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December 2015

**CHANGE AT
THE SEC**

**DOING IT
ALLERGAN**

**THE EDITOR'S
VIEW**

ACTIVISM MONTHLY *Lite*



Activist Insight

www.activistinsight.com



Editor's letter

Josh Black, Activist Insight.

These are interesting times not just for activist investors, who are exploring new tactics, new markets and new ways to fund their campaigns, but also for the advisory service that has sprung up around them. As activists have become more lucrative and, perhaps not unconnectedly, more respected, more and more advisers have sought their business.

Our feature this month highlights the contribution of these advisers, focusing on the law firms and proxy solicitors who are the primary port of call (although PR firms, investment banks, research firms and head hunters are all a growing part of the team). The data comes from public sources—regulatory filings and press releases—although we have accepted listings from the firms themselves on the proviso that they can be listed in full on Activist Insight Online. We intend to do the same again next year, and our research team will welcome submissions throughout 2016.

Special credit must go to Olshan Frome Wolosky, which this year advised on more than three-times as many campaigns as the next busiest law firm. As the firm's Andrew Freedman told me, much of Olshan's business comes through guiding newcomers to activism through their first campaigns. Other trends worth noting include the growing interest of "white shoe" law firms in representing activists, and the small number of firms who represent both

activists and issuers—a sea-change from two years ago when corporate clients were said to be nervous about their legal counsel fraternizing with a perceived enemy.

On the proxy solicitor side, there is also a clear split between those who prefer to work for issuers and those who are happy to represent activists in significant numbers—the firms at the top of our listings, MacKenzie Partners, and Georgeson, are notably in the first camp, with Okapi Partners perhaps the most activist-friendly solicitor.

“As activists have become more lucrative, more and more advisers have sought their business”

This month's issue of Activism Monthly Premium covers a pretty diverse array of topics. Just as a few months ago we looked at Knight Vinke's plans for a new fund, our activist interview this month is with PL Capital, an experienced activist which spies a new opportunity in larger bank M&A and is looking for the capital to support its thesis. According to our interviewee in this issue, Rich Lashley, there is going to be a significant escalation of activism in US community banks, which has historically focused on banks in the \$500 million-and-under market-capitalization segment.

Another topic covered, the full significance of which will only become clear in time, is the changing composition of the Securities and Exchange Commission board. Both new nominees have been outspoken about issues on which they may be expected to set rules in the near future—something that could be both an advantage and a disadvantage to appointing an expert in the field.

Readers of my weekly newsletter on activism will also be aware that both I and my colleague Nick Dawson from our sister company, Proxy Insight, spoke at Schulte Roth & Zabel's Shareholder Activism in the UK seminar earlier in the month. Although the rate of activism on these shores has not risen as quickly as many anticipated at the end of 2013, there has been a steady drip of news and activity over the last few months, and numbers are slightly up on last year. We've republished the Proxy Insight presentation in Activism Monthly Premium, while my own is available on Activist Insight Online or by request.

This month's issue will be our last of the year before we start work on our famous Annual Review. We are delighted to announce we will once again be partnering with Schulte Roth & Zabel on this publication, and two-page advertising spreads are available now. For more details, contact either myself or a member of the team today. ■

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Activist Insight

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Activism Monthly Premium Online



Activist Insight

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Each issue includes a detailed feature article, an interview with an activist, additional expert opinions, a campaign in focus, a round up of all the latest news as well as a summary of the key new investments in the space.

Activism Monthly Premium magazine is the authoritative source of thought leadership and editorial in the activist investing space. Now available on a brand new online platform, this market leading magazine is now easier and quicker to view than ever.

“Great articles on shareholder activism”

Carl Icahn

“I’ve been impressed by the thoroughness and accuracy of Activist Insight’s research. I believe Activism Monthly Premium is ‘must read’ information both for activists and the advisory firms increasingly providing services around shareholder activism.”

Greg Taxin, Spotlight Advisors

For more information:

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Activist Insight

Doing it Allergan

An activist seeks to recreate Pershing Square Capital Management's pursuit of drug company Allergan.

More than eighteen months ago Bill Ackman held a conference call to announce that his fund had taken a major position in drugmaker Allergan. In an unprecedented move, the hedge fund manager would team up with a public company, Valeant Pharmaceuticals International, to make a bid for Allergan—with Pershing Square using a full range of activist tactics to force the target's board to bend to their will. Ackman's ambition to own a large chunk of Valeant no longer looks wise, but the estimated \$2.6 billion in profits Pershing Square reaped from Allergan's eventual sale to Actavis caught the attention of another up-and-coming activist investor.

Lone Star Value Management, a Connecticut-based hedge fund managed by former Soros and Viking Global Portfolio Manager Jeff Eberwein, is intent on recreating Ackman's success. Since May, it has been building a position in Massachusetts-based Edgewater Technology with the intention of agitating for the company to sell itself to AMERI Holdings, a platform company it helped to take public at around the same time and owns a 34% stake in. AMERI Holdings, a technology-management solutions company, has already bought a small number of private companies, he says, before turning its sights on Edgewater. An investor presentation seen by Activism Monthly draws direct parallels

between this campaign and Ackman's at Allergan over a year ago—the first known example of an activist repeating the strategy. “I see this as Activism 2.0,” Eberwein told Activism Monthly. “Having an activist involved increases the probability of success.”

Eberwein says his fund and the company—who have formed a group—made a private offer for Edgewater in June, but were refused a meeting after management discovered he was an activist. A filing from Edgewater appears to confirm the company refused a meeting, but doesn't say why. Nonetheless, CEO and Chairman Shirley Singleton must have bad memories of the activist creed—in 2013 Echo Lake Capital wrote her a public e-mail offering congratulations on 11 years in the top job: “a remarkable accomplishment considering how poorly the company has performed under your leadership,” it said.

Four months since their initial approach, Lone Star and AMERI Holdings have gone public with the offer and plans for the removal of five of Edgewater's six board members through a consent solicitation. Edgewater, for its part, says the \$8.50 per share offer “substantially undervalues” the business. A preliminary revocation document filed with the SEC suggests it would demand a 40-44% premium to its moving average, which would value

shares at around \$10.60, but also believes it has strong standalone prospects. Moreover, it rejects the off-shore model AMERI Holdings is hoping to implement, saying its share price “has appreciated more than 150% since December 31, 2009, well above the company's self-selected peer group... a select group of U.S.-based IT-services companies and a select group of India-based IT-services companies comparable to the company.”

Eberwein rejects the suggestion that he might fall foul of litigation in the same way as Ackman and Valeant, who settled lawsuits brought by Allergan but now face a class action lawsuit from investors which accuses them of insider trading. He credits law firm Olshan Frome Wolosky with devising a strategy that avoids those pitfalls—AMERI Holdings has not launched a tender, for example—and says the board alone will never sell the company. “A stockholder should not have to resort to the extraordinary step of conducting a consent solicitation just to ensure that the board fulfils its duties to stockholders,” a preliminary statement by the activist said.

As Activism Monthly Premium went to press, Edgewater announced a review of strategic alternatives. However, it was too soon to tell whether the move was enough to dissuade Lone Star and AMERI Holdings from pressing on. ■

Change at the SEC

Two of the five most powerful US securities regulators are set to change. How significant will their replacements be?

With its mandate to protect investors, America's Securities and Exchange Commission is responsible for some of the most important structures in financial markets. Technological developments, from cyber warfare to high frequency trading, have increased the burden on its oversight and rulemaking roles, while its remit over corporate law has grown more significant each year with what one former Commissioner calls the "federalization" of corporate governance and increasingly complex solicitation methods. Although its mandate is nominally set by Congress, both investors and lawyers hang on the words of the Commissioners for clues of coming regulatory changes.

Apparently to the annoyance of the Commission, the role of activist investors has risen up the agenda

quickly in recent years. American companies, undergoing a major shift in corporate governance standards and faced with a rising tide of shareholder activism, have looked to the SEC for protection. Equally, activists sought a more shareholder-friendly governance system—often backed by institutional investors.

Thus far the Commission seems content with the status quo, Chair Mary Jo White noting earlier this year that "companies and activists are starting to make positive progress, as they increasingly engage with each other and negotiate outcomes that seem more mutually beneficial." Daniel Gallagher, an outgoing Commissioner, said at a summit on proposed changes to the proxy voting system earlier this year that he saw the Commission's responsibility for

governance as "a limited one[...] to ensure that our rules establish a level playing field."

That may change, however, with new blood on the Commission.

The new Commissioners, whose appointments are still subject to Congressional confirmation, are likely to have a full agenda when they take over mandates held by Gallagher and—for the past eight years—his Democratic counterpart Luis Aguilar, who will step down in December. Steve Wolosky, a Partner at the New York law-firm Olshan Frome Wolosky and head of its activism practice, says there will be growing pressure for the SEC to rule on universal proxy ballots—an alternative to the current model of competing proxy cards—and enforcement actions for rule-breakers.

Hester Peirce on Proxy Advisors

"In crafting its forthcoming guidance, the SEC needs to do more than mandate that proxy advisors disclose their conflicts of interest and methodologies for formulating recommendations. While such disclosures are important, eliminating any direct or indirect regulatory imperative to rely on proxy advisors—including eliminating the SEC's no-action letters—is even more important."

From How Proxy Advisory Services Became So Powerful (with James Glassman), 2014.

“TO THE ANNOYANCE OF THE COMMISSION, THE ROLE OF ACTIVIST INVESTORS HAS RISEN UP THE AGENDA QUICKLY”

“Companies and activists are starting to make positive progress as they increasingly engage with each other”

Disclosure requirements for activists, including the time within which they must file Schedule 13Ds, have also been on the agenda in recent years, while criticism of proxy voting advisers such as Institutional Shareholder Services and Glass Lewis has only increased.

Staying out of these debates is likely to be easier said than done. Earlier this year an unexpected row erupted over the SEC’s practice of providing no-action letters to companies seeking to remove ‘conflicting’ shareholder proposals from their annual meeting ballots, prompted by a proxy access proposal at Whole Foods Market. For the coming proxy season, the Commission has sided with the activists, increasing the burden of proof required of issuers.

The nominees

Lisa Fairfax, an academic who teaches a class on shareholder activism at George Washington University, has written widely on the role of shareholder democracy. That does not necessarily make for a solid endorsement of activism, however.

According to a 2008 paper on the impact of shareholder control for stakeholders of public companies, Fairfax warned that power over corporate decision-making “could be problematic in the hands of certain shareholders,” namely hedge funds.

Hester Peirce, an expert on Dodd-Frank, Senior Research Fellow at the Mercatus Center at George Mason University and the Republican nominee, is likely to follow Gallagher’s lead, focusing SEC rule-making on both the direct and indirect costs of regulation. “SEC rules can have sweeping effects on the US economy,” a paper co-authored by Peirce argues. More importantly, she adds, cost-benefit analyses could help set the priorities of the Commission itself. “The SEC routinely contends that it does not have adequate resources to carry out its responsibilities. Better analysis will help it make better choices about how to spend the resources it has.” Analysis is more commonly a preserve of academia than government agencies, however. It remains to be seen whether the new Commission will be forced to act. ■

Lisa Fairfax on the Universal Ballot

“[T]he fact that both activists and the company are going to be confronted with that potential uncertainty may mean that what they’re going to do is to negotiate in a different way and so it may mean that we have less contests because neither side is willing to go the distance because neither side wants to take on that potential uncertainty.”

Activism in numbers

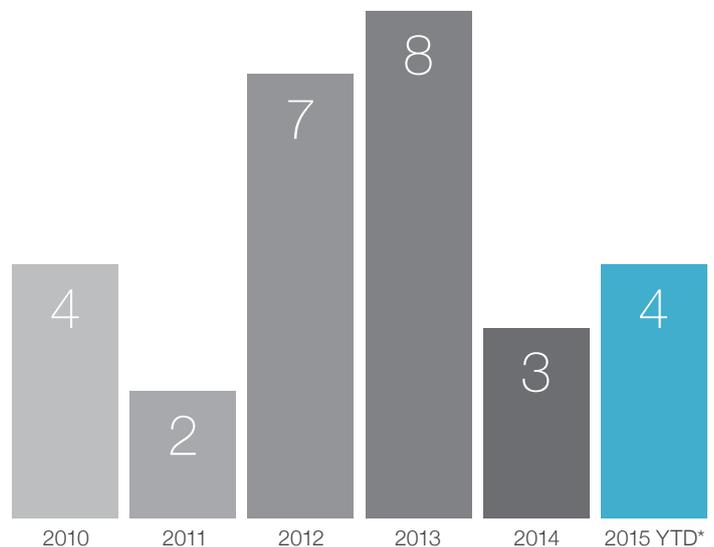
\$62 bn

Value of activist stocks in European companies as of November 18, 2015

Source: Activist Insight Online

Money in activism in Europe

Capital invested in European (including UK) activist positions is more extensive than initially thought, despite only one investor managing more than \$15 billion. The continent has a smaller selection of funds partially focused upon activism, with proportionately more campaigns by funds with a primary and occasional focus on activism than in the US.

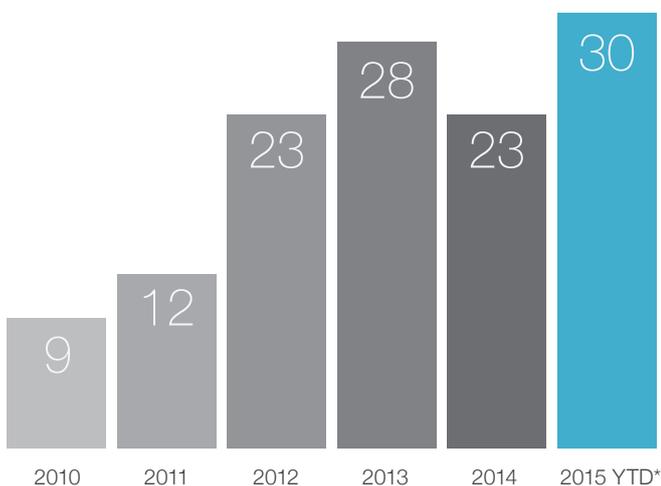


* YTD as of November 30, 2015

Source: Activist Insight Online

Failure to launch

The number of new dedicated activist firms formed each year has fallen since 2013, according to Activist Insight data, yet more established players are adopting activist strategies.



*YTD as of 23/11/2015

Source: Activist Insight Online

Not just the UK

A significant number of companies in Continental Europe have been publicly targeted by activists in recent years, including 30 non-UK issuers this year alone.

Raise the bar



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