

Volume 4, Issue 7

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WHOLESALE**

PAY-OFF TIME

**ACTIVISM IN
NUMBERS**

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“Great articles on shareholder activism”

Carl Icahn

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Editor's letter

Josh Black, Activist Insight

Now for a brief respite. Proxy season is more or less over, and activists are starting to build stakes in advance of next year's season. But that doesn't mean it will be an action-less summer—analysis conducted by Activist Insight earlier this year showed activists have made new demands at an average of around 20 companies a month during July, August and September (based on the 2010-2014 period), before doubling their campaigning rate over proxy season.

The summer can be a good time for taking stock, but also for catching management unawares, as Carl Icahn's August 2013 tweet arguably did for Apple. With most companies busy reporting their earnings and nomination deadlines approaching, there are opportunities both for measuring the progress of investments and for pressing the need for transformative announcements, as at Qualcomm.

Of course, boards are better prepared for activism than ever. According to EY's Center for Board Matters, the proportion of S&P 500 companies disclosing engagement with shareholders in their proxy statements has increased from 6% in 2010 to 56% as of mid-June 2015. "Engagement practices are expanding beyond the largest firms," Kellie Huennekens, the Center's Assistant Director told me. "There's a broad recognition that improved disclosure can help resolve problems."

One area in which extra engagement may struggle to help is in winning over the retail vote. Three major battles this year—at DuPont (US), Alliance Trust (UK) and Samsung C&T (South Korea)—have involved sizeable retail elements, raising the question of whether activists are being forced to look at companies with unconventional shareholder bases because of high valuations and the saturation of activist campaigns.

“The summer can be a good time for taking stock, but also for catching management teams unaware”

In one of my new weekly e-mails last month, I said Samsung C&T's victory over Elliott might turn out to give more comfort to activists than to management teams in the medium term. The margin by which Samsung investors approved the merger was narrow, and the campaign unedifying. A robust corporate governance movement is probably needed to address the ways in which Samsung benefitted from Korea's unique M&A law, and it would be a good thing if the National Pension Service explained why it voted in favor of the deal.

This month's feature article looks at the ways in which private equity is being

affected by activism. On the one hand, activists do seem to be identifying and delivering a healthy flow of targets to buyout shops, with NCR (until late in July), Rosetta Stone and DHI Group on the block. But the truth is predictably more complex, and there is some evidence that activism is replacing private equity as a value-creation strategy. Could this lead to a convergence of the two investing styles? Many observers seem to think so, as we explore.

A growing number of activist campaigns are being launched in Australia—something Activist Insight has long noted. So it seems appropriate that we have finally interviewed one of the men at the center of this activity, Sandon Capital's Gabriel Radzysinski. With a legal system similar to the very shareholder-friendly UK and Canadian models, it is no surprise Australia is going through a spurt of activism. But one of Sandon's campaigns in particular may highlight activism's capacity to scale up its ambitions Down Under.

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Retail versus wholesale

A study says retail investors may be warming to activists. What difference could that make?

A recent study from the research division of public relations adviser Brunswick suggests as many as three-quarters of retail investors believe shareholder activism adds values for companies by nudging management teams in the right direction. The survey, of just over 800 retail investors who take an active interest in picking their own stock portfolio, suggests much higher levels of support for activists than previously thought, with 77% saying management teams are holding excessive levels of cash on their balance sheet and could do more to create value for shareholders.

There is a “surprisingly robust awareness” of the campaigns waged by activist investors among retail shareholders, says Brunswick’s Radina Russell. “What was surprising,” adds her colleague Kaylan Normandeu, “was the belief that activists can add value across majorities of all age groups, genders and political affiliations.”

But according to Bob Marese, Managing Director at New York-based proxy solicitor MacKenzie Partners, it was not always thus. “Retail typically gives the benefit of the doubt to management,” he says. “They tend not to be fast money, they like the story of the company and they aren’t really influenced by proxy advisers. To that extent, they are somewhat

tone-deaf, whereas institutions are accountable for their returns on a day-to-day basis.”

The survey does not dispel the belief that retail investors are less likely to turn out to vote. Only 44% of those surveyed had voted, investigated a resolution or altered their investment levels in response to an activist campaign in the past twelve months. But the vast majority said they would support an activist whose agenda agreed with their own, citing remuneration and effective management as their greatest concerns overall.

“77% of retail investors say companies could do more to create value”

At DuPont, where MacKenzie led efforts by activist investor Trian Partners to replace four incumbent directors, retail participation was said to be unusually high, although no detailed results are available yet. DuPont’s retail investors, many of them retirees or residents of the company’s hometown of Wilmington, Delaware, were relentlessly targeted by both sides through phone calls and newspaper adverts. This aggressive outreach led to “an unusually robust response,” Marese says.

Better awareness may not necessarily

lead to greater appreciation of activists, however, with Brunswick finding that the more well-known an activist is, the more likely he is to be viewed as acting in his own interest. Indeed, 78% of those surveyed had heard of Carl Icahn, but also pinned him as the most ‘selfish’ activist, with David Einhorn and Bill Ackman a distant second and third on both counts. Given the likes of Jeff Ubben and Keith Meister prefer a more private approach to activism, it is not only impressive that they are still recognized by up to a third of the survey’s participants, but possibly to their benefit.

Moreover, if activists are to tap the retail vote in the future, they are likely to have to adapt to the image those investors have formed of them. Issues like compensation are much more mobilizing than financial engineering, according to Brunswick, which could lead activists to be more circumspect in their proxy solicitation materials. So far, much of the attention on activist investors has been focused on their impact at individual companies, but their work is gradually being rolled into a debate about the wider economy. Given that Democrats are currently more in favor of shareholder activism than Republicans, despite Hillary Clinton’s criticism of “quarterly capitalism”, it seems doubtful whether activists will be able to rely on the average voter going into election and annual meeting season. ■

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
- Douglas Speers, Chairman of the Board, Ceres Global Ag Corp.
- Stephen Griggs, CEO, Smoothwater Capital
- Muir Paterson, Managing Director, Goldman Sachs
- David Hunker, Executive Director, J.P. Morgan
- Chris Young, Managing Director, Credit Suisse
- Gordon Pridham, Board of Directors, NewAlta Corporation; Principal, Edgewater Capital
- Naizam Kanji, Director, Office of Mergers & Acquisitions, Ontario Securities Commission
- Julien Balkany, Co-Founder & Managing Partner, Nanes Balkany Partners
- Zach George, Co-Founder, FrontFour Capital
- Victor Guo, Senior M&A Associate, Institutional Shareholder Services Inc. Canada
- John Varghese, President & CEO, Revive Capital Investment Management
- David Rosewater, Managing Director, Global Head of Shareholder Activism and Corporate Defense, 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?
- Exploring the Impact of Activist Campaigns in Announced M&A Transactions
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Pay-off time

Carl Icahn pushed for eBay to spin-off PayPal and won. Now it's up to the company to prove him right.

PayPal Holdings beat expectations on the first day of its new life as an independent company, quickly attaining a market-cap of over \$50 billion and vindicating activist investor Carl Icahn's campaign to get former owner eBay to spin-off the payments unit. Icahn launched a proxy fight and a precatory proposal at eBay early in 2014, forcing CEO John Donahoe to lead a tough response and surprising some analysts who believed eBay's marketplace had barely hindered PayPal's growth over previous years.

“PayPal was a growth company and eBay generated a lot of cash, so it had an unnatural shareholder base”

As a result, it was seen as something of a climb-down by the veteran activist when the contest settled, even with a former colleague of Icahn's, ex-Motorola executive David Dorman, joining the board after Donahoe and Icahn chinked martini glasses at the latter's New York residence.

But as quickly became clear, eBay had heard enough on its investor roadshow to convince it to start planning for PayPal's eventual separation, which it announced just four months later.

“Ultimately, eBay was an in-between stock,” says Wedbush Securities analyst Gil Luria, a follower of the businesses. “PayPal was a growth company, and eBay generated a lot of cash, so it had an unnatural shareholder base.” All of which made for fertile ground for Icahn's technology investments team, led by son Brett and long-time manager Dave Schechter, to plant a seed.

Icahn spotted the opportunity and ran with it, arguing that an independent PayPal could go on an acquisition spree and better compete with its rivals. It already looks like fulfilling that promise; last month it bought Xoom, and has also “walked away” with \$6 billion in cash from the separation, according to Luria. A hefty market-capitalization courtesy of excitement surrounding the spin can hardly hurt.

Although talk of a rival making a bid for PayPal has continued, Luria is one who thinks it can fend off the competition, having seen-off other attempts to create competing payment systems in the past. Instead, he advises watching to see whether the company can strike a deal to provide its services for Amazon or Alibaba as a sign of how beneficial its independence can be.

The newly separated companies have said they will share many services and avoid direct competition for up to five years, keeping costs down. eBay has already set aside \$1 billion for

share repurchases and may institute a dividend. It has also sold its enterprise segment, which sold products at fixed prices, unlike its traditional auction business, for more than \$900 million.

And which stock, if he were Icahn, would Luria now choose to back? “I wouldn't be surprised to see him sell out of both—he's created a tremendous amount of value,” Luria says. “Many other companies have poor governance and could generate a lot more value. I'm sure Mr Icahn is busy identifying the next one.” ■

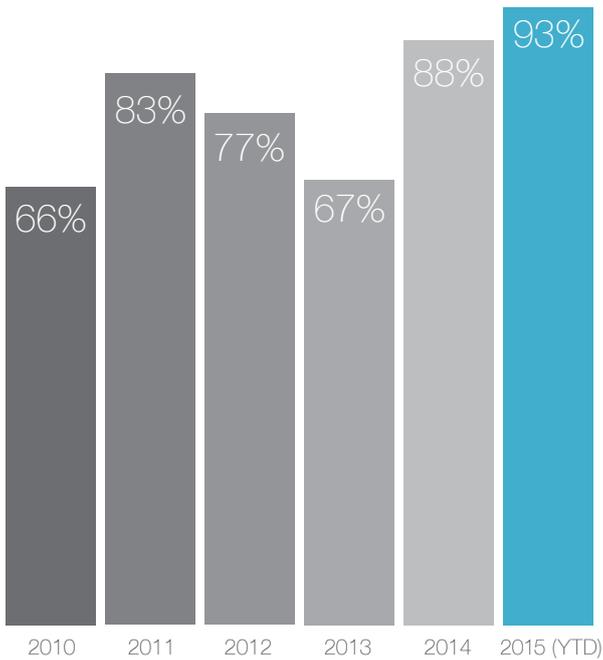
\$50_{bn}

Market capitalization of PayPal on day of debut

24%

Increase in eBay share price between Icahn's initial disclosure and spin-off

Activism in numbers

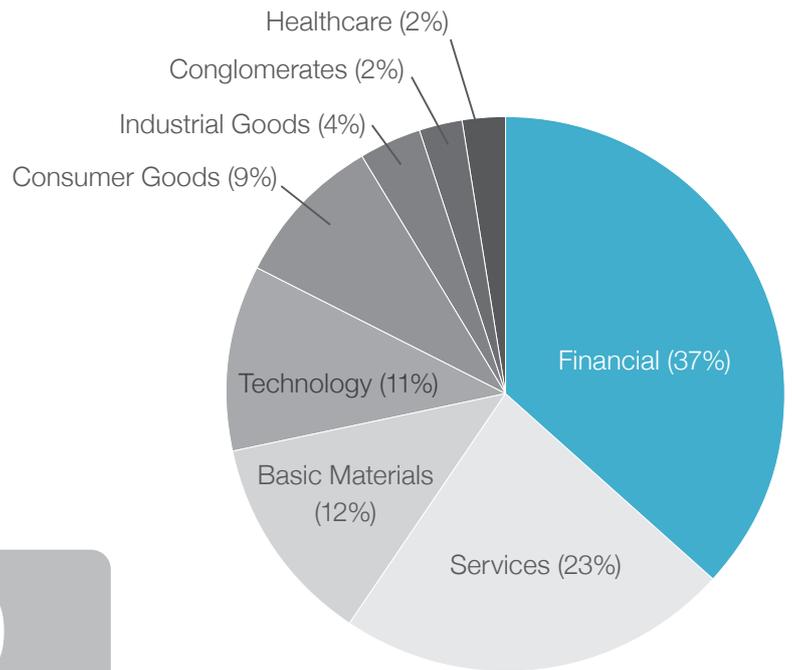


Buy, buy, buy... Sell, sell, sell

Of all resolved campaigns, share repurchase demands by activist investors hit their highest ever level of approval in 2015, with nine in ten requests at least partially successful. As our first infographic shows, this number has been rising for several years.

UK targets

A sector breakdown of activist targets in the United Kingdom showcases the dominance of the financial sector, accounting for nearly two out of every five companies where public demands have been made.



Popular Industries

The five most-targeted industries account for 15% of all campaigns in 2015 thus far, as our final infographic highlights. Asset managers, especially closed-end fund managers, are front and center in the firing line this year, with a surprisingly high level of activity in small-scale oil and gas.

*All figures correct as of As of 27 July, 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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