

SUMMARY OF THE THESIS

The thesis «*Gli hedge funds azionisti di società quotate*» discusses the role of activist hedge funds (“activists”).

These are funds, the legal nature of which is rather complex, that acquire minority interests in listed companies (“targets”) and try to exert an influence over the target’s insiders¹ through requests for governance, financial and strategic changes in the policies of the target so as to gain a profit therefrom.²

To be sure, hedge funds’ activism matters from an economic and financial standpoint. The most recent available estimates indicates that activist hedge funds, although they represent no more than 4% of the aggregate number of hedge funds worldwide, have assets under management (“a.u.m.”) approximately equal to \$ 100 billion.³ In the cover story of its issue of February 7, 2015, *The Economist* depicted activist hedge funds as «Capitalism’s unlikely heroes», arguing «Why activist investors are good for the public company». In the last decade the number of activists’ interventions increased at a remarkable pace, often triggering long and contentious campaigns, in the United States as well as in Italy (although proportionally to the size of their capital markets).⁴

Similarly, hedge funds’ activism matters from a legal standpoint. Activism triggers a number of complex legal issues across multiple fields of the law, including financial regulation, corporate and securities laws. The relatively recent emergence of hedge funds’ activism, coupled with a lack of legal precedents and studies, renders the analysis even more troublesome.

The thesis tackles the matter along a research path structured in three phases, each of which approximately represents a separate goal of the research (and a chapter of the thesis).

¹ The term “target’s insiders” is used to encompass both companies whose executive directors are elected by one (or few) reference shareholders and companies with no such shareholders: in the first scenario, “target’s insiders” are both the reference shareholders and the executive directors they designate; in the other, “target’s insiders” are the executive directors only.

² The legal qualification of *hedge funds* in Italy and the United States, as well as a definition of activism, are discussed in Chapter 1, §2 and Chapter 1, §3.1 of the thesis, respectively.

³ Data current as of June 30, 2014. Sources available at notes 61-63 of the thesis.

⁴ Please see activist campaigns described in Chapter 1, §3.3 of the thesis.

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The first goal of the research, discussed in the first chapter, deals with the legal qualification and nature of hedge funds. The complex legal features of hedge funds, the intricacies associated with their underlying economics and the lack of a single, readily available legal regime applicable to them suggest to carry out a preliminary analysis on hedge funds. This analysis should clarify what a hedge fund is (and, within the hedge funds’ family, what an activist hedge fund is); what an activist hedge fund does, and how it exerts influence over the target’s insiders; and what the economic consequences, and side-effects, of hedge funds’ activism are. This should also allow to identify and describe the legal regime applicable to hedge funds.

The second goal of the research, discussed in the second chapter, deals with the possible correlation between the degree of activism of hedge funds and the regulatory regime applicable to them in an environment, such as Italy, where the ownership of listed companies is largely concentrated.⁵ In this context I will first identify and discuss the regulatory factors that, potentially, are capable of sustaining the emergence of activists. I will then assess whether, and to which extent, the reforms of Italian corporate law adopted in the 2004-2014 period had an impact (and, if so, of what sort) on hedge funds’ activism. Hardly is this the first time that a legal scholar attempts to assess the impact of such reforms. It is however the first time, at least to my knowledge, that a similar task is performed in the context and through the methodology I decided to follow. Notably, I will assess the impact of these reforms: (i) in relation to the possible, either supportive or depressing, effects they had on the emergence of hedge funds’ activism in Italy; and (ii) based on data, and not only on qualitative legal analysis, that I partly hand-collected and largely obtained courtesy of the authors, to whom I am deeply grateful, of a number of empirical studies on the Italian securities market supported by Georgeson/LUISS Ceradi/Fondazione Bruno Visentini.

The third goal of the research is to touch upon the legal consequences of hedge funds’ activism on the target companies they select. On the one hand, I will discuss whether hedge funds’ activism needs to be halted (assuming this is legally doable) or otherwise curbed by newly-approved statutes. On the other hand, I will delve into Italian corporate law to understand whether targets may use any existing corporate tools or devices to fend off activists. The aim of this analysis is, ultimately, to understand whether hedge funds activism

⁵ Please see the data provided at note 212 of the thesis.

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might prove to be harmful or beneficial for the corporate governance of companies with a highly concentrated ownership structure.