

Volume 4, Issue 8

September 2015

**MERGER
ACTIVISM**

13F ROUNDUP

**ACTIVISM IN
NUMBERS**

ACTIVISM MONTHLY

Lite



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Editor's letter

Josh Black, Activist Insight

Are activist investors becoming less radical? That may sound a slightly bizarre proposition, even at this stage in 2015. Already this year, 200 companies have been publicly subjected to demands for board seats by activist investors—some on a consensual and others on a hostile basis—and 44 companies have been publicly pushed to sell themselves. CEOs or board members in the firing line could be forgiven for perceiving activists as every bit as much of a threat; 55 companies have been publicly subjected to calls for their most important individuals to quit—already more than in the whole of 2014.

Several notable campaigns launched in recent weeks and months give pause for thought, however. The question asked by several articles in this issue of Activism Monthly Premium is whether the professed objectives of ValueAct Capital Partners at Rolls-Royce Holdings and Pershing Square Capital Management at Mondelez are as modest as they seem.

A little cost-cutting here, a slight shift of emphasis to give one division a better shot at profitability there—are these the best ideas of investors who have broken-up S&P 500 companies, created giant mergers and sent shivers through even Silicon Valley?

One potential reason for this caution could be the size of the companies activists are taking on. When Triun Fund Management picked a fight with

DuPont earlier this year, it said little about the approach it would take once it got into the boardroom, beyond keeping management to account. Yet it could not shake off the perception, perhaps wrong, that it would seek to break up the company, and may even have lost the proxy contest as a result.

“Rather than simply bulking up their main funds, the largest activists are using co-investment vehicles to lock in current clients”

Still another reason may be the lack of opportunities. Valuations are at relative highs (or were until Black Monday). Interest rates will likely be raised at some point in the next year, which could make management teams less willing to increase their debt-load. Some observers believe there is less and less low-hanging fruit. Bill Ackman has said he is actively looking for an opportunity to repeat his M&A-based campaign at Allergan with another company, but has yet to identify one and has instead piled \$5.5 billion—his largest ever investment—into an apparently durable if unexciting stock.

These ruminations should not distract from our main feature, which shows the lengths activists are going to in order to reap even more of the inflows

into hedge funds. Rather than simply bulking up their main funds, the largest activists are using co-investment vehicles to lock in current clients and make bigger bets on companies.

Nor is this limited to the special purpose vehicle model we've seen in the past. As Activism Monthly Premium now reveals, activists are seeking to create more permanent structures, while at the same time offering less transparency to their investors. This article will only be available to subscribers of Activism Monthly Premium, so be sure to check out our new online portal for the magazine, still unique as the only periodical focused on activism.

Also worth mentioning in this issue are our interview with Voce Capital's Dan Plants, who has made a significant mark since embarking on a career in activism in 2011, and our update on the latest moves on activist investors' quarterly 13F filings. Plus, we have all the usual news, new investments and data you would want from a window into current trends in activism.

Take up of AMP Online, our new platform for the magazine, has been excellent in its first month. To register for a trial, e-mail sales@activistinsight.com, while for feedback, or if you have any questions about our services, please feel free to contact me directly. Thank you, as ever, for reading. ■

jblack@activistinsight.com



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PUBLISHED BY:
Activist Insight Limited
26 York Street, London, W1U 6PZ
+44 (0) 207 129 1314

www.activistinsight.com
info@activistinsight.com
Twitter: @ActivistInsight

For additional copies, please contact Adam Riches at ariches@activistinsight.com

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Activist Insight

Bumpitrage

Activists have started to play dealmakers, but that doesn't mean they've stopped being dealbreakers.

As the ambitions of activist investors have soared, many have attempted to play matchmaker, stitching together deals between target companies in similar areas. Less noted, however, is the significant increase in activists seeking to disrupt takeovers. As M&A has taken off, activists have sensed greater opportunities for arbitrage that involves buying stakes in unconsummated deals and pushing for improvements in their terms. Indeed, in 2015, this strategy is outpacing its use in previous years. A previous high was set at 14 situations in 2013; year-to-date, activists have offered up resistance at 21. Christopher Davis, a Partner at Kleinberg, Kaplan, Wolff & Cohen, a New York-based law firm that represents activists, says Delaware law has often helped their cause. "When a company is in play, directors have a duty to maximize the value to shareholders in the short-term," he says. "Activists can provide leverage for tougher negotiations with a buyer."

Two situations involving Elliott this year (there have been 9 since 2010, according to Activist Insight) show how these situations can play out. At both Dragon Oil and Samsung C&T the activist investor built around 7% stakes after takeovers were announced. At the former, Elliott had the benefit of knowing that Baillie Gifford, a £115 billion (around \$181

billion) asset manager, was opposed, after the investor had spoken out publicly against the deal. In contrast, few major institutions investing in Samsung C&T objected initially to the company's willing submergence with fellow-Samsung affiliate Cheil Industries. And while speculation swirled about the voting intentions of South Korea's national pension fund, the campaign touched sensitivities that may well have set back the perception of activists in the country for some time.

“Merely taking a position to push for a bump in price is very risky, especially in this market”

As these situations differed in their particularities, so too did their outcomes. Samsung's management clung to Korean merger law, which attempts to set a fair price for buyouts by virtue of the stock's recent trading history. It eventually persuaded a majority of shareholders that a better deal could not be expected, and secured approval to move forward with the merger. Dragon Oil, on the other hand, sought a better offer from its buyer, the Emirates National Oil Company (ENOC), after a 750 pence per share bid. Last month, Elliott agreed to tender its shares at 800 pence each, a near-7% increase in the consideration.

The risks inherent in a merger arbitrage strategy are obvious. Whereas activists capitalizing on opposition to the combination itself succeed around 50% of the time, the level of failure for funds agitating for higher prices is much greater, at around 57%. As Jim Osman, CEO of the Edge Consulting Group, which advises activists on special situations, told *Activism Monthly Premium* "Merely taking a position to push for a bump in price is very risky, especially in this market."

"An activist can evaluate the situation, but they have to move fairly quickly in order to solidify investor support and get everything in place for a possible solicitation campaign," says Bruce Goldfarb, the CEO of proxy solicitor Okapi Partners. That could include a campaign website, presentations, and meetings with proxy advisers and key shareholders, at minimum.

The strategy is often also reliant on another buyer being ready to compete for the prize, and having the capacity to prevail. At the turn of the year, Elliott found itself waging a proxy contest at Family Dollar General Stores, which was refusing to consider an unsolicited bid, after signing a deal with Dollar Tree. The markets were concerned a third party, Dollar General, would not get clearance from competition regulators, and opted for safety. ■

Activist Investing in Canada 2015

October 6th – The Ritz-Carlton – Toronto

Understanding the Evolving Landscape of Activist Campaigns

Do activist investors ultimately add value to the companies they target, or are their campaigns just a distraction from the day-to-day operations of the business? The returns of activist hedge funds suggest success, but many feel their interests are short term in nature. The environment in Canada continues to be one of the most activist friendly jurisdictions in the world, and there are no indications that this will change. Activist Investing in Canada explores both sides of the debate and examines how the strategy is evolving and maturing.

SPEAKERS INCLUDE

- Paul Hilal, Partner, Pershing Square Capital Management
- Muir Paterson, Managing Director, Goldman Sachs
- Zach George, Co-Founder and Principal, FrontFour Capital
- Stephen Griggs, CEO, Smoothwater Capital
- Naizam Kanji, Director, Office of Mergers & Acquisitions, Ontario Securities Commission
- Jonathan Litt, Founder & CIO, Land and Buildings
- Douglas E. Speers, Chairman of the Board, Ceres Global Ag Corporation
- John Varghese, President & CEO, Revive Capital
- Ted White, Managing Director, Legion Partners
- Amber Kanwar, Anchor and Reporter, Business News Network
- John Armstrong, Head of Canadian M&A, BMO Capital Markets
- Bradley Tirpak, Chairman, Full House Resorts; Managing Partner, Locke Partners
- Chris Young, Managing Director and Head of Contested Situations, Credit Suisse
- David Rosewater, Managing Director, Morgan Stanley

CONFERENCE TOPICS

- The State of the Market: The Evolving Landscape of Shareholder Activist Campaigns in Canada
- How Are Traditional Long-Only Investors Becoming More Engaged with Activist Investors?
- Legal & Regulatory Update: Securities Laws, Proxy Rules, Litigation and Regulatory Approvals
- Activist Distressed Debt Opportunities in the Energy Sector
- Proxy Contests and Hostile Take-Over Bids in Canada: A Look at the Facts
- Proxy Contests and Directors and Officers Liability (D&O) Insurance
- The Evolving Landscape of the Public Company Board: Should Directors Be Thinking More Like an Activist?
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Activist Insight



New investments in Q2

| Activist | Issuer | Shares | Stake |
|----------------------------|----------------------------|-----------|-------|
| Blue Harbour Group | Computer Sciences | 1,601,100 | 1.1% |
| Engaged Capital | Rentech Nitrogen Partners | 96,201 | 0.3% |
| Lone Star Value Management | Dipexium Pharmaceuticals | 150,000 | 1.8% |
| PL Capital | Monarch Financial Holdings | 129,105 | 1.2% |
| Red Mountain Capital | Deckers Outdoor | 666,046 | 1.9% |
| SpringOwl Asset Management | Boulder Brands | 110,000 | 0.2% |
| Starboard Value | Pinnacle Entertainment | 450,000 | 3.3% |

It was an end of an era for SandRidge Energy, after TPG-Axon sold its final shares in the oil and gas company just under two years after winning four seats on the board and forcing out CEO Tom Ward. ValueAct Capital chose not to press WESCO International and Sachem Head soured on Mylan even before Teva Pharmaceuticals dropped its bid for the UK-based company. Engaged Capital completed its business with Abercrombie & Fitch after reshaping the board.

New short positions in Q2

| Activist | Issuer |
|-----------------------|----------------------|
| Cable Car Capital | Plus500 |
| GeoInvesting | 500.com |
| Kynikos Associates | Royal Dutch Shell |
| Muddy Waters Research | Noble Group |
| The Street Sweeper | Chanticleer Holdings |
| Xuhua Zhou | Lowe's Companies |

Boulder Brands now has a lively shareholder base, with three activists long the stock and two short. The food company announced plans to pursue strategic alternatives shortly after Engaged Capital disclosed a 9.6% stake. Elsewhere, Lone Star Value diversified into pharma and Red Mountain into footwear, while companies likely to be M&A prospects in the second half of the year were arguably the most attractive set of companies.

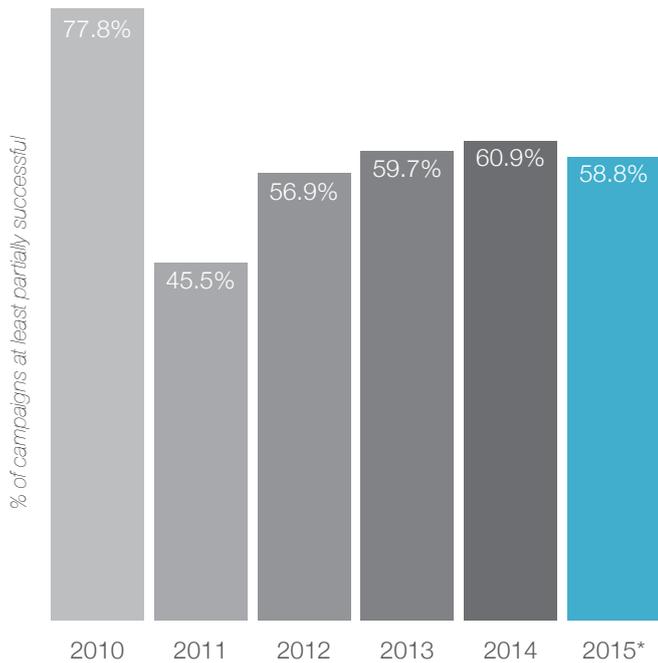
Exited investments in Q2

| Activist | Issuer |
|--------------------------------|---------------------------|
| Atlantic Investment Management | Oil States International |
| Blue Harbour Group | Alliance Data Systems |
| Corvex Management | Crown Castle |
| Engaged Capital | Abercrombie & Fitch |
| Pershing Square | Allergan |
| Red Mountain Capital | Popeyes Louisiana Kitchen |
| Sachem Head Capital | Mylan |
| TPG-Axon | SandRidge Energy |
| ValueAct Capital | WESCO international |

Did you know that Activist Insight Online also tracked short positions? Among the many shorts disclosed in the fourth quarter, these were some of the most interesting.

To see the full list, log in to Activist Insight Online or request a trial by e-mailing info@activistinsight.com.

Activism in numbers

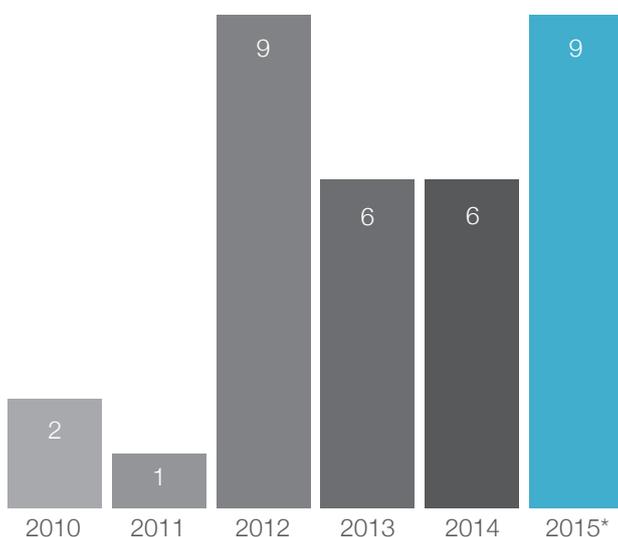
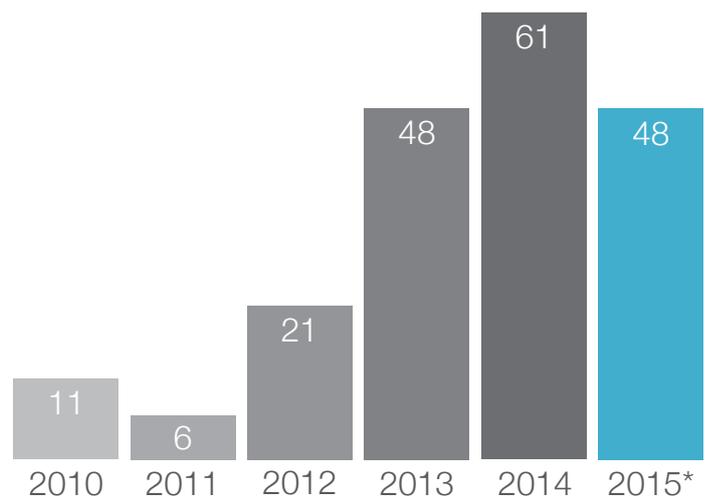


The consumer is always right

Consumer goods companies have always been a popular source of ideas for activists like Trian Fund Management and Pershing Square Capital Management, but they haven't always been accepted. Activists have been at least partially successful with less than three-fifths of their demands at consumer goods companies in four of the last six years.

Doubling up

Activists have increasingly been making public demands at the same companies—so far this year, two or more activists have made demands at 48 companies.



Extra muscle

Analysis by Activist Insight for a recent Olshan Frome Wolosky webinar highlighted a surge in activist campaigns by institutional investors, whether partnering with a conventional activist fund or launching their own solicitation.

*YTD figures as of 25/08/2015

Raise the bar



Activist Insight Online brings you the most extensive coverage of activist investment worldwide to assist you in providing your clients with the most diligent service available. Raise the bar with market leading knowledge of activist situations across the globe, whilst saving valuable time in your research efforts.



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