

Volume 3, Issue 5

May 2014

**A PILL  
TO KEEP  
ACTIVISTS  
AWAY**

**NEWS IN  
BRIEF**

**APRIL IN  
NUMBERS**

# ACTIVISM MONTHLY *Lite*



**Activist Insight**

[www.activistinsight.com](http://www.activistinsight.com)



# Editor's letter

Josh Black, Activist Insight

Even before Bill Ackman stole headlines with his unusual effort to press Allergan into selling itself to Valeant Pharmaceuticals, we at Activist Insight planned an issue of *Activism Monthly Premium* based around the theme of M&A activism. Indeed, Ackman's role in what may be one of the larger deals of the year makes this topic timely, but even without it, there is an interesting story to tell.

A recent investigation by the *Financial Times* found that M&A had reached its highest level since 2007, having risen 42% on a year ago. That represents an exciting opportunity for some investors, with the potential for some hefty synergies and rapid market capitalization growth. But where does activism fit into this new deal-friendly climate?

As in almost all spheres of corporate life, the influence of activist investors has increased significantly. Between 2010 and 2013, the number of companies targeted worldwide with a campaign involving an element of M&A doubled. The much larger targets seen this year suggest more will follow.

Some observers, like Blackstone's John Studzinski, see activists having an outsized role in the quantity of M&A. Quite often, an activist will identify a division that could be spun-off to create value for shareholders, and in drawing attention to the opportunity, will attract

a potential buyer. A similar theme often applies to small- and mid-cap companies. Another argument is that activists are influencing the quality or type of M&A. This perspective suggests that activists are responsible for the apparent preference for mergers of equals, rather than diversification.

“The number of M&A campaigns doubled between 2010 and 2013”

Alternatively, activists might push for spin-offs or seek to hijack deals where they feel a company is moving out of its comfort zone or stifling growth, as at eBay. In our adviser interview, we talked to Barclay's Daniel Kerstein, whose Strategic Finance Group specializes in carve-outs and equity restructuring, about when it makes sense to listen to activists and when to shut up shop.

One of the principal reasons a service like *Activist Insight* is so relevant is that the increased sophistication of activist investors means tactics are constantly changing. As we highlight in one article in *Activism Monthly Premium*, a combination of factors has conspired to make REITs an attractive investment product, and in the case of Darden Restaurants, two different activists

identified the opportunity to create a REIT from the company's property holdings. Many activists are likely to be watching to see how this plays out.

In this issue, we also speak with Jason Ader, principal of SpringOwl Asset Management and a former gaming analyst, who is keeping within his area of expertise to attempt a turnaround at Bwin.party Digital Entertainment. This is a campaign that has many in Europe exercised about the potential for an activist invasion, but while it does highlight a certain globalization of activism, it is not the fact that the company is in Europe that is of vital importance.

Activism is also having a big influence on conference season this year, and we are acting as media sponsors to two in particular. The Growth of Activist Investing in Europe takes place in London on June 2, and there are further details in this very magazine. We are also pleased to offer our subscribers a discounted rate to the London Value Investor Conference, where ValueAct's Mason Morfit will be speaking. Please contact us for more details.

If you're reading our online Lite edition and would be interested in upgrading to a full print subscription featuring all of the articles I've mentioned, please don't hesitate to get in touch.

As ever, thank you for reading.



**Activist Insight**

# Contents

Full contents of Activism Monthly Premium Magazine.  
To subscribe and access all this and more, see overleaf.

- 2 Editor's Letter**
- 4 M&A Activism**
- 8 Out to Bwin**  
An interview with Jason Ader,  
SpringOwl Asset Management
- 10 Strategy in focus: REITs**
- 12 Adviser interview**  
An interview with Daniel Kerstein,  
Barclays' Strategic Finance Group
- 14 The institutions companies  
fear most**
- 15 A line in the sand**  
An interview with Jonas Kron,  
Trillium Asset Management
- 17 A pill to keep activists away**
- 18 Pershing at Allergan**
- 20 News in brief**
- 21 Shareholder resolutions**
- 22 New investments**
- 23 April in numbers**



All rights reserved. The entire contents of Activism Monthly are the Copyright of Activist Insight Limited. No part of this publication may be reproduced without the express prior written approval of an authorized member of the staff of Activist Insight Limited, and, where permission for online publication is granted, contain a hyperlink to the publication.

The information presented herein is for information purposes only and does not constitute and should not be construed as a solicitation or other offer, or recommendation to acquire or dispose of any investment or to engage in any other transaction, or as advice of any nature whatsoever.

PUBLISHED BY:

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

[www.activistinsight.com](http://www.activistinsight.com)  
[info@activistinsight.com](mailto:info@activistinsight.com)  
Twitter: @ActivistInsight

For additional copies, please contact Adam Riches at [ariches@activistinsight.com](mailto:ariches@activistinsight.com).



# Activist Monthly Premium

Market leading analysis, interviews with key players and the critical developments in activist investing

## Activist Insight

Enjoy Activism Monthly Lite? Get even more great content with Activism Monthly Premium Magazine

Subscribe today at [www.activistinsight.com/ActivismMonthly](http://www.activistinsight.com/ActivismMonthly)

Alternatively, complete the form below and return it to:

FAO Accounts, Activist Insight Ltd. Regus House, Victory Way, Admirals Park, Crossways, Dartford, UK DA2 6QD  
or send via email to [sales@activistinsight.com](mailto:sales@activistinsight.com).

Alternatively, please call us on +44 (0)20 7129 1314 to arrange a payment option.

YES, I would like to subscribe to 11 issues of Activism Monthly Premium (including the annual review) from the date stipulated below.

Please send me one copy per issue at a cost of \$750/£450/€525

Please send me ten copies per issue at a cost of \$1450/£890/€1025

### YOUR DETAILS

Company Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Contact Position \_\_\_\_\_

Contact Department \_\_\_\_\_

Contact Email \_\_\_\_\_

Contact Tel \_\_\_\_\_

Address Line 1 \_\_\_\_\_

Address Line 2 \_\_\_\_\_

City/Town \_\_\_\_\_

State/County \_\_\_\_\_

ZIP/Postcode \_\_\_\_\_

### CHOOSE FROM TWO EASY WAYS TO PAY

1. I enclose a check/postal order made payable to Activist Insight Ltd.

2. Bank Transfer - I will make a bank transfer to Activist Insight Ltd. using the details below

Bank: HSBC – 165 Fleet Street, London EC4A 2DY England  
Account Number: 61891480  
Sort Code: 40-06-29  
IBAN: GB33MIDL40062961891480  
Swift / BIC Code: MIDLGB2107P

Signature \_\_\_\_\_ Date \_\_\_\_\_

# A pill to keep activists away

A lawsuit over the use of poison pills may have far-reaching implications



As Activism Monthly Premium went to press, one of the most important lawsuits in recent US corporate history was nearing a verdict. The suit, which concerns a type of shareholder rights plan or “poison pill” that discriminates between active and passive holdings, could pave the way for big changes in the way that companies defend themselves against activists.

Steven Davidoff, the New York Times’ self-styled Deal Professor, says the lawsuit “may well be the tipping point in how far companies can go to defend themselves against shareholder activists.” Marc Weingarten, co-Head of Schulte Roth & Zabel’s Shareholder Activism Practice, told *Activist Insight* it is the first test of whether a pill can be used in an activist situation. He says the decision, expected before the company’s annual meeting on May 6, will be of “major significance,” adding that “to uphold the pill, they [Delaware judges] are going to have to extend current law.”

In October last year, just two days after Third Point Partners announced that it would seek board representation at Sotheby’s, the auction house responded by instituting a rights plan. According to the document, filed with the Securities and Exchange Commission, Sotheby’s has the right to dilute the shareholdings of all investors if a Schedule 13D filer amasses a stake of 10% or more, or a Schedule 13G filer acquires 20% of the stock without prior permission.

This relatively novel distinction, previously adopted by a handful of companies, including Safeway and Air Products & Chemicals, alludes to a novel development in the use of poison pills.

First invented as a means of deterring hostile takeovers, pills are now seen as a defense against activists, who may be

“To uphold the pill, they are going to have to extend current law”

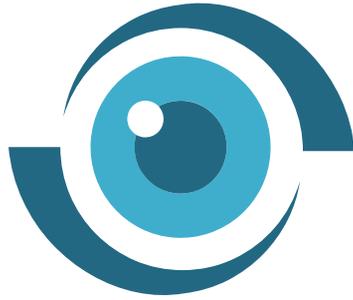
seeking influence on a host of issues, but often have little or no intention of selling or buying the company. Even so, the issue of influence is central to the argument put forward by Sotheby’s, which said its pill was intended to deter “efforts to obtain control that are inconsistent with the best interests of the company and its shareholders” in its initial filing. Third Point argues that its efforts will benefit all shareholders.

In *Unocal* versus *Mesa Petroleum*, the courts decided that the threat to the company posed by T. Boone Pickens justified the use of a pill. However, this early case came at a time when activists were still referred to as greenmailers and corporate raiders, and even then judges inserted a proviso, stating, “A corporation does not have unbridled discretion to defeat any perceived threat by any

Draconian means available.” Since then, an approach from a shareholder must be coercive for a company to justify using a pill in response.

Nowadays, activism is a lot more popular, with institutions keen on the premiums driven by activists and even the FT stating in an editorial that “More activism seems both likely and desirable.” E-mails between Sotheby’s board members leaked by Third Point suggest that Sotheby’s advisers at Goldman Sachs recommended the company drop the poison pill to please the likes of Blackrock and Vanguard, as well as ISS.

As a result, the court’s view of activism as a positive or negative development will be important. That makes Weingarten pessimistic, predicting “an uproar” from the business community if the pill is struck down. He adds that Pershing Square Capital Management’s involvement in a takeover deal for Allergan could not have come at a worse time, raising fears that the takeover defenses of corporations are inadequate and the regulatory environment favors activists.



# Proxy Insight

As simple as:

1

Voting policies and contacts of each investor

2

Who voted and how at any shareholder meeting

3

How an institution typically votes on a particular issue

Call or visit our website to arrange a trial:

+44 (0) 20 7788 7772 • [www.proxyinsight.com](http://www.proxyinsight.com)



This feature is included as a one-time-only example of the great content in Activism Monthly Premium. To subscribe and keep up-to-date with the world of shareholder activism, visit [www.activistinsight.com/ActivismMonthly](http://www.activistinsight.com/ActivismMonthly) today.

Shares in US drugmaker **Allergan** soared after **Pershing Square Capital Management** disclosed a 9% stake and said it would get behind a merger proposal from Valeant Pharmaceuticals International. The activist added that Allergan shares were “undervalued and... an attractive investment.” The acquisition of Allergan, which has a market capitalization of \$40.1 billion, would roughly double the size of Valeant if the deal were to go through. Pershing Square’s regulatory filing suggested the cash component of a deal would be around \$15 billion.

**Carl Icahn** withdrew his nominees and shareholder proposal ahead of **eBay**’s annual meeting, touting a settlement as “win-win for ALL shareholders.” Icahn said in a statement he had agreed with the company’s management to appoint former AT&T and Motorola executive David Dorman with immediate effect. A settlement was agreed after a JP Morgan banker brokered talks between Icahn and eBay CEO John Donahoe.

**SpringOwl Asset Management** nominated four directors at Gibraltar-based **Bwin.party Digital Entertainment**. The activist, co-founded by gaming analyst Jason Ader,

was also critical of the company’s choice of Chairman, but said it would not seek to change management at the firm.

New York’s **Orange Capital** announced new stakes in Canadian oil company **Newalta** and Las Vegas’ **Pinnacle Entertainment**. The activist said it wanted to see spin-offs at each company.

**GAMCO** is seeking to convert **Griffin Land & Nurseries** to a REIT or MLP”

A union investment fund filed a lawsuit in protest at **Darden Restaurants**’ attempts to change its bylaws, saying the changes were made “in order to undermine Darden’s stockholders’ fundamental voting rights.” Meanwhile, **Starboard Value** received support from Glass Lewis and ISS for its campaign to halt the sale of Red Lobster. The activist claimed to have support for a special meeting from more than 55% of shareholders.

The activist investor seeking to overhaul **Cliffs Natural Resources** said it would resort to a consent solicitation if the company didn’t call a shareholder meeting before June 4. **Casablanca Capital** has called the mining company the “biggest loser” in the S&P 500 and argued for greater capital reallocation to shareholders.

Activist hedge fund **Amber Capital** made a shareholder proposal to split the roles of CEO and Chairman at struggling French cable maker **Nexans**. The hedge fund is also hoping to force CEO Frederic Vincent off the board, although shareholders do not have the power to sack him as CEO.

**GAMCO Asset Management** put forward two investment bankers as its nominees at **Griffin Land and Nurseries** ahead of the company’s annual meeting. The activist has nominated Walter Schenker and Christopher Hayley and also wants shareholders to vote on a proposal calling for the reorganization of the company as a real estate investment trust or master limited partnership.

Two activist hedge funds were said to be part of an investor group pressing US drugstore **Walgreens** to domicile in Europe in order to avoid American taxes. **JANA Partners** and **Corvex Management** were named as part of a group holding around 5% of the company’s shares.

A shareholder group led by Marco Fossati’s **Findim Group** failed to have its candidate elected Chairman of **Telecom Italia**. The company’s preferred nominee, Giuseppe Recchi, won 97% of the votes cast, but the development is still being championed as a victory for minority shareholders, and Fossati promised to support the new team.

# The Growth of Activist Investing in Europe 2014

June 2 - The Waldorf Hilton - London

## Positioning and Preparing Companies for Response

Activist campaigns are no longer based solely on valuations. Hedge fund activists are doing an incredible amount of work behind the scenes to research companies, and are using a large degree of analysis to prepare for a campaign. **The Growth of Activist Investing in Europe**, taking place June 2 in London, features some of the most knowledgeable and well-respected participants in the market. Attendees receive technical education on all of the issues that listed company executives, board members, corporate advisors and brokers need to know about to be prepared if they become the target of an activist investor campaign.

### KEYNOTE SPEAKERS



**Eric Knight**  
CIO & CEO  
Knight Vinke



**Giuseppe Recchi**  
Chairman  
Telecom Italia

### CONFERENCE TOPICS

- Defining Activist Investing: An Overview of the Current State of the Market
- How do Activists Determine If a Company is an Attractive Target?
- Stock Performance & Financial Position: What Factors Indicate an Opportunity for an Activist?
- Risk Mitigation Strategies for Potential Activism Targets
- Corporate Governance: The Importance of Maintaining Solid Governance Policies
- Executive Compensation: Attracting Quality Talent vs. Investor Concerns
- Shareholder & Media Outreach, White Papers, Websites & Social Media
- Legal & Regulatory: Securities Laws, Proxy Rules, Litigation and Regulatory Approvals
- Board of Directors: How Solving Board Issues Now Can Benefit a Company Prior to a Campaign
- Proactive Structural Defenses that Can Prevent Activist Hedge Funds from Gaining Control
- Corporate Responses: Building and Organizing an Effective Proxy Response Campaign
- Assembling an Effective Response Team
- Running the Proxy Contest Roadshow
- Examining Strategies that have resulted in Successful Corporate Defenses
- Effectively Communicating with Shareholders and the Market

Visit [www.ActivistInvestingEurope.com](http://www.ActivistInvestingEurope.com) or call +1 (631) 664-1311

### REGISTRATION

**GBP £500** (Inclusive of VAT)  
**USD \$835**

Premier Sponsor



Proxy Firm Sponsor

**Georgeson**

Investor Relations Sponsors



**Tulchan**  
Communications LLP

Conference Sponsor



Media Sponsor

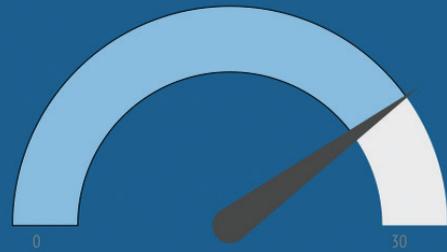


# April in numbers

## Activists active in April



## Location of new campaigns in April

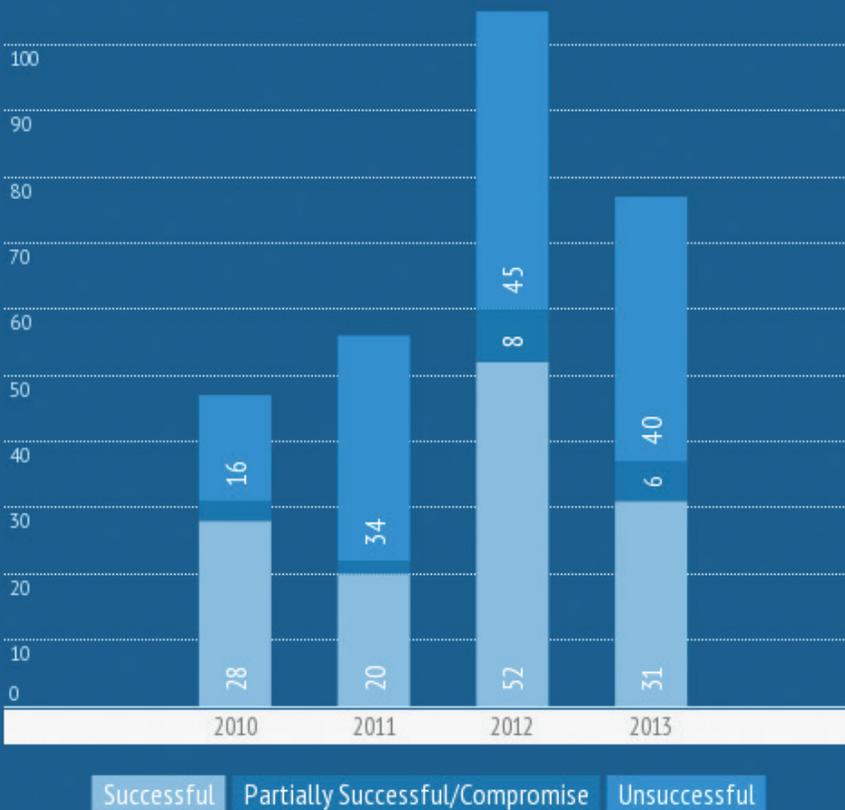


80% of new campaigns were at US companies



13% of new campaigns were at Canadian companies

## M&A activism



Success of activists in M&A campaigns since 2010

## 13D digest

12

Number of SC 13Ds filed by activists in April, up from 11 in March

65

Number of SC 13D/As filed by activists in April, down from 85 in March



## Activist Insight Online

# The definitive resource on activist investing

*Market-leading commentary,  
analysis and profiling of all activist  
situations worldwide*

Detailed profiles of over 250 activist investors worldwide, including investment strategy, activist holdings and performance.

Live and exclusive news service and alerts system, keeping you informed of all activist situations worldwide.

Market analysis, intermediary profiling, bespoke data requests and much more...



**Activist Insight**

[www.activistinsight.com](http://www.activistinsight.com)