$1.058 trillion) corresponding to 14.1% of the country’s GDP at year-end 2020 (Previc - Informe Estatístico - 4º Trimestre 2020). This is a small figure considering that pension funds investment is 87% of GDP in the United States, 123% in the UK and 60% in the OECD average (Pension Funds in Figures: OECD)<sup>62</sup>.

Furthermore, only 20.4% of Brazilian AUM were invested in equity assets - 7.5% in stocks and another 12.9% via stock and indices funds. Pension funds remain substantially fixed income investors: 72.6% of their exposure is invested in fixed income instruments. The other important feature that has not changed in essence is the predominance of public pension

---

<sup>62</sup> OECD Pension Fund in Figures June 2020 - <https://www.oecd.org/pensions/private-pensions/Pension-Funds-in-Figures-2020.pdf>

funds which account for 62.0% of AUM while private pension funds make up for most of the rest – 37.0% (Abrapp – Dez 2020). However, one must highlight a major difference between “public” pension funds in Brazil and in the US. In the US, “public” pension funds are those who belong to civil servants of the states. Those benefits are legal liabilities and as such are backed by state taxing power, so bankruptcy is not a serious possibility (Romano, 1993). In Brazil, the largest public pension funds belong to publicly traded companies that are controlled by the state like Petrobras and Banco do Brasil or those who are fully owned by the state or are government entities, e.g., Caixa Economica Federal, BNDES, and Banco Central. These entities provide retirement plans under capitalization systems<sup>63</sup>.

While defined contribution plans are the largest in quantity - 41.7% of the total they only account for 13.1% of AUM. They are followed by variable contribution (CV) plans – 37.0% of the total and 25.5% of AUM. Lastly, defined benefit (DB) plans represent only 27.6% of the quantity of funds but have the lions’ share of AUM (61.4%) (Previc – Informe Estatístico – 4<sup>th</sup> Quarter 2020)<sup>64</sup>. DB plans have fallen out of favor because of their risk characteristics and many pension funds have stopped offering them at all. Gradually, the AUM share of DB plans should also decline as some large pension funds stated they have already reached the peak and are net payers of pensions. Shifting from DB to DC and CV plans is one means to reduce the possibility that pension funds suffer political pressure, however they also reduce incentives for activism because of more outsourcing (Romano, 1993).

Distribution of pension fund money is very unequal. The ten largest pension funds hold 57.9% of AUM (Previc – Informe Estatístico – 4<sup>th</sup> Quarter 2020) but the country’s largest pension fund alone has 22.5% of the total. The next largest is half its size and almost twice as large as the third. The three largest pension funds are public and together manage 41.2% of the total AUM. Some of the largest private pension funds belong to ex-state-owned companies.

---

<sup>63</sup> Municipal, State and Federal level employees were typically covered by pay-as-you-go defined benefit schemes. In 2012, Law 12.618/2012 changed the federal pension system. Those that joined the federal service after the effectiveness of this law would be subject to a new capitalization system. For that purpose, Funpresp, a federal employee pension fund was created (Decree nº7.808/2012). With few exceptions, state and municipal governments have not yet changed their pension schemes.

<sup>64</sup> Previc – Informe Estatístico 4<sup>th</sup> Quarter 2020) <https://www.gov.br/economia/pt-br/orgaos/entidades-vinculadas/autarquias/previc/centrais-de-conteudo/publicacoes/informe-estatistico-trimestral/informes-de-2020/informe-estatistico-4o-trimestre-2020.pdf/view>

Lei Complementar 109 of March 29, 2001<sup>65</sup> lays the legal framework for the establishment of complementary (to the public social security system) retirement plans and pension systems and Resolução CMN 4,661 of May 2018 sets the rules that apply to the investments made by pension funds. For example, pension funds can only invest in non-listed companies if they are incorporated under Law 6,406 and registered with the CVM and they are limited in the amount that they can invest in foreign assets - 10% of their net worth. Superintendência Nacional de Previdência Complementar – Previc is their regulating body and Associação Brasileira das Entidades de Previdência Complementar – Abrapp the entity that represents the interests of the segment.

Table 7-2: Pension funds / Determinants of ownership engagement  
(Çelik and Isaksson, 2013)

Purpose	Non-Profit
Liability structure	Long-term
Investment strategy	Several
Portfolio structure	Diversified
Fee structure	No fee (low administrative costs)
Political/social objectives	Political and or social incentives
Regulatory framework	No legal requirements or limitations

Çelik and Isaksson (2013) model. The framework identifies 7 features and 19 choices to define the institutional investors' business model and shed light on institutional investor interest in performing corporate governance functions associated with ownership responsibilities.

Although pension fund propensity towards activism is favored by the fact that they are non-profit entities, and they have longer term liability structures, each organization may have different investment strategies which will impact their appetite for activism differently. For example, they may invest in private equities or be part of controlling blocks in which case they would be inside engagers. On the funds they manage internally they may have active strategy and be alpha engagers, whereas when they outsource parts of their resources to mutual fund managers, they could be reactive engagers. Thus, even when using a more sophisticated model for determinants of activism, it is hard to classify organizations because they may implement multiple strategies.

<sup>65</sup> Lei Complementar 109 de 29 de março de 2001 - <http://sa.previdencia.gov.br/site/2017/07/leis-complementares-108-e-109-junho.pdf>

### 7.3 Analysis of the Interviews

#### 7.3.1 Shareholders' agreements are no longer as interesting.

Public pension funds were important players in the privatization in the 1990s. They were participants of consortia formed to acquire privatized companies and together with the national development bank, BNDES, they were also players in the consolidation of certain sectors (Lazzarini, 2011).

But participating in the privatization of large companies was a problem because pension funds had concentration limits to comply with. Being part of control blocks tied together by shareholder agreements was the way to go to protect their interests, at a time where minority shareholder protection was weak. As insiders they were able to monitor and contribute to the development of those companies and the strategies they were to follow. The idea that a large participation in a control block could function as a substitute for quality governance was suggested by Punsuvo *et al.* (2006).

To be effective, however, shareholder agreements need stability which means tying parties together for the long-term. They will impose conditions – such as preemptive rights – should a party decide to sell its stake. This may limit the pension fund's liquidity strategy. With the evolution of the capital markets regulation, it became possible to “(...) influence and monitor companies and participate in debates regarding relevant matters without being party to a shareholders agreement”<sup>66</sup>. Thus, shareholder agreements are less important now and may even become a hindrance if the pension fund needs liquidity.

#### 7.3.2 Pension funds are de-risking, seeking liquidity and focusing on core competencies.

The pension funds that were interviewed for this project were quite diverse. On one end there were those who chose to de-risk. Taking advantage of surpluses generated over the years and the opportunity to lock in fixed income returns to meet their actuarial targets, they preferred to de-risk. Others, because of their size, need higher exposure to stocks to meet those targets.

The type of fund DB, DC or CV does not impact the “stock picking” part of the investment decision but influences the stocks' relevance in the portfolio balance because of

---

<sup>66</sup> “você ter influência, ter acompanhamento, participar dos debates das questões relevantes sem ter a necessidade de um acordo com acionista” (3:17 ¶ 118 in B4)

different investment strategies and risk profiles. DB plans can withstand longer maturities but need to be invested in less risky assets. If they have reached the point at which they are substantial or net payers of pensions they must hold shorter term fixed income instruments. DC and CV plans are where new entrants contribute and have a more volatile contributor base. People are no longer expected to spend their lives working for the same company. Also, in these plans employees can choose how to allocate their money by asset class, so, mobility and portability, calls for investments in more liquid stocks, such as those that are part of indices (IBX-100) and controlling shareholder positions are no longer suitable. The fact that the Brazilian stock exchange is more diversified contributes to enable this kind of strategy.

Pension funds have also been divesting of long-held positions some of which were built in the privatization days and were tied up in shareholder agreements. This is related to de-risking but also liquidity needs. Divestiture is sometimes opportunistic in the sense they may sell their positions when a party to the agreement sells its stake to an outsider and allows the others to get bought out or when companies are taken private. Examples of divestiture can be found in companies of the electricity and telecom sectors.

The need for liquidity has also motivated the dismantling of shareholder agreements that tied up control blocks. Different from the past when the Brazilian government or controlling shareholders privileged maximizing the return on the sale of the control premium, the strategic choice now is to give-up control conditioned on creating large corporations with no controlling shareholders. This strategy has a broader political/economic goal: strengthening the country's capital markets. Larger free floats mean more information in stock prices and a more efficient market. Other state-owned companies and the government have pursued the creation of corporations<sup>67</sup>, so this move could be construed as politically influenced by current government policy.

However, the survival and long term and success of the pension fund industry critically depends on the growth of a healthy capital market and on the existence of companies they can invest in for the long-term while preserving liquidity. So, this strategy is also consistent with pension funds long term interests. Positive actions to strengthen capital markets could be interpreted as an activist practice by pension funds. The preference for

---

<sup>67</sup> Petrobras, a state-owned company, also structured the creation of a publicly traded corporation when it spun-off their gas distribution subsidiary and the government's plan for the privatization of Eletrobras, currently undergoing congressional approval, also envisages the creation of a corporation with limitations for regrouping under a controlling shareholder.

corporations may also suggest that the challenge of striking the balance of power among block holders is preferred to making their interests respected by a majority-owner (see Duarte, 2021 for the experience of the BNDES).

### 7.3.3 Outsourcing enables different investment strategies, cost and return maximization.

Some pension funds are outsourcing more of their investments. This is related to leaner structures and focusing on core competencies. As non-profit institutions pension funds need to keep administrative costs down. As they divest from legacy positions and de-risk it may not make sense to maintain full in-house fundamentalist analysis and monitoring functions. In a process that is ongoing pension funds are outsourcing part or their entire equity portfolios.

Outsourcing has several benefits in addition to cost optimization: asset managers may have larger research teams, specialize in certain niches or investment thesis:

“Our view today is that ... active value asset managers add value, very much so because of the proximity with the company, the knowledge about the company and management, the capacity to evaluate the company’s management, right? The company’s governance because they are looking at range of companies and the market, have a much wider coverage than I could have internally with my team, because we would always have to select who we would follow because of our limited resources. So, with a range of outside management we can reach a wider number of companies and take advantage of the expertise managers have on governance”<sup>68</sup>.

In addition, outsourcing permits pension funds to benefit from reward-oriented work they may not be able to institute in-house because of regulation, philosophy, or non-profit orientation:

“Precisely. They are there to earn money. There is a performance fee in practically all market funds that are there to earn alpha, (...), and this performance fee is a measure for the element of interest. The guy is working because he will put money in his pocket if he earns more, it is not just the maintenance fee. (...) you need to put a carrot in front of him so that he wakes up earlier, works until late because if you gain, he gains”<sup>69</sup>

---

<sup>68</sup> *A nossa visão hoje no Brasil é que o... o gestor ativo desses fundos de valor conseguem agregar valor pra gente, muito pela capacidade dele de proximidade da empresa, conhecimento da empresa, conhecimento do manager, a capacidade de avaliação do manager da empresa, né? Da governança da empresa porque ele tá vendo todo... uma gama de empresas e mercado, tem uma cobertura muito maior do que eu teria aqui com a minha equipe numa gestão própria, teria que sempre... e no passado quando era gestão própria a gente sempre fazia screening, né? Pra tentar ser mais objetivo possível dado nossa limitação de recursos. Então com essa gama de gestores tu consegue alcançar um número de empresas muito maior e aproveitar essa expertise dele de avaliação também na parte de governança (1:25 ¶ 84 in B2-Treated)*

<sup>69</sup> *“Exatamente. Eles tão ali pra ganhar dinheiro. Existe uma taxa de performance em praticamente todos os fundos de mercado que são pra gerar (alfa), (...), e essa taxa de performance é um balizador pro elemento de interesse. O cara, ele tá trabalhando lá é enxergando o que ele vai botar no bolso se ele entregar mais dinheiro, não é só a taxa de*



So, the focus changes from one of picking the right companies to selecting the best managers, making sure the right selection and monitoring processes are in place,

“so, first comes a quantitative analysis of returns (...). We make a qualitative analysis that includes several items including a due diligence of the entity (...) we take into account several items, the team, the institution, how long they have been around and so on. And according to our norms they have to comply with PRI principles, if they are signatories, that is even better (...). The quality of their research is what is most important to us”<sup>70</sup>.

And allows pension funds to concentrate on their core competencies:

“The most efficient is a qualified and competent outside manager, ... again our work is to select the best people, the best managers. This direct way of acting means we don’t believe in the market, we believe there are qualified managers out there who certainly have more knowledge and much more time dedicated to the market than we do. So, naturally, the work is to choose the best and let them work”<sup>71</sup>.

Outsourcing has implications on the pension funds’ engagement practices. To the extent they transfer voting rights to outsourced managers it will be up to those entities decide upon voting strategies or other activist practices.

### 7.3.4 Engagement and Activism: full benefits of size

Pension fund engagement and activism is more diverse and has more layers than IAs and NIAs. This is because they employ different approaches depending on their position as insiders, in-house portfolio managers or when they outsource management.

Unlike IAs, pension funds are less reluctant to describe their actions as “activism” or need to dress them under the more palatable euphemism “collaborative activism” or “engagement”. But like NIAs, their actions are broader and inserted in their investment process:

---

*manutenção. (...)Você tem que colocar lá no final uma (cenourinha) que vai fazer ele correr todo dia, você vai fazer ele acordar cedo, trabalhar até tarde, porque se você ganha dinheiro, ele ganha dinheiro” (5:16 ¶ 32 in B8)*

<sup>70</sup> “Então, a nossa terceirização tem procedimentos bem claros que nós temos que seguir, né? Então, primeiro tem uma avaliação quantitativa com relação à rentabilidade e aí (...). A gente faz uma avaliação qualitativa, (entra aqui) previamente selecionados. Essa avaliação qualitativa tem vários itens, inclusive, uma due diligence até eles, (...), a gente considera vários itens, equipe, a instituição, quanto tempo que eles tão lá, etc., etc. E também, dentro da nossa norma, a gente coloca que eles têm que ser adeptos ao PRI, não essa... se for signatário melhor ainda (...) A qualidade de análise que essa instituição tem é o mais importante pra nós”. (2:24 ¶ 93 in B3)

<sup>71</sup> *O mais eficiente é o gestor terceirizado bem qualificado e experiente, não é um... de novo, o nosso trabalho é selecionar as melhores pessoas, é selecionar os melhores gestores. Essa atuação direta nossa significa que a gente não acredita no mercado, nós acreditamos que existem gestores qualificados e que eles certamente entendem muito mais, tem muito mais tempo dedicado ao mercado do que nós. Então, naturalmente, é escolher os melhores e deixá-los trabalhar. (5:23 ¶ 73 in B8-Treated)*

“What is it we are trying to implement for some years now? It is a more current form of activism, so to say, right? It’s an activism of good practices, transparency, not only focused on financial returns, but how those are obtained. (...) Since 2012 more or less, the entire stock selection process, whether in public or private equity, it contains an evaluation of the governance of those structures, how those processes are done”<sup>72</sup>.

#### Direct influence as insiders

Pension funds are insiders when they are part of a majority control block. As insiders they have direct influence in appointing members to the board and electing the majority. Obviously, this is negotiated with other members of the control block but given their ties through shareholder agreements they act as a single voice.

They may also have more influence when investing in special purpose funds (Fundos de Investimento em Participações – FIP) which could be managed by private equities and invest in companies that need resources to reach a stage where they can provide investors with an exit route via Initial Public Offerings (IPOs). Their level of influence will depend on the agreements of each fund and will vary.

Investing in private equity funds is viewed as the natural route to help increase the number of publicly traded companies. Private equities may help companies with good businesses to unlock value by improving capital structure, governance, marketing, and personnel management expertise. They also provide an alternative route to be exposed to growing sectors of the Brazilian economy when there are no or only a few publicly traded players: “That is why we have to invest in private equity, because our stock market does not reflect (...) the growth of Brazil. (...) Our stock exchange has practically no position in agribusiness or soil exploration, so I have to go to private equity”<sup>73</sup>.

However, recent experience in investing in private equities has imposed “many losses and (significant) losses to the pension fund industry, so we need to rethink”<sup>74</sup>. Which has resulted in some pension funds shying away from those type of investments for the time being. And yet the challenge for pension fund future is put:

---

<sup>72</sup> “O que que a gente tá tentando implementar já faz alguns anos? É um ativismo de uma forma mais atual, por chamar, né? Por assim dizer, é um ativismo mais de boas práticas, de transparência, de tentar fazer não só o retorno financeiro, mas também tem uma preocupação de como esse retorno tá sendo atingido. (...) Desde 2012 mais ou menos, o processo 2012, todo processo de seleção de (equity), de participação acionária nossa, seja em Bolsa ou em private equity, ele passou a ter uma avaliação de governança dessas estruturas de como eram feitos esses processos.” (5:3 ¶ 16 in B8)

<sup>73</sup> “Por isso que tem que fazer investimento em private equity, porque a nossa bolsa, ela não reflete, (...) crescimento do Brasil. (...) A nossa bolsa não tem praticamente posição nenhuma em agribusiness e exploração da terra, eu tenho que ir pro private equity.” (5:22 ¶ 57 in B8)

<sup>74</sup> “mas a indústria de empresa de previdência... (entidade) de previdência privada teve muitos prejuízos e prejuízos (vultosos), então precisa repensar.” (3:53 ¶ 405 in B4)

“that is, I think the Brazilian market will ultimately find a way to grow, right? That is, there is anguish in private equity in Brazil today that is where is the deal flow to the public markets (the natural way out) for the growth of the good parts of the Brazilian economy. So, I think we will need to have more alternatives, as pension funds grow, more investment abroad will be necessary<sup>75</sup>.

They make the most of their size in internally managed equity portfolios

Some pension funds retain in-house management of public equity portfolios. These may contain both large positions that are not tied-up into shareholder agreements and smaller ones. Very few pension funds are structured and have policies to assume more active roles in investees when their holdings are large and their chances of indicating board members or requesting the installation of fiscal boards is feasible. This structure can be quite sophisticated involving more than policies, norms and participation criteria but also include fundamental actions such as developing a – open to the public - data base for the selection of board candidates and promote ongoing training for appointees through workshops and conferences.

These overt practices also contribute to strengthen the pension funds’ own governance image especially because there is great variation in the level of disclosure pension funds provide with respect to internal norms and their own governance. But these structures are important given the level of the regulator oversight over pension funds. They are particularly important for public pension funds who may suffer political pressure to invest in non-return maximizing investments, are frequently suspected of politics-linked corruption and as a result are also subject to the inspection by other government bodies.

Pension fund board and fiscal board appointees serve as channels for them to propose changes they would like the investee to pursue. But it is a suggestion and not an imposition since in their trainings they make it clear that despite being elected with the votes of the pension fund, once elected, the board member’s role is to defend the company’s best interests. So, whether the board member is successful or finds it adequate to promote pension fund proposal it is up to their judgement. These board members are independent of the pension fund who provides no D&O or indemnity.

These practices indicate large pension funds make use of the full potential offered by the Brazilian regulation – such as fiscal boards - and the weight of their sizes and do not appear

---

<sup>75</sup> “*Pros fundos de pensão no futuro, né? Quer dizer, o mercado acionário brasileiro eu acho que ele vai acabar encontrando um caminho pra aumentar, né? Quer dizer, existe uma angústia de private equity maior hoje no Brasil que é onde vai ter o deal flow pro mercado de public (que é a saída) natural no processo de crescimento aí da economia brasileira de melhor condição. Então eu acho que a gente vai ter mais alternativa, mas à medida que os fundos de pensão forem crescendo, mais necessário vai ser o investimento no exterior.*” (1:18 ¶ 38 in B2)

to be passive about their large holdings. They also try to influence companies in ordinary engagement activities: “when there is a specific interest in an improvement topic, we formally position ourselves as an investor. Normally we write a letter or ask for a meeting, there is a pro-active activism, right?”<sup>76</sup> or “From a financial point of view we have always been very active. If I’m investing in a company and it takes a route that is not convenient, that I don’t agree, that I don’t think it has returns, as always, we try to intervene, by talking to management or if our participation is large, through the board and the company’s management”<sup>77</sup>. While this behavior seems consistent with findings by Rubach and Seborá (2009) that internal management is associated with more activism, it is important to highlight that very few pension funds in Brazil have economic reasons and internal structures to support this level of activity.

Ordinary relationship with companies is akin to those of NIAs. They do not seek “close” relationships but actively participate in broker events to which, as volume traders, they are routinely invited:

“Normally these meeting are those put together by brokers, for example, *petit* committee, small groups”<sup>78</sup>; reliance on sell-side research is strong “we normally participate .... For cost reasons, right? Transport. We participate in earnings conference calls; because we are clients, we receive sell-side reports...”<sup>79</sup>;

and companies seek them out and talk to them regularly “we talk regularly, do you understand? Many times, he (the company) approaches us, do you understand? Hey, I’m taking to all shareholders (about) this situation, like this, can I.. ‘go, no go’, do you understand?”<sup>80</sup>

---

<sup>76</sup> “(...) quando há, assim, um interesse específico num aprimoramento, seja de estatuto ou de alguma prática da companhia, a (nome) se posiciona formalmente naquela empresa enquanto investidor. Normalmente a gente faz uma carta ou pede uma reunião, há um ativismo proativo, né?” (3:9 ¶ 61 in B4)

<sup>77</sup> “Do ponto de vista financeiro econômico, nós sempre fomos muito ativistas. (...) Se eu tô investindo numa empresa e ela está indo pra um rumo que não me convém, que eu não concordo, que eu não acho que vai ser o mais rentável, desde sempre a gente buscou intervir, seja numa conversa com a diretoria ou com (a nossa) participação relevante atuando junto ao conselho, atuando junto à diretoria da empresa.” (5:1 ¶ 16 in B8)

<sup>78</sup> “Não. Normalmente, essas reuniões são... elas são montadas nas corretoras, mas, por exemplo, *petit* comitê, são poucas pessoas.” (2:17 ¶ 59 in B3)

<sup>79</sup> “A gente participa de... normalmente... até por questões hoje de custo, né? Deslocamento. A gente participa de conferência de resultado, recebe... porque nós somos clientes (inint 42:43) dos bancos, então a gente recebe relatórios...” (3:32 ¶ 193 in B4)

<sup>80</sup> “a gente conversa regularmente, entendeu? Muitas vezes, ele chega, entendeu? “ó, tô levando pra todos os acionistas essa situação, assim, assim, posso.... Go ou não go”, entendeu? (4:7 ¶ 330 in B6)

### 7.3.4.1 Outsourcing relationships

In outsourcing relationships, the focus is put on monitoring the asset management company. One effect of this outsourcing is raising asset managers, particularly IAs, accountability practices to standards are acceptable to the pension fund. This may involve formalization of policies, practices and commitments and other elements that are pertinent to the investment process. In addition, pension funds were very vocal about their responsibilities as asset owners. All were signatories of PRI and took up their responsibility as inducers of best investment practices which implies integrating ESG factors into the investment analysis process. This influence is already or being formalized in management contracts:

“What we are discussing right now in terms of governance and activism is: lets put more rules so that they continue to seek the carrot and earn more money for us but following some ESG norms”<sup>81</sup>.

These actions work towards greater uniformity in approaches and practices although, they reveal less standardization in processes compared to NIAs.

### 7.3.4.2 Activism directed at the improvement of the market.

In addition to actions at the company level – as insiders and outsiders - large pension funds can function as pioneers, supporters and inducers of desired directions they deem the market should take:

“So we get involved in these market agent processes, regulators, bankers, we consult people with experience in governance and that can contribute, we get involved in public consultations,.....those directed to certain characters, right?”<sup>82</sup>

One way they can do this is by being early adopters of recognized trends and international best practices. This serves several purposes: enhancing their own reputations, benchmarking by international standards, and signaling to the market the way it should go. At year-end 2020, sixty-one Brazilian entities were signatories of PRI. Out of 13 members in the asset owners' category, ten were pension funds of whom six joined before 2010 almost at the start of PRI. Joining PRI provided them with guidelines of how to go about the difficult tasks of integrating ESG into their investment analysis process and enabled them to participate in international discussions. But also, it gave them legitimacy to require a similar commitment

---

<sup>81</sup> *O que a gente tá discutindo agora internamente do ponto de vista de governança e de ativismo é: vamos colocar um pouquinho mais de regra pra esses gestores terceirizados onde eles vão continuar correndo atrás de ganhar dinheiro pra gente, mas seguindo algumas normas de ESG. (5:16 ¶ 32 in B8)*

<sup>82</sup> *Então a gente envolve nesse processo agente de mercado, reguladores, banqueiros, pessoas que tenham vivência em governança e que possam contribuir, então a gente consulta, estamos no meio de uma consulta pública... pública, mas direcionada pra alguns personagens, né? (3:2 ¶ 29 in B4)*

from others: their investees and asset managers. But the commitment goes beyond that of their own interactors. One entity, for example, stated they led the PRI Task Force for Business Integrity Practices which, by engaging Brazilian companies of several sectors, aims to make them aware of best practices, understand their level of commitment to governance and integrity, and help them to improve their policies, programs, and practices so they are better equipped to fight corruption<sup>83</sup>. By undertaking actions like these, pension funds act as inducers of better practices hoping to eventually, raise market standards.

A more recent move has been signing Amec's Stewardship Code. Out of 29 signatories, five are Brazilian pension funds. While signing these documents expresses a public commitment to abide by principles and practices to which they can be held accountable for, there is great disparity in information signatories provide of their actions. Many institutions make no or delayed accounts of how they have been exercising their commitments. If overtime, the Amec code is successful, we should have better information as to how stewardship evolves and greater uniformity in accountability reports. At this point stewardship is at its infancy.

### 7.3.5 Voting

Voting behavior will also vary depending on whether the pension fund is an insider – in which case his involvement with the company's administration is substantial and they, as part of the control group, appoint most of the board –, a large outsider or the ultimate owner of an outsourced portfolio. In the latter case, voting discretion will vary per outsourcing contract.

Regarding internally managed portfolios there is a growing conscience of fiduciary duty as the concept of stewardship becomes more widespread:

“With respect to the stock portfolios, we did not participate in any general meeting until last year, what we had were some ---- among what was outsourced there were three portfolios where managers had a more activist stance and they would do this activism with the AUM under their care, obviously we participated in committees and discussed what was to be done. So, in general meetings they would get organized to elect the

---

<sup>83</sup> Previ – Relatório de Stewardship 2020 pag 104 - <https://www.amecbrasil.org.br/wp-content/uploads/2021/04/relatorio-stewardship-previ-2020.pdf>

independent members of the fiscal and director boards, and eventually we would participate voting on certain matters. With respect to the rest, we did little exercise of our rights as shareholders”<sup>84</sup>.

This behavior was attributed to culture but also to a very lean structure which did not permit the entity to follow meetings, what was to be voted and discuss voting direction. Also, it was not possible to wage the cost of physically being present at meetings to vote.

Distance voting has obviously reduced transport costs but committing to fulfill fiduciary duties continues to be challenging for pension funds even when they internally manage their funds because overall exposure to equities is small, and they might not have the personnel to handle the analysis and the execution of the voting process. It will not be a surprise if Brazilian pension funds examine the possibility of hiring a foreign proxy advisor to help them with the voting process.

Pension funds that can wage the cost of voting will vote regularly. The critical element that attracts them to the voting process is neither the presentation of a shareholder proposal nor typical items of general meetings such as compensation or dividend distribution. Where pension funds as minority shareholders want to influence is the election of independent board and fiscal council members and participate in the elections where minority and preferred shareholders vote separately.

The perception is that foreign and local shareholders have discovered this “niche” to exert influence in companies by electing members they believe will contribute to the company’s development and watch-out for the interests of minority shareholders. At times minority shareholders have competing slates.

The election of independent and fiscal board members is the reason minority shareholders collaborate. One pension fund disclosed its activity to seek supporters prior to the meetings. At each proxy season, they contact investees’ relevant shareholders with the aim of aligning ideas regarding themes such as board member profile, indication strategies, and expectations with respect to possible candidates. Their objective is to improve company corporate governance and the implementation of their strategic agenda (Previ – Relatório de

---

<sup>84</sup> *Com relação aos portfólios que são os fundos de ações, o que nós fazíamos, a gente praticamente não participou de nenhuma assembleia, até o ano passado, o que nós tínhamos é alguma... na terceirização a gente tinha três carteiras terceirizadas pra gestores que tinham uma postura mais ativista e eles faziam esse ativismo junto com o patrimônio que eles tinham, mais a nossa carteira, logicamente nós participávamos dos comitês e discutia o que deveria ser feito. Então, nas assembleias, eles se organizavam pra indicar os independentes dentro do Conselho Fiscal e do Conselho de Administração e, eventualmente, participávamos das assembleias votando em determinadas pautas. Com relação ao resto, a gente pouco exercia o direito de acionista dentro das companhias. (2:4 ¶ 15 in B3)*

Stewardship 2020 pg.103). Amec is another entity that promotes discussions and shares indications for board and fiscal board candidates.

Indicating candidates has responsibility and not everybody is ready to participate: “We have not yet participated in any (indication). This is a more complex discussion because it involves responsibility. We want to know more about the people who are involved in the indication of names, right? In time I think we will eventually join in with these people indicating or not the people that are elected”<sup>85</sup>.

One issue is that minority shareholders may have different interests and objectives. The presence of a board member who is elected by minority shareholders might mean they have someone of their choice and trust to be safeguarding the interests of the minority group that elected them, but, a priori, does not guarantee board effectiveness and thereby better company performance.

## 7.4 Summary and Conclusion

Brazilian pension fund activism does not have the “pro-activity” shown in the selected cases of early US pension fund activism. In part this because large public pension funds were insiders when they participated in controlled blocks of privatized companies and in part because some large pension funds belonged to privatized companies who took and more passive role.

While the overall size as a percentage of GDP and main features of the Brazilian pension fund industry are the same, some micro features are leading to change. The most important one is the growth in the number of defined contribution (or CV plans) which require more liquidity. Another change is that as people age, defined benefit plans, most of which have been closed to new entrants, start paying out more pensions and will also need more liquidity. Thus, shareholder agreements with requirements that restrict the freedom of the pension fund to develop its liquidity strategy may no longer be interesting. In fact, some high-profile shareholder agreements that made pension funds party to controlling blocks of privatized companies, no longer exist. The underlying companies were either sold or taken private or the shareholder agreement was dismantled. So, the role of public pension funds as insiders is diminishing.

Pension fund activism evolves on three fronts: 1) inducing asset managers to whom the outsource their business towards greater formalization, accountability and responsible investment

---

<sup>85</sup> “Nós ainda não participamos de nenhuma delas, a gente ainda não indicou diretamente nenhuma. Isso é uma discussão um pouco mais complexa, porque eu acho que existe uma responsabilidade nessas indicações. Então a gente tem que ter um conhecimento maior das pessoas que estariam envolvidas nessas indicações, né? Eu acho que com o tempo a gente vai acabar aderindo e entrando junto com esse pessoal, indicando ou não as pessoas que sejam eleitas, né?” (2:11 ¶ 33 in B3)



practices; 2) acting towards the betterment of capital markets such as helping the creation of corporations, committing to incorporate and foster responsible investment principles and practices, and adopting, supporting and accounting for of stewardship principles; and 3) maximizing the potential of their sizes to elect board and fiscal board members who they evaluate to be contributors to de improvement of investees and are aligned to their agenda for that company.

Measuring the effectiveness in the first two fronts will be difficult but as voting information improves it will be possible to observe how they vote how successful they are in promoting their board member candidates and if those candidates help company performance or protect the interests of minority shareholders. But mobilizing investors to vote and vote thoughtfully in the absence of regulation (such as ERISA) that obliges them to vote will remain challenging despite recent improvements.

In terms ownership conception, pension funds' perspectives are compatible with that of "legal owners" as in McNulty and Nordberg's (2016) path (a); "traders" (Hendry *et al.*, 2006), and "profit and utility maximizers" (Berle and Means, 1991; Jensen and Meckling, 1976). They are not compatible with the notions of "psychological" owners in McNulty and Nordberg's (2016) path (b) nor "universal" owners (Hawley and Williams, 2000, 2007). However, pension funds face similar challenges to universal owners: limited liquidity options. Their growth and ability to manage future liabilities depend on the growth of the Brazilian capital markets or the opportunity to allocate funds abroad.

Since pension fund conditions have changed significantly, it may be interesting to revisit public pension fund participation in shareholder agreements. How many are still in place? How significant are they? Can pension funds still be characterized as "controlling shareholders"? Can those participations sustain the argument developed in Lazzarini (2010) that the state maintained its grip in privatized companies through state-owned company pension funds? Depending on the answers to these questions, we may find that pension funds are inaugurating a new era of participation and their success as "activists" might be measured by the governance and performance quality of companies their votes or efforts were successful in electing board members.

Another issue, also associated with the fact that their participation in controlling block diminished, that might be explored is what types of political pressure can governments still exert over public pension funds? Are they corruption related? Are they associated with financing needs such as the participation in infrastructure projects? Or they macro policies that limit the opportunity for investing abroad diverting pension fund money to lower returns or riskier project at home? How is

this pressure exercised? What has happened to public pension funds governance and compliance over these years? Are they capable of fending off political pressure?

## 8 Discussion

### 8.1 Engagement Expectations

Asset managers and pension funds were classified in terms of their engagement expectations according to the Çelik and Isaksson, (2013) determinants of ownership engagement model. This model considers seven determinants of ownership engagement: the purpose of the institution (profit x non-profit), the investment strategy (Passive Index and Fundamental, Active Fundamental or Quantitative), portfolio structure (diversified x concentrated), fee structure (non-profit, performance, flat or no fees), whether the institution has political and social objectives, and the regulatory framework that may require or impede actions by institutional investors. Table 8-1 has a summary of each category according to this model.

Table 8-1: Determinants of ownership engagement  
(Çelik and Isaksson, 2013)

	IA	NIA	PF
Purpose	Profit	Profit	Non-profit
Liability structure	Short-term	Short-term	Long-term
Investment strategy	Active Fundamental	Undetermined	Several
Portfolio structure	Diversified	Undetermined	Diversified
Fee structure	Performance and Flat Fee	Undetermined	Administrative costs
Political/social objectives	None	None	Political incentives
Regulatory framework	None	None	None
	↓	↓	↓
Model Expectations	Alpha or Reactive	Reactive	Undetermined
Interpreted	Reactive	Reactive or Passive	Insider, Alpha, Reactive, or Undetermined

Çelik and Isaksson (2013) model. The framework identifies 7 features and 19 choices to define the institutional investors' business model and shed light on institutional investor interest in performing corporate governance functions associated with ownership responsibilities.

Applying models that have been shaped with developed capital markets in mind requires adaptations. One adaptation we made relates to the institutional environment. Since the Brazilian regulator requires all funds to publish quota prices daily, IAs were classified as “short-term” oriented despite most of them saying that they were long term investors. According to the model, an “active fundamental” investment strategy would imply “alpha engagement” but IAs stated activism was a defensive mechanism thereby, a reactive attitude. Thus, we classified them as reactive engagers.

Another issue relates to the unit of analysis. The model proposes four fund strategies. To the extent the institutional investor only manages funds with one or similar strategies, as is the case of most IAs interviewed, fund and institution strategies may be considered the same. However, our unit of analysis is the institutional investor company and not the fund. Both NIAs manage several funds with different strategies and pension funds apply several strategies to different portions of their portfolio. Thus, it is not possible to classify the institutional investor in terms of investment strategy. The same is true to portfolio and fee structure. NIAs, for example, may offer highly concentrated single share funds as well as highly diversified balanced funds. And yet, the investment companies' risk analysis, and thereby, ESG engagement efforts and voting guidance are company rather than portfolio strategy related. NIAs, for example, when evaluating ESG risk do so based of investee merits. Company risk may impact its weight in active but not on indexed and single share portfolios. Thus, fund investment strategy might not be a good indicator of engagement expectations when dealing with large investment management companies or pension funds.

Pension funds are an equally diverse group and may use several engagement strategies for parts of their portfolio. Table 8-2 lays out different engagement strategies depending on the investment strategies they adopt. Large Brazilian public pension fund behavior towards internally managed funds do lend support to findings by Rubach and Seborá (2009) that pension funds are more active when funds are internally managed (propositions #9 and #10). This behavior cannot be extended to private pension funds either because they have outsourced their equity portfolios entirely or because they are not yet structured to play a more active role.

Table 8-2

---

Pension Funds	Insiders	Internal Management	Outsourcing
---------------	----------	---------------------	-------------

---

Public	Private equity Part of the controlling shareholder group through shareholder agreements	Parts of the portfolio that is internally managed. May have an agenda for the company and may try to elect board members alone or in collaboration	Will depend on each contract
--------	--	---	---------------------------------

Private	Very few legacy investments; small positions	Collaboration to elect board members under consideration but not yet practiced	Will depend on contract but no “activist” mandate had been given.
---------	--	--	---



↓

↓

↓

Model Expectations	Insider Engagement	Alpha Engagement	Undetermined
--------------------	--------------------	------------------	--------------

Interpreted	Insider Engagement	Alpha Engagement (public); reactive engagement (private)	Undetermined, probably passive
-------------	--------------------	--	-----------------------------------

---

This discussion adds to the complexity of establishing entity-based engagement determinants and lends support to authors that refrain from such considerations altogether (Goronova and Ryan, 2014; Bushee *et al.*, 2014; Chung and Zang, 2011) preferring to focus on investor actions and positions rather than on intent. Furthermore, to the extent that observing investor “actions” is realized by noting their behavior in the proxy solicitation process, observations will not be substantial in Brazil because, as in the UK, voting is not obligatory and it is unlikely that voting turnouts will ever be as significant as in the US even if the reasons which disincentivize votes in the Brazilian environment, were to be eliminated.

## 8.2 Ownership concepts

Discourses and fund characteristics were also evaluated in terms of the ownership concepts underlying investor perspectives and the best fit seems to be that of legal owners who view their obligations with the investee firm in terms of a set of rights and obligations, as “active owners” in McNulty and Nordberg’s (2016) path a, investors (proposition #4). However, their notions would also be compatible with the views of owners as traders (Hendry *et al.*, 2006) (proposition #5) particularly when investment strategy is described as “multimercado”, portfolio returns and utility maximizers (Bearle and Means, 1991; Jensen and Meckling, 1976) (propositions #6 and #7). Only large public pension funds, in the portions of their private equity, controlled ownership positions and internally managed funds, could be viewed as traditional legal owners (Monk and Minow, 2004) (proposition #3). NIAs and pension funds face similar type of restrictions as universal owners (Hawley and Williams, 2000, 2007) (proposition #8) but cannot be categorized as such because their size (in world comparisons) and small international exposures. There was no indication that any of the entities interviewed had a psychological relationship with the investees such as in McNulty’s and Nordberg’s (2016) path b (proposition #9).

The implication of the ownership concept “active owners” is that they do not necessarily see it in their responsibilities the role to pressure managements of poor performing companies to improve. This is considered one of the critical functions expected of institutional investors (Hoskisson *et al.*, 2002). This is thought to be the case with mutual funds. Gilson and Gordon (2013) argue that mutual

funds are not as proactive in submitting shareholder proposals because they are highly diversified, their remuneration is based on relative performance, and they compete with other fund managers that would benefit equally should they spend resources and be successful. In the case of Brazil, the fact that most publicly traded companies have majority controlling shareholders, adds a strong disincentive for minority shareholders to go against controllers.

### **8.3 Perceptions on Activism and Engagement (extra-ordinary course of business)**

What meanings institutional investors attribute to the terms, “activism” and “engagement”?

Asset managers (independent or not) perceive “activism” to involve confrontation, so the term has a negative connotation which they associate with aggressive hedge fund activism in the US, cases of Brazilian private equities who took over publicly traded companies with as “disastrous” outcome and of investors who got together to extract value from companies and make changes which were not in the company’s best interests. They also reject the label, state they are not activists and that they want to be seen as “collaborative, activists”. Only large public pension funds use the term activism to describe their actions. The term engagement was rarely used by independent asset managers, and commonly used by non-independent who had ESG structures in place and considered it integral to their image building. We infer that the term engagement is more frequent among those who are formally committed to ESG, Stewardship principles or are informed by OECD discourse. Table 8-3 summarizes investor attitudes towards activism and activist actions.

Table 8-3

## Summary of interpretations - Activism

	IA	NIA	PF - Public	PF – Private
Activism	Not activists! “collaborative” activists!	Not activists! Engagers!	Activism OK (internal management)	Not activists
Rationale	Ineffective in controlled companies Distorts focus, uses up;	Needs to be positive! ESG focus	Influence when they have large positions ESG focus (internal management and outsourcing)  Induce formalization, accountability, and ESG (outsourcing) Internal management: Maximize potential of size – board seats	Lack of culture/structure/outsourcing
Escalate confrontation	Only as defense	Not mentioned	Not mentioned but actual cases indicate they have entered disputes	Not mentioned
Exit as a governance mechanism	Yes, but without threats	More difficult to implement	More difficult to implement	More difficult to implement
Unite in favor of shareholder interests (Collaboration)	Board member elections: Yes, but not regularly; recognize increase; may lead process	Board member elections: Recognize frequency; eventually be involved if agree on appointment	Board member elections: participate frequently; may lead process; or preparing to participate	Likely to participate in board election collaboration, but not yet structured to do so
Shareholder proposals	Not mentioned	Not mentioned		Not mentioned

While some non-independent assets managers thought Brazil were not mature enough for the type of activism seen in the US, most independent assets viewed it as ineffective because typically, Brazilian companies are controlled by shareholders who own more than 50% of the voting capital.

Were a vote contest to occur they would lose even if they were a large minority shareholder. So changing companies' policies and practices becomes a quest to convince the controlling shareholder which they all say they will try via carefully worded, friendly approaches. But if that does not work, they will not stage fights. They do not see it as their role to push for the betterment of companies' corporate governance or performance – pro-active activism. Their primary role to their shareholders is identify quality investments and get in and out at the right price. Doing otherwise, distorts focus and would imply devoting scarce resources that can be better employed finding other quality investments.

Public pension funds seem to have a more active stance when they manage funds internally and their positions are large enough to enable them to elect a member for the director or the fiscal boards. Their pro-active activism seems to be associated with the maximization of the opportunities for minority representation offered by the Brazilian corporate law thereby seeking separate votes for minorities, requesting the installation of a fiscal board, and presenting candidates for board seats. Some pension funds may also develop and engage in activities intended for the betterment of the Brazilian capital markets.

While the academic literature uses the term coalitions to refer to investors joining up to vote for or against or propose something to the company, we used collaboration to imply a loser and more sporadic behavior. Collaboration happens. It could be related to factors such as the price for taking a company private, conversion of preferred into common shares or election of board members. All interviewed have been contacted or know of its existence. But these are neither regular nor frequent and not necessarily with the same partners. Shareholder proposals, on the other hand, were never mentioned.

When adverse situations develop after investment, independent asset managers state they will talk to the company first but if that does not work, the preferred course of action is exit. This route is not as easy for the larger non-independent assets and pension funds. Whichever the case, no investor mentioned using the threat of exit as mechanism to persuade companies to change.

In relation to the secondary question “what may prompt them to act”, independent assets stated they would escalate if they thought their interests were not being respected and their positions in the company were important for their portfolios. In fact, some independent assets managers and pension funds interviewed for this study were involved in investor-company disputes that gained the media. So, these investors can act, and have acted, but actions are a reactive response to movements by investees that go against what they perceive to be their rights or interests. Furthermore, there is

the perception that the increase in the number of non-controlled companies is requiring investors to become more involved.

#### **8.4 Engagement Process – Ordinary Course of Business (Meetings with the company and Voting)**

What governance practices investors value most and why? And what is critical in the investment decision and motivates investor to engage?

Brazilian investors' lack of proactivity does not imply they are passive. On the contrary, they are active engagers in the sense they meet the company regularly and follow it closely. Independent assets avoid getting into poor governance situations where they may face the choice of exiting or fighting so, prior to entry, they are careful scrutinizers of their investees doing thorough work on governance and business aspects and developing close relationships with management where they can keep track and adjust expectations accordingly. Except for state-owned companies, rejected by some for their lower earnings predictability (governance and commodity businesses), there are no other eliminatory criteria adopted by independent assets. They are willing to invest in preferred or voting shares, family-run, foreign-run, or dispersed capital companies when they are happy with the investment opportunity and the company's governance. The latter is examined for its substance: who the board members are, what is the board's dynamics, its power structure and the controlling shareholders' reputation, history, and treatment of minority shareholders. So, access to management is a key governance preference. They appreciate companies that value their input and refer to this process as "collaborative activism". Ongoing access and proximity are important because it affords them foresight: the opportunity to discuss strategy with management, make non-intrusive suggestions and lend opinions on matters of their expertise. The behavior they describe is compatible with that found in Holland, 1998, in his investigation of British institutional investors. This means that the substance of activity between investor and investees happens here, as elsewhere, behind-the-scenes (McCahery *et al.*, 2016) producing little or no external signs whether discussions and negotiations were successful in convincing management to change policies and practices. Without external indicators it is hard to evaluate the effectiveness of activism and thereby the relevance of this group of investors as an external governance mechanism.

Non-independent assets and internally managed pension funds' portfolios are also active engagers. They have direct contact with investees but are more institutionalized in their relationships. Pension funds rely on sell-side organized small group meetings with companies to complement their

lean internal structures and lack of resources. Both pension funds and non-independent assets are larger which means that the “smallness” of the Brazilian stock markets affects them more acutely. Adopting exit strategies is more difficult because they may not find equally liquid options to invest. Elimination criteria such as not investing in certain sectors of the economy – such as polluting industries – was not practiced by NIAs but one public pension fund mentioned banning investments in socially reproachable industries such as tobacco and armaments.

Pension funds and non-independent assets share similarities in that they were quick to commit to Principles of Responsible Investment (PRI) and Amec’s Stewardship Code. We suggest the motivation to formalize such commitments are related to legitimacy needs and standard responses to uncertainty (Dimaggio and Powell, 1993) but could also be construed as political moves to support the development of the Brazilian capital markets.

Committing to the principles of such institutions involves more than just signing a piece of paper. It usually means adopting standards, procedures and making some form of public accountability. Thus, particularly NIAs share similarities in structures and approaches. All entities with different degrees of formalism and sophistication are trying to incorporate ESG concerns in their investment analysis. In addition, adopting these principles gives them access to standards and discussions with which they can support their internal decision-making processes, especially since large institutions require traceable decision-making procedures because of hierarchies and compliance.

Committing to outside and international standards also legitimizes their actions. In the case of pension funds, it legitimizes asking asset managers they hire to incorporate ESG in their analysis. But overall, all institutions gain respectability and can capitalize on the images they portray to clients and society. This is important for pension fund legitimacy towards participants and NIAs support of parent company image – usually publicly traded entities, themselves easy targets of activism.

Beyond these internal aspects supporting the stewardship message and ESG can be interpreted as a more general act “activist” practice directed to the market and governments where they point the direction where they want the market to go without individually fronting the activity. Again, while these actions may have substance, measuring their effectiveness will be difficult, imposing another challenge to the study of activism in Brazil.

Table 8-4 summarizes different investor groups approaches to the engagement process ordinary course of engagement (meetings with the company and voting).



Table 8-4

## Engagement process

	IAs	NIAs	Pension Funds
Meetings with management	Private and closeness with companies/ broker organized group meetings	Institutionalized relationships/broker organized group meetings	Institutionalized relationships/ broker organized group meetings
Vote in General and Extraordinary Meetings	According to policy/ case by case	According to policy/ fiduciary duty concept growing	According to policy/ fiduciary duty concept implemented or under implementation
Vote publicity	Yet to develop	Available in most	Available in some

Voting and investor behavior in the proxy solicitation process are important indicators to measure activist behavior. As stated before, voting at general meetings is not mandatory in Brazil and turnouts are low. Although some independent assets vote regularly due to belief, relationship and even fiduciary reasons, most state they vote on a case-by-case basis, when the issue at hand is of their interest. All that can be said is that there is a growing consciousness with respect to voting by non-independent assets. Large public pension funds exert influence either because they are insiders or they have positions that are large enough to propose and vote-in a board representative, request a fiscal board or separate voting.

Despite that, the notion of voting as a fiduciary duty is still incipient and stewardship proponents have a substantial task ahead of them to convince investors to vote when, at best, all their vote can do is create some noise. Identifying the “economic” benefits of voting when considering that most companies have clearly defined controlling shareholders may not be easy to justify. Towards that end, streamlining the distance voting process, i.e., making the system less cumbersome, easy to access and cheap, is fundamental and the authorities should work diligently in that direction.

The perspectives exposed by Brazilian institutional investors in this study are consistent with the theory that ownership concentration subdues activism (Schleifer and Vishny, 1997; La Porta *et al.*, 1999). They are also consistent with theories that argue that diversification and performance metrics (Gilson and Gordon, 2013), profit-seeking and short-term liability structure are prone to less activism (Celik and Ikbosson, 2013; Ryan and Schneider, 2002). They corroborate with the view that investor size enables investors to wage activism (Ryan and Schneider, 2002; Rubach and Sebor,

2009) and that, mutual funds, are the least active of Brazilian investors (Maranho *et al.*, 2020). They also support the view that activism in Brazil is still low but increasing (Vargas *et al.*, 2017).

However, investor perspectives permit us to see how practitioners make sense of their world, understand their limitations, expose their frustrations, and describe their actions. They are yet another source of data supporting the view that local investors remain weak as an external governance mechanism. Even if we conceive that these investors may attempt and succeed in convincing companies to change their policies and practices by engaging privately in the ordinary course of business, it will remain hard to measure the effectiveness of these efforts.

Thus, it seems that the improvement in investor protection which has occurred in Brazil over the past 20 years did what it could to strengthen capital markets, which have responded by proving to be a viable source of funding for controlled companies and to receive foreign investment. However, these changes have not challenged the prevailing hierarchical firm organization that characterizes the country as Hierarchical Market Economy (Schneider, 2009) and external mechanisms such as investor activism and the market for corporate control remain weak or inexistent. If the effectiveness of the corporate governance system depends on the complementarity of internal and external mechanisms, improvements in the legal framework alone may not suffice. Novo Mercado requirements such as independent (from the controlling shareholder) board members help but still leave minority investors vulnerable.

This is an indication that changes in the legal framework may be necessary but not sufficient to strengthen the country's governance system. To that end, the view proposed by Roe (2008) which found support in Aminadav *et al.*, 2020, empirical work, that politics matters could be better explored in the Brazilian situation and in countries where defined control predominates. Other micro and macro measures – such as more freedom for Brazilians to invest abroad (and thus, force Brazilian companies to compete for capital on a global basis), higher disclosure standards for non-public traded companies (lowering the gap between private and public company disclosure), better long-term retirement investing alternatives, lower interest rates, etc. could be explored as part of a package of measures intended to strengthening and making local capital markets core choice of firm financing. But this is a political – economic policy - decision which has not yet been made.

Meaning making is situated and interviews for this study were conducted in 2018. One aspect we believe may have changed since then is a stronger emphasis on ESG by independent asset managers. We believe that the topic would have arisen spontaneously in conversations since the investment community became more mobilized towards the end of 2019 and the World Forum

meetings. For sure, one entity became a PRI signatory and others are known to be developing their analytical frameworks. In addition, CVM launched a public consultation to modernize the *Formulário de Referencia*. This revision suggests the inclusion of more information on ESG aspects.

## 9 Conclusion

In this work we have analyzed the perceptions on activism and engagement of officers and partners of 18 Brazilian institutional investors who were large players in each of their categories or, in the case of independent asset managers, had businesses which heavily depended on the success of their equity portfolios. We defined activism as “actions taken by shareholders with the explicit intention of influencing corporations’ policies and practices” (Goronova and Ryan, 2014). Engagement was defined as a process involving the ongoing interaction between the company and investors. It includes ordinary activities of the investor relations routine such as meetings with the company and voting and extraordinary actions which were considered activism (Martin *et al.*, 2007). Among these, we considered exit, escalation of the conflict, voting against management, collaboration among investors and shareholder proposals.

Our main conclusions are:

- 1) Activism has a negative connotation because it is associated with confrontation. Investors do not want to be seen as activists and prefer to call themselves “collaborative activists”. Only large public pension funds use the term to describe their actions.
- 2) Activism in Brazil is limited and primarily reactive: a defense mechanism to be used if rights or interests are perceived to have been harmed but to be avoided at all costs through prior scrutiny of companies’ governance. Collaboration is a practice which is recognized by all as having become more common but is neither frequent, regular or with the same parties.
- 3) Pro-active activism is limited to and primarily associated with public pension funds proposing candidates to board seats, requesting separate elections for minority or preferred shareholders and fiscal boards. Independent asset managers do not believe activism as an effective means of inducing change in companies most of which have clearly defined controlling shareholders with over half of the voting capital. They do not see it as their roles to take action to induce performance or governance improvement other than what might be achieved by convincing management in ordinary course of business in private meetings.
- 4) Voting disclosure is improving among non-independent asset managers and large public pension funds. Consciousness of voting as a fiduciary duty is increasing among Stewardship signatories but accountability is incipient. Independent asset managers have

voting policies in place and some practice it regularly on beliefs, habit or for relationship reasons. But most vote on a case-by-case basis when there is a subject of interest. So, voting turnouts will remain low impacting the visibility and ability to measure investor activism.

- 5) Investors, as an external governance mechanism, remain weak. Furthermore, the ongoing improvements in investor protection over the past 20 years have borne fruits but have not changed the fundamental characteristic of ownership structure. Thus, to the extent that governance effectiveness depends on the complementarity of internal and external mechanisms, the fact that key external mechanisms (e.g., competitive markets for capital, and investor pressure), imply that the overall governance system remains weak. Ownership concentration may subdue principal-agent problem, but principal-principal issues remain without satisfactory remedies, theoretical or practical.

In terms of further research, we suggest areas that may be pursued where better understanding of the specifics of the Brazilian case may be better clarified. We suggest better understanding of topics that are commonly raised in studies of activism: votes, conflicts-of-interest, and political pressure on pension funds.

One research project that might be pursued is a thorough description of the voting process taking into consideration the information that needs to be provided, aspects of the electronic voting system, documentation, and its costs, and very importantly how votes are counted. Similar studies have been undertaken in other jurisdictions (Eckbo, 2011). This is because clarity of votes is so important for the measurement of activism. Another aspect associated with the voting process relates to the voting of candidate slates rather than voting for individual candidates. What are the merits of each alternative? What can it mean to power balance and most importantly what does it mean to board effectiveness? Conventional discussion about board composition is based on director independence. But as the idea of diversity evolves it becomes evident that what is important is an effective team at the board. So rather than individuals, what may be desired are board members that have complementary competencies that are needed by the company. So, voting for a slate may serve the company better. This renders a good debate concerning governance quality.

On a broader perspective, the nature, and types of conflict of interest that may occur within asset managers and between asset management companies who are part of financial conglomerates could be further explored because financial institutions in Brazil are far more diversified than in the United States. Lastly, pension funds have undergone much change and their position as investors

need to be revisited. Lazzarini (2010) places public pension funds as one of the pillars of his “Capitalismo de Laços”, the means through which the state maintained its grip over privatized companies. Given that many important shareholder agreements which they were part of no longer exist, is it still possible to say that? What is the status of shareholder agreements in Brazil? Also, case studies might show if and how pension funds are subject to political pressure. Has their internal governance evolved? Can it protect them from interference? Does the growth in defined contribution plans make them less vulnerable to political interference? These are topics that merit a deeper understanding.

This study on investor perspectives adds to the Brazilian literature on activism and is relevant for other emerging markets jurisdictions where concentrated ownership prevails. It contributes to the discussion on comparative corporate governance and the complementarity/substitutability of governance mechanisms highlighting there are no satisfactory theoretical or practical propositions to remedy principal-principal conflicts.

## 10 References

- ABRAPP. Associação Brasileira das Entidades Fechadas de Previdência Complementar - Consolidado Estatístico Dezembro 2020 - Retrieved from [https://www.abrapp.org.br/wp-content/uploads/2021/04/Consolidado-Estatistico\\_12\\_2020.pdf](https://www.abrapp.org.br/wp-content/uploads/2021/04/Consolidado-Estatistico_12_2020.pdf)
- ADMATI, A; PFLEIDER, P. Large Shareholder Activism, Risk Sharing and Financial Market Equilibrium, *Journal of Political Economy*, v.102, n.6, p.1097-1130, 1994
- ADMATI, A.R.; PFLEIDER, P., The Wall Street Walk” and Shareholder Activism: Exit as a Form of Voice, *The Review of Financial Studies*, v.22, n 7, p.2645-2685, July 2009
- AGUILERA, R. V.; WILLIAMS, C. A., ‘Law and Finance’: Inaccurate, Incomplete, and Important, *BYU Law Review*, n.6, p.1412-1434, 2009
- AGUILERA, R.; DESENDER, K.; BENDAR, M.; LEE, J.H., Connecting the Dots: Bringing External Corporate Governance into the Corporate Governance Puzzle, *The Academy of Management Annals*, v.9, n.1, p.483–573, 2015 <http://dx.doi.org/10.1080/19416520.2015.1024503>
- AHERN, K.R. Information networks: Evidence from illegal insider trading tips, *Journal of Financial Economics*, v.125, p.26–47, 2017, [doi.org/10.1016/j.jfineco.2017.03.009](https://doi.org/10.1016/j.jfineco.2017.03.009)
- AMINADAV, G.; PAPAIONNOU, E., Corporate Control around the World, *Journal of Finance*, v.69, p.5–50, 2020
- Anbima<sup>a</sup>. Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais. Ranking de Gestao - 201804\_valor from April 2018 – Ações – retrieved from [http://www.anbima.com.br/pt\\_br/informar/ranking/fundos-de-investimento/fundos-de-investimento.htm](http://www.anbima.com.br/pt_br/informar/ranking/fundos-de-investimento/fundos-de-investimento.htm), accessed on June 6, 2018
- Anbima<sup>b</sup>. Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais. Ranking de Gestao, Ranking de Gestão 202011 and 201512. Retrieved from [https://www.anbima.com.br/pt\\_br/informar/ranking/fundos-de-investimento/gestores.htm](https://www.anbima.com.br/pt_br/informar/ranking/fundos-de-investimento/gestores.htm)
- ANSON, M.; WHITE, T.; HO, H. Good corporate governance works: More evidence from CalPERS, *Journal of Asset Management*, v.5, n.3, p.149–156, 2004
- ASHRAF, R. N.; RYAN, H.E., Do, Pension-Related Business Ties Influence Mutual Fund Proxy Voting? Evidence from Shareholder Proposals on Executive Compensation, *Journal of Financial and Quantitative Analysis*, v.47, n.3, p.567–588, June 2012, [doi:10.1017/S0022109012000014](https://doi.org/10.1017/S0022109012000014)
- B3<sup>a</sup> – The Brazilian Stock Exchange, Banco de dados operacionais, Operational Figures\_2018.05 retrieved from [http://ri.bmfbovespa.com.br/?utm\\_source=Home\\_SitesRelacionado&utm\\_content=Portal\\_SiteRelacionados](http://ri.bmfbovespa.com.br/?utm_source=Home_SitesRelacionado&utm_content=Portal_SiteRelacionados), accessed on June 6, 2018; and [http://www.bmfbovespa.com.br/pt\\_br/servicos/market-data/consultas/mercado-a-vista/valor-de-mercado-das-empresas-listadas/bolsa-de-valores/](http://www.bmfbovespa.com.br/pt_br/servicos/market-data/consultas/mercado-a-vista/valor-de-mercado-das-empresas-listadas/bolsa-de-valores/) accessed on April 15 and July 17, 2018.

B3<sup>b</sup>, The Brazilian Stock Exchange, Banco de dados operacionais, December 2020, bd\_operational-figures\_dez-20, Operational Report – Investor Relations

B3<sup>c</sup> - The Brazilian Stock Exchange, Banco de dados operacionais, Press release, B3 Anuncia os Resultados do Terceiro Trimestre de 2020. Retrieved from <https://api.mziq.com/mzfilemanager/v2/d/5fd7b7d8-54a1-472d-8426-eb896ad8a3c4/f577c5c7-f018-e7db-a14a-49e389436ebd?origin=1>

BARBOSA, L, Igualdade e Meritocracia, 4<sup>o</sup>. Ed., Editora FGV, Rio de Janeiro, 2003

BARKER, R.G. The market for information-evidence from finance directors, analysts and fund managers, *Accounting and Business Research*, v.29, n.1, p.3-20, Winter Issue, 1998

BECHT, M.; FRANKS, H.; MAYER, C.; ROSSI, S. Returns to Shareholder Activism? Evidence from a Clinical Study of the Hermes UK Focus Fund, *Oxford University Press* on behalf of The Society for Financial Studies, v.22, n.8, 2009, doi:10.1093/rfs/hhn054

BERLE, A.; MEANS, G. The Modern Corporation and Private Property, Transaction Publishers, New Brunswick, New Jersey 08903, 1991

BLACK, B. The Legal and Institutional Preconditions for Strong Securities Markets, 48, *UCLA Law Review*, v.42, n.781, p.781-855, 2001

BLACK, B.S.; CARVALHO, A.G.; SAMPAIO, J.O. The evolution of corporate governance in Brazil, *Emerging Markets Review*, v.20, n.1, p. 176-195, 2014

BORTOLON, P.M.; SOUSA SILVA, L. S.; CAMPOS BARROS, L.A., Ativismo e Solicitação de Instalação do Conselho Fiscal: influência do Monitoramento, Desempenho e Estrutura de Propriedade, *Revista Contabilidade, Gestão e Governança*, Brasília, v.22, n.2, p. 261-279, May-August, 2019

BUSHEE, B. J.; CARTER, M. E.; GERAKOS, J., Institutional Investor Preferences for Corporate Governance Mechanisms, *Journal of Management Accounting Research*, v.26, n. 2, p.123-149, 2014, doi:10.2308/jmar-50550

BUSHEE, B.J.; NOE, C. Corporate Disclosure Practices, Institutional Investors, and Stock Return Volatility, *Journal of Accounting*, v.38 Supplement: Studies on Accounting Information and Economics of the Firm, p.171-202, 2000

BUTLER, A.W; GURUM, U., Educational Networks, Mutual Fund Voting Patterns, and CEO Compensation, *The Review of Financial Studies*, v.25, n.8, p. 2533–2562, 2012 <https://doi.org/10.1093/rfs/hhs067>

CARLETON, W.T.; NELSON, J.M.; WEISBACH, M.S., The influence of Institutions on Corporate Governance through private negotiations: Evidence from TIAA-CREF, *The Journal of Finance*, v. LIII, n.4, p.1335-1362, 1998

CARVALHO, A. G. Governança Corporativa no Brasil em Perspectiva, *Revista de Administração da USP*, v.37, n.3, p.19-32, 2002



- ÇELIK, S.; ISAKSSON, M., Institutional Investors as Owners: Who Are They and What Do They Do?, *OECD Corporate Governance Working Papers*, n.11, OECD Publishing, Paris, 2013, <https://doi.org/10.1787/5k3v1dvmfk42-en>.
- CHOI, W.Y; CHO, H., Shareholder activism in Korea: Analysis of PSPD's Activities, *Pacific-Basin Finance Journal*, n.11, p.-349-363, 2003
- CHUNG, K. H.; ZHANG H., Corporate Governance and Institutional Ownership, *Journal of Finance and Quantitative Analysis*, v.46, n.1, p.247–273, 2011, doi:10.1017/S0022109010000682
- COLLARES, M. L. Corporate governance: A major factor in shareholder activism in Brazil. *Revista de Administração Contemporânea/Journal of Contemporary Administration*, v.24, n.5, art.3, p.414-431, 2020, <https://doi.org/10.1590/1982-7849rac2020190388>
- CRESPI, R.; RENNEBOOG, L., “Is (Institutional) Shareholder Activism New? Evidence from UK Shareholder Coalitions in the Pre-Cadbury Era”, *Corporate Governance an International Review*, v.8, n.4, p.274-295, 2010, <https://doi-org.ez29.periodicos.capes.gov.br/10.1111/j.1467-8683.2010.00795.x>
- CRESWELL. J.W. Projeto de Pesquisa: métodos qualitativo, quantitativo e misto. Tradução Magda França Lopes, 3edição Ed. Porto Alegre Ârtmed, Sage, 2010
- CRISOSTOMO, V. L.; GONZÁLEZ, E.V., Possível estratégia de ativismo de fundos de pensão no Brasil, (Possible activism strategy of pension funds in Brazil), *Revista de Economia Contemporânea*, v.10, n.1, p.139-155, 2006, <https://doi.org/10.1590/S1415-98482006000100006>
- CULLEN, G.; GASBARRO, D.; MONROE, G.S., Mutual fund trades and the value of contradictory private information, *Journal of Banking & Finance*, v.34, p.378–387, 2010, doi:10.1016/j.jbankfin.2009.08.006
- CVM. Comissão de Valores Mobiliários, Instrução CVM 555, retrieved from <http://conteudo.cvm.gov.br/legislacao/instrucoes/inst555.html>
- DA MATTA, R., A Casa e a Rua: Cidadania, mulher e morte no Brasil, 1st ed., Editora Rocco, 1997
- DALTON, D. R.; DAILY. C.M.; CERTO, S.T.; ROENGPITA, R., Meta-analysis of financial performance and equity: Fusion or confusion? *Academy of Management Journal*, v.46, n.1, p.13-26. 2003
- DAVIS G.; THOMPSON, T. A., Social Movement Perspective on Corporate Control, *Administrative Science Quartely*, v.39, p.141-173, 1994
- DAVIS, G., HAN KIM, E., Business ties and proxy voting by mutual funds, *Journal of Financial Economics*, v.85, p.552–570, 2005
- DAVIS, J. H.; SCHOORMAN, D.; DONALDSON, L., Toward a Stewardship Theory of Management, *Academy of Management Review*, v.22, n.1, p.20-47, 1997

DE ALMEIDA, L. P.; LEAL, R. P., Activism failure of state-owned pension funds with board seats in Brazil, *Corporate Board: Role, Duties and Composition*, v.16, n.3, p.52-62, 2020.  
<https://doi.org/10.22495/cbv16i3art4>.

DE LA CRUZ, A.; MEDINA, A.; Tang, Y, Owners of the World's Listed Companies, *OECD Capital Market Series*, Paris, 2019, retrieved from [www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm](http://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm).

DE OLIVEIRA, R. M.; LEAL, R. P. C; ALMEIDA, V. S., Large pension funds and the corporate governance practices of Brazilian companies, *Corporate Ownership & Control*, v.9, n.2, p.76-84, 2012, <http://doi.org/10.22495/cocv9i2art6>.

DE SILVEIRA, A.; DIAS, A., What is the impact of bad governance in a concentrated ownership environment? *International Journal of Disclosure and Governance*; v.7, n.1, p.70-91, 2009

DENIS, D; MCCONNELL, J., International Corporate Governance, *Journal of Financial and Quantitative Analysis*, v. 38, n.1, p.1-36, 2003

DEQUECH, D., The New Institutional Economics and the Theory of Behavior Under Uncertainty, *Journal of Economic Behavior & Organization*, v.59, p.109–131, 2006

DHARWADKAR, R.; GEORGE, G., Privatization in Emerging Economies: An Agency Theory Perspective, *Academy of Management Review*, v.25, n.3, p.650-669, 2000, doi: 10.2307/259316

DI MICELI DA SILVEIRA, A.; DIAS JR., A. L., What is the impact of bad governance practices in a concentrated ownership environment? *International Journal of Disclosure and Governance*, v.7, n.1, p.70–91, 2009,

DEL GUERCIO; SEERY, D; WOIDTKE, T., “Do boards pay attention when institutional investor activists ‘just vote no’?” *Journal of Financial Economics*, v.90 p.84–103, 2008, doi:10.1016/j.jfineco.2008.01.002

DIMAGGIO, P.J.; POWELL W.W., The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields, *American Sociological Review*, v.48, n.2, p.147-160, April 1983, URL:  
<http://links.jstor.org/Sici?sici=0003.1224%28198304%2948%3A2%3C147%3ATICRII%3E2.0.CO%3B2-S>

DIMSON, E.; KARAK, O.; LI, X., “Active Ownership”, *The Review of Financial Studies*, v.28 n.12, p. 3225-3268, 2015, doi:10.1093/rfs/hhv044

DORE, R. Stock Market Capitalism, Japan and Germany versus the Anglo-Saxons, Oxford University Press, New York, 2000

DUARTE, B.E.; LEAL, R.P.C., “Principal-principal conflicts leading to activism of a large government-owned investor in Brazil”, *Corporate Governance and Organizational Behavior Review*, Volume 5, Issue 1, 2021

- DURNEV, A.A.; NAIN, A.S., Does insider trading regulation deter private information trading? International evidence, *Pacific-Basin Finance Journal*, v.15, p.409–433, 2007  
doi:10.1016/j.pacfin.2006.10.003
- ECKBO, B.E.; PAONE, G; URHEIM, R., Efficiency of Share-Voting Systems: Report on Sweden *ECGI Working Paper Series in Law*, Working Paper n.173, 2011.
- EDMANS, A., Blockholder Trading, Market Efficiency, and Managerial Myopia, *The Journal of Finance*, v.LXIV, n.6, p. 2481-2513, 2009
- EDMANS, A.; FANG, V.W.; ZUR, E., The Effect of Liquidity on Governance, *The Review of Financial Studies*, v.26, n.6, p. 1443-1482, 2013
- EDMANS, A., MANSO, G., Governance Through Trading and Intervention: A Theory of Multiple Blockholders, *Review of Financial Studies*, v.24, n.7, p.2395–2428, July 2011,  
<https://doi.org/10.1093/rfs/hhq145>2011
- EISENHARDT, K., Agency Theory: An Assessment and Review, *Academy of Management Review*, v.14. n.1 p.57-74, 1989
- ERTMUR, Y.; FERRI, F.; MUSLU, V. Shareholder Activism and CEO Pay, *The Review of Financial Studies*, v.24, n.2, p.535-592, 2011
- FERREIRA, M.A.; MATOS, P., The Colors of Investors' Money: The Role of Institutional Investors Around the World, *Journal of Financial Economics*, v.88, p499–533, 2008,  
doi:10.1016/j.jfineco.2007.07.003
- GANTCHEV, N., “The costs of shareholder activism: Evidence from a sequential decision model”, *Journal of Financial Economics*, v.107, n.3, p.610–631, March 2013  
<http://dx.doi.org/10.1016/j.jfineco.2012.09.007>
- GILLAN, S.L.; STARKS, L.T., Corporate Governance, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective, *Journal of Financial Economics*, v.57, n.2, p.275-305, 2000, doi:10.1016/S0304-405X(00)00058-1
- GILLAN, S. L.; STARKS, L.T, The evolution of shareholder activism in the United States, *Journal of Applied Corporate Finance*, v.19 n.1, p.55-73, 2007
- GILSON, R. J.; GORDON, J. N., The Agency costs of agency capitalism: Activist investors and the revaluation of governance rights, *Columbia Law Review*, v.113, n.863, p.113-863, 2013
- GORONOVA, M.; RYAN, L.V., Shareholder Activism: A Multidisciplinary Review, *Journal of Management*, v.40, n.5, p.1230-1268, 2014, doi:1177/0149206313515519
- GORGA, E., Changing the paradigm of stock ownership from concentrated towards dispersed ownership? Evidence from Brazil and consequences for emerging countries, *Northwestern Journal of International Law & Business*, v.29 n.2, p.439-554, 2009

GOUREVITCH, P.A., The Politics of Corporate Governance (Regulation), *Yale Law Journal*, v.112, p.1829, 2003; Comments on ROE, M. “The Political Determinants of Corporate Governance: Political Context, Corporate Impact” New York: Oxford University Press, 2003. p.250.

GUBRIUM, J. F.; HOLSTEIN, J. A., Active Interviewing” in GUBRIUM, J. F.; HOLSTEIN, J. A., eds. *Post Modern Interviewing*, Sage Publications, Chapter 4, p.75, 2003

GUIMARÃES, P.; LELA, R. P. C.; WANKE, P.; MOREY, M., Shareholder activism impact on efficiency in Brazil.” *Corporate Governance*, v.19, n.1, p.141-157, 2019, <https://doi.org/10.1108/CG-01-2018-0010>

HALL, P.; SOSKICE, D., Varieties of Capitalism, The Institutional Foundations of Comparative Advantage, eds. HALL, P.; SOSKICE, D., Oxford University Press, 2001

HAMBRICK, D.C; FINKELSTEIN, S.; CHO, T. S.; JACKSON, E. M., Isomorphism in reverse: Institutional Theory as an explanation for recent increases in intra-industry heterogeneity and managerial discretion, *Research in Organizational Behavior*, v.26, p.307–350, 2005, ISSN: 0191-3085/doi:10.1016/S0191-3085(04)26008-7

HAWLEY, J.; WILLIAMS, A., The Emergence of Universal Owners: Some Implications of Institutional Equity Ownership, *Challenge*, v.43; p.43-61, 2000

HAWLEY, J.; WILLIAMS, A., Universal Owners: Challenges and Opportunities, *Universal Owners*, v. 15, n.5, p. 415-420, 2007

HENDRY, J.; SANDERSON, P.; BARKER, R.; ROBERTS, J. Owners or traders? Conceptualizations of institutional investors and their relationship with corporate managers, *Human Relations*, v.59, n.8, p.1101–1132, 2006 doi:10.1177/0018726706068793

HIRSHMAN, A., Exit, Voice and Loyalty, Responses to decline in firms, organizations, and states Harvard University Press, 1970

HOLLAND, J., Influence and Financial Intervention by Financial Institutions in their Investee Companies, *Corporate Governance*, v.6, n.4, p.249-263, 1998, doi-org.ez29.capes.proxy.ufrj.br/10.1111/1467-8683.00113

HOSKISSON, R. E.; HITT, M.A.; JOHNSON R.A.; GROSSMAN, W., Conflicting Voices: The effects of institutional ownership heterogeneity and internal governance on corporate innovation strategies, *Academy of Management Journal*, v.45, n. 4, p.697-716, 2002.

ICI<sup>a</sup>. Investment Company Institute, ICI Fact Book 2018, retrieved from [http://www.icifactbook.org/data/18\\_fb\\_data](http://www.icifactbook.org/data/18_fb_data)

ICI<sup>b</sup>. Investment Company Institute, Worldwide Public Tables, 3<sup>rd</sup> quarter 2020 (ww\_q3\_20\_public\_report\_us) retrieved from, <https://www.ici.org/search?keywords=worldwide%20public%20tables>

IIFA. International Investment Funds Association – Historical Public Tables 2020 – 7- 23 retrieved from [https://iifa.ca/page/industry\\_statistics](https://iifa.ca/page/industry_statistics), accessed on June 1, 2021

JENSEN, M. C.; Meckling, H., Theory of the Firm: Managerial behavior, agency costs and ownership structure, *Journal of Financial Economics*, v.3, n.4, p.305-360, 1976, doi.org/10.1016/0304-405X(76)90026-X

JENSEN, M., The Modern Industrial Revolution, Exit, and the Failure of Internal Control Systems, *The Journal of Finance*, v. XLVIII, n.3, July 1993

JUDGE, W.Q.; GAUR, A.; MULLER-KAHLE, M. I., Antecedents of shareholder activism in target firms: Evidence from a multi-country study, *Corporate Governance*, v.18, n.4, p.258-273, 2010

KHORANA, A.; SERVAES, H.; TUFANO, P., Explaining the size of the mutual fund industry around the world, *Journal of Financial Economics*, v.78, p.145–185, 2005, doi:10.1016/j.jfineco.2004.08.006

KIM, W.; SUNG, T.; WEI, S., The diffusion of corporate governance to emerging markets: Evaluating two dimensions of investor heterogeneity, *Journal of International Money and Finance*, v.70, p.406–432, 2017, <http://dx.doi.org/10.1016/j.jimonfin.2016.10.002>

KOH, P., Institutional investor type, earnings management and benchmark beaters, *Journal of Accounting and Public Policy*, v.26, p.267–299, 2007, doi:10.1016/j.jaccpubpol.2006.10.001

LA PORTA, R.; LOPEZ-DE-SILANES, F.; SHLEIFER, A.; VISHNY, R W., Law and Finance, *Journal of Political Economy*, v.106, n.6, p.1113-1155, 1998

LA PORTA, R.; LOPEZ-DE-SILANEZ, F.; SHLEIFER, A., Corporate Ownership Around the World, *The Journal of Finance*, v.54, n.2, p.471-517, 1999

LA PORTA, R.; LOPEZ-DE-SILANES, F.; SHLEIFER, A.; VISHNY, R., Investor protection and corporate governance *Journal of Financial Economics*, v.58 p.3-27, 2000, [https://doi.org/10.1016/S0304-405X\(00\)00065-9](https://doi.org/10.1016/S0304-405X(00)00065-9)

LAZZARINI, S.G.; MUSACCHIO, A., Leviathan as a Minority Shareholder: A Study of Equity Purchases by the Brazilian National Development Bank (BNDES), 1995-2003, November 2010, retrieved from SSRN: <https://ssrn.com/abstract=1713429> or <http://dx.doi.org/10.2139/ssrn.1713429>

LAZZARINI, S. Capitalismo de Laços, Elsevier Editora Ltda, 2011

LEAL, R. P. C.; SILVA, A. C.; IERVOLINO, A. P., One decade of evolution of corporate governance practices in Brazil. *Revista Brasileira de Finanças*, v.13 n. 1, p.134-161, 2015

LEAL, R.P.C.; CARVALHAL-DA\_SILVA, A. L.; VALADARES, S. M., Estrutura de Controle das Companhias Brasileiras de Capital Aberto, *RAC*, v.6, n.1, p.7-18, January/April. 2002

LEVIT, D., Soft Shareholder Activism”, *Review of Financial Studies*, Forthcoming, Jacobs Levy Equity Management Center for Quantitative Financial Research Paper, September 10, 2018, Retrieved from SSRN: <https://ssrn.com/abstract=1969475> or <http://dx.doi.org/10.2139/ssrn.1969475>

- LOGSDON, J.; VAN BURREN III, H. J., Beyond the Proxy Vote: Dialogues Between Shareholder Activists and Corporations, *Journal of Business Ethics* v.87, p.353-365, 2009, doi: 10.1007/s10551-008-9807-z
- MARANHO, F. S.; LEAL, R. P. C.; BORTOLON, P. M., The firm-investor level characteristics of institutional investor engagement in Brazil, *International Journal of Disclosure and Governance*. Advance online publication, 2020 <https://doi.org/10.1057/s41310-020-00095-w>
- MARANHO, F.S; LEAL, R.P.C, Corporate Governance and Firm Performance in Latin America: A meta-analysis, *Academia*, v.31 n.1, p.195-211, 2018, doi.org/10.1108/ARLA-04-2017-0126
- MARTIN, R.; CASSON, P.D.; NISAR, T.M., Investor Engagement: Investors and Management Practice under Shareholder Value, Oxford University Press, 2007
- MCCAHERY, J. A; SAUTNER, Z.; STARKS, L. T., Behind the Scenes: The Corporate Governance Preferences of Institutional Investors, *The Journal of Finance*, v. LXXI, n.6, p.2905-2932, 2016, doi:10.1111/jofi.12393
- MCNULTY, T.; NORDBERG, D., Ownership and Engagement: Institutional Investors as Active Owners, *Corporate Governance: An International Review*, v.24, n.3, p.346-358, 2016
- MEYER, E., Getting to say Si, Ja, Oui, Hai, and Da, *Harvard Business Review*, December 2015, <https://hbr.org/2015/12/getting-to-si-ja-oui-hai-and-da>
- MONKS, R.; MINOW, N., Corporate Governance, Blackwell Publishing Ltd. 2004
- NORLI, O.; OSTERGAARD, C.; SCHINDELE, I, Liquidity and Shareholder Activism, *The Review of Financial Studies*, v.28, n.2., p.486-520, 2015 doi:10.1093/rfs/hhu070.
- NORTH, D. C., Institutions and the Performance of Economies Over Time, MÉNARD, C.; SHIRLEY, M.M., p. 21-30, in Handbook of New Institutional Economics, eds. MÉNARD, C., SHIRLEY, M.M., 2008 Springer-Verlag Berlin Heidelberg, 2008
- PINTO, M. B.; LEAL, R. P. C., “Ownership Concentration, Top Management and Board Compensation”, *Revista de Administração Contemporânea*, v.17, n.3(3), p.304-324, 2012
- PREVIC – Superintendência Nacional de Previdência Complementar – Informe Estatístico Trimestral, June 2018, retrieved from <http://www.previc.gov.br/>, accessed on September 17, 2018 and in March 2021
- PUNSUVO, F. R.; KAYO, E.K.; BARROS, L.A, Activism of Pension Funds and Corporate Governance Quality, *Revista de Contabilidade e Finanças, USP, São Paulo*, v.18, n.45, p.63 –72, September/December 2007
- RAJAN, R. G., ZINGALES, L., The great reversals: the politics of financial development in the twentieth century, *Journal of Financial Economics* v.69, p.5–50, 2003
- REHBEIN, K.; LOGSDON, M.; VAN BURREN III, H. J., Corporate Responses to Shareholder Activism: Considering the Dialogue Alternative, *Journal of Business Ethics*, v.112, p.137-154, 2012, doi:10.1007/s10551-012-1237-2

RICTHER, R., The New Institutional Economics: Its Start, Its Meaning, Its Prospects, *European Business Organization Law Review*, v.6, n.2, p.161– 200, 2005  
<https://www.researchgate.net/publication/228261489>

ROE, M. J., The Institutions of Corporate Governance in HANDBOOK OF NEW INSTITUTIONAL ECONOMICS, eds. MÉNARD, C., SHIRLEY, M.M., 2008, Springer-Verlag Berlin Heidelberg

ROMANO, R., Public Pension Fund Activism in Corporate Governance Reconsidered, *Columbia Law Review*, v.93, n.4, p.795-853, May 1993

ROSA, A.R.; TURETA, C.; BRITO, M.J., Revista Contemporânea de Economia e Gestão, v.4, n.1, p.41-52, January/June, 2006

RUBACH, M.; SEBORA, T., Determinants of Institutional Investor Activism: A Test of the Ryan-Schneider Model 2002, *Journal of Managerial Issues* v. XXI, n.2 p.245-261, Summer 2009,

RYAN, L. V.; SCHNEIDER, M., The Antecedents of Institutional Investor Activism, *The Academy of Management Review*, v.27, n.4, p.554-573, October 2002, URL:  
<https://www.jstor.org/stable/4134403> Accessed: 21-09-2018 07:33 UTC

SALDANHA, J., Sage Publications, London, 2009

SCHNEIDER, B. R., Hierarchical Market Economies and Varieties of Capitalism in Latin America *Journal of Latin American Studies*, v.41, p.553–575, 2009, Cambridge University Press, doi:10.1017/S0022216X09990186

SEC – Securities and Exchange Commission, SEC Adopts Amendments to Modernize Shareholder Proposal Rule, Press Release 2020-20, retrieved from <https://www.sec.gov/news/press-release/2020-220>

SHLEIFER, A.; VISHNY, R. W, A survey of corporate governance, *The Journal of Finance*, v.52, n.2, p.737-783, 1997

SIKAVICA, K.; HILLMAN, A. Towards a behavioral theory of corporate ownership and shareholder activism, *Academy of Management Proceedings*. Published Online: 30 November 2017, <https://doi.org/10.5465/ambpp.2008.33718573>

SILVERMAN D., Interpreting Qualitative Data, Sage publications Ltd., 2006

SMITH, M.P., Shareholder Activism by Institutional Investors: Evidence from CalPERS, *The Journal of Finance*, v.LI, n.1, March 1996

SMYTHE, T.I.; MCNEIL, C.R.; ENGLISH II, P.C., When does CalPERS' activism add value?, *Journal of Economic Finance*, v.39, p.641–660, 2015, DOI 10.1007/s12197-013-9269-8.

SONZA, I.B.; GRANZOTTO, A. Are pension funds good monitors? Os fundos de pensão são bons monitores?, *RAUSP Management Journal*, v.53, p.190–201, 2018

STERNBERG, L., LEAL, R. P.; BORTOLON, P. M., Affinities and agreements among Brazilian shareholders, *International Journal of Disclosure and Governance*, v.8, n.3, p.213-228, 2011, doi: 10.1057/jdg.2011.6

THOMAS, R.S.; COTTER J.F., Shareholder proposals in the new millennium: Shareholder support, board response, and market reaction, *Journal of Corporate Finance*, v.13, p.368-391, 2007

VARGAS, L. H.; BORTOLON, P. M.; BARROS, L. A.; LEAL, R. P. Recent activism initiatives in Brazil, *Relatórios COPPEAD*, v.432, p.2-21, 2017. Retrieved from <https://pantheon.ufrj.br/bitstream/11422/2351/1/432.pdf>

VOLPIN, P., Governance with Poor Investor Protection: Evidence from Top Executive Turnover in Italy, *Journal of Financial Economics*, v.64, n.1, p.61-90, April 2002

WFE. World Federation of Exchanges, “Annual Statistics Guide 2019”, retrieved from <https://www.world-exchanges.org/home/>

YAMAHAKI, C.; FYRNAS, J. G., Institutional Determinants of Private Shareholder Engagement in Brazil and South Africa: The Role of Regulation, *Corporate Governance: An International Review*, v24, n.5, p.509–527, 2016, doi:10.1111/corg.12166

YIN, R. K., Case study research: Design and methods, 4th ed., Thousand Oaks, California: Sage, 2016

YOUNG, M. N.; PENG, M. W.; AHLSTROM, D.; BRUTON, G. D.; JIANG, Y. Corporate Governance in Emerging Economies: A Review of the Principal–Principal Perspective *Journal of Management Studies*, v.45 n.1, p.196-220, 2008

ZHENG, S.X.; ZHONG, K, Does shareholder activism improve operating performance of targeted companies: a re-examination of CalPERS’ focus list program *International Journal of Corporate Governance*, v.8, n.2 p.156- 173, 2017



## 11 Appendix 1

### Excerpts to Chapter 5 - Independent Asset Managers

Table 5-2

Theme/Code: Investment Profile - Long-term	Reference
“Por exemplo, nas relações com investidores, eu acho um processo muito natural que se você tem uma forma mais detalhista, mais longo-prazista de enxergar uma empresa, que a própria empresa te enxergue como investidor, de uma forma diferente, do que um cara que está comprando hoje pra vender amanhã.”	1:112¶16 in A1
“O nosso processo de investimento, a gente só faz investimento de longo prazo, tá”	2:3¶11 in A2
“Então pô “ah não, esse investidor tem um perfil legal, de longo prazo, pô, ele interage, ele traz ideias, traz críticas, coloca de uma maneira adequada”	3:77 ¶72 in A3
“Eu acho que a gente tem aqui uma facilidade extra em relação à grande maioria dos outros fundos que a gente não tem necessidade de performance de curto prazo, não tem. E aí isso faz com que – pelo menos eu considero isso, a gente esteja alinhado com o longo prazo do negócio, ta?”	4:24 ¶82 in A4
“Que olha e tá pensando fazer investimento no prazo de três/cinco anos”	6:11¶12 in A6
“(…) aí eu saí em 2009 com a ideia de começar um fundo, com uma cabeça simples de não criar uma gestora com vários produtos, criar um fundo de investimento com horizonte longo prazo que compra participações em empresas abertas”	10:1¶18 in A10

Table 5-3

Theme/Code: Investment Profile – Value Investing	Reference
“Então se você tem uma cabeça de longo prazo, você, muitas vezes, consegue aproveitar movimentos curto-prazistas dessa massa pra fazer investimentos interessantes.”	1:76¶64 in A1
“Então value investing puro em longo prazo”	2:4¶20 in A2
“Porque assim, o (value investor) tem muita gente que fala porque é um discurso bacana e tal, mas na prática não é, não faz, é muito difícil, porque você tem que assim, de fato, ter paciência, você compra uma ação hoje olhando a 18 meses, você tem uma trajetória aí que as vezes é contra você, você tem que ser (contrarian) em alguns momentos, que é muito difícil, né?”	6:12 ¶16 in A6
“Eu sou gestor de fundo de ações, o foco é exatamente esse que você comentou, a gente é value investor,”	7:1 ¶4 in A7
“Pois é, eu vou te deixar triste, porque eu também sigo a cartilha do value investment”	9:1¶277 in A9
“Não cara, ser Buffet no Brasil é melhor ainda porque as coisas se diferenciam muito no prazo mais longo. Sabe, a diferença de você ganhar 5 mil por cento e ganhar 150% faz muita diferença.”	9:34¶281 in A9
“Bem, o seguinte, a gente aqui é... a gente não tem essa distinção de value investing e tal, tá? A gente investe em coisa que tem upside bom. (...) A gente prefere investir no que é bom, no que está dando certo, do que está dando errado (mas é barato), sabe? Então agente não tem esse complexo de brasileiro em outlet, sabe? Tipo assim, ‘ah, o negócio não serve direito, o sapato aperta, mas é tão barato que eu vou comprar, depois... ele laceia e tal, não sei que’, não.”	8:1¶14 in A8

Table 5-4

Theme/Code: Activism – negative connotation	Reference
“Então, (um pouco) para tirar essa conotação negativa... por que de onde vem essa conotação negativa? Lá nos Estados Unidos a gente vê esses investidores mais ativistas, dado que não tem controle, ele compra dois, 3% da empresa e acaba realmente conseguindo fazer diversas coisas, às vezes em detrimento da própria empresa. Então tem alguns investidores lá americanos que são muito agressivos e eu acho que isso trouxe, traz uma conotação às vezes negativa.”	(3:61¶114 in A3).
“durante muito tempo a palavra ativismo ficou mal vista porque haviam fundos de investimento que se organizavam as vezes até em grupo pra atacar a empresa e extrair valor dela”	(5:36¶84 in A5)
“Sei lá, o que é malvisto assim talvez é o caso dos fundos que entram pra organizar a companhia e fazem um desastre lá dentro, o caso da Dasa <sup>86</sup> , né?”	(A5:39 ¶ 88 in A5)
“Eu acho que tem uma questão que eu me preocupo, que a gente talvez não abordou tão profundamente aqui, que é essa questão do ativismo por ativismo que é uma vocação assim, uma certa necessidade de ser ativista e as pessoas às vezes não tem a visão holística, não tem a capacidade de execução de longo prazo dos negócios e elas acabam ... essa participação gerando ruídos, fricções e podem destruir companhias”.	(10:48¶194 in A10)

<sup>86</sup> Dasa is currently Brazil’s largest health lab concern. It went public, some private equity firms became shareholders and conducted restructuring; subsequently it was bought by an entrepreneurial family who now controls it.

Table 5-5

Theme/Code: Activism – not activists	Reference
“Eu não entro num investimento querendo de alguma forma alterar alguma coisa na empresa, influenciar do ponto A, B ou C dentro .... não é o objetivo. O objetivo é... passivo no sentido que eu não vou me meter, tá?”	4:5¶14 in A4
“Então o que eu estava falando: apesar de todo mundo falarem ‘ah pô, vocês têm esse DNA da governança corporativa então vocês são ativistas?’ Não. Assim, a gente não vai ficar levantando por levantar bandeira de governança corporativa, assim como não vamos virar ambientalistas por causa do environmental e do social.”	2:45¶270 in A2
“Como a gente se considera e se define como não ativista, se a gente dentro da nossa análise entender que pra conseguir as coisas da empresa a gente tem que juntar voto para ir assembleia brigar com a empresa, isso para nós dentro da prática fundamentalista é porque o fundamento tá errado e a gente não deve entrar nessa empresa.”	5:65 ¶245 in A5
“Agente não tem um perfil classico ativista”	10:3 ¶18 in A10
“A gente não tem porte suficiente para ter uma entrada mais ativista em relação às empresas, obviamente a gente tenta influenciar conversando, esse tipo de coisa, mas a gente não tem porte efetivamente pra entrar no ativismo efetivo, né?”	7:9¶29 in A7
“Eu , sinceramente, um tipo de funding que eu tenho muitas vezes eu não tenho tempo pra entrar numa briga. Porque sendo bem franco as brigas levam muito mais tempo que meu cotista vai estar no meu fundo ali.”	9:13¶40 in A9
“Embora assim, a gente já tenha alguma influência desses anos todos que a turma pergunta e tal, mas não é o nosso propósito comprar um (stack) grande na companhia, mandar todo mundo embora e assumir a gestão. Isso aí a gente não vai fazer, como alguns investidores outros fazem e fizeram.”	6:26 ¶ 40 in A06

Table 5-6

Theme/Code: Activism – distorts focus	Reference
“Então, do ponto de vista dos nossos cotistas talvez não seja o melhor interesse, então a gente procura não estar, caso... exceto nesses casos assim, que você precisa tomar essas ações.”	(6:33 ¶ 46 in A06)
“Eu não tenho esse proselitismo de... e tal, "ah, vou dar lição", tal, eu não tenho isso, tá? Porque eu tô gerindo dinheiro de cliente. O cliente não tá nem aí pro proselitismo, pra... o cliente fala assim, "pô, você tá gastando o seu tempo, sua energia com um negócio que não vai dar nenhum retorno pra gente, que é uma posição pequena, tal, é besteira"	(8:20 ¶ 34 in A08)
“Eu tenho um compromisso com meus investidores, né? Assim, de gastar energia nisso, quando você vai pra uma companhia sendo um conselheiro se você quiser fazer um bom trabalho é um dia da semana que você gasta pra ter uma reunião mensal ou a cada noventa... dois meses, você deveria gastar pelo menos um dia da semana, então é 20% do meu tempo que eu poderia tá achando outros investimentos, tá reforçando a minha visão sobre aqueles ativos”	(10:39 ¶ 128 in A10)

Table 5-7

Theme/Code: Activism – not competent to tell management what to do	Reference
“a gente não se considera competente pra dizer o que que o management tem que fazer ou não com a companhia, a gente entende que a gente tem que concordar ou não concordar, se eu concordar eu vou estar investido naquilo e vou estar comprando as ações dessa companhia pro meu fundo.”	5:4 ¶ 20 in A05
“Então, nós nunca vamos chegar pro CEO de uma companhia, qualquer que seja, e dizer que a estratégia dele tá errada, que ele deveria fazer esse tipo de gestão aqui e lá, que ele... isso assim, não nos passa pela cabeça porque nós somos investidores financeiros e o cara tá lá, ele que é o especialista, a nossa linha de... vamos dizer assim, de interlocução é mais em coisas assim, que diz respeito mercado de capitais, é relação de investidores, estrutura de capital e tal, aí é mais a nossa área.”	6:25 ¶ 40 in A06
“pra que a gente já esteja com pessoas que vão nos respeitar e vão gerir muito bem esse negócio, que, na verdade, a gente tenha mais a aprender com eles, do ponto de vista de gestão, do que é ensinar, e isso é o caso de gestores excepcionais”	1:40 ¶ 6 in A1

Table 5-8

Theme/Code: Activism – Controlling shareholders	Reference
<p>“Eu acho que ainda aqui no Brasil a gente vive um mundo de controladores. Então... e você brigar com um controlador é uma briga muito ingrata assim, é uma briga que você é um minoritário, você... você é um cara pequeno, você tem que juntar forças com outras pessoas, que, muitas vezes, não estão interessadas, e as empresas também estão bem grandes e estão... não sei se... em muitos casos as empresas são maiores e podem ignorar os investidores minoritários, mesmo eles tendo direito a voto.”</p>	1:134 ¶ 6 in A1
<p>Não. Acho que o grande problema do Brasil... a grande questão do Brasil é que a maioria das empresas têm controle definido, né?</p>	8:43 ¶ 109 in A08
<p>“Primeiro ponto é a estrutura de capital das companhias brasileiras, você tem um controlador muito bem definido e o acionista minoritário ele tem uma ingerência muito pequena, tá?” (...)”mas assim o efeito prático disso nas assembleias ainda é pequeno porque a grande maioria das empresas brasileiras elas não são ainda corporations pra que, vamos dizer assim, na assembleia prevaleça essa questão de comportamento voltado pra minoritário. Em geral os controladores... o máximo que pode acontecer é na margem ter um minoritário votando contra, chamando atenção e o controlador preocupado de evitar isso que isso vai tirar valor, vai macular a imagem, mas o poder decisório no Brasil ainda é muito concentrado.</p>	5:6 ¶ 20 in A05
<p>No Brasil, a nossa herança é o contrário, é assim, essas empresas que você tá falando familiares e tal, elas são totalmente repelentes a você ter sócio, abriram o capital lá atrás por oportunismo, e sempre trataram assim, o mercado de capitais como “ah lá, já vem esses caras aqui me encher o saco e não...”.</p>	6:38 ¶ 74 in A06
<p>E como o Brasil grande parte das empresas têm controle definido a capacidade de transformação dos negócios a partir do ativismo, ela é muito pequena, ela passa muito por um convencimento</p>	10:13 ¶ 42 in A10
<p>E mais do que isso, por mais que assim o controlador pode tudo, ele tem uma parte que é o mercado dono da empresa dele. Então quando ele quer (implementar) muito alguma coisa, e de peso mais importante, tem que passar por assembleia. Muita pauta no dia a dia obviamente é conselho e média, mas coisa muito estrutural vai lá pra assembleia. Por mais que ele já é o controlador, os acionistas não entraram, pode fazer um barulho se ele quiser.</p>	2:41 ¶ 257 in A02

---

“O fato é: você fazer ativismo no Brasil é complexo, por quê? Porque a grande maioria das empresas ela é, como eu falei, empresas de controle definido então na verdade vira uma briga, você tá brigando... e briga injusta porque você é minoritário, você pode até ser um investidor grande, mas minoritário e você mudar alguma coisa na empresa onde você é de fato minoritário em relação a alguém majoritário é muito difícil.”

---

4:48 ¶ 32 in

A4



Table 5–9

Theme/Code: Activism – Defense mechanism	Reference
Agora dito isso eu e a empresa aqui ela tem um pouco se destacado pelo ativismo também, mas é uma coisa consequência de alguma coisa que a empresa fez ou está em vias de fazer que eu me sinto obrigado, como investidor antes passivo, a ser o investidor ativo, então é dessa forma que a gente se engaja.”	4:7 ¶ 14 in A04
“Então o nosso posicionamento aqui é passivo e pacífico, a não ser que nós sejamos de alguma forma, sempre pra defender o interesse da empresa e dos nossos investidores, a gente tem que interferir de alguma forma.”	4:10 ¶ 14 in A04
“E como eu te falei, eu não sou ativista, eu viro ativista se pisarem no meu pé, né?”	4:17 ¶ 32 in A04
“então isso seria um ativismo, mas mais como uma defesa do que pra ensinar o management de como tocar a companhia.”	5:15 ¶ 34 in A05
O ativismo, ele surgiu como uma ferramenta, em muitos casos, de autodefesa ou basicamente de revelar algo que já estava ali, tá? Que um management competente poderia fazer por conta própria, você não precisaria de um elemento externo.	1:94 ¶ 4 in A01
Agora, em alguns momentos pra defender os nossos interesses e o valor pra todos os acionistas, quando a gente vê algum tipo de distorção, aí sim a gente intervém e assim, exerce o direito que a gente tem dentro do tamanho que a gente tem lá na sociedade.	6:27 ¶ 40 in A06
Agora, se é uma posição maior numa coisa meio óbvia, aí eventualmente a gente briga, entendeu? Mas assim, se é uma coisa... porque tem vários conflitos, tem aquele conflito que é óbvio, que, ‘pô, isso aqui é óbvio, não tem erro, não tem como, tal, não sei o que’, (inint 13:12) posição grande sua, aí o cliente até quer que você brigue, ‘poxa, peraí, o cara te... passou a mão na tua bunda na tua frente, uma posição grande nossa, pô, vai lá e briga, pô, vamos recuperar nosso dinheiro’.	8:22 ¶ 34 in A08
Então, acho que você teve uma necessidade de um certo protagonismo no ativismo defensivo do ponto de vista societário, e a partir disso, como as companhias eram talvez muito arcaicas em modelos de remuneração, em go... em certos processos societários de governança, de comunicação com o mercado, esses acionistas ativistas que talvez inicialmente tivessem protegendo seus interesses, e algumas dessas empresas que eram mais abertas se tornaram ativistas colaborativos.	10:6 ¶ 20 in A10

Table 5–10

Theme/Code: Activism – no control	Reference
“Então assim, é por isso que ativismo no Brasil tem aumentado porquê de fato tem aumentado o número de corporações, mas não é usual”	4:16 ¶ 32 in A4
“Tem hora que a gente fica mais agressivo, né? Então aí vai pro teu ponto, né? Então é justamente a hora onde por algum motivo a gente acha... isso acontece muito em corporações, é padrão, corporação é aquela empresa que não tem o dono claro, então é o caso típico onde você tem muitas vezes o management querendo tomar conta da empresa, aí você começa a divergir os interesses e nesse tipo de situação a gente... enfim, num passado recente a gente se envolveu em um ou outro caso de ativismo”	4:9 ¶ 14 in A04
“que as decisões estratégicas estavam sendo mal colocadas porque haviam alguns interesses meio conflitados, eram... companhia de capital pulverizado onde aconteceu aquele caso clássico americano do CEO...”	6:28 ¶ 40 in A06.
E muitas vezes tem um... stock option tem um peso gigante na remuneração dele que é um incentivo de prazo muito curto, né? Então às vezes a gente fica de olho nessas situações, né, que são situações meio que tóxicas que levam esse management à tomar decisões de prazo mais curto, né, e que em geral não são benéficas pra companhia, né?	5:22 ¶ 48 in A05

Table 5-11

Theme/Code: Market characteristics – short-termism	Reference
<p>“Mas na verdade isso não é um problema do Brasil, é um problema do ser humano, o ser humano é à curto prazista, né? O Brasil talvez amplifique um pouco o curto prazismo por ser um país tão esquizofrênico, né? Do ponto de vista econômico. Mas o fato de ter investidores muito curto prazistas dificulta muito a construção de um negócio à longo prazo, tá? Então assim vou te frustrar porque não tem nada a ver com regulação, tem a ver com o ambiente investimento...”</p>	4:36 ¶ 112 in A04
<p>“o investidor de uma maneira geral apesar de dizer que entende os riscos e tal daquele investimento eles têm uma visão mais curto-prazista, que na verdade nem casa muito com o tipo de investimento que é o investimento em renda variável.”</p>	7:22 ¶ 59 in A07
<p>“Só que se você quer convencer um brasileiro a investir em ações, é porque você está falando pra ele que, "a bolsa agora vai", entendeu? É uma coisa muito específica, sabe assim? Muito curto prazista de, "agora a bolsa vai", e de fato, historicamente a bolsa tem períodos de valorização muito rápido. Então o comportamento é de compra o que você acha que vai, não é compra o negócio bom, compra as pessoas com quem você quer estar junto pelos próximos cinco, 10 anos, não, é o que que vai?”</p>	1:69 ¶ 52 in A01

Table 5-12

Theme/Code: Activism – Exit	Reference
<p>“Mas enfim, te respondendo, obviamente a gente mesmo nos casos mais polêmicos, né, a gente sempre vai na empresa” (...) “ou eu vendo a ação... tenho três ações: ou eu vendo a ação, eu não vendo e vou conviver com aquela situação que eu não concorde, ou eu tento mudar, né? Eu tento ganhar apoio pra mudar. Então acontecem as três coisas, né? Mas assim sempre friendly, mas tem hora que não é mais friendly, já aconteceu de não ser friendly e a gente ganhou”</p>	<p>4:27 ¶ 84 in A04 4:29 ¶ 84 in A04</p>
<p>“Então a gente, por exemplo, a gente questiona, a gente conversa, mas no limite, no limite a gente acaba saindo do investimento, né?”</p>	7:31 ¶ 83 in A07
<p>Não. Assim, quando a gente vê alguma coisa que incomoda, nossa primeira reação é chamar a companhia e francamente dizer o que que tá acontecendo</p>	6:62 ¶ 88 in A06
<p>“Então quando eu estou dentro de uma companhia e essa companhia não responde à uma agenda positiva seja pelo conselho, eu sinto isso, ou seja pela minha interlocução informal, e eu sinto que aquela agenda não vai pra frente, a minha primeira reação não é entrar em conflito, é vender minha posição, eu não entendo o meu papel... se meu papel como de alguém que tem que utilizar os recursos de investidores de terceiros que me confiam aquilo como instrumento de melhora do mercado de capitais, obviamente a melhora do mercado de capitais é muito importante pro fundo, pro nosso... pra essa geração de retorno permanente, né?”</p>	(10:44 ¶ 140 in A10)
<p>“Se eu não concordar eu vou vender” (...) “a vantagem de estar no fundo liquido é que eu vendo a ação no dia seguinte, vou concentrar meus esforços em alguma coisa que eu tenho alinhamento maior, então é isso.”</p>	<p>(5:5 ¶ 20 in A05) (5:12 ¶ 32 in A05)</p>
<p>“Depende, porque... depende. Na maior parte das vezes a gente vende a posição.”</p>	(8:18 ¶ 32 in A08)
<p>“Eu hoje, eu corro de qualquer situação onde eu possa ter um conflito, uma briga e tal”</p>	(9:2 ¶ 12 in A09)

Table 5-13

Theme/Code: Activism – Collaborative activism	Reference
“Então acho que aqui no Brasil esse engajamento, principalmente nas empresas com controle definido, precisa ser pensado, precisa ser feito de uma maneira muito adequada senão o tom se perde e quando entra mais a parte emotiva a racionalidade se perde.”	3:16 ¶ 4 in A03
(...) “A gente até... nas nossas apresentações, o que a gente chama é ativismo colaborativo”	3:62 ¶ 114 in A03
(...) “Então a gente é sim um investidor colaborativo, então a gente é muito próximo ou procura estar muito próximo das empresas, procura interagir, quando a gente acha que é devido a gente indica conselheiro. Então assim..”	3:63 ¶ 114 in A03
Na verdade, a gente gosta da colaboração, e a gente gosta de investir em companhias onde nós somos bem recebidos, e gostamos também de investir em companhias na qual você praticamente não precisa desempenhar esse papel de ativismo ou de colaboração mais intensa porque é uma companhia que é bem gerida.	6:24 ¶ 40 in A06
E tem empresas que têm alguma coisa acontecendo, tal, e às vezes, "poxa, era legal ter uma pessoa (dos minoritários) acompanhando, olhando, ajudando,”	8:29 ¶ 56 in A08
A gente sempre participa de forma positiva, "o grupo quer ajudar e tal, não sei o que, é importante pra empresa e tal"	8:30 ¶ 56 in A08
Então acho eu que a gente faz um trabalho legal, friendly com a empresa e... mas assim, muitas vezes não dá certo e aí eu tenho duas opções:	4:28 ¶ 84 in A04
(...) O que a gente tem que tomar muito cuidado é ter certeza que a gente tá fazendo a coisa certa também na forma. Então eu não posso chegar numa empresa com o pé na porta que vai melindrar uma outra pessoa porque eu não pensei direito nisso, então tem que tomar muito cuidado na forma também”	4:33 ¶ 98 in A04
Sempre friendly, né? Assim se chegam a nos convidar, se a gente chega a participar é numa linha muito mais friendly do que ir lá pra interferir.	5:53 ¶ 144 in A05
a gente não tem um porte suficiente pra ter uma entrada mais ativista em relação às empresas, obviamente a gente tenta influenciar conversando, esse tipo de coisa, mas a gente não tem o porte efetivamente pra entrar no ativismo efetivo, né	7:9 ¶ 29 in A07

Table 5–14

Theme/ Code: Investment Process - Entry scrutiny (Knowledge of the company)	Reference
“Você precisa, no mínimo, entender o que que você tá comprando, o que que aquela ação te dá de direito, se o estatuto tem poison pill, se não tem, qual o tamanho do conselho”	3:65 ¶ 122 in A03
“que a gente procura fazer: a gente não investe na empresa a menos que a gente tenha a chance de conhecê-la profundamente.”	5:28 ¶ 61 in A05
“é fundamental a gente ser responsável dentro das companhias e ter uma voz dentro da companhia, e, primeiro assim, saber muito bem o que está acontecendo dentro da companhia pra conseguir atuar perante as suas ações, mas também atuar perante o management, ajudando o management no que é possível, mas em primeiro lugar é muito importante a gente filtrar aonde a gente se mete”	1:105 ¶ 6 in A01

Table 5–15

Theme/Code: Investment Process - Entry scrutiny – Dismissals	Reference
“Se reforça o filtro de entrada”	1:21 ¶ 6 in A1
"eu não consigo julgar se essa companhia está no caminho certo ou não", é muito opaco pra gente, a gente brinca que é a caixinha do "difícil demais", então qual é a caixinha do "difícil demais"	1:117 ¶ 23 in A1
“Por que que ao invés disso a gente não aloca o nosso tempo apenas nos negócios que claramente geram valor ao longo do tempo? A gente pode adicionar um pouquinho mais de valor ou algum valor a mais, escolhendo bem entre eles, mas sabendo quais são... quais eles são, já é um... tipo, e focando neles, já é um grande ponto de partida”	1:126 ¶ 52 in A01
“porque se meter numa fria, do ponto de vista de governança, é uma draga de tempo, capital, esforço, saúde mental, que não vale a pena.”	1:339 ¶ 6 in A1
“meu perfil é de buscar empresas não problemáticas”	8:8 ¶ 18 in A08
“Eu hoje, eu corro de qualquer situação onde eu possa ter um conflito, uma briga e tal”	9:2 ¶ 12 in A09
“Então a gente senta pra ver esse alinhamento. Se esse negócio tá muito desalinhado e ele tem incentivos meio tortos, a gente nem mete a mão.”	9:10 ¶ 16 in A09
“Apesar disso, eu não me coloco impedido de comprar algo que não tenha governança adequada.	10:27 ¶ 84 in A10
Se o controlador tem histórico relativamente polêmico, ou a gente não investe ou a gente investe com várias restrições.	8:10 ¶ 18 in A08

Table 5–16

Code: Investment Process - Governance – Alignment	Reference
“Então quando a gente tem uma percepção em termos de desalinhamento, em termos de objetivos de crescimento da empresa, objetivos de rentabilidade ou qualquer desalinhamento em relação à minoritários a gente pode, inclusive, gostar da empresa a gente acaba não investindo.”	7:5 ¶ 9 in A07
“De quem efetivamente toma a decisão da empresa. (...) É o controlador com a gestão e o minoritário na outra perna, acho que são esses três... assim, é o tripé meio que da governança, né? O tratamento do minoritário, a transparência com o minoritário, a relação do controlador com o minoritário, do controlador com o gestor e do gestor com o minoritário, acho que são os três pontos assim de equilíbrio, né?”	7:4 ¶ 9 in A07 7:8 ¶ 25 in A07
“A gente sempre... quando a gente faz uma análise de uma empresa assim um dos assuntos principais é exatamente isso: quem são os gestores, quem são os conselheiros da empresa, a gente tenta entender como é que é o equilíbrio, como é que é a dinâmica desse conselho, né? Obviamente assim a questão do conselho tem uma maior ou menor importância dependendo dessa questão de conflito de interesse.”	7:28 ¶ 83 in A07
“dentro dos pré-requisitos de análise pra gente considerar o investimento bom, estamos justamente a gente enxergar na empresa práticas de boas governança e um management competente porque se a governança é boa e o management mais forte fica essa coisa do tipo assim “nós não somos empresários, nós temos que acreditar nele. Se a gente tiver que se meter por definição é ruim”.	5:19 ¶ 45 in A05
“É, não é... não quis dizer assim que a gente consegue informações diferentes, informações assim oficiais diferentes do que são públicas, não é isso. É assim: o fato de a gente conhecer as pessoas, conhecer quem eventualmente vá compor uma chapa ou quem vai ser...”	4:19 ¶ 46 in A04
Então mais assim, governança pra gente, em primeiro momento, pra começar é alinhamento. Alinhamento dos interesses da empresa e do meu interesse. Meu interesse como acionista.	9:12 ¶ 40 in A09
É, governança no sentido... De gestão. Qualidade de gestão. (...) Das melhores empresas, em termos de governança, e aí eu tô dizendo até no aspecto expandido de governança, de controles internos, porque foi uma empresa que foi largada pelo dono, tinha um administrador muito forte que prestava conta pra esse dono e teve que manter isso tudo à frente”	9:16 ¶ 43 – 44 in A09 9:29 ¶ 259 in A09



---

a gente mapeia concentração acionária, então a empresa tem um capital definido, 2:31 ¶ 153 in A02  
definido familiar ou é pulverizado? E aí a gente coloca no quadrinho normalmente  
“ah então quem são os controladores.

---

Então, respondendo a sua pergunta, a gente gasta muito tempo, olha muito o 8:11 ¶ 18 in A08  
histórico do controlador, o histórico de como é que... se ele é um controlador de  
empresa privada, como é que... de empresa pública, como é que ele tratava os...  
como é que ele tratou (minoritários) no passado, então isso pra nós é muito  
importante.

---

Não adianta eu ter um contato excepcional, muito bem escrito, com um pilantra (...) 8:13 ¶ 18 in A08  
Então (brinco) que não adianta ter o melhor contrato do mundo com um pilantra,  
porque o cara não vai cumprir o contrato, o contrato não vai valer. É um pouco por  
aí.

---

E aí entrava nessa parte de governança que era um negócio mal tocado e ainda na 9:9 ¶ 16 in A09  
mão de bandido.

---

Table 5-17

Code: Investment Process - Governance – state-owned companies	Reference
Só que assim, pra mim tá nítido que se tiver um conflito de interesse do governo em relação àquela empresa o governo vai acabar prevalecendo em relação àquilo. Então assim essa questão da governança vale até a hora que o negócio... (...) Que o negócio efetivamente complicar. (...) hoje se você perguntar se eu invisto em estatal eu não invisto, entendeu	7:43 ¶ 170 – 172 in A07 7:45 ¶ 180 in A07
nesse de princípio setorial e na primeira etapa de governança em que todas as empresas estatais saem, a gente não acredita que da forma como é estruturada as empresas estatais no Brasil, as interferências políticas, as nomeações pra cargos de executivos, apesar da lei das estatais até de relatoria do Aécio Neves ter melhorado na margem essas questões, pra nós que temos uma visão de longo prazo não dá um conforto de ter um investimento sustentável pra médio prazo.	2:9 ¶ 19 in A02
Acho ótimo, fico super feliz, mas assim tipo, "ah, não é legal, porque, veja bem", (...) nunca investi em Petrobras, entendeu?	8:40 ¶ 101 in A08

Table 5-18

Code – Investment Process - Governance – Substance	Reference
Então assim ter só esses selos pra nós não significa nada. Eu acho que assim, claro que quando tem o selo já significa alguma coisa aparentemente, mas não necessariamente quando você vai ver... é aquele negócio, eu posso ter o selo porque eu checo tudo aqui, tá tudo checked, mas e aí? Funciona pra valer? Acho que é isso que a gente tenta sempre buscar com esses questionamentos de governança e agora com o environmental social.	2:87 ¶ 839 in A02
Na vida real você tem empresas familiares extremamente bem administradas e que o cara tá preocupado em preparar sessão, não sei o quê... (...) Beleza, mas como que é a governança da corporation? Como que funciona o conselho? Quais são as matérias que vão pra assembleia? A arte dessa análise fundamentalista é justamente essa lista de fundamentos e dizer assim “esse troço tá bem dirigido ou não? E você tem corporations que são uma verdadeira bagunça.	5:24 ¶ 53 in A05/ 5:26 ¶ 57 in A05/5:25 ¶ 57 in A05
Então, isso pra gente, vou te falar, se a ação não está listada no novo mercado ou não, isso pra gente cara, quase não tem diferença. Não vou dizer, tem uma diferença que é assim, a ação listada no nível dois ou no novo mercado, você tem a capacidade de levar o controlador para uma arbitragem.	9:18 ¶ 66 in A09

Table 5-19

Theme/Code: Engagement - Investor Relations	Reference
Eu acho que o RI hoje ele virou meio um apêndice da CVM, ele fica ali pra cumprir regras de B3 e CVM. É a sensação que eu tenho. (...) Em termos de engajamento, pra você avaliar isso daqui muita coisa tem (proforma) nos relatórios, mas você tem que ter o engajamento de entrar em contato com o RI e discutir cada vez mais esses pontos. O que nós fazemos cada vez mais é: além das questões operacionais, setoriais e financeiras com empresas, é discutir com os RI's, com os conselheiros ou com o top management essas questões.	2:60 ¶ 411 in A02 2:46 ¶ 270 in A02
“Normalmente através de relação com investidor, às vezes a gente consegue através de rede de relacionamento, a gente consegue chegar” (...) “Então obviamente isso varia dependendo do tamanho da empresa, né, então quanto maior a empresa mais difícil é você conseguir ter um relacionamento mais próximo assim efetivamente da gestão da empresa, né?” (...) “E aí a questão da gente ter um envolvimento mais próximo aí normalmente isso acontece em empresas menores que a gente acaba tendo uma abertura, uma relevância um pouco maior. E aí o que a gente tenta é: aproveitando essas aberturas que a gente tem com os gestores da empresa a gente tentar aproximar o relacionamento com eles, né”	7:11 ¶ 31 in A07 7:12 ¶ 31 in A07 7:14 ¶ 31 in A07
(...) “o RI primeiro: não é o cara com uma grande experiência, uma grande entrada na empresa então não necessariamente esse cara é um cara que conhece profundamente a empresa e que tem as informações, vamos dizer, mais estratégicas da empresa. Então assim dificilmente você consegue achar um RI que efetivamente vá te agregar em questionamentos mais profundos, tá?”	7:13 ¶ 31 in A07
“assim, você não tem a resposta formatada pra isso, acho que tem... o que a gente tem que fazer é buscar obedecer um protocolo. Então, por exemplo, vou te dar um exemplo que tá acontecendo agora, a gente tá numa discussão super friendly com uma empresa grande no Brasil e nossa entrada lá foi com departamento de RI e com o Chairman do conselho, e isso todo mundo sabendo. Então assim os outros executivos sabendo, os acionistas controladores sabendo. Então assim tem que respeitar o protocolo, né? Mas não tem uma regra, tem hora que não, o executivo, o CEO ele tá confortável, conhece a gente pra conversar diretamente. Acho que não tem um protocolo, não tem assim uma regrinha. Seria bom ter, mas não tem, não tem.”	4:32 ¶ 96 in A04
contato com a área de investidores da empresa	1:109 ¶ 16 in A01

---

Tá. Eu acho que o primeiro método de engajamento é o investidor ter um canal aberto de comunicação, seja pelos administradores, seja com os controladores.

---

Table 5-20

Theme/Code: Engagement - Meetings with management, the board and controlling shareholders	Reference
Então... e nessas empresas a gente gosta de falar com os executivos que não apenas do RI (...)Então às vezes você ir lá na fonte primária, como a gente já tem um conhecimento bacana da empresa e tal, pô, ajuda muito, uma conversa com (COO) quando tem projeto interessante de operação, conversa com CEO para entender estratégia e tal	6:52 ¶ 86 in A06 6:53 ¶ 86 in A06
Eu acho que tem ali 10... 5 a 10% que a gente busca estar em contato com ou no conselheiro ou com... ou todos, o conselheiro, seja conselheiro, um controlador ou o próprio CEO da empresa, tá (...) você já consegue ter um acesso a pessoas maiores na empresa ou mais relevantes na cadeia ali do management da empresa, mesmo que você não tenha tamanho para transformar a vida da empresa (...) processo realmente natural de relacionamento, que surge nessa fase de reconhecimento inicial com o próprio (RI), depois evolui pra uma conversa com um management, às vezes por pontos muito específicos que a gente tem dúvida com relação ao funcionamento do negócio, e eventualmente pode chegar até numa discussão mais estratégica ou até numa discussão de pessoas dentro da companhia, com a pessoa mais graúda ainda, independente do tamanho da empresa	1:111 ¶ 16 in A01 1:113 ¶ 16 in A01 1:115 ¶ 16 in A01
então pra gente tem muito valor conversar com o management, entender a cabeça dele, entender pra onde que eles estão querendo levar a companhia, né? (...) Conhecê-la indo lá, independente de estar discutindo o investimento em si, ter a chance de conhecer o management, bater o papo sobre visão, não sei o que, conversar com o concorrente, conversar... então essa formação da confiança realmente ela não pode depender só da informação que é publicizada. (...) mas eu conheço uma outra empresa que é concorrente dessa e que é às vezes não listada e que eu consigo falar com o management e pedir opinião desse cara sobre a postura desse pessoal no mercado.	5:2 ¶ 20 in A05 5:29 ¶ 61 in A05 5:34 ¶ 75 in A05
Mas a gente também fala pro próprio management, né? E com os controladores, mas sempre entendendo que existem vieses muito significativos, né? Nessas conversas. Então a maneira que a gente faz análise a gente conversa muito com a companhia, com o controlador, mas a gente dá também muito mais peso às informações não primárias que a gente consegue estabelecer ao longo do tempo, porque entende que quem tá dentro da companhia tem alguns vieses, né?	10:29 ¶ 86 in A10
A gente fala com todo mundo.	8:34 ¶ 60 in A08

---

(...) É, acho que tem uma questão que volta e meia volta “ah, se os conselheiros deveriam falar com investidores”, né, até que ponto. Eu entendo que sim, eu entendo que é claro que as empresas precisam ter políticas internas de quem fala, como fala, mas os conselheiros em alguma medida deveriam se colocar sim à disposição dos acionistas pra interações. Eu acho que é importante tanto pro conselheiro ouvir os acionistas, entender quais são os anseios, quais são as preocupações, como pros investidores realmente conhecer qual o perfil do cara.

---

Table 5–21

Theme/Code: Engagement - Meetings Two-way gain (collaboration)/Closeness	Reference
em que ela mesma percebe que existe valor em ouvir as sugestões que estão lá. E eu sinto que com isso, ela consegue... assim, a própria empresa consegue sentir como é que o mercado está percebendo ela, e as melhores empresas conseguem tirar sugestões disso e fazer ajustes finos de percurso com isso (...) Quando vira um jogo mais analítico, esse é um jogo que a gente gosta muito mais, quer dizer, um jogo de, "poxa, pô, você está indo por essa estratégia o seu negócio. Será que essa estratégia um pouco alterada, não seria interessante?". E eu acho que muitas companhias adotaram esse diálogo produtivo com os seus investidores	1:114 ¶ 16 in A01 1:136 ¶ 6 in A01
É, mas eu acho que também uma questão... uma visão do controlador, ele não tem a visão de que o RI é um lugar de formação de preço.	2:65 ¶ 464 in A02
Então acaba sendo uma consultoria grátis que as empresas têm por contarem com acionista que tá pensando no longo prazo. Então eu acho que esse contato mais próximo e frequente é um caminho bastante eficiente	3:47 ¶ 76 in A03
Então acho eu que a gente faz um trabalho legal, friendly com a empresa e... mas assim, muitas vezes não dá certo e aí eu tenho duas opções:	4:28 ¶ 84 in A04
Então acho que tem uma coisa assim, de reciprocidade que a gente meio que já conquistou que é legal. (...) Até pra entender o que tá acontecendo, tentar entender as estratégias, pra onde que a companhia tá indo e aí estudar muitos setores dos concorrentes, clientes, fornecedores e tal, e ter esse privilégio de não precisar comprar ação hoje, e a companhia tem um trimestre espetacular, né? (...)	6:56 ¶ 86 in A06 6:15 ¶ 16 in A06
Então obviamente isso varia dependendo do tamanho da empresa, né, então quanto maior a empresa mais difícil é você conseguir ter um relacionamento mais próximo assim efetivamente da gestão da empresa, né? (...) E aí a questão da gente ter um envolvimento mais próximo aí normalmente isso acontece em empresas menores que a gente acaba tendo uma abertura, uma relevância um pouco maior. E aí o que a gente tenta é: aproveitando essas aberturas que a gente tem com os gestores da empresa a gente tentar aproximar o relacionamento com eles, né (...) E aí tentar uma relação de troca de informações, a gente tentar ajudar também um pouco passando a nossa visão, passando material de análise que a gente tem pra eles, a gente tenta agregar também em termos de informação pras empresas também.	7:12 ¶ 31 in A07 7:14 ¶ 31 in A07 7:15 ¶ 31 in A07
“a gente procura se legitimar na interlocução com as empresas que a gente investe no sentido de eles verem valor na nossa opinião.” (...) A gente não é ativista no	5:16 ¶ 37 in A05 5:17 ¶ 37 in A05



---

sentido de querer interferir, mas adora quando o cara vem conversar com a gente e perguntar a nossa opinião.

---

Mas assim, mas o cara percebeu que ter boa governança é um... ter boa governança 8:26 ¶ 50 in A08  
é um ativo pra ele, a ação vale mais, entendeu?

---

Eu posso a partir de uma articulação junto com o CEO de colocar os meus pontos 10:41 ¶ 132 in A10  
em reuniões periódicas. (...)

---

Então por mais que você tenha uma visão estratégica ou sugestões, se você não tiver 3:15 ¶ 4 in A03  
tato e sensibilidade pra encaminhar isso, possivelmente o outcome não vai vir da maneira que você espera, principalmente que de novo: acho que é até um problema cultural muito difícil das pessoas aqui ouvirem alguma pessoa de fora vir dar pitaco no seu próprio negócio. Então é sempre na defensiva, sempre achando que tem uma agenda oculta, que tá querendo alguma coisa diferente, que tá com algum interesse diferente do que o do melhor da empresa.

---

a gente acaba se relacionando bem, a gente é próximo de várias companhias, mas 10:30 ¶ 92 in A10  
eu não tenho muito essa visão de que eu tô ali pra estabelecer uma relação de amizade fraterna com... com management e com os controladores, eu brinco que eu gosto de tá perto pra conhecer bem o negócio, mas tá um pouco distante pra tomar as decisões com mais bom senso possível.

---

Depende, porque tem empresas que você conhece o CEO, você pede pro CEO. Tem 8:35 ¶ 62 in A08  
empresa que você não conhece muito bem o CEO, você tem que fazer... tipo, sei lá, Petrobras, é muito difícil você... que dizer, mas... mas sei lá, tem empresas que... sei lá, Banco do Brasil, você não vai ligar pro CEO e pedir pra ele te indicar, você pede via RI, entendeu?

---

Table 5–22

Theme/Code: Engagement - Personal relationships (networks and trust)	Reference
Eu entendi, mas não é isso também que eu... eu sei que você não perguntou isso, mas enfim, é esse jeitão aí que eu te falei: acho que a gente conhece as pessoas e conhece a grande maioria dos acionistas que se mobilizaram, se mobilizam pra colocar essas pessoas. Então dá pra ter uma leitura melhor do que a média de como é que funcionaria esse conselho, eu acho. Tá?	4:21 ¶ 52 in A04
Então, isso é fácil em São Paulo, no Rio de Janeiro, porque todo mundo conhece todo mundo, né? Então (ao todo) eu já sabia que era esquisita essa história do Joesley, tá certo? Não foi surpresa pra ninguém. É mais difícil quando é fora do eixo Rio-São Paulo. (...)Eu tenho que achar gente que conhece ele, entendeu? Fazer due dilligence achar gente que conhece, então ligar pra amigos, ligar pra banco, "vem cá, você teve relacionamento com essa Pessoa.	8:14 ¶ 22 in A08 8:16 ¶ 22 in A08
Gostamos sempre da coisa pessoal, porque a gente tem um jeito de ser e... Então assim, se a gente consegue...	6:54 ¶ 86 in A06
A vantagem, grande vantagem é a seguinte, esquece selo de qualidade, governança e tal. O que no final das contas vale é cabelo branco, conhecer as pessoas, conhecer a prática das pessoas a longo prazo, saber: “cara, aquele cara ali não quero ser sócio dele a preço nenhum”.	9:27 ¶ 235 in A09
A gente já tem nove anos, a gente tem muito investidores que são famílias, que não... às vezes são controladoras de negócios abertos, então a gente estabelece algum relacionamento com relação a investidores, mas a gente tem muito proximidade com management fora da relação de competidores, que a gente busca de diversas maneiras, né?	10:35 ¶ 94 in A10

Table 5-23

Code: Engagement - Private and group meetings	Reference
Então, enfim, é melhor, portanto, ter conversas individualmente. (...) E isso, novamente, é uma conversa que é delicada. Muitas vezes a companhia não quer se expor. Geralmente as melhores conversas são individuais. (...) Até porque a natureza do relacionamento que a gente tem com outras gestoras e delas com a gente é uma natureza que pode ter um lado de colaboração, mas também um lado competitivo. (...) Então é um pouco por aí. E assim, em nenhum momento, nessas conversas, a gente está buscando saber informações que vão fazer com que a gente compra ou venda no dia seguinte	1:119 ¶ 25 in A01 1:47 ¶ 27 in A01 1:120 ¶ 27 in A01 1:45 ¶ 27 in A01
Então, a arte dessa coisa do investimento é você tentar ter uma profundidade tal que você sabe... e aí por isso que sozinho é melhor (...) Quanto mais próximo você for da companhia, quanto mais você entender, mais você consegue colocar as questões que eles não querem dizer, mas quando você pergunta, eles são obrigados a falar, né? Então a gente sempre diz que os press releases, é tudo aquilo que a companhia quer falar, e o ITR, as notas explicativas, tem coisas lá que eles não querem falar, mas que são obrigados. Então, a arte dessa coisa do investimento é você tentar ter uma profundidade tal que você sabe... e aí por isso que sozinho é melhor. Então às vezes no coletivo a gente não faz perguntas sensíveis pra companhia porque a gente não quer expor a companhia de uma forma e tal, depois você vai lá e fala, “como é que tá aquilo ali?”. Então, não é coisa insider information, não tem nada assim. Tem o quê? Um skill de você tirar mais do que o outro porque não tem condições de fazer a mesma pergunta.	6:58 ¶ 86 in A06 6:74 ¶ 86 in A06
é claro que você não vai conseguir o acesso ou você não vai ter nem assunto pra todo mês falar com esse pessoal, mas com uma certa frequência de três em três, seis em seis meses você se atualizar, você tá com um nível mais experiente na empresa é muito importante pra gente	3:46 ¶ 76 in A03
Assim, a gente tem aqui uma preocupação muito grande com insider information, tá? Então inclusive esse advogado que eu te falei que trabalha exclusivamente pra gente uma das funções importantes dele é make sure que esse fluxo de informação aqui tá dentro dos padrões legais. Então é assim, preocupação grande com isso então sempre quando alguém desconfia que “pô, essa informação que eu descobri na empresa tô em dúvida” aí tem nosso comitê de compliance que senta pra analisar e eventualmente a gente libera ou não, fica restrito ou não naquele negócio ali. Então eu acho que isso é... enfim, acho que é um padrão hoje normal dentro das asset	4:34 ¶ 110 in A04

---

maiores, não tem nada de novidade. Então a gente segue isso também e é uma das funções importantes desse advogado.

---

Mas assim não tem problema nenhum ser em grupo porque é uma conversa que 5:30 ¶ 72 in A05  
 você tá pensando no futuro, você tá vendo como é que é a característica desse cara, 5:31 ¶ 73 in A05  
 você não tá ali pra entender qual é o resultado do próximo trimestre. (...) Você não 5:32 ¶ 75 in A05  
 tá buscando insider information num evento. (...) Pra nós isso não tem valor nenhum  
 porque nossa postura é sempre de longo prazo, não somos aqueles fundos de  
 training que o cara descobre que amanhã a empresa vai fazer não sei o que, aí insider  
 information, que é um crime, mas é tem valor, pra nós isso não funciona.

---

E cara, assim, eu tô te falando isso, mas numa reunião de conselho não tem a menor 9:15 ¶ 42 in A09  
 pretensão de ter mais informação ou mais insider, não é isso. (...) E não tem nada a 9:24 ¶ 172 in A09  
 ver com insider, próximo trimestre, não. Tem a ver como uma empresa estrutura o  
 negócio dela, como ela pensa nos métodos futuros dela e onde estão essas  
 oportunidades e como faz para ela capturar essas oportunidades. Então isso, você  
 tendo um envolvimento mais profundo com o negócio, porque não é o que o RI vai  
 te dizer, às vezes a gente, cara, às vezes a gente senta aqui e tem discussões que a  
 gente enxerga de uma maneira diferente do RI. Que RI tá lá dentro, tentando passar  
 pra fora o que as pessoas enxergam internamente que é o negócio.

---

Table – 5-24

Theme/Code: Voting - General Meetings – Participation

“Nas assembleias a gente participa quando a gente acha que tem algum motivo pra participar de fato. Então apesar da gente ter esse DNA todo a gente não quer tá lá só pra aparecer nosso nome “ah A2 participou, tava lá presente na assembleia”.”	2:47 ¶ 270 in A02
“não tem praticado muito o voto como forma de pressão moral”	1:55 ¶ 29 in A01
“Olha, a gente sempre participa quando o nosso voto é razoavelmente importante, tá? E quando a gente julga que é importante, eventualmente até pro relacionamento que a gente tem com a companhia”	1:51 ¶ 29 in A01
“Olha só, a gente... de novo, a gente nunca perdeu aquele cacoete lá de trás nosso de ficar de olho, de participar, então, a gente vai todas as AGO's e muitas vezes continuamos indo como o único fundo agora na presença física, né?”	6:23 ¶ 40 in A06
“Tem. A gente tem algumas regras, acho que acima de 10% a gente tem que participar, né? Do fundo, mas a gente tem participação relevante em muitas companhias, então nessas companhias a gente sempre participa.”	10:37 ¶ 106 in A10
“A gente participa, a gente acha que assembleia é um instrumento bom, né? Até de relacionamento, né? Você pega o CEO, a vezes controlador num ambiente mais informal. Então a gente gosta de participar da assembleia até pra estabelecer relacionamentos e pra exercer o nosso papel de investidor de longo prazo, né”	10:36 ¶ 104 in A10
“Então via de regra não me meto, votações de conselho eu participo, né? Mas muitas vezes acompanhando a indicação, enfim, ou do acionista de referência, ou da chapa indicada pelo management quando é uma corporação, muitas vezes me pedem pra apoiar determinado conselheiro independente eu faço, mas assim e faço isso porque a gente é grande então acaba que a gente tem alguma influência nessas votações.”	4:8 ¶ 14 in A04
No nosso caso a gente precisou ter, essa pessoa é bem ativa em épocas de assembleia porque ela vai nas assembleias, ela é esperta, ela tem que ficar atenta pra algum tipo de manipulação que acontece. Então...	4:23 ¶ 78 in A04
“Não, a gente vê que é quase obrigado a votar, né? Então a gente vai, vota e tal. Problema nenhum.”	8:25 ¶ 36 in A08
“Assembleia também... de novo, apesar das empresas terem controlador e alguém que manda no final do dia, alguém que com 51% vai ditar o rumo da empresa, é importante os acionistas comparecerem porque as assembleias... os conselheiros vão na assembleia, os administradores vão na assembleia, então também é um fórum de discussão interessante.”	3:50 ¶ 78 in A03

---

“De vez em quando, só se a gente tem alguma matéria que interessa ir lá e ouvir, mas assim não é uma coisa que eu vou pra todas as assembleias que são convocadas.” 5:49 ¶ 133 in A05

---

“É. A gente não vai pra assembleia por ir, só pra cumprir tabela, acho que não é a forma.” 5:56 ¶ 149 in A05

---

“a não ser que seja algum caso extremamente relevante pra gente e relevante pra empresa, né? Alguma coisa que realmente mude a nossa percepção de valor pra empresa, né?” 7:25 ¶ 71 in A07

---

“Ah, depende muito do nosso interesse. Porque geralmente é uma coisa muito proforma. Geralmente é muito proforma e a gente sendo fundo pequeno a gente vai mudar pouco o outcome do negócio. Então a gente acaba tendo uma postura um pouco mais assim de olhar e ver a situação, se a situação é uma situação.” 9:19 ¶ 100 in A09

---

Agora, quanto mais você caminha pra ter empresas efetivamente de mercado, corporations dentro do novo mercado e etc., mais esse tipo de ativismo institucional disciplina as companhias pra dizer “bom, eu tenho que tá preocupado com o meu acionista minoritário sim porque ele é o grande formador de valor da minha ação”. 5:47 ¶ 129 in A05

---

controle definido, que o voto em si é uma mera formalidade 1:53 ¶ 29 in A01

---

mas assim o efeito prático disso nas assembleias ainda é pequeno porque a grande maioria das empresas brasileiras elas não são ainda corporations pra que, vamos dizer assim, na assembleia prevaleça essa questão de comportamento voltado pra minoritário. Em geral os controladores... o máximo que pode acontecer é na margem ter um minoritário votando contra, chamando atenção e o controlador preocupado de evitar isso que isso vai tirar valor, vai macular a imagem, mas o poder decisório no Brasil ainda é muito concentrado. 5:46 ¶ 129 in A05

---

É. Bom, de uma maneira geral a gente acaba não participando dado o nosso tamanho, né? 7:23 ¶ 71 in A07

---

Table 5-25

Theme/Code: Voting - Process

Mas eu acho que assim, uma coisa que poucas pessoas se preocupam é justamente no rito do operacional que o bicho pega	2:58 ¶ 379 in A02
Agora com boletim até de voto à distância então... que aí teve uma primeira fase, né? “Ah não, não precisa mais você toda vez pedir pro administrador mandar o kit cadastral atualizado com data dessa assembleia e tal, basta a gestora ter no seu contrato social em que ela dá poderes pra alguém no seu corpo técnico representar o fundo e aí alguém tem poderes pra assinar pelo fundo na própria gestora”. Já foi uma primeira facilidade em termos burocráticos e que você ia na assembleia ou mandava tudo por procuração. Agora com boletim de voto à distância tá bem melhor, tá bem melhor	2:56 ¶ 368 in A02
O que eu acho que as empresas têm que melhorar... é que aí assim, eu entendo também, e aí talvez a gente queira um pouco de facilidade demais, mas o boletim de voto à distância pra mim não pode ficar num arquivo de 65 páginas e lá no final em que você tem que imprimir só aquelas últimas cinco páginas. Pra mim tinha que ser edital, proposta e aí o seguinte: você pode hoje à distância, digamos assim, você pode duas formas, né?	2:57 ¶ 368 in A02
então voto à distância facilita muito, ainda tem muito o que melhorar, mas pô já é um avanço superimportante	3:17 ¶ 4 in A03
Eu acho que é isso. E o que mais de... eu acho que maneiras de ainda facilitar a questão de voto em assembleia, ainda é muito custoso pros fundos autenticarem. Pô, gasta-se uma grana desproporcional de burocracia pra você se fazer representar.	3:75 ¶ 202 in A03
aquilo valesse pra todas as empresas porque não é possível eu ter que autenticar regulamento do meu fundo pra 15 empresas, sabe	3:76 ¶ 202 in A03
Essa questão de voto à distância, de simplificação e tal eu acho que é muito positivo pro mercado porque vai facilitar você com menor dispêndio de recurso conseguir participar desse tipo de coisa, então eu vejo como bastante positivo. Até porque as empresas quando têm alguma coisa mais complicada elas dificultam até o acesso à votação.	7:26 ¶ 71 in A07
Com bastante antecedência. E até pro controlador e pra administração receber isso de uma maneira mais cautelosa e preparada possível porque eu entendo também por outro lado a empresa receber aos 48 do segundo tempo uma indicação de conselho que eventualmente, pô, ela não esteja preparada e não pensou nisso	3:24 ¶ 6 in A03

---

E às vezes eu sinto que aqui a gente se organiza muito em cima e aí o resultado às vezes é mais caótico, é mais conturbado do que poderia ser se fosse uma organização prévia, uma conversa prévia, uma clara desenho do que se espera. Então.

---



Table 5-26

Theme/Code: Voting – Collaboration	Reference
<p>“Por mais que a gente com o nosso tamanho, ainda mais uma empresa grande, nós somos acionistas pequenos e com peso que temos no (fundo), mesmo assim por que não tentar nós ou juntar com outros acionistas (...)” (...) “é sempre aquele negócio: quando precisamos, nas poucas vezes que eu te mencionei “ah estamos desconfortável com isso, estamos querendo rejeitar ou não”. (...) Primeira coisa que a gente faz aqui é o seguinte: cadê a lista de acionistas? Entra no Bloomberg, quem são os maiores acionistas? Vamos preparar o material, entrar em contato com eles e falar “olha, nós estamos vendo isso, isso e isso”. Alguns falam “pô, legal que você tá vendo isso, eu não quero nem saber” outros falam “não, interessante, eu quero ir junto com vocês”.</p>	<p>(2:51 ¶ 288 in A02)</p> <p>(2:77 ¶ 952 in A02)</p>
<p>Isso não quer dizer que a gente não possa e não vá trocar ideias ou eventualmente agir em conjunto com outros investidores, principalmente que quanto mais representatividade os investidores tiver, mais fácil é o diálogo, até pelo poder e pelo acesso. Então eu acho que às vezes é importante você ter uma comunicação entre os investidores, e aí a maior dificuldade é você casar horizontes de investimento e característica porque é isso que você falou: tem alguns investidores que às vezes preferem uma campanha um pouco mais aberta ou mais via imprensa do que outros, né?</p>	<p>(3:68 ¶ 124 in A03)</p>
<p>A gente conhece geralmente os acionistas que elegem... né? Os acionistas minoritários que de alguma forma, enfim, se juntam pra forçar uma chapa, a gente conhece a grande maioria também.</p>	<p>(4:20 ¶ 48 in A04)</p>
<p>A gente falou “não tem a menor chance, a gente vai brigar”. E a gente se juntou com vários outros investidores, contratou um advogado e entrou com uma representação na CVM, (...) “Não, mas às vezes a gente se junta com outros investidores e aí... Ah sim, mas aí..., E aí consegue...” (...) “Bom, mas aí não é ativismo nosso, é assim é um (crowdfunding) de votos que a gente se junta porque a gente acha legal.”</p>	<p>5:13 ¶ 32 in A05</p> <p>5:51 ¶ 135 – 137 in A05</p> <p>5:55 ¶ 146 in A05</p>
<p>Então às vezes o mercado meio que se junta pra tentar colocar algum representante lá dentro.</p>	<p>7:34 ¶ 87 in A07</p>
<p>vai tentar montar um grupo de pessoas interessadas naquele mesmo assunto ou não</p>	<p>9:21 ¶ 102 in A09</p>

Table 5-27

Theme/Code: Voting – Participation in boards	Reference
<p>“Ou seja, eu acho que depende do estágio da empresa, da composição do conselho, das características das pessoas, então a gente aqui indica conselheiros, mas em casos específicos.” (...) “Então não tem uma receita de bolo de “preciso indicar conselheiros sempre” ou “os sócios da gestora tem que ir pro conselho” a gente não entende que a melhor maneira é essa, mas é importante que a empresa tenha visões diferentes, backgrounds diferentes no conselho.”</p>	<p>3:48 ¶ 76 in A03</p> <p>3:49 ¶ 76 in A03</p>
<p>Mas questões assim, tipo, propor nomes de conselheiros etc.</p> <p>R: Não, isso a gente faz direto</p>	6:34 ¶ 49 – 50 in A06
<p>Às vezes tem empresas que... tipo, a empresa carece de um skill específico e a gente pode ajudar, entendeu?</p>	8:28 ¶ 56 in A08
<p>“Porque eu efetivamente tenho disposição pra sentar em conselho fiscal, esse tipo de coisa pra ajudar as empresas onde eu tô investido. Às vezes bem tô investido, mas são empresas onde a gente tem um vested interest por alguma razão, quer estar a longo prazo, quer entender melhor pra comprar e aí a gente gasta um tempo de se envolver nisso.” (...) “Sim, mas como a gente tava falando de longo prazo essa restrição não chega a ser uma coisa tão problemática”</p>	<p>9:14 ¶ 40 in A09</p> <p>9:22 ¶ 172 in A09</p>
<p>eu acho que hoje você consegue gente independente, falo das gestoras, com competência pra representar a gente, e aí você ganha o benefício, essas pessoas poderem fazer isso com competência parecida..</p>	10:38 ¶ 112 in A10
<p>Que as coisas tão sendo bem tocadas, o conselho, no nosso caso de investidores financeiros, por mais que a gente não (trada) muito, a gente fica com as mãos atadas, porque a gente se coloca em posição de impedimento o tempo todo. A gente... nós somos muito delicados com essa questão de impedimento.</p>	6:32 ¶ 46 in A06
<p>“mas eu acho que aqui não tem essa obrigação de ser ativista, de ter participado do board a não ser em situações muito específicas.” (...) “a gente acha que participar de board é exceção da exceção, a gente quer buscar essa independência, a gente acha importante.”</p>	<p>10:4 ¶ 18 in A10</p> <p>10:33 ¶ 92 in A10</p>
<p>E se além muito aos cases, as empresas, começam a participar de board e as colaborações começam a não ser tão relevantes, e aí eu acho que o ativismo pega um pouco... a própria gestora 1 e a própria gestora 2 deixam de fazer esse ativismo e aí você tem esse protagonismo de outros players, né?</p>	10:15 ¶ 42 in A10

## 12 Appendix 2

### Interview Questions

	#	Questions
Antecedents	1	<i>Como você descreveria o atual estágio do mercado investidor institucional brasileiro em termos de engajamento? Como se comportam os investidores institucionais?</i>
	Translation	How would you describe the current stage of the Brazilian Investor Market in terms of engagement? How do institutional investors behave?
Antecedents	2	<i>Quais semelhanças e diferenças você vê entre os investidores institucionais que podem levar a comportamentos de engajamento diversos?</i>
	Translation	What similarities and differences you see among institutional investors that could lead to different engagement behavior?
Antecedents	3	<i>Quais fatores institucionais e quais condições de mercado são relevantes para essa perspectiva?</i>
	Translation	What institutional factors and what market conditions are important to your perspective?
Antecedents	4	<i>Como enquadraria a sua organização no cenário que traçou? Por quê?</i>
	Translation	How would you place your institution in the scenario you described/ Why?
Antecedents	5	<i>De que forma o perfil do fundo gerido ou do cliente influencia suas decisões?</i>
	Translation	In which way the fund profile or your client's profile influences your decisions?
Antecedents	6	<i>Quais fatores internos à sua organização favorecem ou dificultam uma atuação engajada?</i>
	Translation	What factors internal to your institution favor or make it more difficult to engage?
Process	7	<i>Quais práticas de engajamento são sistematizadas na sua organização?</i>
	Translation	What engagement practices are routinized in your institution?
Process	8	<i>Quais evoluções gostaria de ver no processo de engajamento da sua organização nos próximos 5 anos? Quais ações serão tomadas nessa direção?</i>
	Translation	What changes would you like to see in the engagement process of your institution in the next 5 years?
Process	9	<i>Quais formas de engajamento você considera mais eficazes?</i>
	Translation	What engagement practices you find most efficient?
Process	10	<i>Havendo necessidade ou vontade de tornar público posições de conflito, quais mecanismos são tipicamente adotados? E qual a eficácia?</i>
	Translation	If there is a desire or a need to make public conflict positions, which mechanisms are typically adopted? With what results?
Process	11	<i>Quais mecanismos são usados para orientar seus funcionários a seguirem os valores e diretrizes de engajamento desejados pela instituição? Existem comportamentos que são terminantemente proibidos? Quais?</i>
	Translation	What mechanisms are used to orient your employees to follow the engagement values and guidelines desired by your institution? Are there prohibited behaviors? Which?
Process	12	<i>Em que medida é melhor lutar por mudanças institucionais (regulação ou auto-regulação) do que depender meramente deixar o mercado funcionar (sair do investimento, ou não dar dinheiro em emissões). Ou seja, por que o mercado não funciona?</i>
	Translation	To what extent it is better to fight for institutional changes (regulation or self-regulation) rather than depend on market forces alone (exit, non-entry)? Why doesn't the market work?

Process/Effects	13	<i>Recentemente, várias iniciativas pro-governança foram tomadas: Lei das estatais, alterações nas regras do Novo Mercado, e Código de Governança Corporativa Brasileiro e regulamentação do voto a distância. Quais os elementos nessas medidas são considerados por vocês progressos fundamentais?</i>
	Translation	Recently pro-governance regulation was put forward: state-owned company law; the Brazilian Corporate Governance Code was adopted; distance voting was regulated... Which elements in those measures are considered by you as fundamental progress?
Process/Effects	14	<i>Quais outras questões importantes ainda precisam evoluir e de que forma os investidores institucionais brasileiros como agentes fundamentais, podem fazer para que tal evolução aconteça?</i>
	Translation	What other important issues still need to evolve and in which way Brazilian institutional investors, as fundamental agents, could do towards such development?