Mobilizing Investor Networks behind Shareholder Activism in France

**Introduction**

Large institutional investors are increasingly aware that it is in their long-term interest to engage with management to improve a company’s performance rather than simply to sell their shares (Hawley and Williams, 2007; Bhagat, Black and Blair, 2004). They realize that their impact is magnified when they coordinate their actions, and a rapidly rising form of shareholder activism is via collaborative coalitions and networks (Thamotheram and Wildsmith, 2007). Moreover, they have a fiduciary duty to act as responsible investors which entails monitoring their investments in a professional manner and voting their shareholdings at companies’ shareholder meetings. Many institutional investors find it increasingly effective to outsource their fiduciary duty to professional shareholder activists. These activists may perform proxy analyses, provide voting recommendations and/or execute share voting; they may contract with investors and create coordinated networks for engaging privately with management; or they may mobilize a shareholder network behind a public shareholder activist campaign.

As a result, numerous global shareholder networks have emerged with different objectives and coordination mechanisms. Corporate social responsibility engagement encompasses such institutional investor networks as the Carbon Disclosure Project, UN Principles of Responsible Investment (now UNPRI), CERES, Global Reporting Initiative, and the Enhanced Analytics Initiative (Clark and Hebb, 2004; Tkac, 2006). There are also corporate governance investor networks such as the International Corporate Governance Network (ICGN). However, in our study, we focus on those professional investment services and actors whose express aim is to improve performance through enhanced corporate governance or direct private or public engagement with management (Corporate Executive Board, 2008).

Concomitantly, pressure from the international investment community resulted in revisions to many countries’ laws concerning corporate governance that has facilitated its greater influence. In France, the need for financial capital drove the French government and firms to adopt selective legal and institutional modifications (Lee and Iio, 2008) imposed by Anglo-Saxon institutional investors (Aguilera and Cuervo-Cazurra, 2004). As a consequence, shareholder activism in France has become more and more the result of professional actors.

This paper makes three contributions: it is the first to analyse this professionalization of shareholder activism in France. Second, it determines the roles played by networks in French shareholder activism by attempting to identify the diversity of relationships between activism sponsors, activist professionals and institutional investor networks. Third, it describes the investor network process through two recent examples.

In the first part of this paper, we provide an overview of the theoretical and empirical literature on shareholder activism in France. This part explains the changes in French legislation and corporate governance which facilitated international investor networks’ activism up to the recent adoption of AIFM directive1. We then develop the conceptual model that may explain the effects on targeted French corporations.

**I. Shareholder activism in France**

Changes in French legislation have strengthened the impact of institutional investor networks and led to the professionalization of shareholder activism. In this section, we review the theoretical and empirical literature to present a conceptual model of French shareholder activism that we believe explains the formal and informal relationships between all the diverse actors in shareholder activism.

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I.1. INCREASING COMPLEXITY OF THE FRENCH SHAREHOLDER ACTIVISM PROCESS

The French shareholder activism process remains a hybrid model with a continuum of possible private and public activities simultaneously accompanied by legal actions from French investor associations. Girard (2003) reported that an activist shareholder’s announcement registered only a low level of public perception as measured by cumulative abnormal returns. This could be explained by the passive role of institutional investors due to the following three legal constraints and obstacles: (1) prior to the 2001 New Economic Regulation law, they needed to own at least 5% of voting rights to be able to put forward a shareholder proposal; (2) they were not required to report on the exercise of their voting rights attached to the shares held by the collective pension schemes until the 2003 Financial Security law; and (3) they had to block their shares five days before the Annual General Meeting (AGM) until the 2005 Mansion Report. Before these three legislative changes in France, Girard (2001) observed that institutional investors usually preferred to mandate French investor associations to improve the chance of success for shareholder activism.

French investor associations generally initiate a legal action at an early stage of the process which may either replace or accompany other activities. The advantages of immediately launching a lawsuit were: (1) to make use of legal loopholes; (2) to threaten that an AGM be convened by a representative appointed by the court; (3) to put a halt to proceedings to gain time to convince passive shareholders to coordinate their proxy voting actions by using public engagement practices such as media coverage; (4) or to negotiate a higher exit premium during a takeover attempt. Célestin (2006) reported that the organization of a proxy fight in France usually takes place after shareholders have been notified of an AGM. Filing a lawsuit once the AGM has been announced can effectively halt the process and give time in order to mobilize shareholder voting. Threatening a legal action can also help in negotiating an arrangement behind closed doors.

Despite the fact that the 2001 New Economic Regulation law accompanied an ongoing process of closing legal loopholes, Girard (2001) observed that the number of French investor associations has continued to increase. Currently, there are more than twenty, each specializing in specific legal actions such as civil, penal or class action. Prior to 2001, Girard noted that 63% of activist activities took the form of a lawsuit but that subsequently this proportion has fallen to less than one-third.

More recently, investor associations such as l’Association Des Actionnaires Minoritaires (ADAM), led by Colette Neuville, collaborate regularly with hedge fund activists “as long as their objectives go beyond the short term and help to create value for all the shareholders,” as she stated in an article entitled “Minority shareholders support hedge fund activism,” (Les Échos, August 24, 2005). Are hedge funds set to become the new allies of minority shareholders? What role will they play within shareholder activism?

In order to better understand how the activist hedge funds operate, we will explain some of their techniques. To limit their capital investment and risk exposure, activist hedge funds enlist the support of institutional investors as well as fellow hedge funds. Activist shareholders can leverage their relatively small stake in a target company through one or more tactics. First, they can federate like-minded hedge funds and file in the U.S a schedule 13-D disclosure form as one “person” acting as a group for the purpose of acquiring, holding or disposing of securities of an issuer (Katz, Jang, Partnow and Thomas, 2008). Second, they can use so-called “remora funds” to facilitate activism without disclosure under certain conditions where their discussions or brainstorming are not deemed to constitute a “plan or proposal” (Briggs, 2004). This has led to the activists avoiding making a 13-D filing once they hit the ownership disclosure threshold since this might trigger a poison pill if the company has one in place. Finally, the term “remora funds” refers to other investment advisors or asset management firms that follow an activist investor after it has filed its 13-D disclosure.

Activist hedge funds can also utilize tactics that leverage their shareholding in concert with a network of institutional investors. Stock lending is a practice that has developed broadly, and allows hedge funds to execute hedging and short-selling transactions, in other words, to vote shares without making an equity investment. It also leads to over-voting the shares as both the hedge fund borrower and the beneficial owner (who does not receive notice of the lending transaction) vote the same shares (Katten Muchin Rosenman Client Memorandum, 2010). Hu and Black (2006) also documented how activist hedge funds have learned to abuse the stock lending market through a process that they named “empty voting”. Activist hedge funds first borrow large blocks of shares just prior to the record date. They then use hedging techniques to control enough votes to influence the outcome of a shareholder vote without actually holding an economic interest in the company.

Finally, the main advantage of these techniques is to reduce the costs (communication and buying shares) incurred by an activist to overcome the problems of collective action, such as gathering the required threshold of voting rights to put forward a shareholder proposal, or withdrawing or at least contesting a managerial proposal. It is worth remembering that in France, only 5% of voting rights are required to put a shareholder resolution on the agenda of the AGM, and only 5% of voting rights are required to call an AGM. While this requirement might seem low, in practice it is not: more than half of AGMs in French companies occur only after they have been called a second time. The low level of shareholder participation in the AGM serves the interests of the activist hedge funds, which often represent more than 20% of the capital at the AGM. Chaterley, Chevillon and Mesounced (2009) confirmed that there were coordinated voting strategies at AGMs among the SBF 250 (the second French index) companies during 2004-2005. They determined that shareholder resolutions proposed by hedge funds received an average rate of approval of
In addition, since 2001 professionals have appeared in France, such as Risk Metrics/Deminor, Proxinvest and the France-based asset management association AFG (Association Française de Gestion). Such new actors offer proxy advisory services consisting of voting recommendations and proxy solicitation services, which enhance the effectiveness of the activist coalition’s campaign. Active investors are influenced by their recommendations to vote in favor or against a proposal. Charlety et al. (2009) discovered that AFG recommendations encourage private investors to vote in favor of proposals put forward by an activist coalition. Alexander, Chen, Seppi and Spatt (2008) determined that these activist professionals play a dual informational role in the shareholder activism process. They serve both to certify the relative quality of competing management teams and corporate governance systems and to predict activism outcomes by conveying new information to the market. Consequently, the emergence of activist hedge funds and proxy professionals in France has changed the French shareholder activism process.

1.2. CONCEPTUAL MODEL OF FRENCH SHAREHOLDER ACTIVISM PROCESS

Corporate governance theory defines shareholder activism as a confrontational process which can be divided into several stages (Wahal, 1996). Recently, the Institutional Shareholders’ Committee (ISC, 2005) has replaced “activism” with “engagement”. Several leading US and UK shareholders routinely follow different, non-standardized engagement practices (see Buchanan and Yang (2009) for a comparative analysis).

As shown in Table 1, the first stage involves target selection from a portfolio of firms. The activists’ motive to become engaged could relate to underperformance, governance or social and environmental issues as categorized by Klein and Zur (2009) and Biv and al. (2008) according to the level of aggressiveness. Klein and Zur categorize as aggressive the following non-routine motives: change the board; oppose a proposed merger; sell the firm; buy more stock with the intention of buying the firm; buy back its own stock; oust the CEO; criticize executive excessive remuneration; and pay a cash dividend.

The second stage, known as “behind the scenes” or “private engagement”, consists of informal communication activities (private meetings with the CEO and the chairman, meetings with board members). At this stage, private engagement is collaborative. The target management agrees with the changes sought by the activist coalition, and implements them in cooperation with this coalition (Becht, Franks, Mayer and Rossi, 2009).

In contrast, the third stage becomes confrontational because the target management refuses the changes sought by the activist coalition. This stage refers to the proxy voting process. It involves voting solicitation activities to submit a shareholder proposal or to contest a managerial proposal at the shareholders’ meeting. It may also be characterized by activities such as media coverage, lobbying activities and launching a proxy battle. In the American context, Gillan and Starks (2006) show that institutional investors prefer to engage with a target company at a lower level of confrontation since 73 percent of shareholder resolutions were withdrawn before the AGM meeting in the period 1987-1994. Shareholder resolutions remain relatively infrequent in Continental Europe in comparison to the USA (Cziraki, Renneboog and Szilagyi, 2010). In France, there are few shareholder resolutions either submitted or withdrawn. In its 2009 European voting results report, RiskMetrics observed that only 21 shareholder proposals were submitted at French AGMs in 2009. Twelve of these proposals were withdrawn, and out of 134 proposals put forward by management and shareholders relating to share incentive plans, only 4 were subsequently withdrawn.

Finally, the fourth stage is characterized by the most confrontational degree of activism, namely the exit of dissatisfied shareholders and/or a takeover attempt and/or a law suit (Wahal, 1996). Nevertheless, the French activism process remains a hybrid model with an early recourse to parallel legal actions. In the period 2001-2004, Huynh (2009) observed among the 71 French firms listed in the SBF index a gradual increase in activist shareholders tactics. Compared with the USA and the UK, in France the proxy battle remains “the main vector of direct dialogue between the CEO and shareholders” (Huynh, 2009, p. 501). Huynh also observed positive correlations between legal actions and calls for an Extraordinary General Meeting (EGM). In particular, if executive remuneration is the motive, shareholder activism is expressed through AGMs, through the courts, and by filing a complaint with AMF (Autorité des Marchés Financiers). Consequently, in contrast to Wahal (1996), we consider that the highest degree of confrontational activism in France is exclusively constituted by takeover or exit. However, the emergence of activist hedge funds and proxy professionals in France has changed the activism process. Ryan and Schneider (2002) demonstrated that institutional investor activism is expressed in a variety of degrees from confrontational to relational depending on investment and engagement practices determined by several factors such as legal constraints, fund size, investment time horizon, and sensitivity to pressures from business relationships and external/external management. For example, the decision to manage a fund’s portfolio internally or externally has implications for the fund’s degree of activism. Ryan and Schneider assumed that external portfolio managers are likely to hold many of the same stocks across the portfolios they manage which give them a greater incentive to exert a higher degree of activism than the internal manager of a single fund. However, since the Ryan-Schneider model was published in 2002, the shareholder activism process has evolved. In a recent study, Lubach and Sehora (2009) tested the Ryan-Schneider model. Their results showed that, contrary to the proposition of Ryan and Schneider (2002), institutions whose assets are managed externally did not play an activist role.
In contrast with the period of the mid-1980s, which was characterized by the so-called “CalPERS effect” referring to the way in which the fund managed its activism strategies (Smith, 1996; Anson, White and Ho, 2004), today this category of fund is less directly engaged due to current regulatory and political constraints. These constraints include diversification and liquidity requirements to cover redemptions for beneficiaries. Moreover, it has become necessary for these pension funds to avoid conflicts of interests arising from business relationships as well as social and political pressures. However, hedge funds are able to minimize these political risks by operating outside the framework of security regulation and registration requirements. Consequently, with the emergence of these new professional hedge fund shareholder activists, public pension funds such as CalPERS have outsourced the management of the most confrontational degrees of activism through their relational investing (long-term arrangements through banks and corporate network allies) (Bhagat and al., 2004; Martin, Casson and Nisar, 2007). Pound (1992) reported that these allies are professionals operating through small entities such as investment partnerships or pools of funds which minimize activism costs and political risks. Moreover, Martellini, Le Sourd and Ziemann (2008) explained that due to the perfect storm of adverse market conditions during the past decade, institutional investors are desperately seeking new investment styles and asset classes that activist hedge funds provide because of their focus on higher absolute return.

Meanwhile, other private equity funds or traditional investors prefer to internalize activism costs. For example, through its proxy provider services, pooled fund as well as its index tracker fund, Hermes has internalized the costs and also the benefits of its engagement actions. As analysed by Becht et al. (2009, p. 3), the Hermes UK Focus Fund (HUKFF) tactics consist of “increasing the stakes in companies that Hermes has already invested in through its index tracker fund, thereby the HUKFF partially internalizes the benefits of activism to all shareholders”. In addition, as a blend of traditional investor and hedge fund, HUKFF uses the equity loan market with the aim of decreasing the costs of activism implied in aggregating votes (Christoffersen, Geczy, Musto and Reed, 2007). In France, some private equity funds such as Wendel Investment and Eurazeo internalize this function. Other investors create pools of funds, such as the CEO of LVMH Bernard Arnault and Colony Capital which established Blue Capital.

### Table 1. Degrees of shareholder activism in France

<table>
<thead>
<tr>
<th>Degree of confrontational activism</th>
<th>Professional activists</th>
<th>International shareholder activist networks</th>
<th>Outsourced activism management</th>
<th>Relational mechanisms</th>
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</thead>
<tbody>
<tr>
<td>Step 1: Target selection motives</td>
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<tr>
<td>- Low degree of aggressiveness</td>
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<tr>
<td>- Alter business strategy: carry out merger and acquisition</td>
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<td>- Improve social and environmental issues</td>
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<td>- Improve governance issues: rescind takeover defenses</td>
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<tr>
<td>- Other policies</td>
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<tr>
<td>- High degree of aggressiveness</td>
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<tr>
<td>- Cash payout to shareholders</td>
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<tr>
<td>- Alter business strategy: obtain focus (spin-offs, dismantle)</td>
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<tr>
<td>- Oppose to the merger</td>
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<tr>
<td>- Improve governance issues: oust CEO</td>
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<tr>
<td>- Board members’ nomination</td>
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<td>- Executive remuneration</td>
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<td>Step 2: Private engagement</td>
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<tr>
<td>- Dialogue with targeted corporation and activist shareholders</td>
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<tr>
<td>- Write a letter to target corporation</td>
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<tr>
<td>- Threats to law suit</td>
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<tr>
<td>Step 3: Public engagement</td>
<td></td>
<td>Media coverage</td>
<td></td>
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<tr>
<td>- Media coverage</td>
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<td>Dialogs to withdraw proposal(s)</td>
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<tr>
<td>- Put forward proposals</td>
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<td>Proxy battle at AGM</td>
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<tr>
<td>Step 4: Exit strategies</td>
<td></td>
<td>Takeover attempt</td>
<td></td>
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<tr>
<td>- Exit of activists</td>
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</table>

### Step 1: Target selection motives

- Low degree of aggressiveness
  - Alter business strategy: carry out merger and acquisition
  - Improve social and environmental issues
  - Improve governance issues: rescind takeover defenses
  - Other policies
- High degree of aggressiveness
  - Cash payout to shareholders
  - Alter business strategy: obtain focus (spin-offs, dismantle)
  - Oppose to the merger
  - Improve governance issues: oust CEO
  - Board members’ nomination
  - Executive remuneration

### Step 2: Private engagement

- Dialogue with targeted corporation and activist shareholders
- Write a letter to target corporation
- Threats to law suit

### Step 3: Public engagement

- Media coverage
- Dialogs to withdraw proposal(s)
- Put forward proposals
- Proxy battle at AGM

### Step 4: Exit strategies

- Takeover attempt
- Exit of activists
In this section, we illustrate our conceptual model with a description of three shareholder activist professional actors that mobilize international investor networks. We also apply it to evaluate the shareholder activist process when targeting French companies in particular.

II. DESCRIPTION OF THREE SHAREHOLDER ACTIVIST PROFESSIONALS

We document the origins and function of three shareholder activist professional actors that mobilize international investor networks: a proxy analysis, voting recommendation and execution network (Risk Metrics/Deminor); a voting and private engagement network (Hermes EOS); and an institutional investor/activist hedge fund network (CalPERS and Knight Vinke). Using the conceptual model from Table 1, we summarize the three activists’ degree of aggressiveness and confrontation; their engagement forms; and their shareholder activist network in Table 2. Once more using our conceptual model, we then evaluate recent shareholder activist groups and their institutional investor networks’ efforts in targeting French companies in particular.

Risk Metrics/Deminor

Origin. Over the past few years, Risk Metrics acquired Institutional Shareholder Services (US) and Deminor (Europe), both specialists in proxy analysis and voting recommendation and execution. Risk Metrics is the world’s largest provider of voting guidance, serving more than 1,700 investment institutions globally. As legal and corporate governance requirements for shareholder voting have spread, proxy advisors like Risk Metrics have grown in influence.

Function. Risk Metrics/Deminor operates in two ways: first, it helps clients create their own customized voting policies, which it subsequently executes on their behalf; second, it analyzes companies’ proxies and provides voting recommendations to clients who may follow them or use them when making their own voting decisions. However, since many institutional investors do not have the internal capability to collect, translate and analyze company proxy voting material in time to vote, Risk Metrics’ recommendations are very influential.

Hermes Equity Ownership Services (EOS)

Origin. Hermes EOS had over $40 billion of assets (as of 30 September 2009) under stewardship for its network of institutional investor clients. It fulfills the fiduciary duty of its network of investors by voting their shares and engaging with companies to improve performance even when it is not responsible for investing its clients’ funds. Following the publication of the Myer report in March 2001 and the Institutional Shareholders Committee’s statement on shareholder responsibilities, all UK institutional investors are expected to take an active role in voting, monitoring company performance and where appropriate, engaging with companies to improve performance. In July 2004, Hermes responded to this expectation by creating EOS.

Function. Hermes EOS analyzes annual reports and accounts to provide voting recommendations; assists clients with voting; and represents their interests in engagements with these companies. EOS seeks to keep its discussions private while they are proving constructive, or until the engagement is complete. EOS leverages its engagement impact with companies through its extensive network of formal and informal contacts with other fund managers whether or not they are clients of EOS. Over the years, Hermes has established and participates actively in a number of national and international organizations dedicated to improvements in environmental, social and corporate governance issues. EOS finds potential allies for its company engagements through networks.

CalPERS and Knight Vinke (KV)

Origin. The California Public Employees’ Retirement System (CalPERS) increased the allocation of its $356.5 billion global equity portfolio to its corporate governance fund from 3 percent to 5 percent plus or minus three percentage points (Pension and Investments, July 9, 2007). At the time of board approval of this re-allocation on June 18, 2007, this represented a maximum target level of $12.5 billion.
<table>
<thead>
<tr>
<th>Targeted firm</th>
<th>Year</th>
<th>Result</th>
<th>Issues</th>
<th>Aggressiveness degree</th>
<th>Engagement forms</th>
<th>Confrontational degree</th>
<th>Professional activists (percentage of shareholding)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vivarte</td>
<td>2000</td>
<td>Success</td>
<td>Engage business strategy: achieve operational efficiency Improve governance: oust CEO</td>
<td>High</td>
<td>Public</td>
<td>Middle</td>
<td>« Raider »: Guy Wyser Pratt and Atticus (one third)</td>
</tr>
<tr>
<td>Alstom</td>
<td>2004</td>
<td>Partial success</td>
<td>Improve governance: legal action against executive gross remuneration via a personal foundation</td>
<td>High</td>
<td>Public and penal action</td>
<td>High</td>
<td>Investor association: APPAC</td>
</tr>
<tr>
<td>Suez</td>
<td>2006</td>
<td>Success</td>
<td>Alter business strategy: oppose to the merger between Suez and Gaz de France Spin off</td>
<td>High</td>
<td>Public and judicial</td>
<td>High</td>
<td>ADAM « Raider »: Albert Frère</td>
</tr>
<tr>
<td>Aircel</td>
<td>2008</td>
<td>Partial success: board representation</td>
<td>Alter business strategy: obtain focus (spin-offs, dismantle)</td>
<td>High</td>
<td>-</td>
<td>-</td>
<td>SRM</td>
</tr>
<tr>
<td>Accor</td>
<td>2007</td>
<td>Partial success: change in CEO</td>
<td>Alter business strategy: obtain focus (spin-offs, dismantle) Improve governance: oust CEO and board independent members’ nomination</td>
<td>High</td>
<td>Public</td>
<td>High</td>
<td>Pardus (10.04%) Centaurus (12.8%)</td>
</tr>
<tr>
<td>Carrefour</td>
<td>2008</td>
<td>Partial success: board representation</td>
<td>Alter business strategy: obtain focus (spin-offs, dismantle)</td>
<td>High</td>
<td>Public</td>
<td>Middle</td>
<td>« Raider »: Arnault Group</td>
</tr>
<tr>
<td>Valéo</td>
<td>2007</td>
<td>Failure</td>
<td>Improve governance: board members’ nomination</td>
<td>High</td>
<td>Public</td>
<td>Middle</td>
<td>« Raider »: Guy Wyser Pratt Pardus (19.7%)</td>
</tr>
<tr>
<td>Saint-Gobain</td>
<td>2008</td>
<td>Success</td>
<td>Improve governance: board members’ nomination</td>
<td>High</td>
<td>Public</td>
<td>Middle</td>
<td>« Raider »: Arnault Group Private equity fund: Eurazeo Pardus (18.54%)</td>
</tr>
</tbody>
</table>

Table 3. Description of French hedge fund activism process
Function. CalPERS invests in 10 hedge funds specializing in corporate governance activism, including KV in Europe. While KV takes the lead in initiating and coordinating an institutional investor network behind its public activism, the hedge funds pursue engagements with management's strategy. CalPERS publicly supports KV and votes its shares with KV.

In Table 3, we apply our process of outsourcing shareholder activism to the context of France. We evaluate its degree of success, its degree of aggressiveness and confrontation, and list the professional activist actors of the coalition that targets each French company. Hedge fund activism in France is a recent phenomenon which intensified starting in 2006. In accordance with American studies (Brav et al., 2008), in France the activist's success rate is high, but not always total. Since their “public engagement” occurs prior to opening a dialogue (Huynh, 2009), hedge fund activists drop some of their demands during subsequent private discussions with management. This explains their partial success. Nevertheless, contrary to their practice in America, hedge funds collaborate in France with minority shareholder associations in order either to intensify their aggressiveness or to gain recourse to litigation. Finally, it should be noted that Hermes EOS seeks to keep its engagement with company management and boards private while they are proving constructive. After several discussions among its fund managers and communications staff in response to the authors’ requests, Hermes EOS decided not to make public any information about its engagements with French companies other than to confirm that they engaged with Alcatel-Lucent, Galeries Lafayette and Vinci, and that they publicly engaged in specific networks to increase Environmental, Social and Governance standards in French listed corporations. Hermes EOS utilizes its network of 640 billion of assets to pursue engagements privately, although its efforts may be supplemented by more public activism.

III. TWO ILLUSTRATIONS OF INTERNATIONAL SHAREHOLDER ACTIVIST NETWORKS’ ROLE IN FRENCH SHAREHOLDER ACTIVISM PROCESS

In Table 4, we apply our framework once again to analyze the international shareholder activist networks’ role in two cases: Suez/Gaz de France and Atos Origin.

SUEZ: Activist hedge fund’s impact on international investor network

Knight Vinke (KV) is an activist hedge fund that typically targets large European companies, buying about 1 percent and then persuading other investors to join its campaign to change the target’s strategy. Its flagship fund, with a significant investment from CalPERS, California’s state pension fund, among others, has more than $1.5 billion under management.

On July 22, 2004, the French government partially privatized Gaz de France (GDF), while guaranteeing that it would not lower its stakeholding below 70 percent. On February 25, 2006, Dominique de Villepin, then Prime Minister of France, announced the merger of GDF and Suez, which effectively would lower the government’s stakeholding to 34% in the merged entity. GDF’s unions and the opposition political parties (Communist and Socialists) were firmly opposed. Meanwhile, the European regulatory authorities opened a lengthy anti-trust investigation concerning the impact on competition in France and Belgium, and imposed several divestments of Suez’s assets.

On September 3, 2006, Gaz de France and Suez announced the final terms of merger, an exchange of 21 Gaz de France shares for 22 Suez shares via the absorption of Suez by Gaz de France. On September 7, 2006, an extremely contentious debate concerning the merger opened in the Assembly Nationale; On October 25, 2006, the Senate adopted the merger; and on November 8, 2006, the final text was adopted by both legislative bodies. On November 29, 2006, the Conseil Constitutionnel accepted the merger, but stipulated that it could not take effect until July 1, 2007.

During September and October 2006, Knight Vinke, the shareholder activist, published 13 full-page newspaper advertisements advocating that the two companies should agree to a spin-off and public listing of Suez Environment to help the companies merge.

On November 16, 2006, the French investor association ADAM publicly criticized the banks involved in the merger, notably HSBC, for their lack of independence in determining the share exchange ratio between GDF and Suez. Suez owned Electrabel, the Belgian electricity company, whose significant shareholder, Albert Frère, demanded on November 21, 2006 a special dividend of 4 euros per share to compensate for the share exchange ratio. The same day, Knight Vinke, the shareholder activist, demanded a special dividend of 6.5 to 7 euros per share. There was speculation in the press that Knight was a stalking horse for savvy Belgian investor Albert Frère, who controlled 7.7% of Suez stock through Groupe Bruxelles Lambert (GBL) and was vice-chairman of Suez. Knight once worked for Frère’s Pargesa Group. On December 22, 2006, KV published an open letter in the French newspaper, Le Figaro, stating that the valuation of Suez’s shares under the merger proposal was very insufficient, and recommended Suez’s board should suspend the merger. KV reported that 18 out of 20 major institutional investors, including CalPERS, had strong reservations about the merger.

On December 29, 2006, market rumors surfaced that François Pinaud might launch a takeover of Suez, which were repeated throughout January 2007, and its share price rose. On January 4, 2007, President Jacques Chirac announced that the GDF/Suez merger was a “strategic project for France and for Europe.” On January 12, Albert Frère increased his shareholding in Suez to 10.5 percent of capital. Over days ending on January 15, 2007, in the midst of this market speculation about Suez’s eventual ownership, KV sold its nearly 1 percent of Suez shares.
Table 4. Degrees of shareholder activism in Suez/Gaz de France and Atos Origin cases

<table>
<thead>
<tr>
<th></th>
<th>Aggressiveness degree</th>
<th>Engagement forms</th>
<th>Confrontational degree</th>
<th>Shareholder activist network</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suez/Gaz de France</td>
<td>High</td>
<td>Public and judicial</td>
<td>High</td>
<td>YES. 18 of 20 major institutional investors mobilized by Knight Vinke; Centaurus; Pardus</td>
</tr>
<tr>
<td>Atos Origin</td>
<td>High</td>
<td>Private, public, not and judicial</td>
<td>High</td>
<td>YES. Two proxy voting services advised institutional investor network to block activist hedge funds.</td>
</tr>
</tbody>
</table>

At the same time, another group of professional activists entered Suez’s capital. In the end, Suez’s environment division was listed separately on the French stock exchange and the valuation for the remaining Suez improved in the merger. GDP Suez finally merged on July 22, 2008.

**ATOS ORIGIN: Proxy advisors’ impact on international investor network**

The activism process in Atos Origin, a French SSII, began with private negotiations between the Centaurus hedge fund and the management of Atos Origin. On October 23, 2008, Centaurus was the referent shareholder with 5.49% of shares. After the failure of negotiations, Centaurus and Pardus, another hedge fund, announced publicly a joint action “to put pressure on the board...to explore all strategic alternatives” such as “a dismantling” (Les Echos, October 19, 2007). Two days before the public announcement, Pardus bought 7.32% of the shares and the voting rights of Atos Origin.

At this confrontational step of the activism process, they publicly pressured the board to dismantle the company, and later demanded seats on the board and the dismissal of the CEO of Atos Origin, Philippe Germon. They also mandated the services of local activist professionals, namely ADAM the French investor association (Les Echos, April 1, 2008), to support their proposals. However, Atos Origin management convinced Investor Sight and Deminor, two proxy voting advisors to a large network of international investors, to support their position. Deminor maintained that Colette Neuville, the CEO of the French investor association ADAM, was not independent because of her business relations with the two hedge funds.

On the basis of paper votes, Centaurus and Colette Neuville should have been elected to the board at the AGM, and the chairman Didier Chepillet should have been dismissed (Les Echos, May 23, 2008). However, the CEO of Atos Origin, Philippe Germon, reacted by adjourning the meeting when unexpectedly the chairman of the ESOP (Employee Stock Option Plan) fund board stated publicly that he would use the 3%-of-ESOP voting rights to vote in favor of the activist coalition.

Finally, the two coalitions announced the end of the confrontational activities in Les Echos on May 27, 2008. The activist coalition gained the nomination of their members to the board, but proceeded to take the most confrontational step by selling its shareholding to PAI partners.

In November 2008, Thierry Breton (the former French Minister of the Economy) replaced Philippe Germon, the CEO. As studied by Bessiere, Kaestner and Lafont (2010, p.17), Atos Origin is an interesting clinical case in the sense that French state intervention can “create a strong support to managers’ entrenchment despite the relevance strategic changes required by activists” and may explain the partial success of the activist coalition. In this case, five days before the AGM, Senator Marini publicly expressed his concern by stating that Atos Origin risked being dismantled if the two funds were to succeed in taking control of it.

**Conclusion**

International institutional investor networks will exercise increasing influence in French companies via international and local country professional activists. As these investor networks own an increasing percentage of French shares, both the legal changes in France and the outsourcing of their fiduciary voting duty to professional activists facilitate their greater voice in French corporate governance.

However, the two studies suggest that shareholder activism is a learning process that is becoming increasingly professional. Moreover, all local players, including management, employee shareholders, state government, local professional activists (such as investor associations) as well as activist sponsors themselves, are learning more sophisticated tactics. Surprisingly, the number of French corporations targeted by activist hedge funds is weak compared with the US context. As underlined by the two explanatory cases, the French state government exerts both lobbying activities and influential activities to increase activism costs for the hedge fund sponsors in order to reduce the probability that they achieve their initial stated objectives.

Our descriptive and exploratory study highlights an attractive field for additional research concerning collaborative investor networks and shareholder activists. In particular, how are these networks evolving? How are they collaborating with other institutional investor networks? And to what extent do they have an impact on targeted corporations?
The 2001 New Economic Regulation law set the threshold at 5% of voting rights.

Over the years, the percentage threshold on market capitalization has been set as follows:
- In 1994, the threshold was set at 1% of voting rights.
- In 2001, the threshold was further reduced to 0.1%.
- In 2006, the threshold was lowered to 0.01%.
- In 2010, the threshold was reduced to 0.001%.
- In 2011, the threshold was further reduced to 0.0001%.

These changes were made to encourage transparency and disclosure in corporate governance.

References

- Corporate Executive Board, 2008, "Proactive Approaches to Managing Shareholder Activism", investor relations roundtable, Washington, D.C.