



Bulldog's Goldstein On The Hard Path Facing Activist Shareholders

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Chuck Jaffe, in this episode of The NAVigator podcast interviewed Phillip Goldstein, co-founder and portfolio manager at Bulldog Investors. Read the Q & A below as Phillip says that narrowing discounts, and regulatory and legal changes have made it tougher for shareholders to find appropriate targets where they can mount a viable campaign against management. A new



law proposed in Congress would take that further, Goldstein says, but he ultimately believes that activists will adjust and continue to bring action in cases that warrant the approach.

Phillip Goldstein

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CHUCK JAFFE: Longtime activist investor Phillip Goldstein of Bulldog Investors is here and we're talking about challenges that are making activism hard for closed-end fund investors, welcome to The NAVigator. This is The NAVigator, where we talk about all-weather investing and plotting a course to financial success with the help of closed-end funds. The NAVigator's brought to you by the Active Investment Company Alliance, a unique industry organization that represents all facets of the closed-end fund industry from users and investors to fund sponsors and creators. If you're looking for excellence beyond indexing, The NAVigator's going to point you in the right direction. And today, well, it's pointing us in the direction of

legendary activist investor, Phillip Goldstein, who runs Bulldog Investors which you can learn about at BulldogInvestors.com. Before we get to that, if you want to learn more about investing in closed-end funds generally, make sure you check out the website for the Active Investment Company Alliance, it's AICAlliance.org. Phil Goldstein, thanks for joining me again on The NAVigator.

PHILLIP GOLDSTEIN: Thank you, Chuck.

CHUCK JAFFE: When last you were on we were talking about challenges and some rules changes that were affecting closed-end fund shareholders and activist investors. And you were talking about how it was getting more difficult and there were signs that were discouraging folks like you from doing your job. That hasn't gotten any better, has it? Because there have been more steps that make it a little bit tougher on folks who are doing what you do. Which activism is really about trying to say, "Hey, there are oversized discounts that we want to be able to capture through corporate action."

PHILLIP GOLDSTEIN: That's correct, Chuck. What happened, I think it was shortly after the SEC withdrew the Boulder Letter, which essentially gave a free pass to closed-end funds to opt into what's called a control share statute in Maryland, which essentially says that if a shareholder owns more than 10% of the fund's outstanding shares, it can't vote the excess. Since that time, quite a number of closed-end funds that are registered in Maryland have opted into the control share statute. In addition to some other funds that are registered in other states like Massachusetts and Delaware, have adopted a bylaw that mirrors the Maryland Control Share Statute. I will just comment that I find it ironic that while there's a big debate in the country now about voter suppression in politics, that closed-end fund managers seem to have no qualms about limiting the ability of their own shareholders to vote. But all is not lost because there's finally been some pushback, there's been a couple of lawsuits, both brought by SABA; which is another activist investor who went against Eaton Vance in state court in Massachusetts and won in the southern district of New York, Federal Court, challenging these control share provisions. And I'm cautiously optimistic that they will get a favorable ruling. So I'd say at this point, that while activism's not dead, it's sort of in the state of suspended animation. I personally am waiting for a decision, and I think that if I'm correct and if the court finds that these control share statutes violate the 1940 Investment Company Act, that things will take a radical change.

CHUCK JAFFE: We should point out, Maryland is particularly important, as are Massachusetts and Delaware, because that's where a bulk of closed-end funds are registered. Maryland has some statutes in its law, or it did before and now after this, that encourage folks to use the system there the same way that many corporations are headquartered in Delaware to use the corporate laws in those states. So that's part of why this is important. But now this is also potentially on a federal level, because there has been a congressman with some significant support from the Investment Company Institute, which is the trade association for mutual fund and closed-end fund sponsors, there has been a bill that is now saying shareholders shouldn't even be allowed to own more than 10% of a closed-end fund, right?

PHILLIP GOLDSTEIN: Correct. Yeah, I just found out about that last week. I was rather surprised about it. I guess there were two congressmen who introduced the bill. I'm not too worried about it because I don't think it's going to get any significant support because it's obviously designed to protect management of closed-end funds and it does nothing for shareholders, but you never know. But yes, the Investment Company Institute, which as you said is really a trade organization for management, apparently lobbied these two congressmen to push this bill. But really you're talking about amending the Investment Company Act, and I just don't see it getting a lot of traction at this point.

CHUCK JAFFE: Okay, so let's talk about what can be done. Because as an activist investor, if you are prohibited from either accumulating, which would be the law change, or just voting beyond 10% of your shares, what can you do? How do you get some sort of alliance that allows you to pick up a meaningful stake and someone else to pick up a meaningful stake, and to have to then come up as a group, as activist investors? Is that possible in this environment?

PHILLIP GOLDSTEIN: It's difficult because the ultimate weapon is a proxy contest, and by limiting the size of your position that you can vote, what you're really doing is let's say there's a fixed cost of running a proxy contest and it may not be economically viable to incur those costs if you can't get a big enough stake. I mean that said, it's not impossible and activism is not dead. There are still things that can be done like just plain old shareholder proposals, 14-a proposals, including proposals that terminate the advisory agreement that are low-cost activist approaches. You can also theoretically launch a tender offer, which we

have done in the past to try to pressure management into taking steps to address the discount. So we can be under 10% and still induce change, but it's obviously not as easy as when you could go above 10%.

CHUCK JAFFE: Is it also a time when, go back to the beginning of the pandemic and discounts got abnormally wide, now of course they have narrowed dramatically. So you've got on the one hand a legislative issue and a governance issue, on the other hand in an environment where discounts have narrowed dramatically, is it harder to find appropriate targets as an activist investor? Let alone to get others to agree with you so you can basically force some movement?

PHILLIP GOLDSTEIN: Well, the short answer is yes. I mean obviously look, if every closed-end fund was trading at a discount of say 5% or less or at a premium, there's really not much money to be made so there's no point in being an activist. An activist is only attracted to closed-end funds or any company because it thinks that the intrinsic value of the company is significantly higher than the market price, so the question answers itself. That said, the fact that discounts have narrowed generally doesn't mean that there aren't some funds that are at still or attractive discounts and could be targets, it's just that there's going to be a lot fewer of them.

CHUCK JAFFE: Phil, thanks so much for joining me to talk about it. I look forward to seeing how this progresses down the line.

PHILLIP GOLDSTEIN: Stay tuned.

CHUCK JAFFE: And of course you can stay tuned to The NAVigator by finding us each and every week on your favorite podcast app, or by going to AICAlliance.org, the website for the Active Investment Company Alliance. The NAVigator is a joint production between the Active Investment Company Alliance and Money Life with Chuck Jaffe. I'm Chuck Jaffe and you can check out my show on your favorite podcast app or at MoneyLifeShow.com. To learn more about interval funds, closed-end funds, and business-development companies, check out all the things that are available to you at the AICAlliance.org website. And don't forget, the Alliance is also on Facebook and LinkedIn @AICAlliance. Thanks to my guest, the legendary Phillip Goldstein. He runs Bulldog Investors, which is an activist investor in closed-end funds. Learn more about him and the firm at BulldogInvestors.com. The NAVigator podcast is new

every Friday, follow along on your favorite podcast app and come back next week to learn more about investing with closed-end funds. Until next time, happy investing!

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