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THE EDITOR'S VIEW

**ACTIVISM IN
NUMBERS**

DUPONT

TALK OF THE TOWN

ACTIVISM MONTHLY

Lite



Activist Insight

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Editor's letter

Josh Black, Activist Insight.

October was a big month for activist investing. New campaigns for Carl Icahn and Trian Fund Management—at industry giants American Insurance Group and General Electric respectively, no less—and the resignation of DuPont CEO Ellen Kullman show that the role of activists has hardly diminished over a turbulent summer in which their returns have suffered and issuers have had other things on their mind. Our Activist Insight Online database has tracked more than 30 new long positions during October, so there is ample evidence to suggest that the next few months could be very busy indeed.

This issue of Activism Monthly Premium has a distinct flavor of M&A activism. Not only have we distilled some of the best free advice available on how to prepare for an activist if your company is about to announce a deal, but we have a look at a lawsuit that could impact on the way the courts view activists who push for companies to sell themselves.

Let's deal with the feature article first. As the volume of M&A remains high, the number of potential bidders for each company is, in theory at least, substantially increased. That gives activists a solid platform to play 'bumpitragé'—

investing in companies in the middle of a transaction and pushing either for an uplift in the price or the entry of a rival bidder into the process. As a result, many are forecasting a rise in the number of companies targeted this way.

“Time is the enemy of all deals, or so they say”

That said, the striking thing about activists who oppose deals, or at least the terms underpinning them, is how unusual it is for a transaction to fall through when one of them goes public with their opposition. Far more common is the deal proceeding as planned, a source of comfort to deal-makers, perhaps.

Some deals do fall through, of course, and there have been examples of activists getting a 'bump' here and there. Yet where companies have run a robust process and there are few other short-term strategies for boosting the stock price, activists are largely at a disadvantage. Time is the enemy of all deals, or so they say, and shareholders of all stripes are well-aware of the risks in letting one collapse.

Onto PLX Technology, where a Delaware Court judge has denied

a motion to dismiss a claim against the activist investor who won a proxy contest and sat on the board that decided to sell the company (claims will also proceed against the CEO and financial adviser, so it's not a lonely trial by any means). Although it is early days yet in the trial, the idea that activist directors have dual fiduciary duties that may conflict is a little counter-intuitive to say the least and has some activists worried that courts will take a dim view of their profession in years to come.

Also within these pages are features on two recent conferences I was fortunate enough to be invited to speak at. We have a full conference review of ArrowCon Event's Activist Investing in Canada event in Toronto on October 6 and—since the panels at Schulte Roth & Zabel's sixth annual shareholder activism conference in New York were off the record—a brief excerpt from my presentation at that event.

It only remains for me to say thank you as ever for reading, and I hope you enjoy this, the penultimate issue of 2015. ■

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Activist Insight

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“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

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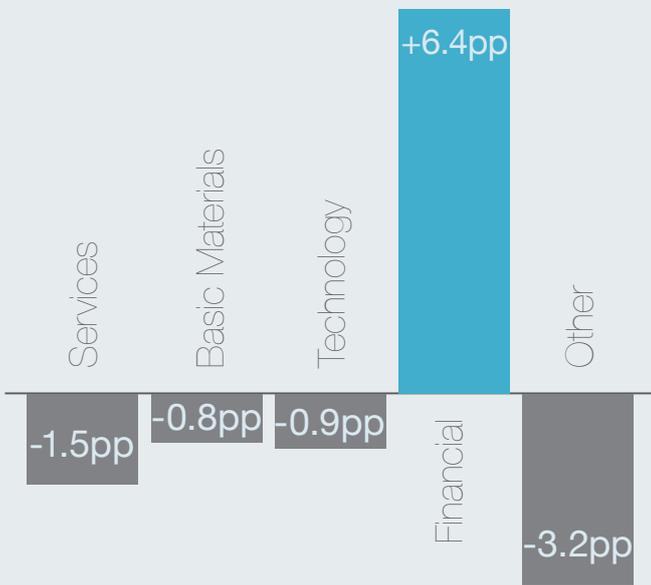
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Talk of the town

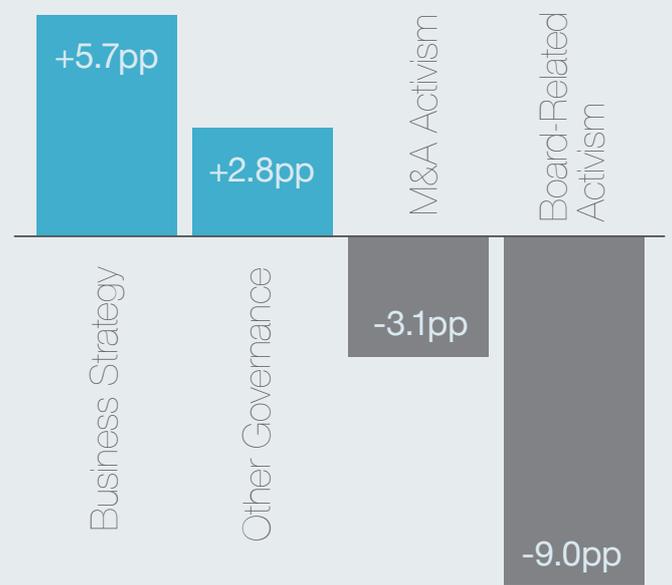
Three key charts from our presentation at the sixth annual Schulte Roth & Zabel Shareholder Activism Conference.

The rise in activism at financial stocks in the last year has been overlooked



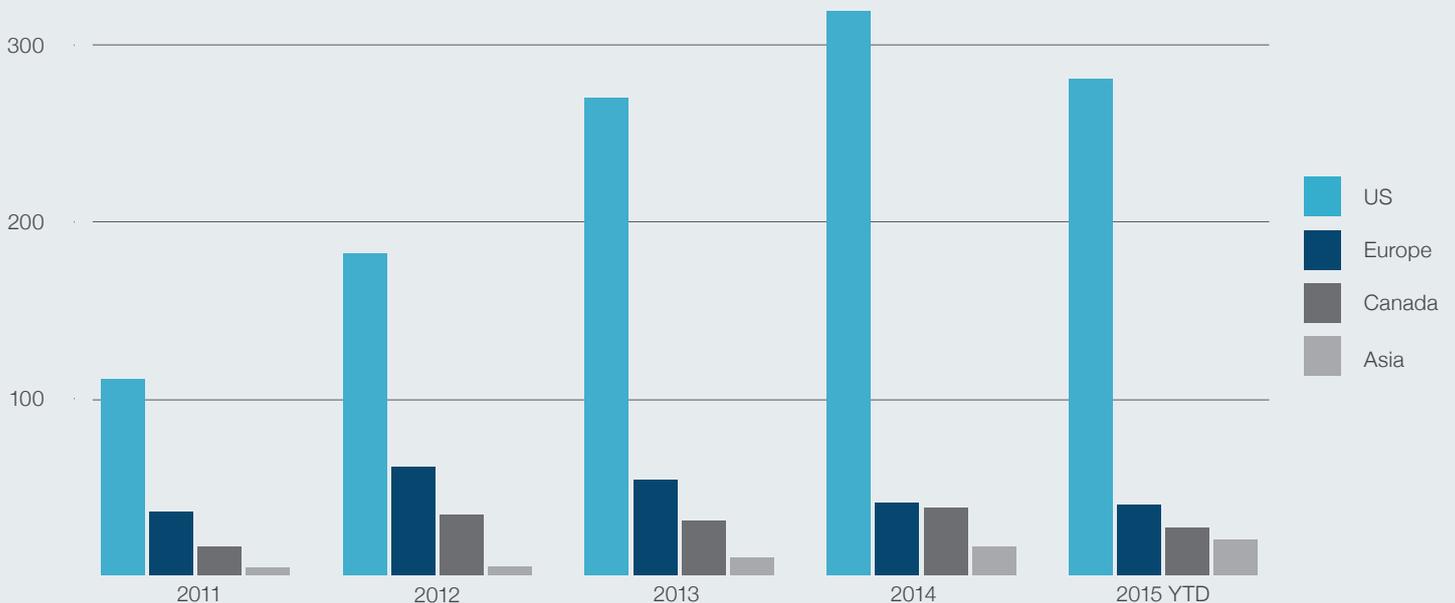
Change in target sector (2014 vs. 2015) of companies publicly subjected to activist demands as a proportion of all activism

Activism has evolved since 2010 (push for board seats excluded)



Change in type of activist actions (2010 vs. 2015) as a proportion of all activism

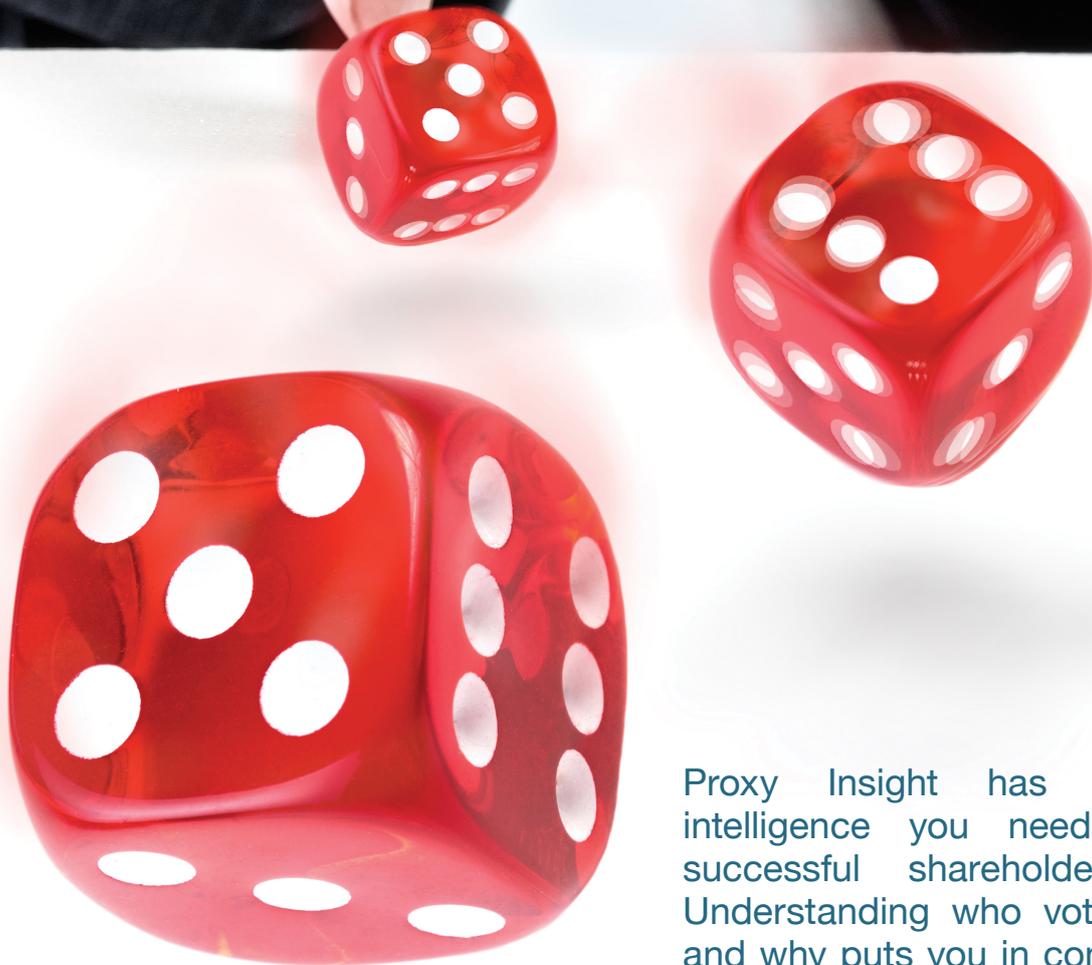
The US remains the most appealing market for activists



Number of companies publicly subjected to activist demands by company HQ and year

A close-up photograph of a hand holding several red dice. The hand is positioned as if about to drop them. The background is dark, and the lighting highlights the texture of the skin and the glossy surface of the dice.

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The dangers of fighting back

DuPont was a poster child for corporate defense after winning its proxy fight in May. That bought CEO Ellen Kullman just five months in the job.

When DuPont fought off a board challenge from activist investor Trian Fund Management in May, the company's CEO and Chairman Ellen Kullman was seen as the main beneficiary. In fourth place on the company's slate of twelve with 97% of the votes cast, compared to Nelson Peltz's 43%, it could safely be said that she had earned the right to lead DuPont into a new era.

Five months later, that confidence seems to have been misplaced. October 5, DuPont announced its latest quarterly earnings, accompanied by yet another downgrade of guidance for the year and an acceleration of its cost-cutting program. More surprisingly, Kullman announced her retirement from all roles at the chemicals-cum-generic sciences company at the same time.

Whether she jumped or was pushed is far from obvious. Audience members at a conference Kullman spoke at three days earlier said there was no sign of fatigue or uncertainty, despite her six years at the helm. Nonetheless, Trian had made noises about repeating its proxy fight next year, raising the question of whether the board had made a pre-emptive move to avoid a fight.

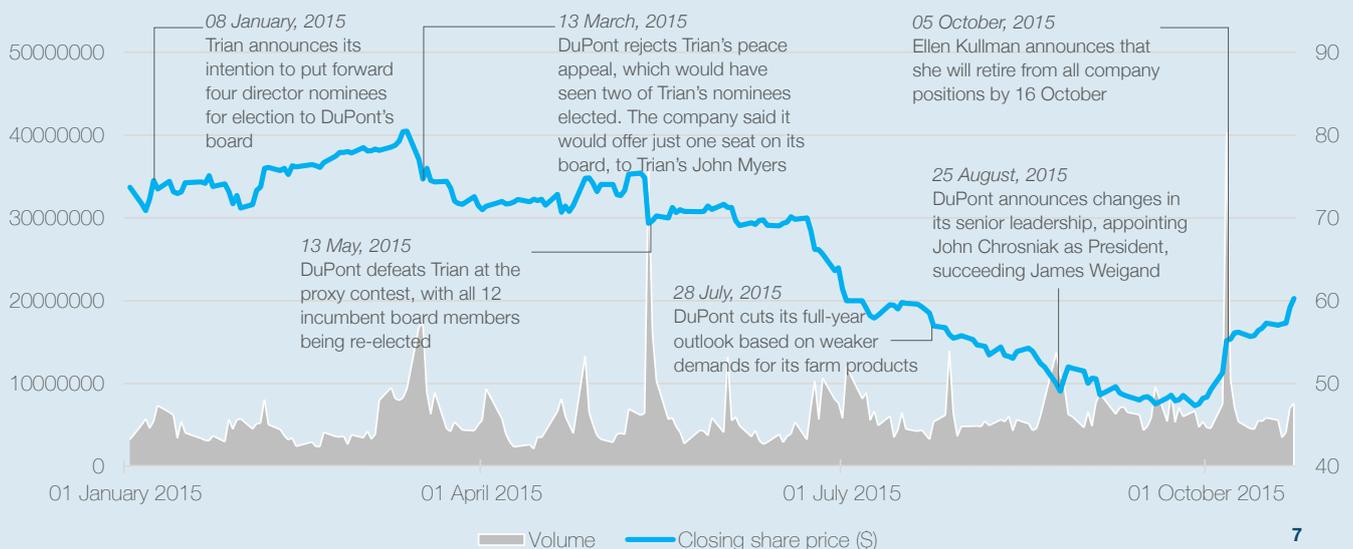
Jeff Sonnenfeld, Senior Associate Dean at the Yale School of Management, friend of Kullman and a bête-noire of Peltz, had a more nuanced take in an article for Fortune magazine, accusing the board of harbouring "an Oedipal-like rivalry" with Kullman and an ambition to leave its own generational imprint. The rush to change leaders in the midst of a cyclical downturn was a

product of "groupthink in reaction to the wilting external criticism of a few activist investors and some very new directors, namely recently retired CEOs Ed Breen and James Gallogly," he argues.

Breen's elevation looks significant. A noted breakup expert, the former Tyco Chair has been widely touted as a potential permanent successor. Sandy Cutler, DuPont's Lead Independent Director, said in a statement "Breen's record of achievement and broad experience make him well-suited to lead the company."

At the very least, he will be a hard candidate for Trian to oppose, the activist having previously tried to hire Breen for its slate. For now, he also has the favor of the markets; DuPont's stock has risen 18% since his appointment. ■

DuPont Stock



Activism in numbers

\$253Bn

Value of activist
stocks as of
October 29, 2015

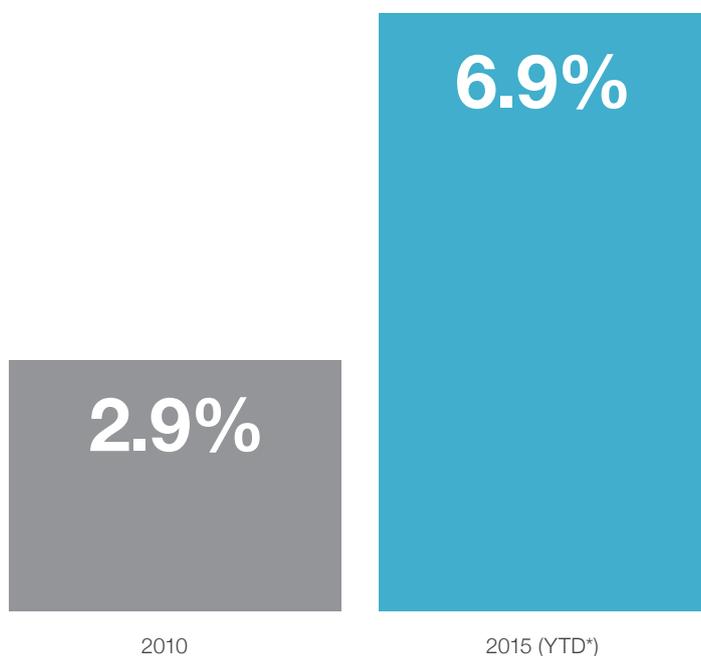
Source: Activist Insight Online

Money in activism

The market value of investments in public companies by activist investors hit \$253 billion in 2015, and could surge again once Schedule 13F filings are released next month.

Just one activist?

Of the companies subjected to public demands by activists, the proportion facing the same demand from more than one investor in a single year has risen sharply since 2010.



*YTD correct at 19/10/2015

Source: Activist Insight Online

Of the 40 investors who have made a public demand of an Asian company**:

50%

are headquartered
in the United States

25%

are headquartered
in Asia

18%

are headquartered
in the United Kingdom

**Since 2010

Source: Activist Insight Online

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