

Closed-End Activist Tries New Tactic: Use a Fund Director

By Greg Saitz October 22, 2019

When activist investors in the rough-and-tumble world of closed-end funds put forward a slate of board nominees, they usually select employees or others already allied with them. But in a proxy battle at a Nuveen fund, the hedge fund Saba Capital has landed a rare catch as one of its nominees: an independent fund director currently serving at an open-end complex.

Industry experts say they've rarely heard of a fund director agreeing to be a nominee for an activist investor's campaign to gain board seats on a closed-end fund. And some wonder how other directors feel about one of their own consorting with a type of investor many in the closed-end business view as the enemy.

But experts also say Saba's strategy is smart, given that closed-end funds regularly attack activist investor nominees as inexperienced outsiders who would serve only that shareholder and have no interest in improving fund governance.

"It would bring the activist a little bit of credibility," says Paul Torre, president of governance, proxy and ownership services at **AST Fund Solutions**, which works on soliciting proxies. "My question is why would that sitting board member want to side with an activist investor?"

Saba Capital, which also subadvises the two-and-a-half-year-old Saba Closed-End Funds ETF, is one of a small handful of money managers that take large positions in closed-end funds that trade at a discount to their net asset value. They then wage proxy contests seeking to place their own nominees on a fund board or convince shareholders to back proposals aimed at reducing or eliminating that discount.

Activist investors say they want to unlock value for shareholders. Fund groups say activists want short-term gains – and that their actions leave long-term investors worse off. The proxy battles often get heated, and sometimes, as happened this past summer in challenges Saba mounted against certain BlackRock closed-end funds, the disputes land in court.

That hasn't happened so far with the proxy contest at the \$287 million Nuveen Ohio Quality Municipal Income Fund. Saba filed a proxy Sept. 23 asking shareholders to elect three of its nominees to the board and to support a proposal requesting the board declassify itself so all directors are elected annually instead of on staggered terms.

One of Saba's nominees is Peter Borish, who has served as an independent fund director on the RMB Funds board since 2015. The complex, which earlier this year folded the former IronBridge Funds into its trust, has eight funds and about \$1.2 billion in assets, according to Morningstar.

Borish, 59, has decades of experience in asset management. He helped found the hedge fund Tudor Investment Corp. with Paul Tudor Jones in the 1980s, worked at the Federal Reserve Bank of New York, started his own firm, Computer Trading Corp., and is now chief strategist of the hedge fund Quad Group.

He has also been a board member of the Futures Industry Association, served as special adviser to the board of the Chicago Board of Trade, and been on the boards of various trade and philanthropic organizations, according to Saba's proxy. Another of Saba's nominees, David Basile, also worked at Tudor, though not at the same time as Borish.

Saba says in a letter to shareholders it wants to elect Borish and the others at a meeting set for Dec. 5 because doing so would improve Nuveen's governance and help close its fund's discount.

Those at the Nuveen fund see it differently.

"Saba would have you believe that its actions are about improving fund governance," Nuveen independent board chair Terence Toth wrote in an Oct. 9 shareholder letter. "Fact: Saba sells out for a quick profit when a fund acquiesces to its demands and moves on to the next target, leaving long-term fund investors like you footing the bill."

Toth contrasted Saba's "inexperienced slate of nominees" with the incumbents, a "diverse and highly qualified board" that has extensive closed-end fund experience. "Help us protect your fund and the interests of long-term investors like yourself," he wrote at the end of his letter.

While there's nothing stopping open-end directors from working with activist investors in a closed-end fund proxy battle, several experts who work in the space say they rarely see that happen and for good reason.

“There’s a pretty much black and white line down the two sides. The activists are not well received in the boardroom,” AST’s Torre says. “I’d imagine the boards that Saba is opposing probably feel a little betrayed.”

Borish did not respond to a request for comment. Saba would not comment on the record.

A board counsel who works with closed-end funds says, “It has the potential to put that open-end director at [odds] with how most open-end directors view activists in closed-end investing.”

Michael Mabry, a partner at Stradley Ronon, also sees risks in an independent director’s agreeing to stand as an activist’s candidate and potentially serving on a closed-end board.

“Certainly if I had a client who was an independent trustee of a fund, I would not encourage them to put themselves up as a dissident nominee,” Mabry says. “I think there are a lot of conflicts of interest that could arise in a situation like that that could be hard to navigate.”

A big conflict for a nominee who gets elected is weighing what the activist investor wants against a director’s fiduciary duty to the fund and all shareholders, Mabry says.

Thomas Perna, independent chair of the Pioneer Funds board who oversees both open-end and closed-end funds, has a more nuanced view. Perna, who knows Borish from professional interactions and describes him as “a very smart guy,” says he doesn’t see anything wrong with open-end directors accepting nominations from activist investors as long as that director’s board colleagues, counsel and management are OK with the decision.

“If he’s on a fund complex and all they’ve got is some open-end funds and they don’t compete with any Nuveen funds, I don’t think it’s the end of the world,” Perna says.

But he also acknowledges it’s not likely many open-end fund directors would agree to be a board nominee for a closed-end fund activist. “I would bet with most people you would have a very short conversation,” he says, “and they would say, ‘I wouldn’t do that.’”

Mabry and others note Saba’s use of a current independent fund director as a nominee could be viewed as part of a larger strategy to enlist more credible candidates instead of using the firm’s executives or the same handful of names for multiple proxy campaigns.

Broadly, activist investors have not had much success seating their nominees on closed-end fund boards, experts say, but it does happen. Last year, shareholders of eight Pimco closed-end funds elected a director nominee put up by activist Dryden Capital, and activist campaigns were successful at several other closed-end funds.

This year, Saba has initiated the most campaigns of any activist investor – eight of the 14 that have so far been filed, according to a tally of closed-end fund proxy contests that AST compiled.

“Saba is relatively new to this, but each time around they get a little wiser on strategy,” AST’s Torre says. “If Saba comes after a fund this year, if they lose, it doesn’t necessarily mean they’re going away.”