



Lijst met gevonden bronnen

Aantal woorden	Link
273	http://www.columbia.edu/~wj2006/HFActivism.pdf
147	http://www.ejcl.org/143/art143-17.pdf
142	http://openarchive.cbs.dk/bitstream/handle/10398/8460/Therese_Strand.pdf?sequence=1
117	http://www.scribbr.nl/wp-content/uploads/2012/11/Master-Thesis-Proposal-Voorbeeld-Finance.pdf
93	http://www.unibas.ch/fileadmin/www/redaktion/Summer_School/2012/YERMACK_David/Readings/06_-_Klein___
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19	http://repub.eur.nl/res/pub/10417/EPS2007111MKT9058921437PAAPE.pdf

Voorbeelddocument

1. Introduction

Shareholder activism is becoming more and more a hot topic in the Netherlands. According to Pound (1992) a shareholder is:

Jouw document:

"an activist is an investor who buys a large stake in a publicly held corporation, with the intention to bring change and thereby realize a profit on the investment"

: http://www.unibas.ch/fileadmin/www/redaktion/Summer_School/2012/YERMACK_David/Readings/06_-_Klein___Zur_JF_2009.pdf

. There are numerous kinds of entrepreneurial activists, but for this thesis hedge funds are of particular interest.

Due to the fact that share ownership of listed companies in the Netherlands is relatively dispersed, and that as many as 70% of the shareholders are foreign shareholders, Dutch companies are particular vulnerable to shareholder activism by hedge funds in comparison with other continental countries from Europe (Risk Metrics Group (2009)).

There are many examples of shareholder activism by hedge funds that were extensively covered in the media. A few examples are:
Hermes,

Jouw document:

a large Océ shareholder, openly challenged the takeover bid by Canon of Océ. It stated that the takeover bid was far too low and thus significantly undervalued the Dutch company's shares.

Gevonden door Ephorus:

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: <http://www.scribbr.nl/wp-content/uploads/2012/11/Master-Thesis-Proposal-Voorbeeld-Finance.pdf>

Jouw document:

- # Royal Dutch Shell combined its British and Dutch arms in 2004, and so ending a structure that lasted for more than a century, pressured by activist investor Knight Vinke.
- # Stork and Ahold both came under pressure from hedge funds Centauris Capital and Paulsen & Co. They pressured with a break-up of the company if certain strategic actions weren't put through.
- # ASMI was in 2006 target of fund manager Mellon HBV

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(changed name into Fursa), who was pushing for a split of the company.

Influential people and even the Dutch government publicly question the instruments hedge funds use in order to achieve their objective. The activists are put down as a short term, high risk and certainly negative part of the globalization. The financial crisis has strengthened this debate and many politicians now argue that shareholders rights should be decreased.

Although there is a lot of discussion about hedge funds and their activism in the Netherlands, literature about hedge fund activism is still in its infancy. Large part of actual data remains vague and the only empirical work on hedge fund activism in the Netherlands that I could find was the research by De Jong, Roosenboom, Verbeek and Verwijmeren (2007).

Therefore I'm investigating the 'magnitude' of shareholder activism of the last decade using data from the Authority of Financial Markets (AFM), news articles and company's press reports. I will be looking at the motives and tactics of hedge funds in the Netherlands of the past decade.

Research Question

What is the magnitude of hedge fund activism in the Netherlands the past ten years?

- # What is hedge fund activism?
- # What are the rights of shareholders in the Dutch corporate governance system and in what way differ they from the US and UK?
- # How big is hedge fund activism in the Netherlands?
- # Which objectives do hedge funds try to achieve, and are they successful?
- # Which tactics do they employ?
- # How does the market react to the announcement of activism? What is the market's reaction to the filing of a hedge fund?

The rest of this thesis proceeds as follows. Chapter 2 starts with forming a definition of hedge funds and gives an explanation of the definition 'shareholder activism'. I will continue with a review of existing literature on hedge fund activism. The second part consists of a brief description of the corporate governance climate affecting shareholders in the Netherlands during the last decade. It ends with the comparison of the Dutch governance system with that of the US and UK, with respect to shareholders rights. Chapter 3 is the data collection process as well as an overview of the data and its implications. Chapter 4 and 5 are respectively the conclusion and the discussion. The last chapter contains the references.

2. Literature Review

What is a hedge fund?

Hedge funds are not regulated so it's difficult to come to a precise definition. While there are numerous authors that tried to come up with a definition that captures all characteristics of hedge funds none of these are chosen in the literature as 'the definition'. When the Securities and Exchange Commission (SEC) held a discussion on hedge funds in 2003 David A. Vaughan cited 14 different definitions from government and industry publications (SEC (2003))!

Therefore it's better to rely on a short summary of the characteristics in order to define a hedge fund. I believe the summary given by Partnoy and Thomas (2007) is a very precise and accurate one.

In their view hedge funds generally have

Jouw document:

- four characteristics:
- # They are pooled, privately organized investment vehicles.
- # They are **administered** by professional investment managers.

Gevonden door Ephorus:

four characteristics: they are pooled, privately organized investment vehicles; they are **led** by professional investment managers

: <http://www.scribbr.nl/wp-content/uploads/2012/11/Master-Thesis-Proposal-Voorbeeld-Finance.pdf>

Jouw document:

- # They are not widely available to the public.
- # They operate outside of securities regulation and registration requirements

Gevonden door Ephorus:

they are not widely available to the public; **and (4)** they operate outside of securities regulation and registration requirements

: <http://www.columbia.edu/~wj2006/HFAActivism.pdf>

(so they can take short positions without restrictions).

Private equity and venture capital funds also have, for the main part, the same characteristics. But those funds are different from hedge funds because they focus only on one particular private market. Private equity focuses normally on targeting going private transactions by acquiring a larger percentage of ownership than hedge funds. Venture capital normally invests in companies with the prospect of selling it later when the company goes public. They therefore invest at much earlier stages than hedge funds (Brav, Jiang, Partnoy and Thomas (2008)).

Mutual funds from the US are far more regulated than hedge funds because they have to comply with the Investment Company Act of

1940. First they are constrained by tax laws because they take concentrated positions in companies. Second they are subject to restrictions on shorting, borrowing and investing and third the SEC regulates the types of fees mutual funds may charge. Sometimes the differences between private equity funds, venture capital and hedge funds are less clear than stated above. Therefore I will further elaborate on the characteristics of hedge funds.

Hedge funds often operate outside of securities regulation and registration requirements because they avoid the Investment Company Act of 1940. They do this by making use of the exemptions written in the law. If a fund has no more than 100 investors and the investors are each persons who invest at least \$5 million, the fund isn't obliged to the Company Act and registration rules of the SEC. As a consequence a hedge fund never sells to the main public, and always has investors with enough net worth (Brav et al. (2008)).

A remark is that only hedge funds from the US or from countries like the Cayman Islands, Bermuda and Bahamas are unregulated. Hedge funds from the Netherlands and the UK are under the same regulations as traditional investment funds. Often the hedge funds are sited in tax friendly countries and have only the headquarters in the US or UK. Because of the fact that hedge funds are not established in European countries it is very hard for the European Union to regulate them. And what about those hedge funds from the UK? Only the managers of these hedge funds operate from the UK, the hedge funds themselves are sited in other countries. The UK government is trying to regulate the managers but cannot regulate the hedge fund itself. When I collect my data I will also look at the countries from which the hedge funds work and have their origin.

The average hedge fund is a partnership entity managed by a general manager. The investors are limited partners, and have little to nothing to say in the hedge fund's business (Brav et al. (2008)). Hedge funds are often considered as very active market participants that use leverage aggressively and take both long and short positions (Partnoy and Thomas (2007)). Because hedge funds do not fall under the act of 1940 they can take much larger relative positions,

Jouw document:

they are permitted to trade on margin and to engage in derivatives trading.

Gevonden door Ephorus:

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: <http://www.columbia.edu/~wj2006/HFActivism.pdf>

Therefore hedge funds are far more flexible in trading than other institutions (Brav et al. (2008)). Also hedge funds can use leverage and financial derivatives to acquire very large positions in companies without the need for a lot of cash.

In most literature from the past decade hedge funds are also always described as pursuing short-term strategies. Brav et al. (2008) argue that

Jouw document:

hedge fund activists are not short-term in focus, as some critics have claimed.

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: <http://www.columbia.edu/~wj2006/HFActivism.pdf>

They found that the median holding period of hedge funds acquiring a stake in a firm is about one year. I will come back to this later when I discuss the results from my data.

The funds charges high fees for their operations. Usually around 2% of the assets under management and 20% of the fund's annual return. Because managers are compensated on absolute terms they have a strong incentive to be more aggressive in their strategies than managers at other funds (Partnoy and Thomas (2007)). Managers from other funds can also be awarded performance compensation but they capture a much smaller percentage of any returns due to the restricting of performance fees under the Investment Company Act of 1940. So their incentives are much smaller.

Also hedge fund managers suffer from fewer conflicts of interest than managers of other institutions. The example giving by Brav et al. (2008) is that of a pension fund that is subject to extensive political control. Hedge funds are not regulated and so have fewer conflicts of interest.

Shareholder activism

Shareholder activism constitute of all actions taken by shareholders of a company to influence the management and boards of that company. They can range from writing a letter and corresponding with the management to the using of voting rights, going to court or even buy-out the company. Pound (1992) gives the following definition: A shareholder activist is an investor who buys a large stake in a publicly held corporation, with the intention to bring change and thereby realize a profit on the investment.

But why do shareholders actively monitor the company? From theory it is well known that the separation of ownership and control in public firms can give rise to the possibility of agency conflicts between the company's managers and shareholders (Berle and Means (1932), Jensen and Meckling (1976)). Monitoring the firm's management can be helpful in mitigating agency costs. While monitoring may reduce the agency costs, the benefits from monitoring are enjoyed by all shareholders and the costs are only beard by the activists (Grossman and Hart (1980)). Shleifer and Vishny (1986) argue that large shareholders may be able to overcome the potential free rider problems because they have a large equity stake in the firm.

Surprisingly most studies that cover monitoring or activism by pension funds and mutual funds provide little or no evidence consistent with the theory (Opler and Sokobin (1995), Strickland et al. (1996), Karpoff et al. (1996), Smith (1996), Wahal (1996), Del Guercio and Hawkins (1999), Parrino et al. (2003) and Barber (2007)). Karpoff (2001) comes to the conclusion that while activists are able to force some small changes in the targets governance structures, there is little evidence that activism leads to significant increases in operating performance or share value.

Shareholder activism by hedge funds can be, in contrast with other institutional funds, more effective and efficient. The explanation of this lies in the fact that the other institutional funds are more regulated and have to cope with more restrictions. As described above hedge funds have less conflicts of interest, low regulatory constraints and more adequate management incentives to actively monitor. Therefore they should be a more credible threat to target firm management. So in sum hedge funds should be better monitors than other institutional funds. This is also argued by numerous legal scholars (Bratton (2007), Briggs (2007), Kahan and Rock (2007) and Partnoy and Thomas (2007)).

Relevant research on hedge fund activism

There have been a few research papers aiming hedge fund activism and recent papers study hedge fund activism in the United States. Bratton (2007) and Kahan and Rock (2007) come up with some evidence of hedge fund activism but there methods for acquiring data are not complete and therefore these results are not that robust. Brav et al. (2008), Klein and Zur (2009) and Clifford (2008) use larger and better samples.

Jouw document:

Klein and Zur (2009) use a sample of 194 Schedule 13D filings by hedge fund **activist** from 2003 to 2005.

Gevonden door Ephorus:

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These are

Jouw document:

mandatory federal securities law filings under Section 13 of the 1934 Exchange Act

: <http://www.columbia.edu/~wj2006/HFActivism.pdf>

Gevonden door Ephorus:

mandatory federal securities law filings under Section 13(♦) of the 1934 Exchange Act

in the United States of America (US). Investors must file with the US Securities and Exchange Commission

Jouw document:

(SEC) within 10 days of acquiring more than 5% of any class of securities, of a publicly traded company. They

: <http://www.columbia.edu/~wj2006/HFActivism.pdf>

Gevonden door Ephorus:

SEC within 10 days of acquiring more than 5% of any class of securities of a publicly traded company **if** they

investigate how stock prices react to the announcement that a hedge fund has acquired a significant holding of 5% or more. From the fillings they eliminate all cases that aren't aggressive or confrontational and the data is compared with a sample of other entrepreneurial confrontational activists. Klein and Zur (2009) report a 7.2% average abnormal stock return for hedge funds and a 1.9% stock return for other entrepreneurial activists during the period surrounding the initial Schedule 13D.

Hedge funds achieve their goals about 60% of the time and target companies are more profitable and financially healthy than firms targeted by other entrepreneurial activists. Changing the board of directors (26%) and changing the strategy of the company (19%) are the motives most expressed by hedge funds.

Brav et al. (2008) use a large sample of 235 activists' hedge funds between the period 2001-2006, mainly using Schedule 13D filings and news searches. They report a 7% to 8% average abnormal return during the (-20, +20) announcement window, using quite the same methods as Klein and Zur (2009).

Brav et al. (2008) also find out that the activists tend to target companies that are typically "value firms", and that have constant operating cash flows and return to assets. They have also more takeover defenses and pay their CEO's more than comparable firms (industry/size/book-to-market matched firms). Targets have also higher institutional ownership and trading liquidity, Brav et al. (2008) mentions that this makes it easier for activists to acquire a significant stake quickly. 40.6% of the time hedge funds achieve their goals, and 26% is partly successful.

They also look at the hostility of the interactions between hedge funds and the targets (this instead of Klein and Zur (2009)). Hedge funds are in less than 30% of the cases openly hostile. It is more common that the activists cooperate with managers and the funds achieve all or most of their stated goals in about two-thirds of all cases.

Clifford (2008) collects a sample of 197 unique hedge funds over the period 1998-2005. Clifford (2008) also uses 13D filings to collect his data, but uses a control group of passive block holdings by the same group of hedge funds. Surrounding the filing date (-2, +2) targeted firms by activists earn a 3.39% excess return. Passive hedge funds earn a 1.63% excess return.

So these papers find that hedge fund activism creates significantly higher abnormal returns indicating the value of intervention. Hedge funds engage in a new form of shareholder activism that clearly differs fundamentally from other institutional investors from the past. As mentioned above earlier studies show that institutional investors, often mutual funds and pension funds, do not achieve considerable benefits for shareholders.

The following paper from Becht, Franks, Mayer and Rossi (2009) investigates hedge fund activism in the United Kingdom (UK). Instead of doing a public study using 13D filings, they

Jouw document:

conduct a study **on** one large U.K. pension fund, the Hermes U.K. Focus Fund, which is

: http://www.unibas.ch/fileadmin/wvz/redaktion/Summer_School/2012/YERMACK_David/Readings/06_-_Klein__Zur_JF_2009.pdf

Gevonden door Ephorus:

conduct a **clinical** study **of** one large U.K. pension fund, the Hermes U.K. Focus Fund, which is

a sort of hedge fund. Unlike the studies of Brav et al. (2008) and Klein and Zur (2009), they find that this fund primarily targets poorly performing firms, and that most of the activism is related to private communication between the hedge funds and the management of the targeted firms. If the management doesn't want to cooperate then the fund seeks out the media.

Jouw document:

Corporate Governance in the Netherlands
The corporate governance system in the Netherlands has

: <http://www.ejcl.org/143/art143-17.pdf>

Gevonden door Ephorus:

Corporate Governance in the Netherlands
The corporate governance system in the Netherlands has

undergone a lot of changes in the past decade. The public debate started back in the first half of the 1990s and since then multiple codes and legislation changes were adopted into the Dutch corporate governance system. I will first point out the main characteristics of the governance climate at the beginning of the millennium. After that I will, in time sequence, describe all changes in the system affecting shareholders and their relation with the management. I will end with a conclusion. The AFM is an autonomous administrative authority that also advises the Ministry of Finance" The authority of the AFM ranges from notification of substantial holdings and investigating insider trading to

Jouw document:

suspension of trading. Most of the decisions of the AFM are subject to appeal

: <http://www.ejcl.org/143/art143-17.pdf>

Gevonden door Ephorus:

suspension of trading. Most of the decisions of the AFM are subject to appeal

in front of the court in Rotterdam, an administrative court. The AFM has no direct involvement in corporate governance enforcement (Bekku et al. (2010)).

In the Netherlands there is a regulation that is quite similar with the Schedule 13d filings of the US. This is the Dutch Act on the disclosure of voting power and capital interest in securities institutions regulated by the AFM (Wet Melding Zeggenschap - WMZ and since 2006 Wet op het Financieel Toezicht - Wft). Each person or legal entity that has a substantial holding in issuing institutions has to report this to the Dutch Authority for the Financial Markets.

"An issuing institution is a public limited company (Naamloze Vennootschap) incorporated under Dutch law whose shares are admitted to trading on a regulated market in the Netherlands or in another Member State of the European Union or an EEA State, or a legal entity incorporated under the law of a state that is not an EU Member State and whose shares are admitted to trading on a regulated market in the Netherlands (AFM.nl)."

As soon as the substantial holding of an investor equals or exceeds the 5% level of the issued capital then the shareholder should report this to the AFM. Further the shareholder should also notify the AFM if the substantial holding reaches, exceeds or falls below a threshold. Since November 1st 2006

Jouw document:

the thresholds are: 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%

Gevonden door Ephorus:

the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%

: <http://www.ejcl.org/143/art143-17.pdf>

. Before November 1st 2006 the thresholds were 5%, 10%, 25%, 50%, 66%.

I will use the notifications published by the AFM for this thesis, and will further elaborate on them later on in the data collection process. Ondernemingskamer (OK – The Enterprise Chamber of the Amsterdam Court of Appeal)

The OK is a specialized judicial body and is unique in Europe. It is part of the Court of Justice in Amsterdam and has to judge disputes involving legal entities. Since the early 1970s the OK successfully solved many business disputes and the verdicts of the OK are also very influential in contributing to the Dutch corporate governance system. The judges of the OK consist of people expert in legal professions as well as commercial fields (www.rechtspraak.nl).

Inquiry Procedure

Inquiry procedures before the OK provide an efficient method for (minority) shareholders to object to controlling shareholders and/or management. And it is an effective method to enforce rules and principles of the governance system. Also inquiry proceedings are a nice tool to obtain information, since one of the purposes of this right is to obtain clarity with respect to the affairs of the company (Bekum et al. (2010)).

Any shareholder or group of shareholders that has a minimum of 10% of the issued capital/depositary receipts or having together at least 225,000 euro's nominal value worth of shares can go to the OK.

Controlling Shareholder

A controlling shareholder is subject to legal norms in the Netherlands and has a fiduciary duty towards minority shareholders. According to the Corporate Governance Code (will be handled later);

Jouw document:

“the greater the interest which the shareholder has in a company, the greater is his responsibility to the company, the minority shareholders and other stakeholders”



: <http://www.ejcl.org/143/art143-17.pdf>

. Minority shareholders ask for an inquiry procedure if they believe the principle of reasonableness and fairness is violated.

Management of the Company

Whether the OK grants an inquiry depends on that there has to be sound reasons to doubt the proper policies of the company (management) and/or its business. If after inquiry mismanagement is concluded the OK can take immediate measures for the duration of the proceedings. Mismanagement is determined when elementary principles of responsible entrepreneurship have been breached.

Immediate measures the OK can take are:

- # The dismissal of directors.
- # The appointment of independent members to the supervisory board.
- # Prohibiting the company from taking defensive measures.

Shareholder activist seem to have frequently initiated inquiry proceedings. When covering hedge fund cases, I will further elaborate on this.

Changing the corporate governance system

The Dutch corporate governance system obviously imposes a stakeholder rather than a shareholder orientated system. During the first half of the 1990s a public debate started because of the wide arsenal of defensive measures companies had, and were using, in order to rescind takeovers. The Peters Committee was the first to write something down.

The Peters Committee

Back in 1997 the Peters Committee initiated the debate on corporate governance. They issued forty recommendations that

Jouw document:

can be regarded as the first corporate governance code in the Netherlands.

Gevonden door Ephorus:

can be regarded as the first corporate governance code in the Netherlands.

: <http://www.rug.nl/research/Healthwise/kennis/publicaties/professional-publications/2007AkkermansCorporateGovernance.pdf>

The report did not address the inherent problems of the structured regime involving the shareholders rights, but focused on making the structured regime more accountable to shareholders without changing shareholders rights (De Jong et al. (2005)).

De Jong et al. (2005) studied the extent to which Dutch firms complied with the recommendations made by the Peters Committee. The recommendations had no effect on corporate governance characteristics and in most cases the firms only comply formally but didn't implement major changes in corporate activity. It became clear that this “code” wasn't sufficient.

Code Tabaksblat

On January 1st 2004 the new Dutch Corporate Governance Code came into effect (Tabaksblat Code). As of this date companies are required to write an additional chapter about corporate governance in their annual reports. The code is, just as many other national corporate governance codes, enforced by using a “comply-or-explain” approach. This means that in principle firms have to comply with the code, but if a company chooses not to it will have to explain and report this in the annual report. The Code is for all firms

Jouw document:

listed on the Dutch stock exchange and foreign companies with a statutory residence in the Netherlands

Gevonden door Ephorus:

listed on the Dutch stock exchange and foreign companies with a statutory residence in the Netherlands.

: <http://www.rug.nl/research/Healthwise/kennis/publicaties/professional-publications/2007AkkermansCorporateGovernance.pdf>

(Akkermans et al. (2007)).

It contains 21 principles of good governance representing “the latest general views on good corporate governance” and of which has several points that try to improve the rights of the shareholder (Corporate Governance Committee (2003)). Generally the Dutch Code aims at changing the behavior of management in a more transparent way,

Jouw document:

and to improve the quality and integrity of both the management and supervisory board.

Gevonden door Ephorus:

and to improve the quality and integrity of the management and supervisory board

: <http://www.rug.nl/research/Healthwise/kennis/publicaties/professional-publications/2007AkkermansCorporateGovernance.pdf>

Some important aspects of the code that are also pointed out by Cziraki et al. (2010) are:

It tries to facilitate the shareholder communication better by advising companies to adopt the possibility of proxy voting.

Depositary receipt holders should be granted voting rights at all times.

It is calling for a more active role of institutional investors in the general meetings.

It set caps on the number of supervisory board members that come from other listed companies and are also in the supervisory board or management board of those companies (Cziraki et al. (2010)).

Also the Code provides that supervisory directors may hold office for a period of three four-year terms max. Bekkum et al. (2010) argue that staggered boards are not applied by listed companies (so that for instance only one-third of the board comes up for election each year). Although often provisions in the articles of association describe,

Jouw document:

that **members** can only be dismissed by the general meeting with a majority of two thirds of the votes.

Gevonden door Ephorus:

that **they** can only be dismissed by the general meeting with a majority of two-thirds of the votes

: <http://www.ejcl.org/143/art143-17.pdf>

Akkermans et al. (2007) investigate the implementation of the Dutch Corporate Governance Code in 2005. They conclude that in order to assess the actual impact of the Code a much longer perspective is needed, but the first signs are rather positive.

The Corporate Governance Code Monitoring Committee

The Monitoring Committee monitors trends in the application of the Code and issues yearly reports. The Dutch government established the Monitoring Committee on December 6th 2004. Below I will give a summary of the findings of three years monitoring the Code by the Committee (2004-2006).

A lot of companies have dismantled their anti-takeover mechanisms under market pressure. The Committee states that shareholders since the introduction of the Code have taken a more active approach. In some cases this has led to disputes between the management and the shareholders, and in which interesting rulings by the OK were taken. The rate of compliance to the code is stabilized to 95% of all listed companies by 2006 (this means that they adopt the code in their communication with the shareholders), and the rate of application rose from 87 to 90% (this means that they applied with the code). The average attendance rate at general meetings of shareholders is 57% in 2006. Since January 2007 a legal basis is created for the use of electronic means to communicate, so the Committee expects the attendance rate to rise in the future. Explanations for non-application of parts of the Code were increasingly standardized by the companies; this is considered as an undesirable trend.

Structured Regime Reform Act

The Structured Regime Reform Act is a change in law of the old Structured Regime.

Effective from September 1st 2004 the act cuts back some of the authority of the supervisory board and also increases the shareholder power in other areas.

Shareholders and the works council are allowed to recommend candidates for supervisory membership prior to the nomination made by the supervisory board.

The firm's annual accounts and the remuneration of both boards have to be approved by the general meeting.

A general meeting of shareholders with at least one-third of the issued capital present may reject nominations for supervisory board members and dismiss the supervisory board with a majority vote.

Shareholders also have to approve for more transactions that will have a material impact on the nature of the company, so for instance joint ventures or divestures.

Both shareholders and holders of depositary receipts can place resolutions on the agenda of general meetings if they have a stake of at least 1% or 50 million euro in the company's shares. A notion to make is that often certain important proposals can only be requested by the management or the supervisory board. For example proposals to change the articles of association, issue shares and authorize management to sell company's assets (De Jong et al. (2006)).

Companies (Trust Offices) will have to give depositary receipt holders voting rights if they request this at an annual meeting. But there are some exceptions to this, if the company is under threat of a hostile takeover and if the issuer of the depositary receipts has the opinion granting those voting rights would be strongly against the company's interest.

Since 2007 it is also possible to attend the general meeting electronically, but this has to be arranged in the articles of association. Proxy voting is still in a development stage in the Netherlands (proxy voting is that you can vote from a distance if you can't attend the annual meeting). This is mainly because of the major obstacles that are still in place in the Netherlands and that oppose a well-functioning proxy voting system. Most shares in Dutch listed firms are dematerialized bearer shares, and so for companies it's hard to trace the identity of the shareholders. This makes it difficult for companies to distribute information (Bekkum et al. (2010)).

Proxy Solicitation

Proxy solicitation is a way in which shareholders try to get in contact with other shareholders and with their approval vote for them in upcoming annual meetings. Due to the fact that proxy voting is still in a development stage it is also difficult for shareholders to contact each other. There is a proposal by the Dutch Ministry of Finance to enable investors to communicate with one another. Shortly it will mean that investors that individually or collectively hold 10% or more of the shares may request the company to extract the identity of its investors. And the investors may also request that the company will distribute information to these shareholders on behalf of them (Bekkum et al. (2010)).

EU Directive on Takeover Bids

Both the rights

Jouw document:

should be exercised within three months of the expiration of the offer

Gevonden door Ephorus:

should be exercised within three months of the expiration of the offer

: <http://www.ejcl.org/143/art143-17.pdf>

(Bekkum et al. (2010)).

The new Corporate Governance Code (Code Frijns)

In December 2008 the Monitoring Committee published an updated version of the Code (Code Frijns), this new code came into force on January 1st 2009. The Code became more stringent on parts of remuneration and risk management and appears to be aiming on mitigating the influence of activist shareholders. The new provision about proxy proposals is a good example. If a shareholder intends to put an item on the agenda for the coming shareholders meeting and this agenda point could result in the change of the company's strategy, the management board is given the opportunity to wait with a respond up to 180 days.

Also the Dutch government has recently proposed additional legislative measures that have the effect of limiting shareholders power. Shareholders should only be entitled to put points on the agenda if they have 3% of the issued capital (instead of 1%) and the disclosure requirements of shareholders should go from 5% to 3%. Also shareholders that exceed this threshold will have to disclose whether or not they agree with the strategy of the company.

One-Tier Board

In November 2008 the Dutch Parliament presented a bill in which Dutch companies would get the opportunity to obtain for the one-tier board structure. December 8th 2009 the bill passed and it is expected that the law will be put in place in the end of 2010. Companies with a foreign legal entity and on the Dutch exchange can already have a one-tier board structure. A report by the Spencer Stuart (2009), one of the world's leading executive search consulting firms, investigates board trends and practices at 100 leading companies in the Netherlands. In 2008 10% of the companies have a one-tier board; examples of these are Royal Dutch Shell, Unilever and LogicaCMG. Bekkum et al. (2010) argue that

Jouw document:
in practice the operation of a one-tier board and a two-tier board in

Gevonden door Ephorus:
In practice, the operation of a one-tier and a two-tier board in

: <http://www.ejcl.org/143/art143-17.pdf>

the Netherlands

Jouw document:
may not differ fundamentally. Although the one-tier board is often associated with

Gevonden door Ephorus:
may not differ fundamentally. The one-tier board is often associated with

: <http://www.ejcl.org/143/art143-17.pdf>

more meetings of the board, and a stronger involvement of non-executive directors, this can also be achieved without difficulty in a two-tier model. So the differences seem to be more in perception than in reality.

Conclusion

The second objective includes activism targeting the firm's

Jouw document:
payout policy and capital structure. In the first subgroup of this category, the hedge fund proposes changes toward the reduction of excess cash, increase in firm leverage or more/higher payouts to the shareholders either using stock repurchases

Gevonden door Ephorus:
payout policy and capital structure. In the first subgroup of this category, the hedge fund proposes changes geared toward the reduction of excess cash, increase in firm leverage, or higher payouts to shareholders using either dividends or stock repurchases.

: <http://www.columbia.edu/~wj2006/HFAActivism.pdf>

or increase in dividends. The second subgroup of this category involves suggested equity issuance, such as stopping or reducing equity offerings by the target companies or proposed debt restructuring.

The third category of events includes activism targeting the business strategy. There are 5 subgroups that fall within this group. The first subgroup consists of general operational efficiency, cost cutting and tax efficiency-enhancing proposals. Second group consists of proposals to spin off some divisions or refocus the business strategy. This is in cases the activist believes that the company lacks business focus or exhibits excess diversification. Third, hedge fund may attempt to play an activist role in a pending merger or acquisitions, normally

Jouw document:
by asking for a better price when the firm is the target of the acquisition or by trying to stop the pending acquisition.

Gevonden door Ephorus:
by asking for a better price when the firm is the target of the acquisition or by trying to stop the pending acquisition.

: <http://www.columbia.edu/~wj2006/HFAActivism.pdf>

Fourth,

Jouw document:
hedge funds may attempt to play an activist role in a pending merger or acquisition

Gevonden door Ephorus:
hedge funds may attempt to play an activist role in a pending merger or acquisition,

: <http://www.columbia.edu/~wj2006/HFAActivism.pdf>

when the firm is the acquirer (also if the hedge funds attempt to stop a pending acquisition). Finally, hedge funds that make proposals stressing that the issuing institution better pursues its growth strategy.

The fourth objective involves activism demanding or urging the sale of the target. If hedge funds forces a sale of the company to a third party it ends in the first subgroup. If it wants to take over the company themselves it is the second subcategory.

The fifth category all activism targeting the firm governance is included and there are five subgroups. These are ranging from rescind takeover defenses;

Jouw document:
to remove the CEO or chairman; to challenge board independence and fair representation; to demand more information disclosure and question potential fraud; and to challenge the level or pay-for-performance sensitivity of remuneration. The

Gevonden door Ephorus:
; to oust the CEO or chairman; to challenge board independence and fair representation; to demand more information disclosure and question potential fraud; and to challenge the level or pay-for-performance sensitivity of executive compensation. The

: <http://www.columbia.edu/~wj2006/HFAActivism.pdf>

categories, except the first and the sixth are not mutually exclusive as a hedge fund can target multiple issues. On the next page at table is given with all the outcomes.

Jouw document:
the hedge fund just intends to communicate with the management/board on a regular basis with the goal of

Gevonden door Ephorus:
The hedge fund intends to communicate with the board/management on a regular basis with the goal of

enhancing shareholder value.

enhancing shareholder value

: <http://www.columbia.edu/~wj2006/HFActivism.pdf>

What also stands out is that hedge funds aren't generally involved in controlling

Jouw document:

blocks of stock. The interquartile of hedge funds initial stakes is from 5.11% to 8.54% and even the 75th percentile of the maximum ownership falls below

Gevonden door Ephorus:

blocks of stock. The interquartile of hedge funds' initial stakes is from 5.4% to 8.8%, and the 75th percentile of the maximum ownership falls below

: <http://www.columbia.edu/~wj2006/HFActivism.pdf>

11%. This is also consistent with the paper from Brav et al. (2008). The average maximum voting power is 10.10%, this is actually a very high outcome but the distribution is also skewed to the right.

Ondernemingskamer (OK - Dutch Enterprise Chamber)

It immediately stood out that almost 22.89% of all tactics were regarding the OndernemingsKamer (OK - The Dutch Enterprise Chamber). Therefore I will look at the OK in more detail in this chapter. All court decisions are published and are available in a database. Using the Wolters Kluwer Online Research and the hedge funds and issuing institutions as keywords I'm able to check for each hedge fund if they appealed at the OK. I will only report the cases in which the hedge fund is reported as the party that requested the procedure at the OK. As said before inquiry procedures are an efficient method for (minority) shareholders to object to controlling shareholders and/or management. When the OK reaches a verdict they can take provisional measures immediately. Any shareholder or group of shareholders that has a minimum of 10% of the issued capital/depository receipts or having together at least 225,000 euro's nominal value worth of shares can go to the OK.

On the next page there is a table in which all publications of the OK summed up. They are first ordered in alphabetic order of the issuing institution and then on the date the OK reached a verdict and/or made a publication.

The general view is that defensive measures are justified if they are necessary

Jouw document:

to preserve the long term continuity of the company and its stakeholders.

Gevonden door Ephorus:

to the (long-term) continuity of the company and its various stakeholders,

: <http://www.ejcl.org/143/art143-17.pdf>

And only if the defensive measure can help in achieving a status quo of the takeover, so that negotiations can start. Having defensive measures for an infinite amount of time is not allowed. Both ASMI and Stork issued preference shares to protect themselves. Stork had, by demand of the OK, the obligation to withdraw its preference shares. The preference shares were issued so that shareholders couldn't vote for the dismissal of the supervisory board and this did not qualify for the use of defensive measures. At first ASMI was allowed to issue preference shares, because the replacing the entire supervisory board including the CEO was being judged as a raid. But the foundation that kept the preference shares was being found not independent of the board. And so not the status quo would have been preserved, but the management was just protected (Bekkum et al. (2010).

So it depends very much on the circumstances if a shareholder can address the OK to cancel the use of defensive measures. It is for certain that due to the power of the OK, shareholders in the Netherlands have a better opportunity to rescind to anti-shareholder measures.

In the case of Stork and ASMI, the activists tried to force the companies to spin off some divisions to refocus its strategy. There are two conclusions that can be made. First the authority of setting the company's strategy lies still with the management board, and under supervision of the supervisory board. Second when there is a large disagreement between shareholders and the management the OK takes some provisional measures; it tries to keep the dialogue going, both management and shareholders may not take actions that are irreversible and if a solution isn't found the OK will often appoint new supervisory board members that are independent.

This means that often hedge funds will reach a compromise with the company, and this is also seen in the data. More than 50% of all cases in which the motive of a hedge fund was, refocusing the business, the hedge fund had a partial success of their objective.

The verdict by the OK in the case of Stork also illustrates that the management board in the Netherlands is not able to ignore wishes of a majority of its shareholders. Although the hedge funds were unable to dismiss the supervisory board of Stork the OK appointed three supervisory board members and gave them special powers. The effect of this was that the power of the existing board strongly decreased.

The case of Versatel is a good example of minority shareholders that asked for an inquiry procedure at the OK against the block holder. As mentioned earlier, the corporate governance code has a notion about the responsibility of the large shareholders. "The

Jouw document:

greater the interest which the shareholder has in a company, the greater is his responsibility to the company, the minority shareholders and other stakeholders"

Gevonden door Ephorus:

greater the interest which the shareholder has in a company, the greater is his responsibility to the company, the minority shareholders and other stakeholders'

: <http://www.ejcl.org/143/art143-17.pdf>

. Minority shareholders ask for an inquiry procedure if they believe the principle of reasonableness and fairness is violated. Following the case of Versatel the principle of reasonableness and fairness is violated when the controlling shareholders used his power to appoint members of the supervisory board. This means that minority shareholders have a fair chance at the OK, if they feel they are being oppressed by the block holders.

Market response to the filing of hedge funds and their activism

The American studies have all been doing event studies surrounding the filing dates of the hedge funds in order to calculate the announcement effects of activism. As mentioned before hedge funds that file at the AFM don't have to give an explanation for the fact that they are taking an interest in the company. Therefore I expect that there will not be an increase in the stock price around the filing of a hedge fund. Simply because the objectives of the hedge fund are not clear yet.

I'm conducting an event study by using methodology described by Frank de Jong (2007). I will first look to the hedge fund filings at the AFM. For each filing I know the exact date on which the filing took place and this date is the event date. The event window is the same as in the study by Brav et al. (2008), namely (-20, +20).

I define the abnormal returns as the residuals of the market model, and for the market index I choose the Amsterdam SE All share index for the listed companies on Euronext Amsterdam. For companies that are listed abroad, I pick the corresponding major indices of the particular country. For each company the total return index is downloaded from Datastream and if companies are cross listed, the Dutch

total return index is taken. As an estimation window I use 150 days of data preceding the event period. The results are as I expected. The event study consists of 34 cases and the average of abnormal returns (AAR) on the event date is almost zero, there is also no form of run-up before the filing. The cumulative average abnormal return (CAAR) after the end of the event window is also close to zero. So this means that the market does not react to a filing of a hedge fund at the AFM. That's why it is interesting to look at the market response after the objectives of a hedge fund are clear (so when they become active). In the data collection process (described before) I was able to find an additional of 24 cases in which hedge funds became active that were not in my AFM list. By searching the news I've checked for each case on what date a first impression must have come that the hedge fund was active. I did this by using LexisNexis.

I also checked for every hedge fund, that I found in the AFM list, the date in which they became active. In some cases this was even before the date of a filing of a notification by the AFM. In sum I was able to collect 25 events (there are only 25 events because a lot of hedge funds became active on the same date in the same company). The event study was conducted by using the same methodology as before. To be clear; the event dates are now the dates on which for the first time it became clear why a hedge fund had an interest in a company and that it became active.

Table 11. Abnormal Stock Returns Surrounding the Activism Events Dates by using the Market Model

This table shows the abnormal average returns and cumulative abnormal average returns for the activism event dates. The event window is (-20,+20) and the estimation window is 150 days of data preceding the event period. The abnormal performance is tested by using a simple t-test.

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