

# Institutional Investor Activism: Lessons from Israel

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## I. Introduction

One of the important developments underlying capital markets is the dramatic increase in the size and influence of institutional investors. Institutional investors hold above 40 % of global market capitalization.<sup>1</sup> In the United States, for example, institutional investors collectively own 70–80 % of the entire capital market.<sup>2</sup> Moreover, a small number of asset managers hold significant stakes at each public company.<sup>3</sup> The rise in institutional investors' ownership has produced studies on the corporate governance role of institutional investors. The literature initially celebrated the potential of those investors to actively monitor insiders,<sup>4</sup> but then focused on institutional investors' shortcomings, such as the differences between active and passive investors,<sup>5</sup> the antitrust implications of common ownership,<sup>6</sup> and the passivity of mutual funds in filing lawsuits against insiders.<sup>7</sup>

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<sup>1</sup> See *De La Cruz/Medinal/Tang*, Owners of the World's Listed Companies, OECD Capital Market Series, 2019, at [www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm](http://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm).

<sup>2</sup> See *Posner/Morton/Weyl*, A Proposal to Limit the Anti-Competitive Power of Institutional Investors, *Antitrust L. J.* 81 (2017), 669, p. 674.

<sup>3</sup> This Chapter refers to those that make investment decisions on behalf of the funds as “asset managers”.

<sup>4</sup> See *Black*, Agents Watching Agents: The Promise of Institutional Investor Voice, *UCLA L. Rev.* 39 (1992), 811; *Rock*, The Logic and (Uncertain) Significance of Institutional Shareholder Activism, *Geo. L. J.* 79 (1991), 445.

<sup>5</sup> See generally *Bebchuk/Hirst*, Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy, *Colum. L. Rev.* 119 (2019), 2029; *Fisch/Hamdani/Solomon*, The New Titans of Wall Street: A Theoretical Framework for Passive Investors, *U. Pa. L. Rev.* 168 (2019), 17; *Lund*, The Case Against Passive Shareholder Voting, *J. Corp. L.* 43 (2018), 493; *Kahan/Rock*, Index Funds and Corporate Governance: Let Shareholders Be Shareholders (N.Y. Univ. Schl. L., Working Paper No. 18-3).

<sup>6</sup> See *Azar/Schmalz/Tecu*, Anticompetitive Effects of Common Ownership, *J. Fin.* 73 (2018), 1513, p. 1558.