

Volume 3, Issue 10

October 2014

**KINGSDALE
SHAREHOLDER
SERVICES**

**PERSHING
SQUARE
CAPITAL
MANAGEMENT**

**ACTIVISM IN
NUMBERS**

ACTIVISM MONTHLY *Lite*



Activist Insight

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Editor's letter

Josh Black, Activist Insight

This month's Activism Monthly Premium highlights a data point that continues to fascinate observers of this fast-growing strategy. While the total assets under management by activist funds has tended to be put at around \$100 billion, an analysis by Activist Insight of 50 pure focus activist funds suggests this may be off by a good \$50 billion, largely as a consequence of ignoring non-US funds. Indeed, by focusing on US activists, some analyses of assets under management have ignored the striking importance of these funds elsewhere, missing a crucial piece of the jigsaw that indicates what we might see over the coming years.

The growth in activist assets under management is likely to lead to two developments, or more likely, a mixture of both. Either the number of activist campaigns is going to grow, or the size of companies targeted will increase. In fact, the past year has shown that a combination of both is the most likely outcome, with growth in every market-capitalization but bigger and bigger bets, like Carl Icahn's \$3 billion investment in Apple or Bill Ackman's \$4 billion effort to push Allergan into the hands of Valeant Pharmaceuticals.

As part of this analysis, we've also aggregated all the activist holdings recorded on the Activist Insight Online

database (more than 1,000). While not all of these holdings have seen publicly declared activist campaigns, we have selected them for upload on the basis that there is likely to be one taking place behind the scenes at least.

“Darden is one of the year's most interesting campaigns for a number of reasons”

Elsewhere in this month's edition we take a deep look at Starboard Value's campaign at Darden Restaurants. Darden is one of the most interesting campaigns of the year—Starboard's largest-ever investment, a full array of demands ranging from the operational to a real estate spin-off, and perhaps most significantly, one of the most controversial corporate governance questions of the year. In May, the Florida-based company sold its Red Lobster chain despite more than half of investors wanting a special meeting to decide on the deal, handing Starboard an open goal and encouraging ISS and Glass Lewis to advocate the removal of Darden's entire board in a very rare and comprehensive endorsement.

By offering a full slate at Darden, Starboard Value is participating in

an emerging trend among activists. In the past five years, Activist Insight has tracked 28 full slates nominated by activists, including 19 in the past two years alone. A total of 15 majority slates were nominated in the US alone in each of the past two years, (for more, see our infographics page, Activism in Numbers), plus three in other jurisdictions this year.

This month's activist interviewee, Daniel Lewis of Orange Capital, knows a thing or two about other markets, given his campaigns in Australia and Canada. He's also a proponent of real estate separations, pushing for one at casino operator Pinnacle Entertainment. We're pleased to have added input on Canada from Wes Hall of Kingsdale Shareholder Services, trailing the firm's proxy season review, and in our investor interview, we examine what CalSTRS thinks of activist investors. Hint: with \$4 billion invested in their funds, it's pretty keen on them, even if there are too few small-cap specialists out there for its liking.

As usual, we have all the news and new investments from September, making this your one-stop shop for news on activism. With that, it only remains to say, thanks as always for reading, and do get in touch if you have anything you'd like to discuss.

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Activist Insight

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PUBLISHED BY:

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Activism Monthly Premium

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



Activist Insight

Activism Monthly Premium magazine is the authoritative source of thought leadership and editorial in the activist investing space.

“Great articles on shareholder activism”

Carl Icahn



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“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, formerly of Clinton Group

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The playmaker

An interview with Wes Hall, CEO & Founder of Kingsdale Shareholder Services

They say Canada is an activist's paradise, but is it just the legal regime that makes it attractive?

There's no doubt Canada continues to have a welcoming regulatory regime, including a more lax warning threshold—10% share ownership—and majority voting policies now mandated by the Toronto Stock Exchange, making it easier to advance change.

But that's not the whole story. It's the opportunities that really attract investors. As the US market becomes more crowded, many players are getting elbowed out as what remains of the low-hanging fruit is picked off and, by necessity, they spill over the border in search of spoils. Our resource sector was most active this year—with over half of the 26 proxy contests in Canada taking place there—in part due to the continued weakness of the commodities market.

US investors, especially the smaller ones, are able to take up larger stakes in a Canadian company than they might otherwise be able to in the US, thanks to the weaker Canadian dollar, the relatively smaller size of Canadian companies, and the increased willingness of institutional investors—who in general occupy larger positions than they do comparatively in the US—to work with activists, no longer resorting to 'voting with their feet' to make their views known.

Has the level of activism increased during 2014 or have there been any other significant developments?

The number of proxy contests in Canada have remained at an elevated level first seen in 2008, when the numbers jumped 67% from the year before. What changed this year was the number of fights disclosed publicly dropped. More of the action has moved behind the scenes. Activists have become more sophisticated arriving

“More of the action has moved behind the scenes”

at boardroom doors with white papers and alternative corporate strategies and boards, acknowledging the high resource costs of a fight, are more willing to listen. With activists doing a better job of highlighting issues that do indeed need fixing, boards have been willing to accept their point of view and make changes before a fight.

The fact is, even if an activist is unsuccessful in achieving their ultimate prize, they often win by influencing the company to go off in a different, more profitable direction.

Does representing both activists and defense teams make Kingsdale a better advisor?

Our results suggest it does. We've been engaged in more proxy contests than all other advisors in Canada combined and acted on a majority of M&A transactions each year.

This means we're often responsible for setting the trends and innovating new tactics before the rest of the world hears about them. The fact we have worked on both sides means we can anticipate moves and strategies before they are deployed.

But what leads to our greatest success is a simple correlation: the sooner we are brought in as an advisor the greater the likelihood of our client's success. We like to be in a position to win a fight before it starts. For example, if we are representing an issuer, we would encourage them to get proactive the second they get a hint of an activist investor. Get out and start conditioning shareholders that your strategy is the right one and implementing defensive tactics like an advance notice by-law. For activists, we know what companies will have lined up for you when those boardroom doors open and can help you leapfrog their best arguments and defensive tactics.

What should activists from outside of Canada know before they look at a move here?

Aside from knowing the ins and outs of our favorable regulatory policies, we're

“US INVESTORS ARE OFTEN ABLE TO TAKE LARGER STAKES IN CANADIAN COMPANIES THAN THEY WOULD IN US ONES”

being contacted by a lot of US activist investors wanting to understand where the Canadian government will step in to prevent them from changing a Canadian company. They're asking us for clarity on potential targets and our advice is to have conversations with the government before you take a run at a company because there doesn't appear to be a clear policy.

Wes has over 15 years of experience in corporate governance and shareholder communications. He started Kingsdale Shareholder Services in 2003 and Kingsdale Communications in 2009 to provide clients with best-in-class services for communicating with shareholders and managing investor relations communications. Wes is one of Canada's foremost experts in proxy solicitation, depositary, corporate governance and other shareholder related initiatives. Prior to forming Kingsdale, Wes was Vice President, national sales, for Georgeson Shareholder Communications Canada, and a Senior Manager for a major Canadian transfer agent. He is currently a director of SickKids Foundation and Wellgreen Platinum Ltd. He is the former Chairman of the board of Difference Capital Financial, former Director of Equity Financial Holdings Inc., Longford Energy, Exempt Market Dealers Association of Canada and Caldera Geothermal Inc. He has earned the Ernst & Young Entrepreneur of the Year 2009 award for Ontario. Wes has successfully completed the directors' education program offered by the Institute of Corporate Directors (ICD) in partnership with the Rotman School of Management, University of Toronto.



2014 PROXY SEASON REVIEW



Being the best in our field means **constantly learning, staying on top** of the latest developments, **identifying trends** before they're trends, and **always innovating**.

Find out what we know:

<http://www.kingsdaleshareholder.com/2014psr.html>

There's a reason why we're engaged on more proxy contests than all others combined.



Riding the rails

An interview with Paul Hilal from Pershing Square Capital Management, taken from this month's 'The Activist Investing in Canada Conference' special edition of Activism Monthly Premium

Few activist investors are as well-known as Pershing Square Capital Management, least of all in Canada, which has been a happy hunting ground for Bill Ackman's hedge fund over the years. Encouraging US burger chain Wendy's to spin-off Tim Hortons in 2006 and selling Sears Canada back to its US parent in 2010 at a premium to a failed takeover bid four years earlier were two highlights, but neither generated as much interest, or controversy, as the replacement of seven directors of Canadian Pacific Railway ("CP") in 2012. Paul Hilal, a Partner at Pershing Square who served as Ackman's railroad expert on the campaign, says the battle shook corporate Canada, where activism was still rare and low-key. "For those Canadian boards that had lost sight of the shareholders they served, the CP proxy win was a seismic reminder," he told *Activist Insight* recently.

Like many investors, Hilal believes there is a "relatively level playing field" for shareholders wanting to engage boards. "Because the Canadian judicial system functions so well," he says, "foreign shareholders have less risk of being disadvantaged—or 'home-cooked' as some say—than they do in many other jurisdictions around the world."

Even so, the stunning victory over

CP, which had an unusually eminent board (often referred to as "the establishment" in Canada) and literally joined the country together in the nineteenth century, was a shock to many. Canada's use of the universal proxy, instead of separate cards for the activist and issuer as in the US, was put forward as one factor, but Hilal says this was only effective "on the margin." Instead, it was high-minded presentation and hard work that made the difference.

“Foreign shareholders have less risk of being ‘home-cooked’ than they do elsewhere”

"We strove to present what we believed was an overwhelming argument in as respectful and polite a fashion possible," Hilal says. "Earning the support of CP's shareholders required months of meetings and phone calls. Lots of airplane miles. Ultimately we also earned the strong backing of all three proxy advisers."

The rewards have since vindicated Pershing Square's thesis. "In the 26 months since that annual meeting, we ship more freight, faster and more reliably, more safely and with less overhead than ever before. As a result, our profits and cash flow have skyrocketed, the CDN\$8bn

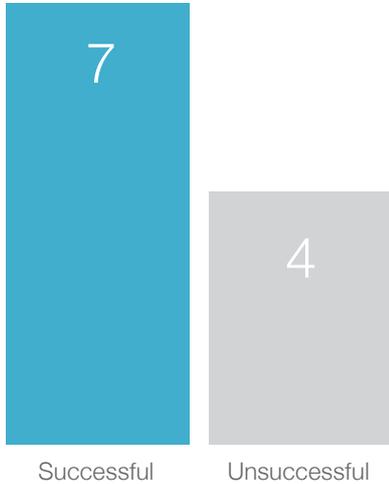
company we started with is today worth CDN\$40bn."

That is unlikely to be the end of the story, however, and Pershing Square has exposure to two live-wire Canadian situations, both involving so-called tax-inversion mergers. As explored elsewhere in this edition, the activist is pushing botox-manufacturer Allergan to sell itself to Quebec's Valeant Pharmaceuticals International, and has separately expressed support for Burger King's bid for control of Tim Hortons. "The rush by US corporations to pursue inversion transactions highlights the opportunity this Congress has to improve the US corporate tax system," Hilal says. "The tax code needs to reflect how easily capital, talent, and business activity can shift from one jurisdiction to another."

And on the news that would have left Canadians reaching protectively for their TimBits? Pershing Square thinks Tim Hortons could do with some hands-on support to become more efficient, starting with Burger King's zero-base costing approach (which requires budgetary requests be re-evaluated repeatedly). "We greatly admire Burger King's management team, and its financial backer—3G," Hilal says. "If Wendy's had this team, we would have been happy, supportive shareholders."

Activism in numbers

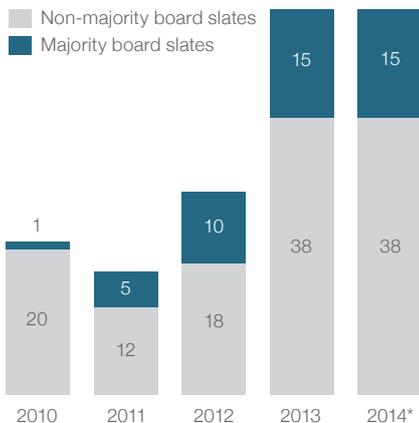
M&A tech activism more often successful than not



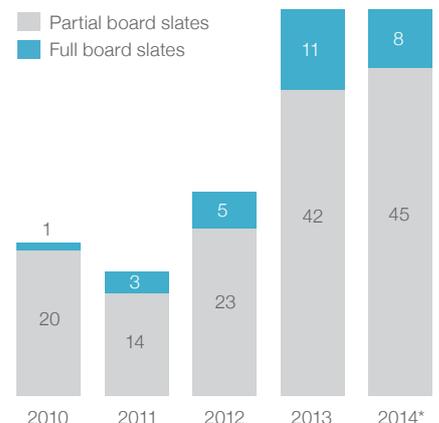
This month Starboard Value was particularly active in the technology sector, where it is already the activist with the largest number of campaigns. Aside from offering to buy 3D-technology firm RealD, Starboard also called on Yahoo! to acquire AOL (a company it knows well).

Starboard's chances of success look good from the past efforts of activists in the field, seven campaigns for an acquisition or merger ending in success, against four failures. Yet the complexity and size of the Yahoo! deal adds its own dimensions to Starboard's campaign, and the outcome is hard to foretell.

Size of dissident board slates holds steady



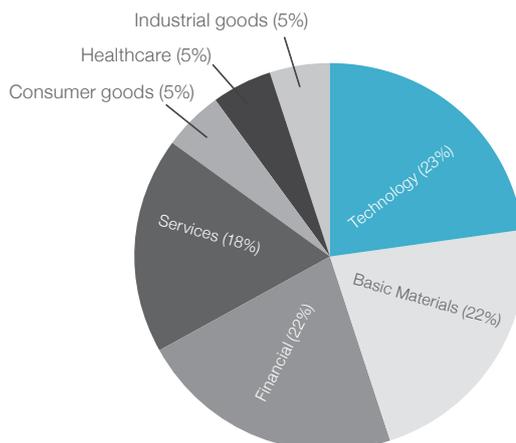
Since 2012, almost one-third of proxy contests led by full time activists have seen majority slates nominated. What is relatively new is the high number of full slates, where activists seek the removal of entire boards. These peaked at 21% of contests last year, falling to 15% so far in 2014.



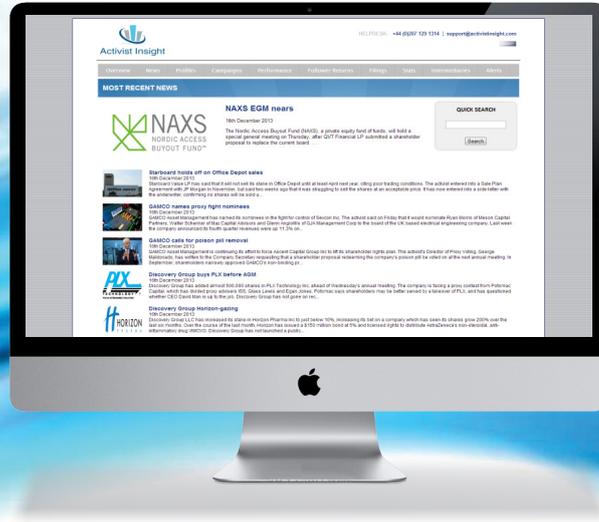
13D digest



September sector breakdown



Activists continued to invest heavily in the technology sector in September, but perhaps more surprising was the equally large number of basic materials stocks, suggesting investors hope commodity cycles have reached their nadirs. There were four investments in service firms, a particularly popular sector in 2014.



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