

Comparative Study of Successful French and Anglo-Saxon Shareholder Activism

Carine Girard
Associate Professor
AUDENCIA-Nantes School of Management
cgirard@audencia.com

Abstract

This article presents a legal, theoretical and empirical study to understand distinctive features of successful French shareholder activism. We compare its evolution with Anglo-Saxon shareholder activism across the period January 1989 to June 2008. Over the period studied, 203 French corporations were criticized by dissident shareholders. To measure the success of French activism, we examine to what extent activist shareholders are successful in achieving their objectives. We find significant differences according to sponsor identity, the degree of influential activity and the time period. Our results show that, throughout the period studied, there is a correlation between successful outcomes and the most aggressive influential degree (law suit) with an absence of private engagement. But since 2001, when there was a legal enforcement to protect minority shareholders and institutional changes in order to develop popular ownership, we observe a new tendency in the French activism process. Contrary to the Anglo-Saxon common law countries, the role played by investor associations is a significant factor in successful French activism. However, in accordance with a global phenomenon, activist hedge funds and proxy professionals are increasingly critical of bad corporate governance. The consequence is that French activism is becoming more intensely professionalized and concerted.

EFMA classification code: 150

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Introduction

A new wave of shareholder activism has appeared in the United States and in the United Kingdom. This phenomenon is characterized by innovative forms of influential activities called public and private engagement. Black and Coffee (1994) argue that the U.K. legal environment encourages private interventions from activist institutional shareholders, and that the U.S. private intervention is weak and “takes the form of letter writing” (Becht and al., 2006). But, as observed by Gillan and Starks (2007), American institutional investors are more and more active in supporting shareholder proposals because of an increase in the number of joint influential activities with proxy professionals or activist hedge funds. In fact, the Anglo-Saxon contested process is becoming more and more professionalized. Can we make the same observations in France? What are the distinctive features of French shareholder activism? Can they explain the success of shareholder activism in listed and non listed French corporations? Can we observe at present a tendency towards convergence between French shareholder activism and Anglo-Saxon shareholder activism?

In the late 1980s, studies on American activism outcomes (Gordon and Pound, 1993; Karpoff and al., 1996; Strickland and al., 1996) reported that success depended on the characteristics of criticized corporations (poor performance with high institutional ownership) and those of the activism process (motive of contestation, nature of influential activities and identity of the sponsor). Proposals sponsored by institutional investors received more votes because of their ability to gather and process information. Over the period 1987 to 1994, Gillan and Starks (2000) showed that proposals related to corporate governance concerns attracted more voting

rights. Since 2001, there has been more concerted actions with more private engagement by long-term institutional investors and hedge funds.

In contrast, in France, institutional investors continue to exert a quiet activism due to legal and institutional barriers. Firstly, before 2001, they could not vote by mail. Before 2006, the shares held by investors were blocked for a few days before the annual general meeting. This absence of a record date discouraged institutional investors from voting. Secondly, prior 2001, the threshold of voting rights required to put forward a shareholder proposal was too high. Collecting 10% of voting rights was too difficult because of the concentration of ownership. During the first wave of French corporate privatization, in the early 1990s, cross-shareholdings became to crumble. But as underlined by Aglietta (2008), French corporations are traditionally attached to ownership stability. The new individual shareholders and the large number of employees who had been encouraged to invest in their corporation with the view of creating a loyal popular ownership base needed better protection from the law. The first step towards better protection was the recognition in 1989 of investor associations' rights to act and to claim collective damages for expropriated shareholders. This date marks the beginning of the gradual development of French shareholder activism.

Between January 1989 and June 2008, 203 French corporations were targeted by dissident shareholders. On average, the success rate of activism was 45%. French activism is a long-term process with a combination of several influential activities and a variety of motives. The term (successful) indicates that the dissident coalition obtains at least one of their objectives. In our empirical study, we only took into account the characteristics of the activism process (motives, degree of influential activities and sponsor identity) and compared these with results for successful Anglo-Saxon activism using the same criteria. Firstly, since 2001, the role played by investor associations as been a significant factor. Contrary to the U.S., the number

of investor associations has increased. Today, there are more than twenty and they are all specialized in law suits. Secondly, it is clearly the nature of this influential activity which explains their success after 1994. Another important difference between French and Anglo-Saxon activism outcomes is that there is no correlation in France between the use of private interventions and a successful activism process. The more aggressive the activism process, the greater the chance of the firm acceding to the coalition's demands. Thirdly, since 2001, as in the U.S. and the U.K., a corporate governance-related motive, hedge fund sponsor and/or the involvement of proxy professionals have all been significant factors of success.

To understand the impact of the legal and institutional environment on the slow development of shareholder activism, in section 1, we draw up a short history of French shareholder activism. In section 2, we describe the data and the results.

1. A short history of French shareholder activism

In France, the development of shareholder activism began much later than in the U.S. because of institutional and legal obstacles. The institutional obstacles stem from the distribution of share ownership in France. In the study by Faccio and Lang (2002) based on 5232 listed companies in 13 countries, it was observed that the dominant actors in French listed corporations tend to be the family owners, whereas in British listed corporations the shareholders are more widely spread. Outside the Anglo-American common law countries, single majority owners hold power over firms “significantly in excess of the cash flow rights” (La Porta and al., 1999). In France, at the start of the 1990s, the French economy was a “financial network economy” governed by interlocking and controlling shareholders organized in cross-shareholdings (Morin, 2000). On average the interlocking stakes held by these controlling coalitions had exceeded 30% of the capital of French companies (Morin,

2000). Other studies find same concentration of cash flow and control ownership in those civil law countries characterized by poor shareholder protection (Rajan and Zingales, 1995; La Porta and al., 1998). These differences in ownership composition and shareholder protection account for the fact that, in French corporations, conflicts of interest are not only between management and dissatisfied shareholders but often oppose two coalitions: a controlling coalition of blockholders and a dissident coalition of minority shareholders. The dissident coalition is composed of various categories of shareholders (employee investors, institutional investors, financial investors and minority blockholders) who have been expropriated by the controlling coalition but who have neither the information, nor the knowledge to become active.

For example, during the first wave of French corporate privatizations, many small shareholders invested in Eurotunnel share issues hoping to gain a long-term return on invested capital based on the over-optimistic forecasts in the original offer for sale document in 1987. These small optimistic investors believed they were financing their retirement or were intended to transfer their shares to their heirs by means of dividends which they perceived as a fixed income. To illustrate this lack of financial market knowledge, we can read the following quote from the *Financial Times* in 1997 made by a French individual Eurotunnel shareholder: “I didn’t know what shares were. I thought they were saved like loans”¹. It was only in April 2004 and after a decrease of more than 90% that dissident shareholders of Eurotunnel fired the incumbent management after a proxy contest investigated by a shareholder action group called Adacte. This lack of financial knowledge combined with the problem of coalition-forming in listed corporations are the main reasons for the slow development of shareholder activism in France.

¹ *Financial Times*, 9 August 1997.

Prior to the 1990s, shareholders remained passive because their power to influence the management was limited by legal constraints which made it costly for individual owners to acquire blocks of shares, or for groups of activists to act collectively. As shown in previous research, the probability of a dissident coalition succeeding increases with the size of its shareholding (Pound, 1988) and with the communication costs spent by a “pivotal” shareholder (Bhattacharya, 1997) to break the free rider problem (Grossman and Hart, 1980). In the United States, the role of the “pivotal” shareholder is played by institutional shareholders who have the financial resources and the specific competencies to collect and interpret private information and to convince passive shareholders to join their activism strategies. Contrary to the United States, the problem of coalition-forming is not solved by institutional investors but by investor associations. To understand the evolution of French shareholder activism and its main differences with the Anglo-Saxon process, we need to start with the role played by investor associations in France.

1. 1. The growing role of investor associations

Investor associations were enacted in 1989 by the French Law n° 89-421. These associations give general protection to investors holding equity in any company. To be legally entitled to sue a targeted company, the association must have a written mandate from each of the claimant shareholders. In France, the law requires that when an activist shareholder is represented before the court, his or her own personal identity must appear in the procedure. This explains why an American-style class action is effectively ruled out by the French civil law system. At present, the closest approximation in France to a class action lawsuit is the “Representation Action” (*action en représentation conjointe*²) enacted in 1992. This grants designated associations the right to file a joint compensation claim on behalf of financially

² Art. L.422-1 of the French Consumer Code.

exposed investors, but each claimant must be named individually³. These associations play an important role in the defence of shareholders as otherwise weak protection would inevitably result in a free rider problem.

Before the New Economic Regulation Law came into force in May 2001, French civil law offered very weak protection to shareholders (La Porta and *al.*, 1998). As shown in table 1, shareholders remained passive during the Annual General Meeting (AGM) as they had no possibility of voting by mail. They also had to solicit more than 10% of voting rights to have any influence on proposals which were approved or contested at the AGM. With 10% of voting rights they could enforce compliance with disclosure rules and demand a minority assessment (*expertise de minorité*). This type of assessment was useful not only as a way of reducing informational asymmetry in one or several operational decisions, but also as delaying tactic to facilitate the mobilisation of shareholders.

Since the adoption of the New Economic Regulation Law in 2001, this threshold has been lowered to 5% of voting rights. With 5% of voting rights, dissident shareholders can now, individually or conjointly, put forward a proposal in the proxy statement, vote by mail and submit written questions to the AGM. If a resolution is supported by more than 50% of votes, it is approved. But if more than one-third of votes are cast against the managerial resolution, the proposal is blocked by what is known as “*minorité de blocage*”. One possible explanation for the relative passivity of institutional investors in France prior 2006, and in contrast to the United States, was the blocking of shares for the five days preceding an AGM (table 1). The practice of setting a record date⁴ was only adopted at the end of 2006.

³ Art. L.422-1 of the French Consumer Code.

⁴ Date established by issuing company, on which an individual must hold own shares to be eligible to receive a dividend.

Table 1: Comparative Company Law of General Meetings mechanics

Judicial constraints	United States ⁵	France	
	Before 2001	Before 2001	2001-2006
Proxy by mail	yes	no	Yes
Share Blocking/registration required	no/no	yes/yes	yes/yes
Minimum notice of AGM	28 days	15 days	15 days
Shareholder proposals	1%	10%	5%

During the 1990s, the most famous French investor association was ADAM (Minority Shareholder Association). Its executive officer Colette Neuville usually started her activism by writing to the French Securities Market regulator (COB⁶), and this was followed by judicial and lobbying activities such as the minority expertise. But during the 1990s, she also used legal loopholes such as concerted action to force individual shareholders acting conjointly to make a bid as a way of protecting the minority shareholders of controlled companies. In French Law, a third of voting rights are required to gain control. The notion of concerted action was introduced by the Law of the 2nd August 1989 and is defined as “an agreement to acquire or to sell voting rights or to carry out a common policy towards the corporation though the exercise of voting rights”⁷. Even so, it is extremely difficult to prove conclusively the existence of a case of concerted shareholder action. But recently, Eiffage corporation acting with ADAM lodged a complaint against Sacyr accusing them acting together with certain Eiffage shareholders. Finally, in its decision of the 27th June 2007, the *Cour de Paris* specified three criteria of a concerted action which are: « a collective and organized approach » not written and not restricting; « targeted to modify the composition of the board at the EGM » by means of the joint exercise of voting rights “for a common goal” in this case, the partial unofficial takeover of Eiffage by Sacyr.

⁵ Cf. Mallin (2001)

⁶ AMF ex COB is the French equivalent of the Securities and Exchange Commissions.

⁷ art. L.233-10-1 of the French Commercial Code

The second loophole used is linked to the evaluation of the exit premium during a squeeze out. In France, the right to demand a squeeze-out is comparatively recent and dates from 1991. But art. 5-6-6 of the general regulation of the AMF (ex-COB) specifies a multi-criteria evaluation of the exit bid. This wide definition gave to dissatisfied shareholders and to ADAM an opportunity to negotiate an exit with a higher premium. This “strategy of harassment” (Courret, 1996) was interrupted by new regulations to limit minority abuse. In parallel, ADAM used lobbying activities to improve the enforcement conditions of squeeze-outs, the abolition of partial takeovers and capital increase without subscription rights.

After the New Economic Regulation Law in 2001, activism increased during the AGMs because of the reduction in the threshold to 5%, and because of ADAM’s affiliation with other groups of investors. For example, during the Atos Origin AGM in 2007, ADAM supported two activist hedge funds when another investor association called APPACT decided to support the CEO of SSII. If this collaborative action is recent, it doesn’t rule out conflicts of interest between them. Contrary to the ADAM, the APPACT made a series of highly controversial comments on the subject of the takeover of Arcelor by Mittal Steel, defending the majority coalition of Mittal Steel and not the minority shareholders who held 6% of Arcelor in June 2007.

French investor associations tend to have a much longer lifespan than the American counterparts. As observed by Gillan and Starks (2007), the board of the United Shareholders’ Association created in 1986 voted to disband itself in 1993 after targeting corporations and encouraging the S.E.C. to improve investor rights. Another organization called Investors’ Rights Association of American (IRAA) began to submit proposals for a short time in 1995.

As shown in table 2, we observe an inverse phenomenon in France. Today, there are more than twenty investor associations in France, each specialized in specific influential activities.

Table 2: Specialized influential activities by the most active investor associations in France

Name	CEO (date of creation)	Influential activities	Targeted corporations
<i>France Petits Porteurs</i> (France Small Holders)	Charles Reguardati	Lobbying activities	Lobbies for the transposition of the Sarbanes-Oxley Law.
<i>SOS Petits Porteurs</i> (SOS Small Holders)	Jean Claude Delarue (1987)	Media and judicial activities Collect the accounts of retired people badly advised by their bank.	La Poste (Bénéfic affair); Crédit Agricole; Caisse d'Epargne; Eurotunnel,...
ADAM <i>Association Des Actionnaires Minoritaires</i> (Minority Shareholder Association)	Colette Neuville (1991)	Media coverage Letters to AMF Civil law suits	Bernard Tapie Finance (1992); Compagnie du BTP (1993); Compagnie Générale des Eaux (1998); Vivendi-Havas (1998); Schneider-Legrand (2001); Renault-Nissan (2002); Rhodia (2002, 2005, 2006); EADS (2006); Eiffage (2007); Atos Origin (2007)
APPACT <i>Association des Petits Porteurs Actifs</i> (Active Small Investors Association)	Didier Cornadeau (2002)	Penal law suits	Vivendi Universal (2002); Alsthom (2003); Marionnaud (2004); Rhodia (2006); EADS (2006); Eiffage (2007); Smoby (2008)
ASA <i>Association des Actionnaires Actifs</i> (Active Shareholder Association)	Me Frédéric Karel Canoy (2005)	Class actions	EADS (2006)

Recently, certain investor associations have launched class actions not in France but in common law countries, where the parent is registered. For example, several investor associations from EADS have filed this action in Netherlands, where the pan European company is registered.

As explained in this section, these associations play an important role to solve the problem of coalition-forming because of institutional and legal barriers. In United-States, this problem is solved by coalitions of institutional investors (Strickland and al., 1996) who became very active from the mid 1980s. Over this period, the Council of Institutional Investors led lobbying activities for shareholder rights. Thanks to changes in securities laws facilitating communication between shareholders, a new phenomenon called institutional activism (Del Guercio and Hawkins, 1999; Prevost and Rao, 2000; Ryan and Schneider, 2000; Smith, 1996) has appeared. In France, this activism emerged much later and seems to be evolving towards a global professionalization of activism process.

1.2. A professionalization of activism process

At the end of the 1990s, there was a visible decline in the amount of cross-shareholdings in French companies. This was due to the repurchase of blocks of shares previously held by controlling shareholders by the large U.S. pension funds spurred on by a more open regulatory system. Between 1985 and 1997 foreign investors increased their shares of stock exchange capitalization from 10% to 35% (Morin, 2000). In 2006, a survey of AMF⁸ showed that foreign investors held 42.2% of the capital of CAC40 listed corporations.

On average, institutional investors still exert a “quiet” activism (Ben M’Barek, 2008) characterized by an absence of media coverage and private interventions. In this study, they describe themselves as “money managers” with no ability to intervene in the management of invested corporations. But their activism is not homogeneous. As Del Guercio and Hawkins (1999) and Ryan and Schneider (2002) showed in the U.S., institutional activism is a relatively drawn-out process involving different levels of activism depending on individual types of institutional investors. In Ben M’Barek’s study, only four of the ninety-one investors interviewed exerted conventional activism characterized by private negotiations prior to the

⁸ Cf. Bulletin n°161 of AMF, May 2007

contesting of managerial proposals. This conventional activism is a contestation process which can be divided into four stages (Wahal, 1996). The first stage involves target selection from the portfolio of the firms. The second consists of informational communication activities. The third involves the submission of a shareholder proposal, which may also comprise voting solicitation activities to contest a managerial proposal at the shareholders' meeting. If no agreement is reached, then a proxy battle at the AGM will take place at the fourth stage.

This conventional activism has been emerging since the Financial Security Law in 2003. Investment management companies are now required to report on the exercise of the voting rights attached to shares held by collective pension schemes (table 3). More recently, the adoption of the record date encourages investment companies to vote at French AGMs. Since these recent enforcements, the France-based asset management association AFG⁹ observed that half of questioned investment companies held a voting policy and 13% of them voted against managerial proposals at the 2007 AGM. These active institutional investors voted against certain specific proposals such as nomination of board members, capital increase without subscription rights, the repeal of antitakeover amendments, and remunerations.

Table 3: Evolution of the minority shareholder rights in France

Year	Legal Reforms	Fiduciary responsibilities
1989	Law n° 89-421 of June 23, 1989	Recognition of investor associations' rights to act and to claim collective damages for expropriated shareholders
	Law of August 2, 1989	Emergence of the squeeze-out
1992	Law n° 92-60 of January 18, 1992	Consumer associations are permitted to sue in the name of at least two consumers who give them their prior written authorization
1994	Loi n° 94-679 of August 8, 1994	Recognition of the right to claim individual damages for robbed shareholders who give a mandate to investor association
2001	New Economic Regulation Law	Reduction in the threshold to 5% of voting rights Authorization to vote by mail

⁹ Cf. « Exercice des droits de vote par les sociétés de gestion en 2007 », 13th February 2008.

2003	Financial Security Law	Shareholder(s) with 5 % of voting rights are allowed to put forward a resolution on the proxy statement sent 25 days before the AGM. Investment management companies are required to draw up a report on the exercise of voting rights attached to the shares held by the collective pension schemes. Merger between French Securities Market Regulators to create the <i>Autorité des Marchés Financiers</i> , an independent public authority tasked with investor protection.
2006	Decret n° 2006-1566 of December 11, 2006	Adoption of the record date which gives up the shares blocking before the AGM. The shares are registered three days before the AGM.

If the improvement of the minority shareholders rights has encouraged the emergence of institutional activism, the dynamism of the asset management industry has also given rise to a new wave of institutional activism. Two main reforms have occurred over the last ten years, aiming to raise individual contributions and reduce the replacement rate. Law n°2001-152, also called the “Fabius Act” extends the benefit of employee saving schemes to small and midsize companies. Such companies are allowed to pool funds by setting up joint schemes with other employers on a regional and industry sector basis. Law n°2003-775, also called the “Fillon Act” creates new employee retirement schemes. These pension reforms should be very positive for the asset management industry. In its 2008 survey¹⁰, Novethic observed that strong growth of employee saving schemes, with deposits more than doubling from 1.3 to 2.8 milliards € (+118%), has given rise to new “social” (Marens, 2001) or “political” (Romano, 2001) form of institutional activism. This development is due to FRR (*Fonds de Réserve pour la Retraite*/pension reserve fund) and ERAFP (*Etablissement de la Retraite Additionnelle de la Fonction Publique*/state employees’ pension reserve fund) which incorporate Environmental Social and Governance (ESG) concerns into investment decisions. Together with a certain number of French asset managers, FRR signed the Global Principles for Responsible Investment drawn up by the United Nations in April 2006. Today, these

¹⁰ Novethic, 2008, « Enquête annuelle sur le marché français de l’ISR en 2007 : gestion collective, dédiée et interne »

signatories are integrating environmental, social and corporate governance criteria into their asset management. The use of these extra-financial criteria is known as the *approche d'intégration ISR* (SRI integrated approach). Although this SRI integrated approach has placed them in alignment with socially responsible investors (SRI) in some situations, there are some differences which subsist.

In 2007, the French SRI market doubled to reach a level of 22.1 milliards € of deposits compared to 17 milliards € at the end of 2006, an increase of 30% in one year (Novethic, 2008). Contrary to the United States, this SRI market is developing within the context of greater shareholder protection, and is largely constituted of popular ownership following the two waves of privatization and employee saving schemes. These factors explain the diversity and the increase in the number of funds. Out of a total of 175 funds, only 13 are SRI funds, which were created in the last twelve months (Novethic, 2008). The majority of these funds are “best in class” funds using positive screens (e.g., investing in a company because of its positive environmental performance) to select shares or a combination of negative and positive screens. Contrary to the Anglo-Saxon context, we find rarely ethical funds using exclusively negative screens (a handful of French ISR funds refuse to invest in the arms sector, or in companies whose ethical record is weak). The undefined nature and the diversity of SRI funds could be explained by the fact that SRIs were launched without a real demand from the public (Déjean, 2006). French investment funds¹¹ were seeking in fact to diversify their offer to attract new customers. In its 2008 survey, Novethic shows that all these French responsible funds have an active voting policy because they are legally obliged to do so by the Financial Security Law. But, contrary to the conventional form of activism (Wahal, 1996), the target selection process has evolved as well as the nature of influential activities.

¹¹ They are called OPCVMs - *Organismes de Placement Collectif en Valeurs Mobilières* - for UCITS - Undertakings for Collective Investment in Transferable Securities

In accordance with a global phenomenon, they exert innovative forms of influential activism characterized by private and public engagements. To act as responsible investors, some of them choose to be engaged privately in invested corporations which mean they prefer to exercise private interventions (direct involvement with the CEO and the chairman, meetings with board members and seeking support of other institutional investors) rather than public campaigns (media coverage on the proxy battle) to maximize shareholder wealth (Becht and al., 2006). The majority of them have established collaborative coalitions with prominent actors in society. Some French asset owners and investment managers (such as BNPAM, I.DE.AM, CAAM, AXA, Caisse des Dépôts, FRR) are engaged in global initiatives such as the Carbon disclosure project, the enhanced analytics initiative, the global rating initiative, the institutional investors group on climate change and the international corporate governance network¹². This is known as “corporatist engagement” (Clark and Hebb, 2004), because of their use of institutional investor networks and relational investing. As defined by Bhagat and al. (2004), these relational investors are outside investors seeking collective engagement with institutional investors and private engagement with the management of their invested corporations because of their large holdings and their long holding period. This category of active institutional investors has adopted a universal owner perspective. By being large investors with diversified portfolios, they own small parts of global capital with very small opportunities for exit. Their performance depends to an important degree on the performance of the economy at large (Hawley and Williams, 2007). Therefore, it is in their interest to collaborate with management prior to voting and with prominent external actors to internalize the externalities generated by extra-financial factors of growth. Their active behaviour is characterized by private, public and collaborative engagement activities with minimal conventional activism.

¹² http://www.paris-europlace.net/files/rapport_isr_europlace.pdf

In parallel, labor unions such as CFDT, CGT, CFTC and CGC have seen a new opportunity to exert a more political and social leverage by focusing on their union efforts to influence corporate policy through collective bargaining and constructive engagement with the companies in which they invest. In accordance with the U.S. (Gillan and Starks, 2007), these unions have pursued some innovative forms of activism, not only in terms of developing new proposals, but also by using public engagement such as boycott campaigns during the firm's annual meeting or collaborative engagement called "militant" engagement (Chakrabarti, 2004). So, in 2002, these four labor unions created the CIES (*Comité Intersyndical de l'Epargne Salariale*/labor committee for employee savings schemes) and a quality-label to encourage employee investors to take into account social and environmental concerns in their investment strategies. As observed by Novethic (2008), these funds do not systematically use an active voting policy. But, contrary to the U.S., the French union labours are being still perceived as antagonists and not as «strategically cooperative players» (Schwab and Thomas, 1998) in the new wave of institutional activism.

This global phenomenon is recent in France. It appeared earlier in the U.S. and in the U.K. In the late 1990s, the Blair government argued that institutional investors should act as "responsible owners". Under British law which came into effect in 2000, pension funds must disclose within their statements of investment principal "whether and to what extent they use social, ethical and/or environmental criteria in their investment selection" (Hendry and al., 2007). Consequently, some British institutional investors invest in under-performing firms not only to raise the long-term rate of return but also to push for environmental, social and governance changes in invested corporations without filing shareholder proposals. In the U.S., this new phenomenon appeared in the mid 1990s and was used by unions with a more aggressive form (public press) to put pressure on the management. The difference with the U.K. is that private engagement is almost unknown in France and the U.S. because of a

culture of compliance rather than dialogue between investors and corporations (Hendry and al., 2007).

With the emergence of these universal owners as long-term responsible investors, French institutional activism seems to be converging towards a global model characterized by a professionalization of the activism process. These different forms of engagement activities presented above have been partly outsourced to intermediaries. For example, Phitrust, a French asset management company, has developed shareholder engagement strategies to promote good corporate governance practices in listed companies. With its OPCVM called “Proxy Active Investors”, it works together with Proxinvest, a French proxy voting advisory firm. In France, these “informadiaries” (Van der Burg and Prinz, 2006) are Proxinvest, AFG and Deminor which offer proxy advising firm services. Their corporate governance ratings were used recently by aggressive activist hedge funds who have been involved in targeted corporate governance for over two years (Boyson and Mooradian, 2007; Brav and al., 2008).

With the decline in share prices which has made investing in blue chip French companies cheaper, activist hedge funds recently have appeared in France. Contrary to the different engagement activities described, they do not have regulatory requirements. Their relations with the targeted corporations are short term and only contractual, not political or moral. Their behaviour is more aggressively and takes the form of using public engagement and joint action with certain French investor associations.

2. The determinants of successful French shareholder activism

2. 1. Description of French shareholder activism

There is no specific database of activist shareholders in France. Data were obtained from the Factiva database from January 1989 to June 2008 using the key words “activism”, “minority shareholders” and “contest”. Our sample consists of all public announcements by a dissident coalition threatening, planning or undertaking a proxy fight or a law suit.

Table 4 provides descriptive statistics regarding activism. Panel A delineates the target firms. In all, 203 French corporations were targeted by activist shareholders. There are proximately the same number listed and non listed corporations. To observe the changes in the French activism process resulting from the evolution of minority investor rights, our sample was divided into three sub-samples. We focused on the period 1994 to 2001. In 1994, French law recognized the right for investor associations to claim individual damages on behalf of expropriated investors. In 2001, the New Economic Regulation Law decreased the threshold to 5% of voting rights to be able to exert influence at the AGM. Before 1994, 41 French corporations were targeted. Between 1994 and 2001, 74 French corporations were criticized by activist shareholders. Since the New Economic Regulation Law of 2001, this number has risen to 88. The majority of the 203 targeted companies have been targeted only once. Only 49 have been targeted more than once.

Panel B provides data about activism including the degree of activism, the sponsor and the motives. The degrees of activism are classified from the least to the most aggressive. Degree (1): the dissident coalition exerts private engagement described above and characterized by private interventions. Degree (2): the dissident coalition makes formal influential activities such as publicly criticizing the company by media coverage or letters sent to the AMF. Degree (3): the dissident coalition launches a proxy contest. Degree (4): the dissident coalition sues the company. We observe that half of influential activities are aggressive. Between 1994 and 2001, 51% of influential activities took the form of law suit. But since

2001, only 32% of them have been aggressive. As explained in the first part, the decline of judicial actions is the result of legal reform to close loopholes. At the same time, the number of less aggressive activities is on the increase. Since 2001, public engagements and proxy contests each account for almost one third of influential activities. But contrary to the U.K., private engagement is currently used in comparably few companies.

The most common activist sponsor is still investor association. If before 2001, they intervened in one third of targeted companies, after 2001, they were the main sponsor in 56% of activism campaigns. In parallel, institutional investors have continued to become less and less active. Before 1994, they were sponsors in 29% of targeted companies. Between 1994 and 2001, they were active in 24% of our sample. But after 2001, they initiated an activism process in only 11% of cases. If institutional shareholders seem to have become less active, the opposite can be observed for individual shareholders and hedge funds.

Before 2001, the most common motives were related to weak performance and control changes. Activist shareholders targeted French companies to have an opportunity to exit. They criticized the financial performance of their invested companies, takeover attempts and antitakeover measures. Since then, the most common grounds were related to corporate governance recommendations. Activist shareholders elected independent board members, criticized executive remunerations and non-independent board members. Over all the period studied, the number of antitakeover amendments as motives remains constant. Surprisingly, in some targeted companies such as Veolia Environment and Essilor, the dissident coalition did not contest the adoption of poison pill called “Breton warrants” which were introduced as recently on 2006. In fact, we can observe the same tendency in France as that shown by Gillan and Starks (2007) in the United-States. Concerns about antitakeover amendments remained stable over the all period studied. However, between 2001 and 2005, concerns about

executive remuneration and board related issues became much more prevalent compared to the earlier 1987-1994 period.

Panel C details the outcomes of shareholder activism. Each of the motives has an outcome, which we code as “partial success” or “failure”. “Success” indicates that the dissident coalition obtains its exact motives. But activism may be a long process with a combination of several influential activities and a variety of motives to win one of them. In general, French activism is “partially” successful. In this case “partial success” means that activist investors obtain some degree of success in achieving their motives. Examples include failing private engagement, ousting a CEO who has abused power, contesting anti-takeover amendments, claiming minority shareholder protection and obtaining satisfaction only one of these points. In France, requesting board representation or ousting the CEO remains anecdotic because of the difficulty in soliciting enough voting rights to win a proxy battle. In France, we had just two successful proxy battles which took place in Eurotunnel and the Vivarte group. “Failure” means that the activist shareholders failed to achieve any of their motives. On average, the success rate of activism is 45%. However it has decreased over the sub-periods. Before 1994, it was 59%; between 1994 and 2001, it fell 39%; and in June 2008, it stood at 45%.

Table 4: Descriptive statistics regarding French activism

Panel A: Number of target firms

Number of firms targeted before 1994	41
Number of firms targeted between 1994 and 2001	74
Number of firms targeted since 2001	88
Total number of target firms	203
Number of firms once targeted	154
Number of firms targeted more than once	49

Panel B: Degrees of activism, motives and sponsors of Activism

	Before 1994	Between 1994 and 2001	Since 2001	Total
Degrees of activism				

Degree (1): private engagement	1	14	6	21
Degree (2): public engagement	0	1	27	28
Degree (3): proxy contest	6	21	27	54
Degree (4): law suit	34	38	28	100
Sponsor types				
Institutional investor	12	18	10	40
Hedge fund	0	0	2	2
Shareholder rights association	15	29	49	93
Individual investor	5	10	18	33
Family holder	2	1	0	3
Other (employee investors or proxy professionals, for examples)	7	16	9	32
Motives				
Governance related targeting	6	27	43	79
- <i>Antitakeover amendments</i>	2	8	9	19
- <i>Shareholder proposals</i>	0	9	6	15
- <i>Information/potential fraud</i>	1	6	13	20
- <i>Board related</i>	0	0	5	5
- <i>Executive remuneration</i>	3	4	12	19
Social/environmental related targeting	0	0	2	2
Performance related targeting	18	27	16	60
Takeover related targeting	17	20	27	62

Panel C: Outcomes of French shareholder activism

	Before 1994	Between 1994 and 2001	Since 2001	Total
Success	24	33	34	91
Failure	17	41	54	112

2. 2. Results

We now turn to our research questions: which determinants can explain the success of French shareholder activism? Are we able to validate any features which distinguish French activism from American and British models?

We have performed a logistic regression to predict those determinants which are specific to partial successful French shareholder activism. The results are represented in table 5. The dependant variable is set to 1 in the case of successful and 0 otherwise. In model 1, the independent variables include all the variables described in panel B: degree of activism (DEGREE), sponsor type (SPONSOR) and motive of activism (MOTIVE). For DEGREE the

degree of activism is ranked from 1 (least aggressive, more private engagement) to 4 (law suit, the most aggressive action without engagement). For MOTIVE, we used a dummy variable to codify each motive. “Social and environmental related targeting” was not take into account. We then included other variables into the subsequent models. Model 2 used dummy variables to measure the degree of activism and sponsor identity: private engagement (Degr1), public engagement (Degr2), proxy contest (Degr3), law suit (Degr4), French institutional investor (INSTF), Foreign institutional investor (INSTE), hedge fund (HEDG), investor association (ASSO) and proxy professionals (PROF).

Prior to 2001, there was no case of a hedge fund leading an aggressive strategy. Therefore, as we can observe in table 5, we have not included this independent variable in the pre-2001 subsamples. Model 3, 4 and 5 analyse the various motives for activism. The new dummy variables are “governance-related targeting” (GOV), “performance-related targeting” (PERF) and “takeover-related targeting” (TAKE). Contrary to previous research on American activism outcomes, we have not used proxy measures of information such as target firm economic and financial performance, target firm corporate governance characteristics (such as the structure of ownership) and the percentage of voting rights collected. Our objective is to define the distinctive features of French shareholder activism by comparing the evolution of tactics with those used in the United States and the United Kingdom.

Contrary to previous American research, table 5 shows significant distinctive determinants of activism outcome. If the problem of coalition-forming is solved by institutional investors and the United Shareholder Association in the U.S. (Gordon and Pound, 1993; Strickland and al., 1996), this problem is solved in France by hedge funds and proxy professionals over the whole period studied. However, as table 5 shows, contestation by these sponsors has become increasing significant from 2001 onwards. To a lesser extent, investor associations have also

played a more important role since the reform of 2001. This result is consistent with table 2 which shows that contrary to the U.S., the number of investor associations has risen. As analysed each investor association has specifically adapted its judicial activity to increase its ability to gather and process information and to use loopholes to put pressure on the management of targeted corporations. This increase is consistent with the fact that the most significant determinant of French activism success is the degree of activism. In model 1, the more aggressive the activism process, the greater the chance of the firm acceding to the dissident coalition's demand. This result has been constantly valid since 1994 (model 4 and 5). This result seems to contradict recent research on hedge fund activism. Whereas in the American context (Klein and Zur, 2006) and the British context (Becht and al., 2006), the perspective of a proxy fight appears to be a more effective method of achieving dissident goals.

In addition, the issue of the activism motive is relevant in model 4 and 5. If dissident shareholders criticized takeover attempt with the aim of negotiating a higher exit premium during the period 1994-2001, it would be seen that since 2001, their main preoccupation has been corporate governance.

In accordance with recent American studies (Gillan and Starks, 2007; Alexander and al., 2006), voting outcomes depend on motives, concerted action and the existence of proxy voting advisory firms, but do not depend on the requirement that funds disclose the way they vote their shares in invested corporations (Cremers and Romano, 2006). In France, we can observe the same tendency. The Financial Security Law of 2003 which makes compulsory drawing up a report on pension schemes voting policy had no effect on activism outcomes. Institutional investors still exert a "quiet activism", as observed by Ben M'Barek (2008) and prefer to mandate proxy professionals with corporate governance and legal expertise or to

Table 5: Logistic model predicting French activism outcomes

The dependant variable is set to 1 in the case of successful and 0 otherwise. In model 1, the independent variables include all the variables described in panel B: degree of activism (DEGREE), sponsor type (SPONSOR) and motive of activism (MOTIVE). For DEGREE the degree of activism is ranked from 1 (least aggressive, more engaged) to 4 (law suit, the most aggressive). For MOTIVE, we used dummy variable to codify each motive. “Social and environmental related targeting” was not tale into account. We then included other variables into the next models. Model 2 used dummy variables to measure the degree of activism and sponsor identity: private engagement (Degr1), public engagement (Degr2), proxy contest (Degr3), law suit (Degr4), French institutional investor (INSTF), Foreign institutional investor (INSTE), hedge fund (HEDG), investor association (ASSO) and proxy professionals (PROF).

Coefficients marked with *** are significant at level 1%, ** at the 5% level, and at the 10% level

Variable	Full sample (N=203) Coefficient (p-value)		Before 1994 sample (N=41) Coefficient (p-value)		Between 1994 and 2001 sample (N=74) Coefficient (p-value)		After 2001 sample (N=88) Coefficient (p-value)	
	Model 1	Model 2	Model 1	Model 3	Model 1	Model 4	Model 1	Model 5
Intercept	-1.485** (0.022)	-0.717* (0.058)	2.859 (0.243)	0.701 (0.428)	-2.795** (0.011)	-1.260** (0.034)	-0.307 (0.772)	-4.028*** (0.000)
DEGREE	0.470*** (0.002)		-0.074 (0.907)		0.465** (0.049)		0.396 (0.125)	
SPONSOR	0.036 (0.701)		0.211 (0.312)		0.009 (0.95)		-0.099 (0.595)	
MOTIVE	-0.133 (0.245)		-0.891* (0.065)		0.417** (0.044)		-0.450** (0.012)	
Degr1		0.040 (0.947)						
Degr2		-0.246 (0.568)						
Degr3		-0.166 (0.638)						
Degr4		1.026*** (0.005)		0.396 (0.711)		1.347** (0.012)		1.375** (0.03)

INSTF		0.758 (0.148)		-0.454 (0.664)		0.974 (0.282)		0.695 (0.529)
INSTE		0.136 (0.757)		0.617 (0.685)		-0.377 (0.560)		1.433 (0.121)
HEDG		2.469** (0.038)						2.790** (0.037)
ASSO		-0.389 (0.204)		0.132 (0.887)		-0.593 (0.297)		1.579* (0.058)
PROF		0.803** (0.055)		-1.381 (0.287)		0.960 (0.404)		2.445*** (0.003)
GOV								1.633*** (0.006)
PERF						0.692 (0.297)		
TAKE				-1.076 (0.209)		1.225* (0.064)		
R ²	5.2%	11%	15.1%	11.4%	11.3%	16.2%	10.9%	29%
Log likelihood ratio	268,411	255,500	48,932	50,656	92,844	88,648	107,269	87,276
N° of observations	203	203	41	41	74	74	88	88

lend their voting rights to hedge funds. As underlined in the first part, some of these hedge funds combine their actions with investor associations to increase their chances of success. However, this phenomenon is recent in France.

Conclusion

The purpose of this article is to compare the evolution of French and Anglo-Saxon shareholder activism over the last three decades. In France, the development of shareholder activism began much later than in the United States and in the United Kingdom. Across the period January 1989 to June 2008, only 203 French corporations were criticized by dissident shareholders. Over the all period studied, we were only two successful proxy battles which took place in Eurotunnel and the Vivarte group. In these two exceptional cases, a dissident coalition took total control of the corporations targeted on account of their poor performance. But, in general, success is partial because activism is a long process composed of different degrees of influential activities and a variety of motives. In fact, successful activism means that dissident shareholders achieve a part of their objectives. The average rate of success is 45%.

Compared to results on Anglo-Saxon activism, we observe some distinctive features in France. Firstly, in the United States, as corporate takeover activity declined throughout the 1980s and the 1990s, Karpoff and al. (1996) and Wahal (1996) observed a movement away from takeover-related motives towards corporate governance-related motives. In France, this movement came later after 2001. In 2001, the New Economic Regulation Law strengthened shareholder democracy at AGMs. Currently, French corporations are more concerned about their corporate governance issues because the Financial Security Act of 2003 has forced the chairman to publish a report on the internal control mechanisms of the corporation. Secondly, to overcome free riding problems in a legal environment that is not friendly to activist

shareholders, expropriated minority shareholders have to exert the most aggressive influential degree (judicial actions). Contrary to U.K. activism (Becht and al. 2006) or U.S. activism sponsored by hedge funds, dissident shareholders do not recourse to private engagement, as it does not yield results. In France, dissident coalitions have traditionally used loopholes to sue. These judicial actions are used in general by investor associations. Thirdly, contrary to the common law countries, the role played by investor associations has been a significant factor in successful French activism after 2001. Since 2001, the number of investor associations in France has increased whereas, in the United States, their number has dwindled (Gillan and Starks, 2007).

However, we are currently observing a professionalization of these investor associations. Some of them make use of loopholes as a tactic, others prefer to be specialized in penal suits or class actions. In accordance with a global phenomenon, French activism is becoming more increasingly professionalized and concerted. At the moment, we can observe cases of investor associations acting conjointly with activist hedge funds and with the help of proxy professionals.

References

- Aglietta, M., 2008, "Corporate governance and the long-run investor", *International Review of Applied Economics*, 22(4): 407-427.
- Alexander, C., Chen, M., Seppi, D., and Spatt, C., 2006, "The role of advisory services in proxy voting", *University of Maryland working paper*.
- Bhattacharya, U., 1997, "Communication costs, information acquisition, and voting decisions in proxy contests", *Review of Financial Studies*, 10(4): 1065.
- Becht, M., Franks, J., Mayer, C., and Rossi, S., 2006, "Returns to shareholder activism: Evidence from a clinical study of Hermes U.K. focus fund", *ECGI-finance working paper*.
- Ben M'Barek, N., 2008, "L'hétérogénéité du comportement de contrôle des investisseurs institutionnels français", *Revue d'Economie Financière*, 91: 231-254.
- Bhagat, S., Black, B., and Blair, M., 2004, "Relational Investing And Firm Performance", *Journal of Financial Research*, 27(1): 1-30.
- Bhattacharya, U., 1997, "Communication costs, information acquisition, and voting decisions in proxy contests", *Review of Financial Studies*, 10(4): 1065.

- Black, B. S., and Coffee, J. C., 1994, "Hail Britannia? Institutional investor behavior under limited regulation" *Michigan Law Review*, 92: 1997-2087.
- Boyson, N.M., and Mooradian, R.M., 2007, "Hedge funds as shareholder activists from 1994-2005", *SSRN working paper*
- Brav A., Wei J., Partnoy F., Thomas R. S., and Randall S., 2007, "The returns to hedge fund activism", *Financial Analysts Journal*, 64(6), 45-61.
- Chakrabarti, M., 2004, "Labor and corporate governance: initial lessons from shareholder activism", *WorkingUSA: the journal of labor and society*, 8(1): 45-69.
- Clark, G. L., and Hebb, T., 2004, "Pension Fund Corporate Engagement: The fifth stage of capitalism", *Relations industrielles/industrial relations*, 59(1): 142-171.
- Couret, A., 1996, "Le harcèlement des majoritaires", *Bulletin Joly*, Chroniques, 112-119.
- Cremers, M., and Romano, R., 2006, "Institutional investors and proxy voting: The impact of the 2003 mutual fund voting disclosure regulation", *Yale University Working Paper*.
- Déjean, F., 2006, "La création du marché de l'ISR en France : logique d'offre et stratégie de communication", *Revue d'Economie Financière*, 85: 1-12.
- Del Guercio, D., and Hawkins, J., 1999, "The motivation and impact of pension fund activism", *Journal of Financial Economics*, 52(3): 293-340.
- Faccio, M., and Lang, L. H. P., 2002, "The ultimate ownership of Western European corporations", *Journal of Financial Economics*, 65(3): 365-395.
- Gillan, S., and Starks, L., 2007, "The evolution of shareholder activism in the United States", *Journal of Applied Corporate Finance*, 19(1): 55-73.
- Gillan, S., and Starks, L., 2000, "Corporate governance proposals and shareholder activism: the role of institutional investors", *Journal of Financial Economics*, 57, 275-305.
- Gordon, L., and Pound, J., 1993, "Information, ownership structure, and shareholder voting: Evidence from shareholder-sponsored corporate governance proposals", *The Journal of Finance*, 42(2): 697-718.
- Grossman, S. J., and Hart, O. D., 1980, "Disclosure Laws and Takeover Bids", *The Journal of Finance*, 35(2): 323-334.
- Hawley, J., and Williams, A., 2007, "Universal Owners: challenges and opportunities", *Corporate Governance: An International Review*, 15(3): 415-420.
- Hendry, J., Sanderson, P., Barker, R., and Roberts, J., 2007, "Responsible ownership, shareholder value and the new shareholder activism", *Competition & Change*, 11(3): 223-240.
- Karpoff, J. M., Malatesta, P. H., and Walking, R. A., 1996, "Corporate governance and shareholder initiatives: Empirical evidence", *Journal of Financial Economics*, 42: 365-395.
- Klein, A., and Zur, E., 2006, "Hedge fund activism", *New York University working paper*.
- La Porta, R., Lopez-de-Silanes, F., and Shleifer, A., 1999, "Corporate Ownership Around the World", *The Journal of Finance*, 54(2): 471-517.
- La Porta, R., Lopez-de-Silanes, F., and Shleifer, A., 1998, "Law and Finance", *Journal of Political Economy*, 106: 1113 - 1155.
- Mallin, C., 2001, « Institutional investors and voting practices : an international comparison », *Corporate Governance*, 9(2): 118-126.
- Marens, R., 2003, "Evolution du gouvernement des entreprises : l'émergence de l'activisme actionnarial au milieu du XXe siècle", *Finance Contrôle Stratégie*, 6(4): 97-131.
- Morin, F., 2000, "A transformation in the French model of shareholding and management", *Economy & Society*, 29(1): 36-53.
- Novethic, 2008, « Enquête annuelle sur le marché français de l'ISR en 2007 : gestion collective, dédiée et interne »

- Pound, J., 1988, "Proxy contests and the efficiency of shareholder oversight", *Journal of Financial Economics*, 20: 237-265.
- Prevost, A. K., and Rao, R. P., 2000, "Of What Value Are Shareholder Proposals Sponsored by Public Pension Funds?" *The Journal of Business*, 73(2): 177-204.
- Rajan, R. G., and Zingales, L., 1995 "What Do We Know about Capital Structure? Some Evidence from International Data", *The Journal of Finance*, 50(5): 1421-1460.
- Romano, R., 2001, "Less is more: making shareholder activism a valued mechanism of corporate governance", *Yale Journal on Regulation*, 18(2): 174-252.
- Ryan, L. V., and Schneider, M., 2002, "The Antecedents of Institutional Investor Activism", *The Academy of Management Review*, 27(4): 554-573.
- Schwab, S. J., and Thomas, R. S., 1998, "Realigning corporate governance: Shareholder activism by labor unions", *Michigan Law Review*, 96(4): 1018.
- Smith, M. P., 1996, "Shareholder Activism by Institutional Investors: Evidence from CalPERS", *The Journal of Finance*, 51(1): 227-252.
- Strickland, D., Wiles, K. W., and Zenner, M., 1996, "A requiem for the USA Is small shareholder monitoring effective?", *Journal of Financial Economics*, 40(2): 319-338.
- Van der Burg, T, and Prinz, A., 2006, "Empowering small shareholders: a comparison of three instruments", *Corporate Governance: An international Review*, 14(5): 406-417.
- Wahal, S., 1996, "Pension Fund Activism and Firm Performance", *The Journal of Financial and Quantitative Analysis*, 31(1): 1-23.