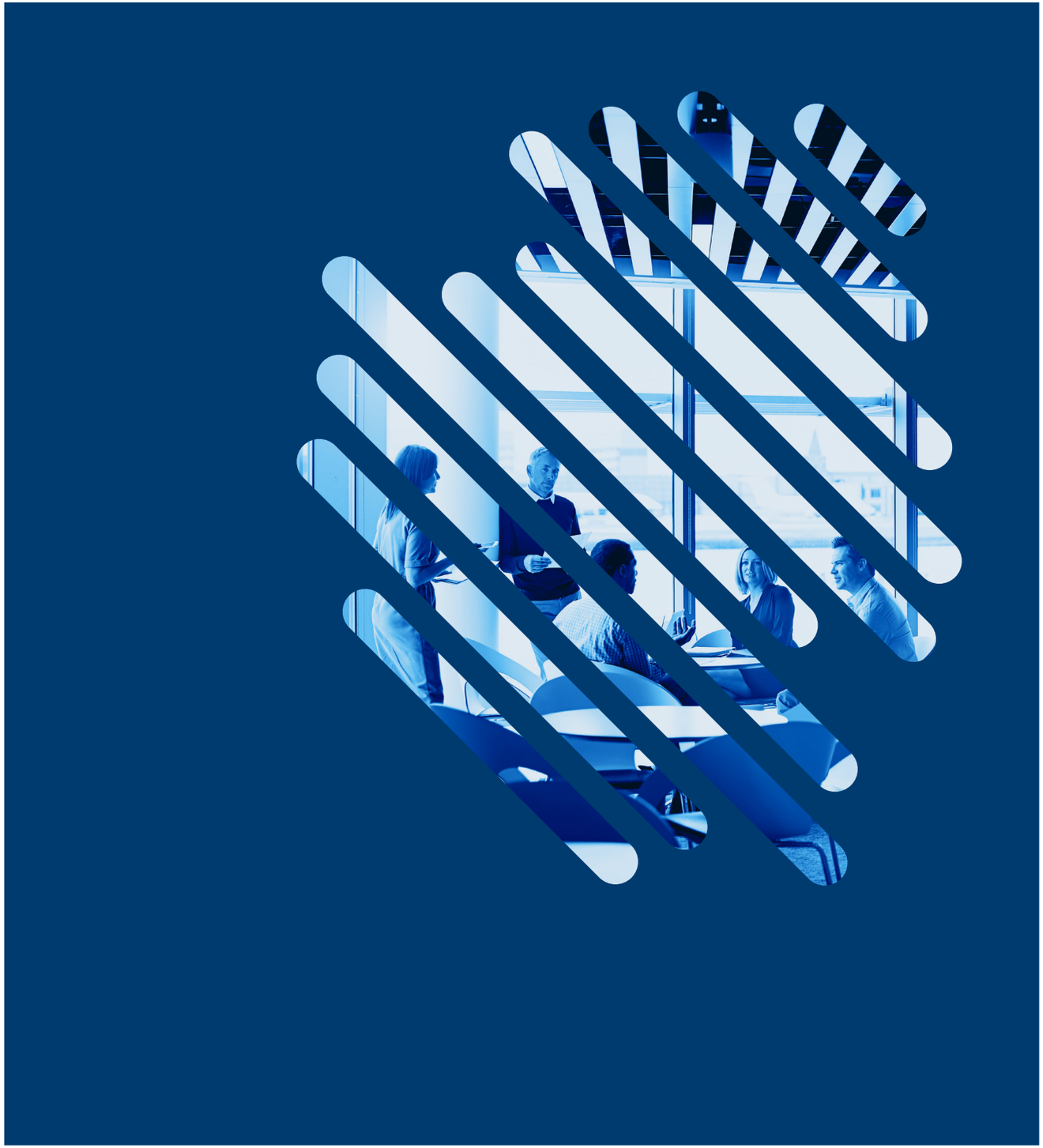
CORPORATE GOVERNANCE INITIATIVE

Reinvigorating the
Public Company Model

SPRING 2018

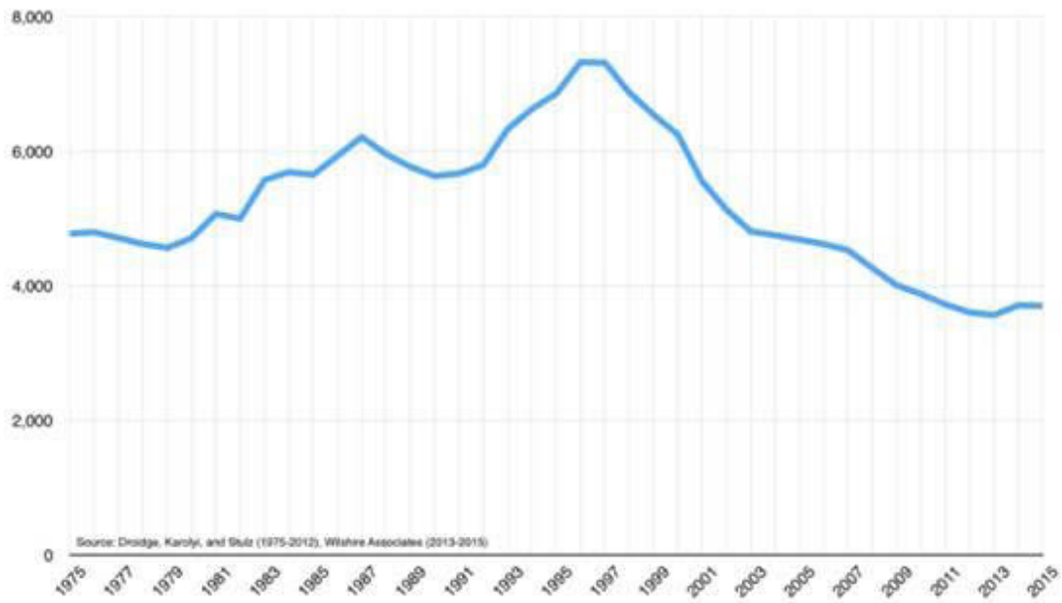


CENTER FOR CAPITAL MARKETS COMPETITIVENESS

INTRODUCTION

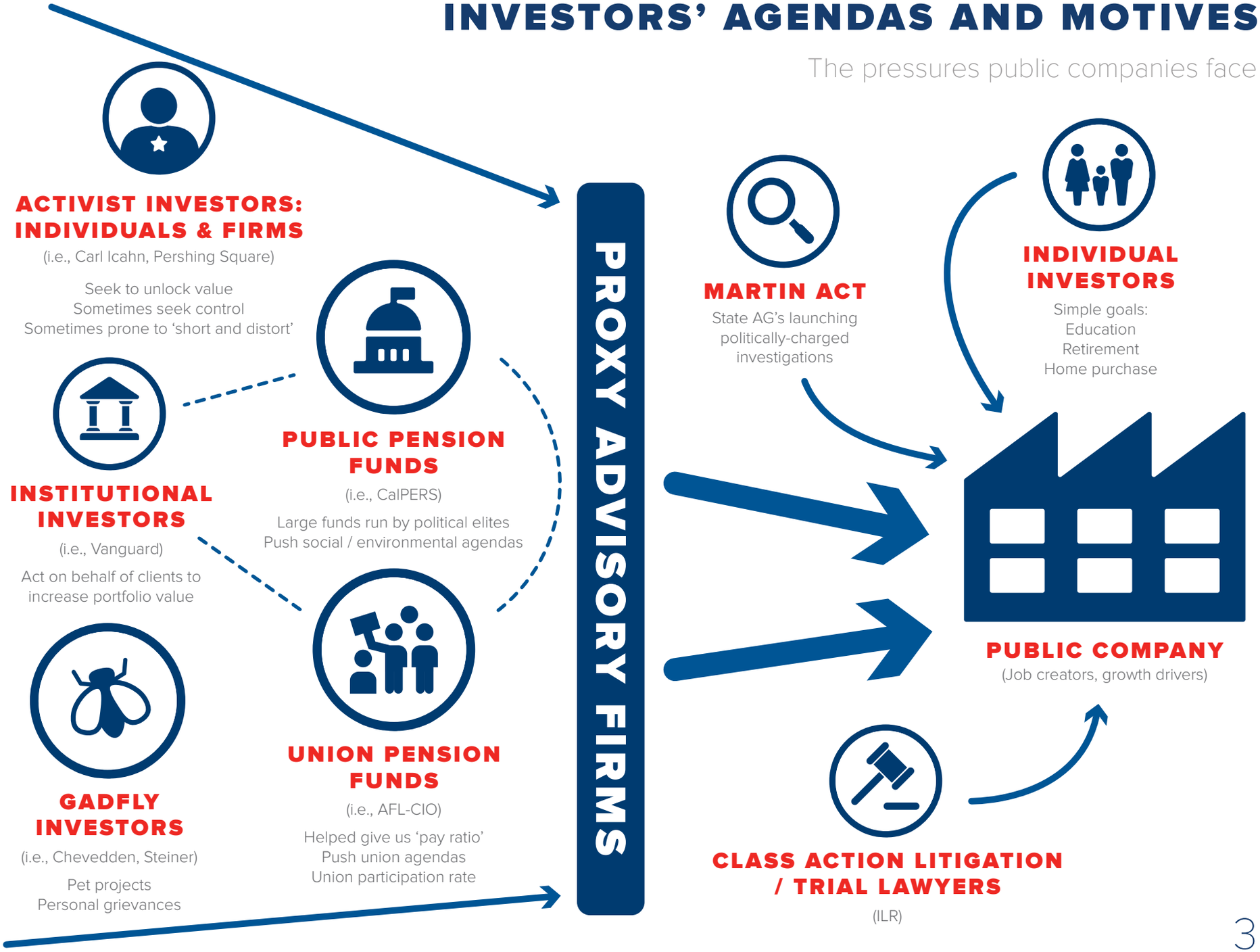
Over the last few decades the **U.S. has experienced a steady decline in public companies.** In fact, in 19 of the past 20 years, the number of public companies has dropped. The tragedy of this decline is that public companies have historically been a key source of growth, innovation, and job creation. **The U.S. Chamber is committed to fighting for responsible corporate governance policies that encourage companies to stay public and benefit the long-term position of shareholders** while opposing special interest activist agendas unrelated to the interests of a business or investors.

U.S. Publicly Traded Firms (1975-2015)



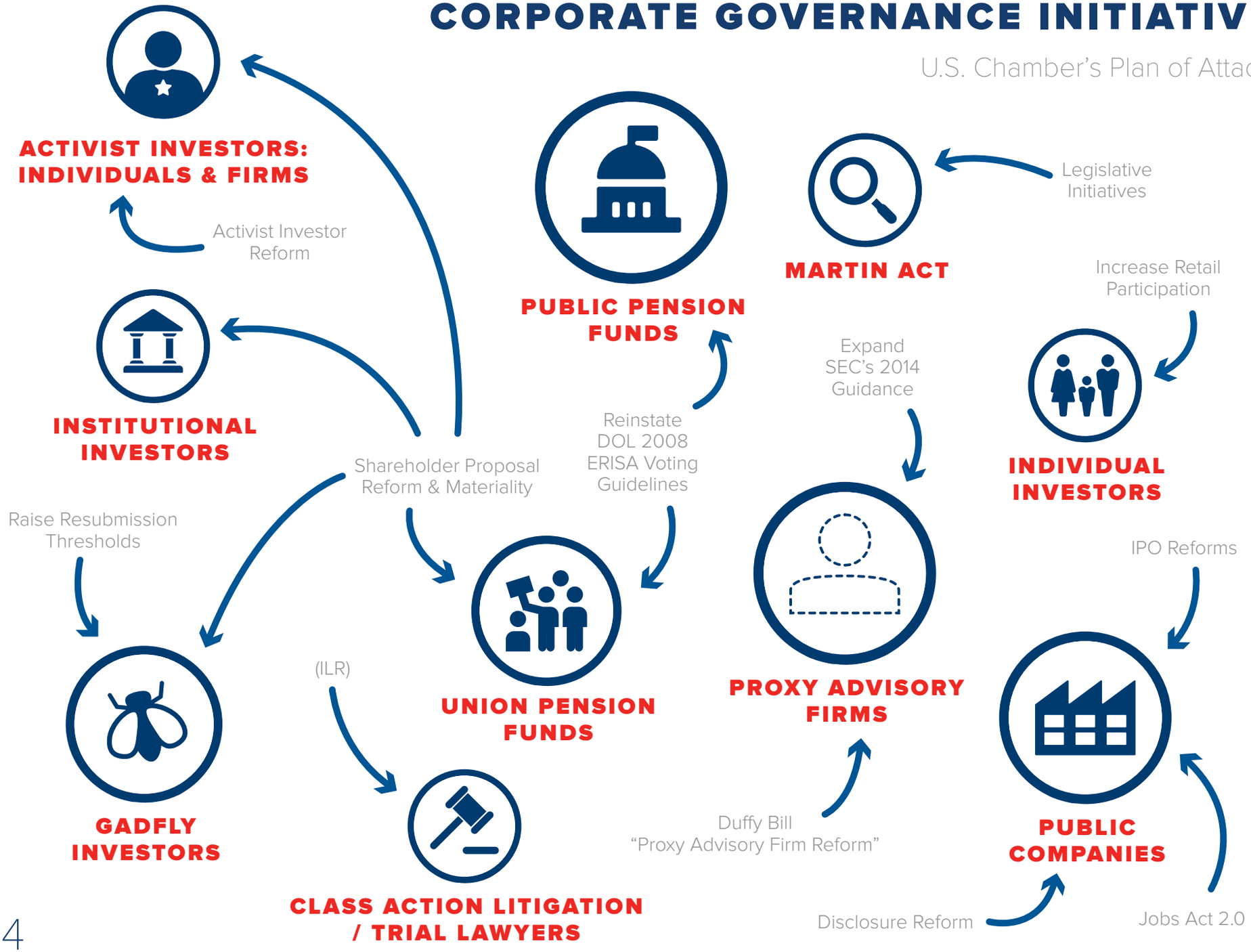
INVESTORS' AGENDAS AND MOTIVES

The pressures public companies face



CORPORATE GOVERNANCE INITIATIVE

U.S. Chamber's Plan of Attack



FIVE PROBLEM AREAS

1. *Proxy advisory firms*
2. *Shareholder proposal system*
3. *Disclosure Reform*
4. *Special interest activists*
5. *Class action litigation / trial lawyers (ILR)*

OUR WORK

There are plenty of reasons why companies are deciding to stay private or to go private. The U.S. Chamber's Corporate Governance Initiative is centered on four problem areas:

Four Problem Areas:

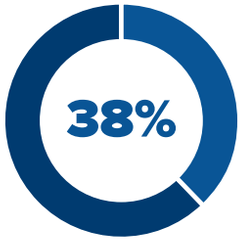
1. Proxy advisory firms
2. Shareholder proposal system
3. Antiquated 1930's disclosure system
4. Special interest activists

4

WALMART'S 1970 IPO
28 Page Prospectus

SNAP INC. 2017 IPO
250 Page Prospectus

1



PROXY ADVISORY FIRMS
Can now control up to 38% of the vote on proxy issues

2

The average
SHAREHOLDER PROPOSAL
costs a company $87,000

3

Only
1/3RD
of institutional investors understand
EXECUTIVE COMPENSATION DISCLOSURES
and find them to be helpful

THE CHAMBER'S CORPORATE GOVERNANCE STRATEGY

Explain the benefits of robust public markets

Push back on activists: explain why their efforts are harmful to individual investors and Main Street

Advocate for policy changes and regulatory reform

"To the extent companies are eschewing our public markets, the vast majority of Main Street investors will be unable to participate in their growth. The potential lasting effects of such an outcome to the economy and society are, in two words, not good."

JAY CLAYTON

SEC Chairman | July 2017

SUCCESS TRACK RECORD

The U.S. Chamber has long advocated on behalf of public companies.

2009
Stopped Naked Short Selling

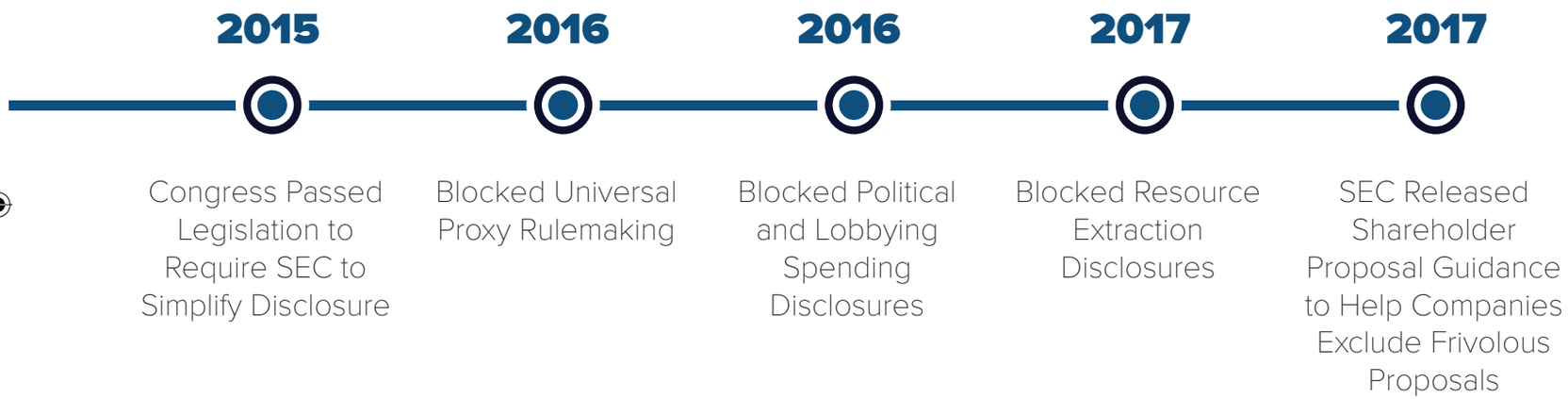
2011
Blocked Proxy Access

2013
Released Proxy Advisory Firm Best Practices and Principles

2014
SEC Issued Proxy Advisory Firm Guidance

2014
Released Corporate Disclosure Reform Report

2015
Struck Down Portion in Conflict Mineral Rule for Violating the 1st Amendment


2015
Congress Passed Legislation to Require SEC to Simplify Disclosure
2016
Blocked Universal Proxy Rulemaking
2016
Blocked Political and Lobbying Spending Disclosures
2017
Blocked Resource Extraction Disclosures
2017
SEC Released Shareholder Proposal Guidance to Help Companies Exclude Frivolous Proposals

PROBLEM AREA #1

Proxy Advisory Firms: Balancing the outsized influence in proxy voting

Proxy advisory firms have been estimated to control up to **38% of the vote** on proxy issues

Two firms—ISS and Glass Lewis—**control 97% of the market** and often side with activists

The U.S. Chamber's plan to bring transparency and accountability to proxy advisory firms:

1. Congressional Engagement to increase pressure on firms (i.e., the Duffy Bill and Oversight)
2. Corporate Engagement to educate the Hill and SEC
3. Regulatory Engagement to provide additional oversight

"Privatization has unleashed the passion of our team members...in a way that was not always possible when striving to meet the quarterly demands of Wall Street."

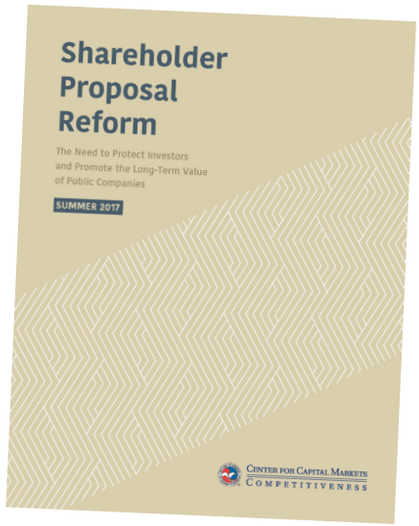
MICHAEL DELL

on the topic of taking Dell private.

PROBLEM AREA #2

Shareholder Proposal Systems: Reforming the system to promote the long term value of a public company

The U.S. Chamber has made a series of recommendations to reform the shareholder proposal system, which has become dominated by special interests that use proposals in order to push political or social agendas.



1. Raising the **"resubmission thresholds"** which determine when a proponent is allowed to resubmit a proposal that previously received low shareholder support

2. Reforming the SEC's no-action process to help companies exclude more non-material proposals from their proxy materials

3. Requiring greater disclosure from proponents in terms of their proof of ownership and overall objectives

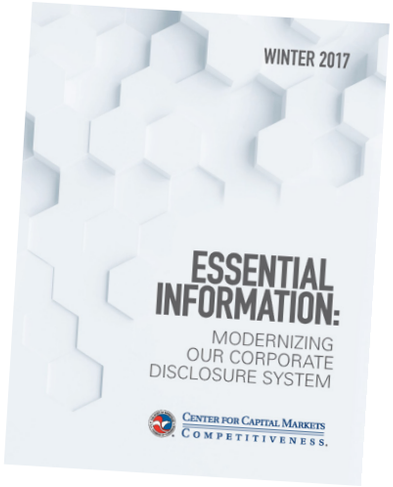
In **November 2017**, the SEC staff issued guidance that incorporates many of the recommendations in the Chamber's report, and should be helpful for companies as they navigate the 2018 proxy season.

PROBLEM AREA #3

Antiquated 1930's Disclosure System: Streamlining and updating

The U.S. Chamber's plan to modernize disclosures:

1. Ensure that materiality remains the guiding principle of disclosure
2. Develop further recommendations for how to improve disclosure regime
3. Remove obsolete and duplicative disclosures
4. Push back on Environmental Social Governance (ESG) Disclosures



Opportunity - *On October 11, 2017 the SEC released an initial proposal to remove obsolete disclosures and streamline the filing process to eliminate duplication; some Chamber recommendations were included as part of that release.*

40,000 WORDS

AVERAGE ANNUAL REPORT LENGTH

Longer than Shakespeare's *Hamlet* and up 33% since the year 2000

PROBLEM AREA #4

Special Interest Activists: Exposing politically and socially motivated activist investors

Special interest activists have increasingly used corporate governance to advance their agendas for the past 30 years. While **we are on the offense** for the first time in 8 years, we are also laying the groundwork to stop the next Administration from taking the efforts of special interest activists to new levels. The 2017 proxy season was significant as—for the first time—proposals related to climate change disclosure passed with a majority of shareholder votes at three companies. The 2018 proxy promises to hold a continued focus by activists on climate change, the opioid crisis, gender pay equity, and other issues.

The U.S. Chamber's offensive plan to push back on special interest activist investors:

1. **Demonstrate** that politically-motivated activism is not in the best interest of plan beneficiaries
2. **Repeal** politically-motivated disclosure requirements, and oppose such mandates in the future
3. **Expose** short and distort campaigns
4. **Reinstate** 2008 Department of Labor ERISA Voting Guidelines so plans must use economic return as the sole consideration in deciding how to cast their proxy votes

CAMPAIGN SPOTLIGHT: EXPOSING PUBLIC PENSION PLANS

Activist public pension plans...

Are poorly managed and have an incredibly low rate of return

Use unrealistic discount rates and threaten the retirement security of pensioners and the wallets of taxpayers

Are collectively $4 trillion in the 'red' in terms of unfunded liabilities

Use plan assets to advance political agendas and embarrass public companies

And it is only going to get worse...The New York City Comptroller has launched the "Boardroom Accountability 2.0" project to push proposals (i.e. climate change disclosures, board diversity, and gender pay inequity) at 150 companies.

The U.S. Chamber's plan to push back on public pension funds:

- **Build congressional and administrative support** to reign in political and socially motivated activities
- "Shame" public pension plans—$4 trillion in the hole and telling others how to run their affairs!
- **Pass state legislation** to prohibit plans from engaging in activities that are not correlated to enhancing economic return
- **Produce research** on:
  - » Funding shortfalls at plans and the threats to taxpayers and beneficiaries
  - » Public opinion on management's motives
- **Engage 3rd parties** to build the echo chamber and develop additional credible voices

GET INVOLVED

Corporate Governance Working Group:

CCMC advances an effective and transparent corporate governance structure by bringing together corporate secretaries and other individuals to discuss current developments affecting companies' corporate governance policies. This group shares insights and determines collective strategies moving forward on issues such as executive compensation, conflict minerals, pay-ratio disclosures, proxy advisory firms, activist investors, and other issues.

Corporate Secretary Working Group:

A subset of the Corporate Governance Working Group, the Corporate Secretary Working Group provides an advisory role to CCMC as well as participates in a number of DC Fly-Ins to meet with policy makers.

Corporate Governance Coalition for Investor Value:

The Corporate Governance Coalition for Investor Value has formed to provide a forum for the discussion of issues of common interest among select trade associations with respect to corporate governance and the federal securities laws.

CENTER FOR CAPITAL MARKETS

COMPETITIVENESS®

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