

Too Big to Be Activist

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Thesis

Large investment advisers have many different clients and business lines, and aggressive activism brings these different clients and business lines into conflict with one another. This makes aggressive activism very costly and sometimes impossible for large advisers

Two Variables Affecting Conflicts

Conflicts over activism increase with

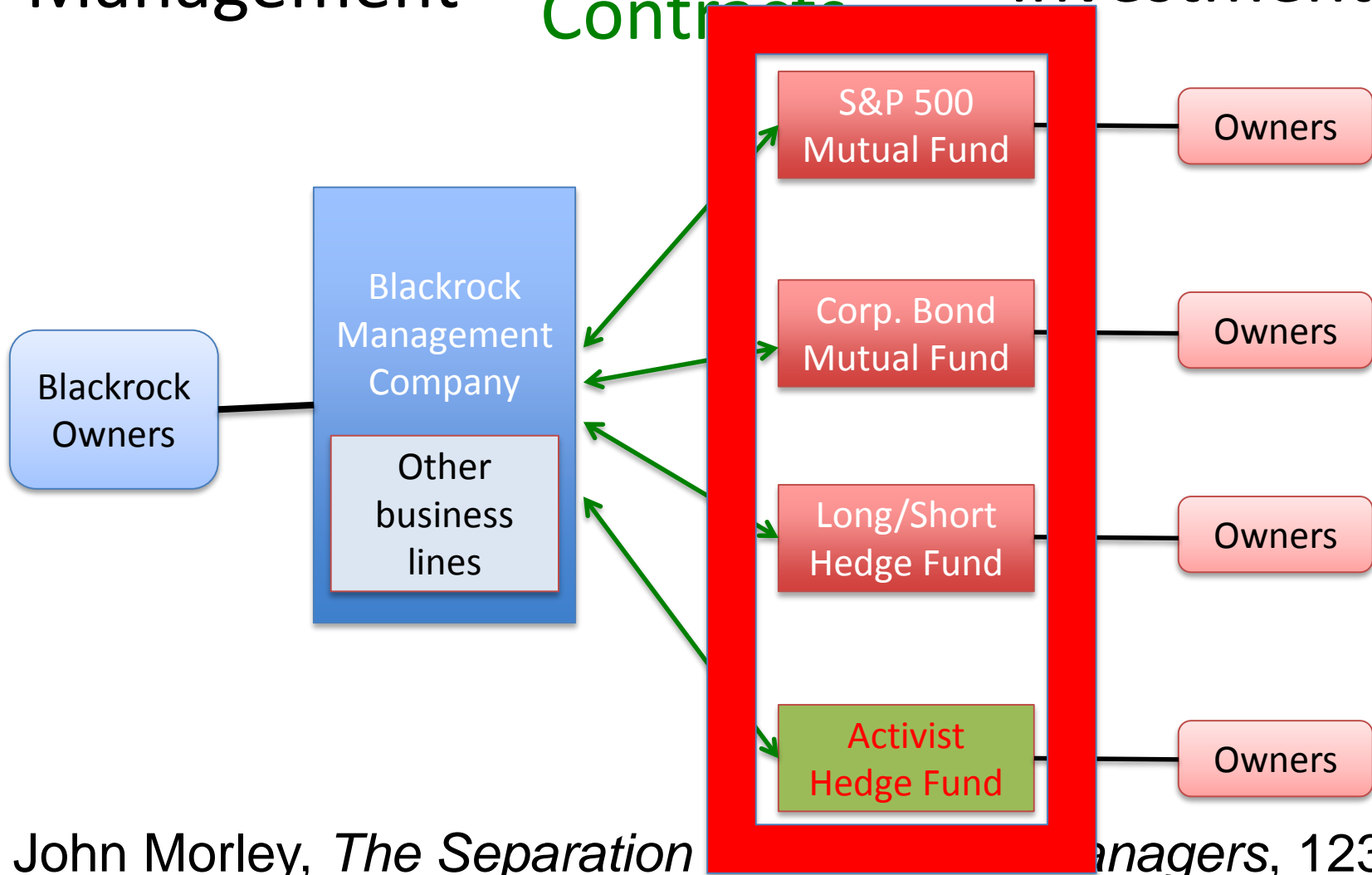
1. Intensity of activism
2. Size
 - Assets under management
 - Diversity of adviser's clients and business lines

Blackrock Fund Complex

Management

Contracts

Investments



John Morley, *The Separation*
L.J. 1118 (2014).

managers, 123 YALE

Practical Conflicts

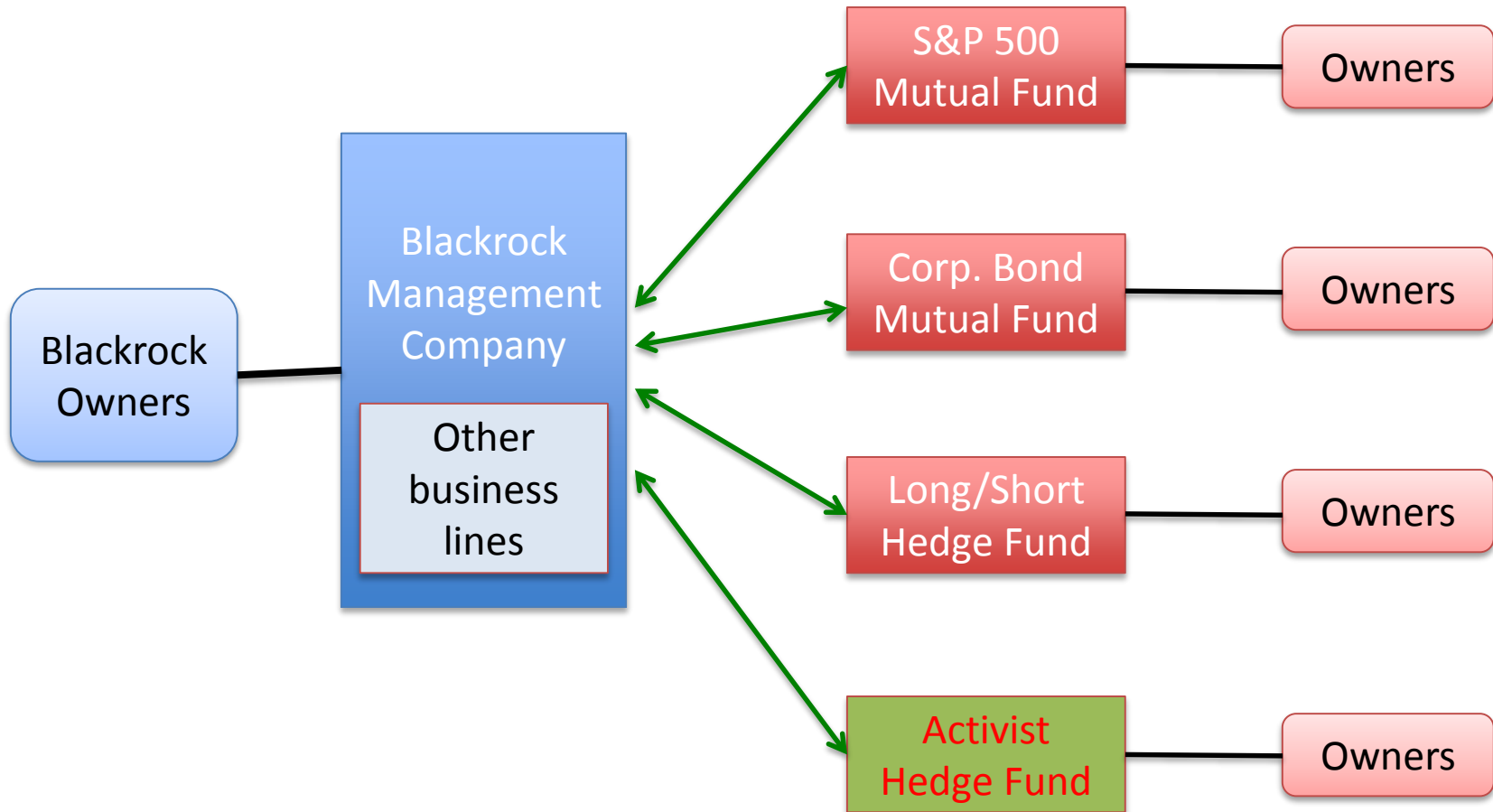
- **Differing strategic preferences**
 - Equity vs. debt
 - Taxable vs. untaxable
 - Socially responsible vs. ordinary
- **Disagreement over allocation of the costs and benefits of activism.**

Blackrock Fund Complex

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John Morley, *The Separation of Funds and Managers*, 123 YALE L.J. 1118 (2014).

Practical Conflicts

- **Brand risk**

- Sales of mutual funds to employer-sponsored retirement plans
- Investment banking
- Public perception

- **Political risk**

- A large manager's size makes it more politically visible
- A large manager has more contacts and more diverse contacts with regulation than a small manager

Legal Conflicts

Many legal rules tend to aggregate the holdings of an adviser and its funds into a single unit, so that the actions of one fund have legal consequences for every other fund.

Section 13(d)

- The adviser is a “beneficial owner” of every fund’s securities
- The actions of *just one* fund can change the manager’s reporting obligations for *every other fund*.
- Conflicts:
 - No quiet acquisitions
 - Slippage from 13G to 13D reporting if one client exercises control

Item 4 of Schedule 13D

- b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;
- c) A sale or transfer of a material amount of assets of the issuer...;
- d) Any change in the present board of directors or management of the issuer...;
- e) Any material change in the present capitalization or dividend policy of the issuer;
- f) Any other material change in the issuer's business or corporate structure...
- g) Changes in the issuer's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the issuer by any person;
- j) Any action similar to any of those enumerated above.

Section 16(b)

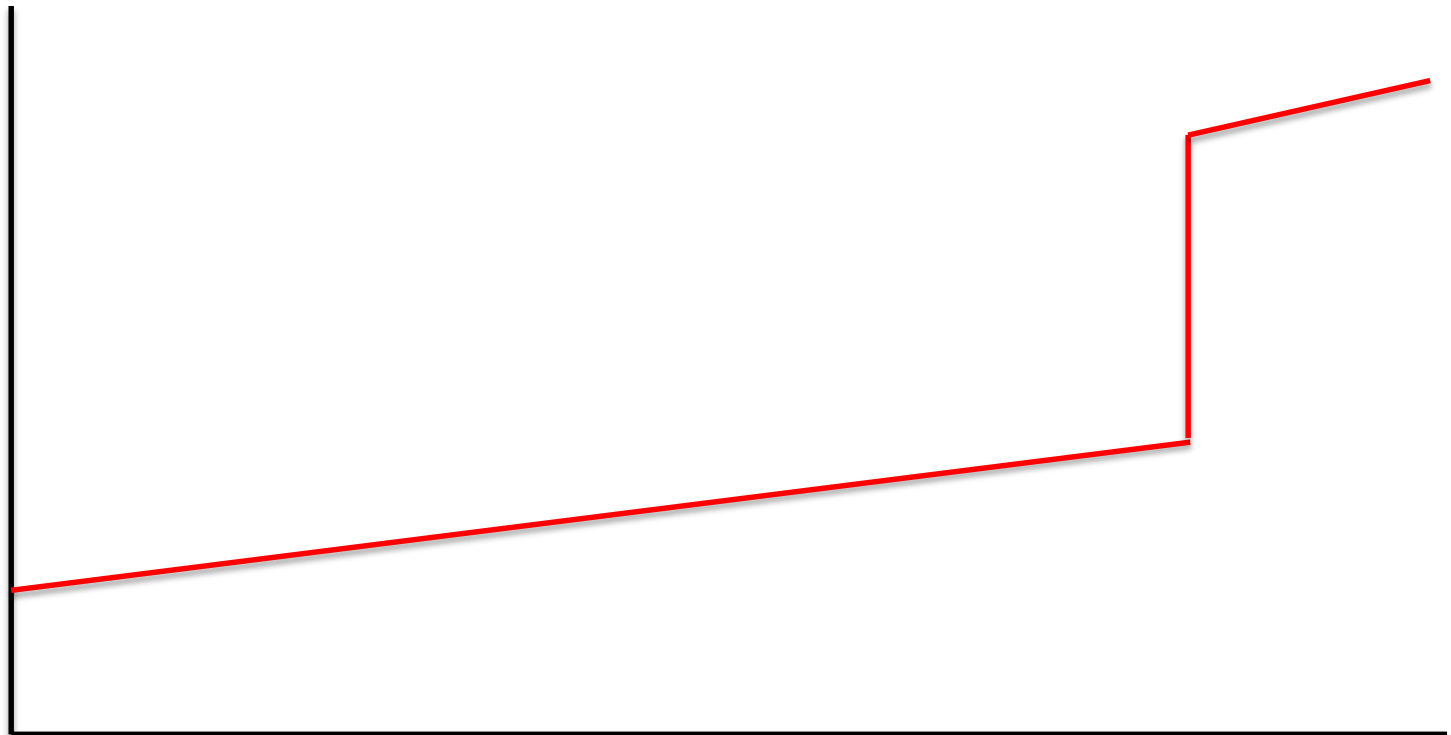
- If a fund exercises “control,” then the manager becomes a beneficial owner of the fund’s securities for purposes of the 10% threshold of § 16(b).

Poison Pills

- Poison pills aggregate clients and managers even more aggressively than statutes and regulations
 - Include more derivatives
 - Ignore internal walls
- A two-tier pill doesn't exempt an investment manager if *even one* client exercises control

Intensity of Activism

**Intensity
of
Conflicts**



Total
Passivity

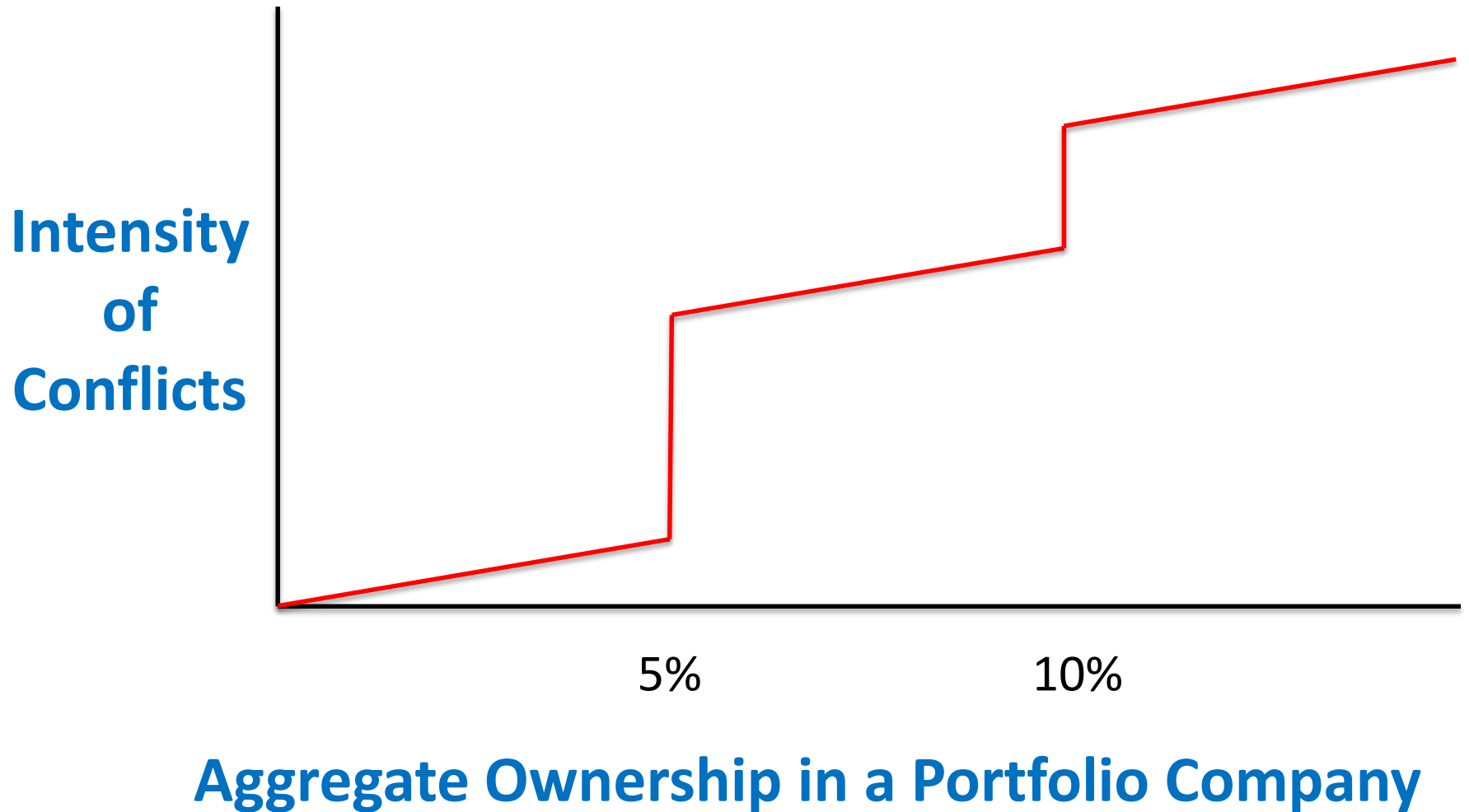
Closed-Door
Meetings
with Mgmt

Support for
Other
Activists

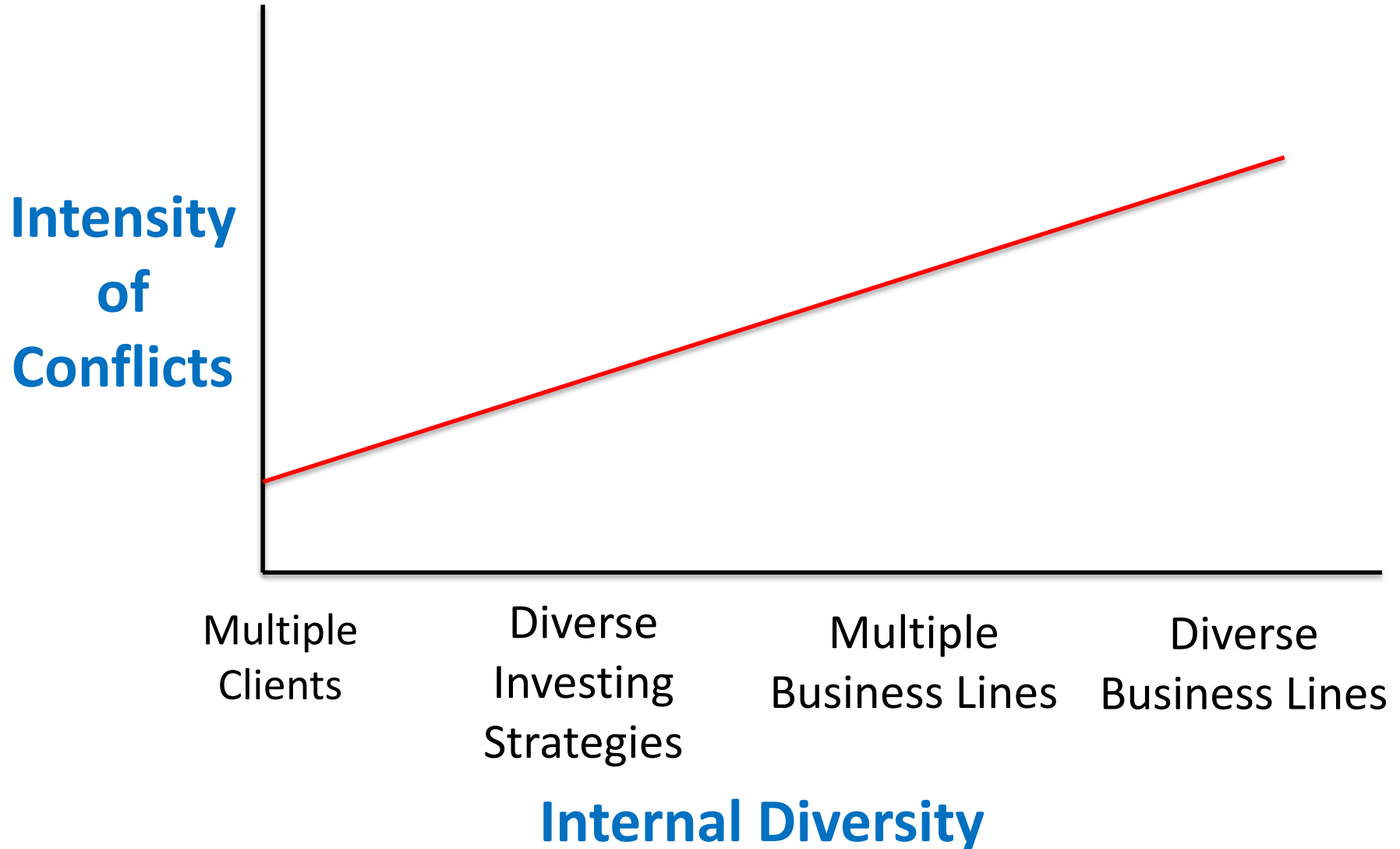
“Control”
under 13d-1

Intensity of Activism

Size of Holdings



Internal Diversity



Other Explanations for Large Adviser Passivity are Incomplete

- No demand for activism among investors
- Activism is not profitable for index mutual funds
- Big advisers are not “set up” for activism
- Legal restrictions in the Investment Company Act and related regulations

Implications

- Common ownership
- Reform