THE FOUNDATIONS AND ANATOMY OF SHAREHOLDER ACTIVISM

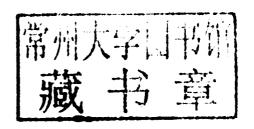
IRIS H-Y CHIU

CONTEMPORARY STUDIES

IN CORPORATE LAW

The Foundations and Anatomy of Shareholder Activism

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THE FOUNDATIONS AND ANATOMY OF SHAREHOLDER ACTIVISM

The Foundations and Anatomy of Shareholder Activism examines the landscape of contemporary shareholder activism in the UK. The book focuses on minority shareholder activism in publicly listed companies. It argues that contemporary shareholder activism in the UK is dominated by two groups; one, the institutional shareholders whose shareholder activism is largely seen as a driving force for good corporate governance, and two, the hedge funds whose shareholder activism is based on value extraction and exit. The book provides a detailed examination of both types of shareholder activism, and discusses critically the nature of, motivations for and consequences following both types of shareholder activism. The book then locates both types of shareholder activism in the theory of the company and the fabric of company law, and argues that institutional shareholder activism based on exercising a voice at general meetings is well supported in theory and law. The call for institutions to engage in more informal forms of activism in the name of 'stewardship' may bring about challenges to the current patterns of activism that institutions engage in. The book argues, however, that a more cautious view of hedge fund activism and the pattern of value extraction and exit should be taken. More empirical evidence is likely to be necessary, however, to weigh up the long term benefits and costs of hedge fund activism.

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The Foundations and Anatomy of Shareholder Activism
Iris H-Y Chiu

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Introduction to Shareholder Activism in the UK

1 MEANING AND NATURE OF SHAREHOLDER ACTIVISM

HAREHOLDER ACTIVISM TODAY may mean '... the way in which shareholders can assert their power as owners of the company to influence its behaviour' or as readily understood by some others, 'the intervention by shareholders in the running of the company'.2 Activism as an incident of share ownership is now accepted as mainstream, and this may be attributed to the general acceptance of the special position of shareholders in relation to the corporation.³ There may of course be various motivations driving shareholder activism, and activism may take place in a variety of ways. However, a dominant theoretical paradigm in which shareholder activism is understood is the principalagent paradigm⁴ that perceives shareholder activism as mitigating the tendency of self-dealing that management could engage in. This book intends to take stock of how shareholder activism has developed in the UK in the last 15–20 years. Contemporary shareholder activism has developed along certain patterns, and is being developed against the backdrop of two main streams of thought in corporate theory: shareholder value and social responsibility. The book suggests that it is timely to consider the position of shareholder activism within these theories of the company and the legal framework surrounding shareholders and their rights.

 $^{^1\,}$ As defined by the European Corporate Governance Institute, see http://www.ecgi.org/activism/index.php.

² http://moneyterms.co.uk/shareholder-activism/, accessed Dec 2008.

³ Even if such acceptance is not characterised as a pure form of shareholder primacy, which is often seen as the opposite of a more inclusive stakeholder perspective of the corporation, see S Worthington, 'Shareholders: Property, Power and Entitlement: Parts 1 and 2' (2001) 22 Company Lawyer 258 and 307; A Etzioni, 'A Communitarian Note on Stakeholder Theory' (1998) 8 Business Ethics Quarterly 679.

⁴ MC Jensen and WH Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure' (1976) 3 *Journal of Financial Economics* 305. However, some contemporary management literature has criticised this paradigm as unconstructive as the paradigm itself perpetuates the agency problem by making directors 'individualised' and defensive, see JD Roberts, 'Trust and Control in Anglo-American Corporations' (2001) 54 *Human Relations* 1547.

This allows us not only to consider shareholder activism as a practical phenomenon, but takes us back to foundational roots and perspectives in order to locate the place of shareholder activism in theory and law. Some recurring questions in the book would be:

- (a) What is the nature of shareholder activism—is it part of the greater landscape of corporate governance and responsibility or is it an investment approach?
- (b) What are the consequences/effects of shareholder activism, and do they matter?
- (c) Are shareholders acting as self-interested utility maximisers in activism, and can this produce a countervailing force against self-interested management as assumed in the principal-agent paradigm?

Shareholder activism is not a novel phenomenon. As Lauren Talner argues, all forms of shareholder engagement and discussion with companies, questioning or complaining against company policies, could be regarded as early forms of shareholder activism.⁵ In the UK, family controlled companies only started unwinding during the post-war period, largely due to tax incentives favouring diversification, the rise of the portfolio theory and the rise of the managerial revolution.⁶ Although institutions rose to become the main owners of publicly issued equity in the UK by the 1980s, they were largely 'sleeping giants', relying on the active market for corporate control to exert discipline on management, or they could exit from the company by selling out. Systematic forms of shareholder activism arguably only emerged in the 1980s in the United States,8 and had taken a slow start in the UK in the 1990s. By referring to 'systematic forms' of shareholder activism, this book means the perspective taken by some shareholders who regard activism as an inherent part of their investment management; that engaging with their investee companies is part and parcel of ongoing investment, and not as an ad hoc occurrence.

Early shareholder activism described in Talner's book such as the 'gad-flies' questioning of the sale of oil by the Board of Standard Oil to the Axis Powers in the 1930s, is a form of activism that is triggered by specific events, and is thus ad hoc, event-led and *ex post* in nature. Contemporary

⁶ See BR Cheffins, Corporate Ownership and Control: British Businesses Transformed (Oxford, Oxford University Press, 2009) at chapters 2, 3 and 4.

⁵ L Talner, *The Origins of Shareholder Activism* (Investor Responsibility Research Center 1993), now out of print, quoted in RF Balotti, JA Finkelstein, GP Williams, *Meetings of Stockholders* (Aspen Publishers Online, 1996) at para 5.4.

⁷ Ibid, Cheffins, 373ff.

⁸ Notably as carried out by CalPERS and TIAA-CREF, major public pension funds in the US. More on CalPERS' approach will be discussed in chapter 2, as context and comparison for the purposes of examining shareholder activism in the UK.

shareholder activism may still be event-led, but it is observed that 'relational investing'9 has become a significant development, characterised by relatively more persistent engagement with companies. Such engagement may be carried out in order to safeguard investment value when issues arise that may threaten investment value. Some engagement may even be carried out with a view to influencing management on an ex ante basis. The latter may include regular and not merely ad hoc participation in general meetings, but also includes informal types of engagement outside of the general meeting. Contemporary shareholder activism also potentially includes the joining in any litigation in enforcing shareholders' rights, although the book will not focus on the exercise of legal rights as a feature of shareholder activism, as there is copious existing literature dealing with derivative actions and minority shareholder litigation. This book will focus on contemporary shareholder activism as an investment approach, and the location of such an approach in theory and law, in order to offer come critical perspectives. Nevertheless, for the sake of completeness, this chapter will briefly discuss shareholder activism which is concerned with other issues unrelated to investment value in the company.

Shareholder activism as examined in this book will be confined to publicly listed companies in the UK, as shareholder involvement in private companies may be based on different considerations, such as those in the realm of 'quasi-partnerships' 10 that deserve separate discussion. Some consideration will however be given to private equity involvement in the management of some companies, as the activities of the private equity sector have been seen as being important to how shareholder activism is perceived and practised in publicly listed companies. 11

In terms of why this book has chosen to discuss shareholder activism in the last 15-20 years, it could be argued that these years are key in the development of contemporary shareholder activism in the forms commonly seen today. The acceptance of shareholder activism in both policy and industry sectors had emerged by the 1990s, especially by 1992 with the Cadbury Committee's Report, 12 which is subsequently affirmed in

⁹ Relational investing is frequently characterised by significant stakes held over a long period of time, with the shareholder committed to exerting internal discipline on managers, see I Ayres and P Cramton, 'Relational Investing and Agency Theory' (1994) 15 Cardozo Law Review 1033.

¹⁰ Lord Hoffmann, in O'Neill v Phillips [1999] 1 WLR 1092, refers to 'quasi-partnerships' as a form of private company where member-managers have made commitments of mutual understanding vis-a-vis one another.

¹¹ Chapter 3.

¹² Sir Adrian Cadbury, Report of the Committee on the Financial Aspects of Corporate Governance (Dec 1992) (hereinafter known as the Cadbury Report).

other independent Committee Reports. ¹³ The Annual Surveys carried out by the Investment Management Association ('IMA') documents a marked increase in institutional outsourcing of investment management, which is followed by an increase in engagement with investee companies and the carrying out of activist campaigns. ¹⁴ This also coincides with the increase in hedge fund investment in UK companies and the carrying out of novel forms of aggressive activism. ¹⁵ Hence, where the UK is concerned, systematic forms of shareholder activism carried out by some shareholders in publicly listed companies are a recent phenomenon, and it is arguably timely to take stock of the drivers and patterns of such activism and relate them to the foundations of theory and company law. ¹⁶

Overview of the Range of Shareholders in the UK

This book will focus mainly on shareholder activism in relation to investment value, ie the activism of institutional shareholders and shareholders such as hedge funds, as these represent the dominant patterns of shareholder activism in the UK. Although a significant amount of shareholder activism in the US is in relation to social responsibility matters and stakeholder concerns such as employment matters, such activism is less significant in the UK.

The breakdown of beneficial ownership of shares in UK PLCs as at December 2008 (latest figures on the website of the Office of National Statistics)¹⁷ is as follows: foreign shareholders (41.5%, from 10–11% in 1990), insurance companies (13.4%, from 20% in 1990s), pension funds (12.8% from 30% in the 1990s), unit trusts (2% from 6% in 1990s), investment trusts (1.9% from 1–1.5% in the 1990s), individuals (10.2% down from 20% in the 1990s), alternative financial institutions (10% from 1% in the 1990s), charities (about 1%), corporations (2–3%), the state (0.1% as at 2006 but has risen to 1% with bank bailouts following the global financial crisis in 2008/9), and banks (3% from 0.7% in the 1990s). Institutional shareholders collectively own about 26 per cent of UK PLCs, foreign

¹⁴ Investment Management Association, Survey of Fund Managers' Engagement with Companies for the Year Ending 2005, http://www.investmentuk.org/news/surveys/default.asp.

¹³ As will be discussed in greater detail shortly.

asp>. ¹⁵ See J Plender, 'Our Punt Went Wrong, Now Help Us', *Financial Times* (17 Jul 2005) on how Elliot Associates, a US hedge fund started actively campaigning for asset stripping or earnings improvement by Woolworths after a share price decline. See also C Hughes, 'Hedge Funds Home in on UK Targets', *Financial Times* (5 Nov 2007) reporting on a survey by Thomson Financials that hedge funds view investments in the UK as fertile territory for shareholder activism for the purpose of improving share price.

¹⁶ Hedge funds, see example ibid.

¹⁷ http://www.statistics.gov.uk/pdfdir/share0110.pdf >.

shareholders own 41.5 per cent, alternative financial institutions such as hedge funds own 10 per cent with the remainder dispersed amongst individuals, charities and non-financial corporations. Foreign shareholders are thus the largest significant group of shareholders in the UK. Such foreign shareholders may be individuals, corporations, institutional or alternative investors, and sovereign wealth funds. In particular, foreign institutional investors such as CalPERS' investment in the UK Hermes Funds will be discussed in chapter 3, and foreign hedge funds and private equity fund activities will be discussed in the same chapter.

Sovereign wealth funds have existed since the 1960s and 1970s, as oil producing nations such as Norway, Saudi Arabia and the United Arab Emirates. These funds have been formed to manage trade surpluses from sales of crude. Countries with huge trade surpluses also manage their wealth through sovereign wealth funds, and China for example has formed a few of the richest sovereign wealth funds in the world to invest in foreign assets. Increasing concern has been raised over the role of sovereign wealth funds in general, and questions are being asked as to the motivations of sovereign wealth funds in taking stakes in foreign public companies. Although such high levels of foreign share ownership exist in the UK, it is however observed that sovereign wealth funds have engaged in little or no shareholder activism. A similar pattern is observed in the US.¹⁸ There is only one reported instance of sovereign wealth fund involvement in supporting American hedge fund Trian's activism against Cadbury Schweppes, which will be discussed in chapter 3. Other than that, sovereign wealth funds have been extremely quiet, whether on corporate governance issues (which is actually largely led by UK institutions), or on issues relating to extracting value from the company (which is largely led by hedge funds, whether UK or foreign).¹⁹ This observation is at odds with the literature that evinces suspicions and fears over sovereign wealth funds.²⁰ Some academics have even called for

¹⁸ RA Epstein and AM Rose, 'The Regulation of Sovereign Wealth Funds: The Virtues of Going Slow' (2009) 76 University of Chicago Law Review 111. The article further explores the advantages of sovereign wealth investing and argues that there is no necessity as yet to seize on paranoia and fears regarding sovereign wealth funds to reform corporate legislation.

¹⁹ It is also reported in the US that sovereign wealth funds are largely too long term, passive and cautious to be activist, see P Rose, 'Sovereigns as Shareholders' (2008) 87 North Carolina Law Review 83.

²⁰ G Lyons, 'State Capitalism: The Rise of Sovereign Wealth Funds' (2008) 4 Law and Business Review of the Americas 179; RJ Gilson and C Milhaupt, 'Sovereign Wealth Funds And Corporate Governance: A Minimalist Response To The New Mercantilism' (2008) 60 Stanford Law Review 1345; all write of the fears and suspicions regarding the motivations for sovereign wealth fund investments and whether any political reasons may exist to use the investments as political levers or as learning platforms to better domestic industries. These suspicions are increased where the fund is operated by countries whose political motivations may be unclear, and whose social values differ greatly from the social values

sovereign wealth funds to be disabled from voting, so that they will be unable to exercise any form of activism that may be motivated by political aims.²¹ However, the reality is that sovereign wealth funds appear to make highly diversified and small investments in different industry sectors all over the world,²² are long term investors in nature²³ and do not appear to initiate or carry out activism, having a primary concern for investment value rather than other political concerns.²⁴ Further, the Santiago Principles mapped out in early 2008 are likely to be adhered to by large sovereign wealth funds such as Abu Dhabi's and Singapore's wealth funds, committing to greater transparency and disclosure of their structures, objectives and accountability.²⁵ The book will not devote much discussion to sovereign wealth funds as there is no significant activist activity led by them in the UK.

There is also no significant pattern of shareholder activism emerging from the individual shareholders' quarter, and this is perhaps to be expected as individuals are possibly too dispersed and unmotivated to take a lead on activism. The only noteworthy movement of individual activism is the collective action taken by former Northern Rock shareholders whose shares have been expropriated after the nationalisation of the bank in early 2008.²⁶ Such activism is thus driven by highly unusual events, and is not even targeted at the company.²⁷ It is thus not representative of individual shareholder activism against target companies in the UK. Individuals may however be an important force to be reckoned with when it comes to voting, as will be discussed in chapter 2 in relation

of the jurisdictions where the investments are made, L Badian and G Harrington, 'The Politics of Sovereign Wealth' (Winter 2008) International Economy 5. AH Monk, 'Recasting the Sovereign Wealth Fund Debate: Organizational Legitimacy, Institutional Governance and Geopolitics' 2008, at http://srn.com/abstract=1134862> writes of fears surrounding the operations and lack of disclosure by sovereign wealth funds, affecting their legitimacy, see also EM Truman, 'Sovereign Wealth Funds: The Need for Greater Transparency and Accountability' Policy Brief, Peterson Institute for International Economics, Aug 2007.

- ²¹ Ibid, Gilson and Milhaupt, 'Sovereign Wealth Funds and Corporate Governance' (2008).
- ²² C Balding, 'A Portfolio Analysis of Sovereign Wealth Funds' (2008) at http://ssrn. com/abstract=1141531>; C Portman, 'The Economic Significance of Sovereign Wealth Funds' Economic Outlook, Oxford Economics 2008 24.
- ²³ V Fotak, B Bertolotti, W Megginson and William Miracky 'Soveriegn Wealth Fund Investment Patterns and Performance' (2009) at http://www.bepress.com/cgi/ viewcontent.cgi?article=1294&context=feem>.
- ²⁴ J-F Seznec, 'The Gulf Sovereign Wealth Funds: Myths And Reality' (2008) 15 Middle
 - ²⁵ Rose, 'Sovereigns as Shareholders', above at n 19.
- ²⁶ Northern Rock Shareholders Action Group, see http://www.uksa.org.uk/ NorthernRock.htm>, that is involved in campaigning for fair compensation for the expropriation of their shares upon nationalisation.
- ²⁷ The main action taken is the filing of a judicial review suit against the legislation for nationalising Northern Rock.

to Marks and Spencer. As individual shareholders are likely to ride on shareholder activism initiated by institutions or alternative investors such as hedge funds, their activities will not be separately discussed.

2. PARADIGMS AND CHARACTERISTICS OF SHAREHOLDER ACTIVISM

As Cheffins argues, the dominant ownership structure of most publicly listed companies today is dispersed ownership.²⁸ The erstwhile issue in dispersed ownership is the agency problem first identified in Berle and Means' locus classicus.²⁹ Bratton argues that '[the] book's continued vitality (after more than 70 years) results from its identification and discussion of problems left untreated both then and now', 30 such problems referring mainly to issues arising out of the agency problem. Jensen and Meckling's seminal article has attempted to show how the separation of ownership from control would result in the divergence between managers' self-serving interests and shareholders' interest in the maximisation of corporate wealth.³¹ This paradigm has come to dominate perspectives in corporate governance, hence, much of mainstream corporate governance focuses on how managers as agents may be incentivised, governed or controlled, so that the effects of the agency problem may be mitigated.³² In general, shareholder activism is seen as a necessary countervailing force to combat the agency problem in widely dispersed companies. This perspective allows us to locate shareholder activism within the fabric of corporate governance in general. It also allows us to frame the perspective that shareholder activism is a form of market-based governance intended to 'monitor' management. The fundamental rationale for shareholder activism is arguably a means of 'defence' against managerial deviations. There could be two expressions of shareholder defence against the agency problem—exit, ie by selling shares and hence removing the exposure to the problem altogether, or voice, ie the taking of a positive form of action or intervention that moves away from reliance on the market.³³ The book's

²⁸ See Cheffins, Corporate Ownership and Control, above at n 6, which discusses the historical development of the ownership structure in UK public companies and the factors contributing to the dominance of the dispersed ownership structure.

²⁹ AA Berle and GC Means, The Modern Corporation and Private Property 2nd edn (New Jersey, Transaction Publishers, 1991).

³⁰ W Bratton, 'Berle and Means Reconsidered at the Century's Turn' (2001) Journal of Corporation Law 737, at 739.

³¹ Jensen and Meckling, 'Theory of the Firm' (1976) n 4.

³² EF Fama and MC Jensen, 'Separation of Ownership and Control' (1983) 26 Journal of Law and Economics 301.

³³ AO Hirschmann, Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States (Cambridge, MA, Harvard University Press, 1970).

discussion is on shareholder activism as the use of voice. Jansson further develops shareholder activism as the use of voice into two categories: defensive and offensive shareholder activism.

Defensive and Offensive Shareholder Activism

Jansson's paper discusses two paradigms of shareholder activism in exercising 'voice', the offensive and defensive forms of activism.³⁴ This typology is derived from two representative case studies in the paper, and is also used to explain more generally why shareholder activism does not always lead to abnormal returns in share prices. Jansson is of the view that where share prices do not dramatically increase as a result of the shareholder activism, the activism could be explained as a defensive type, where shareholders see the need to safeguard their investment in the company, but are not prepared to sell. Defensive shareholder activism is defined as 'a defensive safeguarding of invested capital, which is exposed to hazards because of increasing costs of exit'. Defensive activism is thus aimed at maintaining the value of the share price as far as possible and not seeking abnormal returns. Hence, the defensive type of activism also takes on a characteristic of seeking to rectify certain management failures which are observed that threaten the viability of the investment, in particular governance failures. Chapter 2 will argue that elements of defensive shareholder activism can be seen in institutional shareholder activism in the UK, as the activism is carried out on the basis of a pre-existing stake, and is largely related to issues of governance in the company, which could have implications for long term value. However, institutional shareholder activism in the UK is closely connected with policy exhortations with regard to the institutions' roles, as chapter 2 will argue. Hence, the exercise of voice or exit by institutions may not only be related to investment value, or whether the institution has too large a stake to sell. The book refrains from characterising institutions as being 'defensive' on all fours with Jansson's typology, although significant elements of defensiveness can be found.

Where abnormal returns on share price result, Jansson characterises such activism as 'offensive' activism. Offensive activism is described as action taken to seize an opportunity, often in an aggressive manner, in the

³⁴ A Jansson, 'Types of Shareholder Activism: Offensive Opportunity Seizure or Defensive Safeguarding of the Investment?', paper presented at EAA (2007), Lisbon. Armour and Cheffins have a more limited definition, classifying 'defensive' activism as activism carried out by a minority shareholder who has a pre-existing stake in a company, and 'offensive' activism as the building up of a minority stake by an activist in an opportunistic manner in order to realise abnormal returns from the stake, J Armour and B Cheffins, 'Offensive Shareholder Activism', paper delivered at the Department of Management, King's College London, 7 Oct 2009.

expectation of generating abnormal returns on share price.³⁵ This type of shareholder activism is characterised as *ex ante* in nature, and stakes are taken in a company in order to seek gains. This is opposed to seeking to rectify a concern as is the case with defensive activism. The offensive type of shareholder activism characterised by hedge funds will be discussed in greater detail in chapter 3.

In the 1980s when shareholder activism emerged on a systematic basis in the United States, led by major public pension funds such as CalPERS,³⁶ the agency problem was the chief driver of such activism. However, what started as a defensive mechanism in investment rather quickly developed into a quest for abnormal share price returns. Hence, the motivations for defensive activism became fused with the objective to seek returns, turning into a form of offensive activism. This allowed shareholder activism not only to become an investment approach in the corporate governance landscape, but also an investment strategy. Hence, Jansson's typology draws the distinction between defensive and offensive shareholder activism too starkly, although it is useful to note some of the differences between defensive and offensive forms of activism when looking at the practice in the UK. Even if shareholder activism may be driven by defensive concerns, a corollary aim may be to make 'offensive gains' at the same time. This is not only because shareholders realise that defensive activism could become an investment strategy, but because defensive activism also entails cost which needs to be made up for by the gains in share price returns that could result from activism. Jansson's case study where shareholder activism does not result in 'offensive' gains, in the case of Pricer in Sweden, is possibly unintended rather than intended. In this author's view, the failure to realise any abnormal gains in share price by Pricer shareholders could possibly be due to the fact that the shareholders involved were not prepared to take a systematic and persistent approach to activism, and engaged in a one-off protest until the Chairman and CEO were replaced. Contemporary shareholder activism on a systematic and persistent basis features both defensive and offensive elements, and this book argues that the distinction between the two is possibly not as neat as Jansson suggests, although the typology is still very useful in explaining the drivers and evolution of shareholder activism in the UK.

It is necessary to take a look at CalPERS in the United States as the groundwork laid by CalPERS in shareholder activism is essential to the understanding of contemporary shareholder activism generally, and in

³⁵ Cheffins also describes such activism as being 'offensive', see above n 6, at p392.

³⁶ The California Public Employees' Retirement System, see http://www.calpers.

relation to the UK. In the 1980s, CalPERS was managing a large pension portfolio, and like all other pension funds, the investment approach was one of selling if the equity did not perform, or waiting for an acquirer to purchase an underperforming company and hopefully improve the share price thereafter. Performance was passively tracked against an index which was an aggregate of significant equities. From 1986-88, CalPERS saw that companies were passing poison pills against takeovers without the matter being approved by shareholders, and hence it would be increasingly difficult to rely on the market for corporate control to provide discipline for poorly managed companies in the portfolio. CalPERS commenced a form of activism in putting forth shareholder proposals to combat takeover defences. This investment approach could arguably be categorised as a defensive type, responding to an unfavourable trend that could threaten the safeguarding of the value of certain portfolio assets. It was documented in empirical research that such activism did not produce any significant changes in the share price of the companies concerned, and Smith explained this as being characteristic of a defensive approach where the value of the stock was maintained rather than improved.³⁷ CalPERS changed this investment approach in 1989 when the beginnings of a systematic approach appeared in their targeting of companies whose share price had been underperforming. The activism was aimed at improving the performance of these companies and making gains on share price. This later evolved into the Focus List (from 1992) where CalPERS would publish annually the companies they regarded as underperforming. The investments made by CalPERS in these companies would be for the objective of performance improvement, as opposed to merely changing policies such as anti-takeovers or corporate governance.³⁸ After conducting a form of defensive investment management in 1987-88, CalPERS has very quickly moved beyond the combating of the agency problem. Purely defensive activism motivated by the desire to combat the agency problem is rather short lived and CalPERS seems to view the defensive and offensive approaches to shareholder activism as two sides of the same coin: that the investment approach to safeguard assets by engaging with investee companies is also an investment strategy that seizes the opportunities offered by underperforming companies, allowing engagement in a systematic way in order to influence management to improve abnormal returns on share price. This has paid off in long term share price improvement as documented in empirical evidence

³⁷ MP Smith, 'Shareholder Activism by Institutional Investors: Evidence from CalPERS' (1996) 51 *Journal of Finance* 227.

³⁸ Also see CE Crutchley, CD Hudson and MR Jensen, 'The Shareholder Wealth Effects of CalPERS' Activism' (1998) 7 *Financial Services Review*, available at http://findarticles.com/p/articles/mi_qa3743/is_/ai_n8786737.