

Volume 3, Issue 9

September 2014

**CASABLANCA
CAPITAL**

**PERSHING AT
ALLERGAN:
LITIGATION UPDATE**

**ACTIVISM IN
NUMBERS**

ACTIVISM MONTHLY *Lite*



Activist Insight

www.activistinsight.com



Editor's letter

Josh Black, Activist Insight

How much does it cost to fight a proxy contest? To the best of our knowledge, no-one has provided a recent estimate. Having trawled through more than 70 quarterly and annual reports by American companies, we have a good idea. According to our analysis, companies with a market-cap of between \$250 million and \$2 billion have been prone to spend around an average of \$1.5 million to \$2 million defending and entrenching their boards. With larger companies, the amounts can spiral to more than \$10 million.

Activists and their advisers tend to repeat the same objections to this corporate largesse. Executives and boards are willing to spend any amount of shareholders' money, they say. Second, investment banks, proxy solicitors and law firms who often make most of their money out of defensive work tend not to face push-backs on their costs, but instead "scare" corporations into adding more services. Our analysis shows issuers both outspend activists on proxy solicitation services, and use more bodies repeatedly calling investors.

The activists themselves may be spending more in bigger fights—there are few reliable statistics on the subject—but on the whole they bear the risk of being lumbered with heavy bills that affect the

performance of their funds. For that reason, activists will often seek the full reimbursement of costs when they are successful in their aims or enter into a settlement agreement. Their actions would not be necessary if the company was on a successful trajectory, they argue, and drive shareholder value in the long-term.

“ Activists complain that boards are willing to spend any amount of shareholders' money”

Even so, when the stakes are high, activists can spend small fortunes. Bill Ackman is expecting to spend \$1.75 million on his special meeting solicitation alone at Allergan and incurred \$20 million in total costs at Canadian Pacific in 2012. Last year Jason Ader was reimbursed \$2.5 million for his first proxy contest, at International Game Technology. It is likely that first-time or occasional activists spend more than those who fight several proxy fights a year, whose costs can be as little as \$800,000.

In comparison, a proxy solicitor in Canada estimates the cost of a no-frills proxy contest at \$1-2 million. For some activists, these contests can be expensive—not only do they sometimes add Canadian advisers on top of their US counsel, but Canadian

service providers are said to be slightly more expensive than their US equivalents. This was also the case for an activist who launched a proxy fight against US-based but Australian-listed Antares Energy, only to see last minute defections torpedo his slate.

Elsewhere in this issue, we interview Casablanca Capital's Don Drapkin on his successful proxy fight at Cliffs Natural Resources and the new management installed after last month's annual meeting. Cliffs has ruled out one part of Casablanca's plan—splitting the company into US and offshore assets—but Drapkin is upbeat about the company's future.

We also showcase Engaged Capital and Voce Capital Management's campaign at Oplink Communications. Oplink's Management appears to have taken the hint and is considering spinning-off a subsidiary identified by the activists as a drag on earnings. That is unlikely to halt the proxy fight, however, as we explain.

It is also worth noting that we will be travelling to Toronto in October for the second ArrowCon Partners activist conference, this time focused on Canada. We hope to meet as many of our readers as possible there. Thank you for reading, and do get in touch if you have any queries.

jblack@activistinsight.com

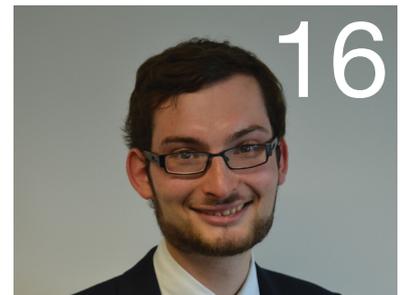
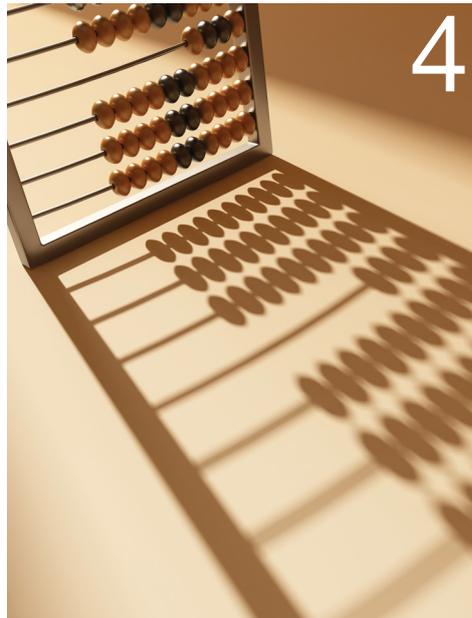


Activist Insight

Contents

Full contents of Activism Monthly Premium Magazine, September 2014. To subscribe and access all this and more, see overleaf.

- 2** Editor's letter
- 4** The cost of a proxy contest
- 9** Litigation update
- 10** At the Cliff-face
An interview with Donald Drapkin,
Casablanca Capital
- 12** Indirect support
An interview with Wrug Ved,
PAAMCO
- 14** How to handle an activist
Josh Black, Activist Insight
- 16** Engaged & Voce at Oplink
- 18** News in brief
- 20** New investments
- 22** 13F analysis
- 23** Activism 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
info@activistinsight.com
Twitter: @ActivistInsight

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

Activism Monthly Premium

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

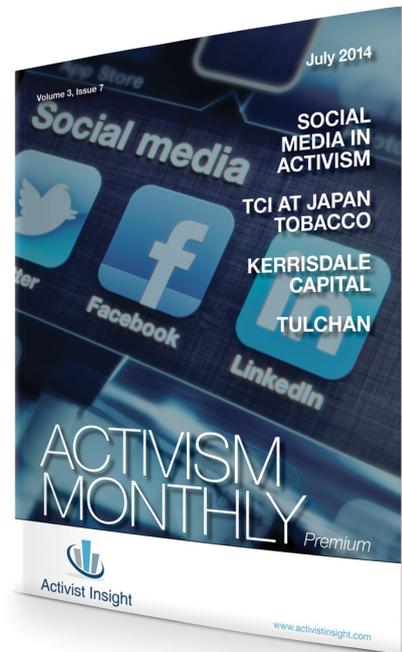


Activist Insight

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



Feature articles, expert opinion, interviews with key players, campaign analyses, news round-ups and much more!

“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, Clinton Group

Subscribe today at www.activistinsight.com/ActivismMonthly



At the Cliff-face

An interview with Donald Drapkin from Casablanca Capital

Casablanca Capital's proxy contest victory over Cliffs Natural Resources looks set to go down as one of the most comprehensive of 2014. Over a seven month stretch, Cliffs traded barbs with the activist, claiming Casablanca wasn't prepared to compromise and at the last minute shortening its slate so that as many as four of Casablanca's nominees would be elected without contest—delivering the outcome proxy voting advisers ISS and Glass Lewis had recommended without requiring institutions to vote on the activist's proxy. Yet ultimately the stock's institutional holders were harder on management than anyone expected. Casablanca won six seats on the board—a majority—and barely a few weeks later appointed one of those nominees as CEO.

The overwhelming support for change at Cliffs was doubly surprising, given Casablanca's relative anonymity in the activist space. In 2011, it put up three nominees for directorship in a proxy contest at Mentor Graphics, but withdrew its slate when a certain Carl Icahn nominated his own.

Since then, it has jettisoned its hedge fund and now invests on a case-by-case basis, approaching potential investors with propositions like that at Cliffs, where it said shares could rise 250%. For Cliffs, it raised \$200 million in order to build a stake of

just over 5%. This suits an activist investor just as well as a hedge fund structure with lock-in periods, he thinks, noting that “people like seeing the idea before they invest.” And with activism increasingly in the public eye, there are more and more potential sponsors.

“They were totally ineffectual. It was the classic, Nancy Reagan, ‘just say no’ defense”

Keeping them on their toes

Casablanca's Chairman Donald Drapkin is known as a veteran deal-maker from his time at MacAndrews & Forbes, where he had a high profile and litigious falling out with Ron Perelman. Yet he started his career at New York law firm Skadden, Arps, Meagher & Flom. “I learnt everything I know from Joe Flom,” Drapkin told Activist Insight. Sometimes his work would involve defending corporations from hostile takeovers or corporate raiders, other times he would be working for the bidding party. But when he moved into private equity some ten years later, he “went after everybody,” by his own admission.

The transition from an acquisition-based approach does not appear to have flummoxed Drapkin much.

“Activism is just another way of keeping management on their toes and making them perform,” he says.

Indeed, it was the management that Casablanca objected to most strongly at Cliffs, despite the company having recruited the former interim-Chief Operating Officer of Barrick Gold, Gary Halverson, as its new President and CEO-elect just three months earlier. Things started cordially enough, with an acknowledgement in Casablanca's initial filing in January that the current management was not responsible for the performance that had seen it spend most of 2013 as the worst performing member of the S&P 500. Yet discussions with the board went nowhere fast, according to Drapkin. “They were totally ineffectual,” he says. “It was the classic, Nancy Reagan, ‘just say no’ defense.”

Skin in the game

In February, Casablanca announced it would nominate a slate that could represent a majority of the board if all members were elected. Cliffs argued that shareholders shouldn't hand control to an investor holding just 5% of the stock, but Drapkin is quick to point to management's own lack of equity—a point Casablanca made repeatedly during its campaign. The activist had already lined up Lourenco Goncalves as its choice to lead the

“IF LOURENCO SEES SOMETHING, WE’RE FLEXIBLE FOLK. WHAT YOU NEED IS A GOOD CEO”

company early on in the process, and encouraged him to buy \$1.5 million in stock as a way of showing his interest in the company.

A former CEO of USA Metals, Goncalves said from the start that Cliffs was undervalued by the market because of the way its assets were structured. On becoming CEO last month, he said the company occupied a “unique position” in the strength of its iron ore business and “While there is much to be done and many challenges ahead of us, there is also much promise.”

However, Drapkin thinks the most compelling offering of Casablanca’s alternative slate was the opportunity to boot out management. “We got lucky and had the Cliffs board,” he notes, dryly. When two of the three main proxy advisers recommended shareholders vote for four of Casablanca’s nominees, Cliffs shortened its slate in what Drapkin describes as “a clever little ploy” to avoid institutions voting on the activists’ proxy. “Institutions don’t like to give full control,” Drapkin says, “but

in this case they had to; management was so bad.”

Like many others, Drapkin is beginning to see new opportunities in cracks in the formerly united façade of management and institutional investors.

 Institutions don’t like to give full control, but in this case they had to; management was so bad”

“You can see the institutions are starting to take anti-management positions,” he says, citing Darden Restaurants as another company where investors are angry at unaccountable executives.

Settling in

Questions about Cliffs’ new direction are best addressed to management, according to Drapkin. Casablanca has been forthright in its vision for the company (see box below), but

circumstances could change once the new team gets its hands on the internal records. “If Laurenco [Goncalves] sees something, we’re flexible folk,” says Drapkin. “What you need is a good CEO, and we have that now.”

Nonetheless, Drapkin is excited by the company’s potential, saying he thinks there will be “a big return” when the hard work is over. “All of the major miners in the space think iron ore prices could move up. If that happens and Cliffs is properly configured, we think we could get to \$50, but most shareholders will be happy at \$40-45,” he says.

And although Drapkin is reluctant to discuss any new projects, it sounds like Casablanca could be involved in activism again in the foreseeable future. “I think I was known for being effective at doing hostile deals,” Drapkin says. Now, when Casablanca identifies its next target in need of a restructuring, “[they] will take us seriously.”

The Cliffs gameplan

Casablanca’s filings suggest an average share price of \$25.39, including brokerage fees, for its \$201 million investment in Cliffs, which it first disclosed in January. After losing 32% of their value in 2013, shares fell as low as \$14.38 in June on the back of weak iron ore prices. Since that low, they have recovered almost 10%, albeit far short of the \$53 Casablanca suggested they could be worth in January. Casablanca’s contention was that international projects were holding

back Cliffs’ prime asset—its US iron ore operations. It suggested mines in Eastern Canada (including Bloom Lake) and the Asia Pacific region be spun-off into a newco called Cliffs International, which in time could become a potential acquisition or joint venture partner. Cliffs USA, with iron ore assets “ideally positioned” to enjoy the fruits of an economic recovery, could then convert to an MLP structure and double its dividend, according to Casablanca. The US firm could be

worth \$23 per share, in addition to \$15 per share for Cliffs International; MLP conversion and cost-reductions could add \$15 per share, the activist said. This remains the gameplan, according to Drapkin, but is subject to the new board agreeing on this course of action. In the meantime, questions remain over the viability of the firm’s Bloom Lake and Pinnacle mines, and Drapkin thinks it will take between 12 and 24 months to accomplish all of management’s ambitions.

The Growth of Activist Investing in Canada 2014

October 16 - The Ritz Carlton - Toronto

Positioning and Preparing Companies for Response

As the activist investing trend continues to grow, and the Canadian regulatory landscape continues to favor shareholder activists, it becomes more important than ever for company management, advisors and investors to understand the specifics around shareholder activist campaigns.

Activist Investing in Canada taking place October 16 in Toronto will feature some of the most knowledgeable and well-respected participants in the market. Attendees will receive technical education on all of the issues surrounding this growing trend.

View the complete agenda at: www.activistinvestingcanada.com

SPEAKERS INCLUDE



Paul Hilal
Partner
Pershing Square Capital Mgmt



Glenn Welling
Founder & CIO
Engaged Capital



Raj Hindocha
Managing Director
Deutsche Bank



James Vanasek
Principal
VN Capital Management



John Varghese
President & CEO
Revive Capital Investment Mgmt



Walied Soliman
Partner
Norton Rose Fulbright



Stephen Griggs
CEO
Smoothwater Capital



Victor Guo
Senior M&A Associate
Institutional Shareholder

REGISTRATION

Registration Rate

CAD \$765 (USD \$700)

Publicly Listed Companies: Two Attendees for the Price of One

Premier Sponsor

NORTON ROSE FULBRIGHT

Luncheon Sponsor

D.F. KING

Conference Sponsors

Shorecrest

SIDLEY AUSTIN LLP
SIDLEY

Innisfree

M&A Incorporated

Paul | Weiss



HOULIHAN LOKEY

Media Sponsor



Activist Insight

Visit www.ActivistInvestingCanada.com or call +1 (631) 664-1311



Litigation update

What's happening in Pershing Square's battle with Allergan?

Much has changed since Pershing Square's attempt to push Allergan into the arms of Valeant Pharmaceuticals was our campaign of the month in May. Then, Valeant had just unveiled its first offer, which Allergan promptly rejected. Valeant has since raised its offer, but the target proved immovable. As we predicted, Pershing Square has therefore called a special meeting to replace a majority of the board. In August, it delivered consents from 31% of shareholders, and Allergan called the meeting for December 18.

None of these issues has been uncontested, with three key areas litigated. First, Pershing Square sought exemption from the company's poison pill for those consenting to its special meeting solicitation. Most recently, it sought to compel Allergan to hold the special meeting before it had a chance to make an acquisition that would likely put a takeover beyond Valeant's reach. Allergan, for its part, has accused Pershing Square of insider trading and sought a declaration on the matter.

The poison pill

After Pershing Square disclosed its 9.7% stake in Allergan, the company implemented a poison pill that restricted activist owners of the stock to 10% of the outstanding shares, and passive investors to 20%—a pill of the

kind Third Point and Sotheby's fought a battle over earlier this year. Pershing Square then alleged Allergan owners were afraid to talk to it unless the company could confirm they would not be treated as beneficial owners.

Ruling on this motion, the Delaware Court discussed how “the stockholders' ability to exercise their franchise rights by calling a special meeting of the stockholders can be rendered functionally meaningless as a practical matter because of the deterrent effect of the rights plan,” and prescribed exemptions from the pill for the purpose of communicating on the technicalities and advisability of the consent solicitation.

Bylaws

On August 22, Pershing Square submitted consents for the solicitation, while also objecting to having to “provide elaborate and intrusive information” on the parties to the solicitation. With the Delaware Court agreeing that a risk may be posed by the lack of clarity in the bylaws and in conflict with the articles of incorporation, a three-day hearing has been scheduled for early October.

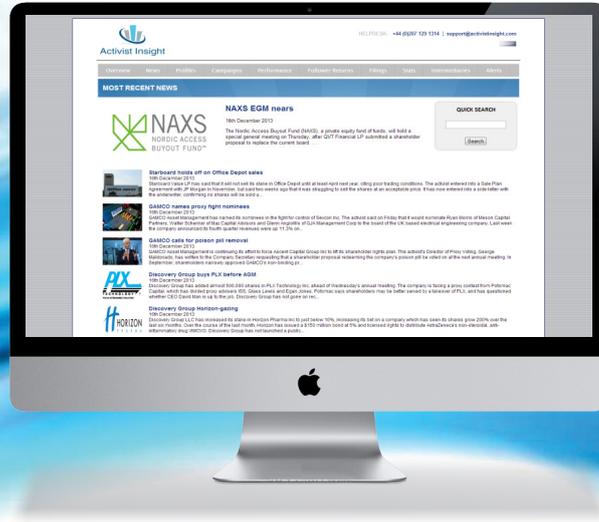
Tender offer

Allergan itself has submitted a complaint about the way Pershing Square accumulated stock in the

knowledge that Valeant would be making an offer for the company. It sought a declaration from a Federal Court in California that the activist's shares could be excluded from being voted at the special meeting.

SEC rules prohibit the purchase of company stock by a party with prior knowledge of a tender offer, but not other kinds of hostile takeover. While Valeant has now launched a tender offer, it is not clear it intended to do so when conspiring with Pershing Square before the activist started buying stock. In the absence of a smoking gun, the Court refused to give a declaratory judgement, saying the question of whether Pershing Square and Valeant were “separate persons” or a joint venture, as they claim, was likely to require a “fact-intensive” and time-consuming allegation.

Perhaps the most important point from the hearing was the reluctance of the Court to take the matter out of shareholders' hands, saying it “would be reluctant to create a precedent that allows corporations to demand at will the immediate attention and input of the federal courts in order to resolve intra-corporate disputes that might be better left to the dynamic free market or to the state court.” A showdown on December 18 therefore looks likely, unless financial considerations intervene.



Activist Insight Online

The definitive resource on activist investing

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

Detailed profiles of 300 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...

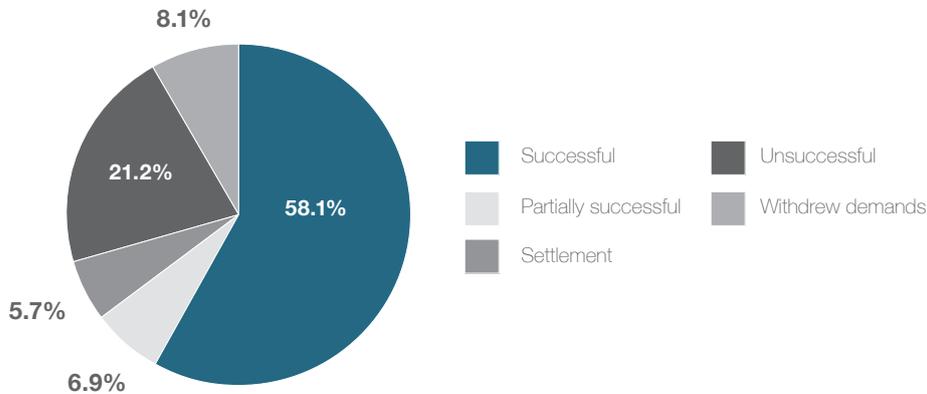


Activist Insight

www.activistinsight.com

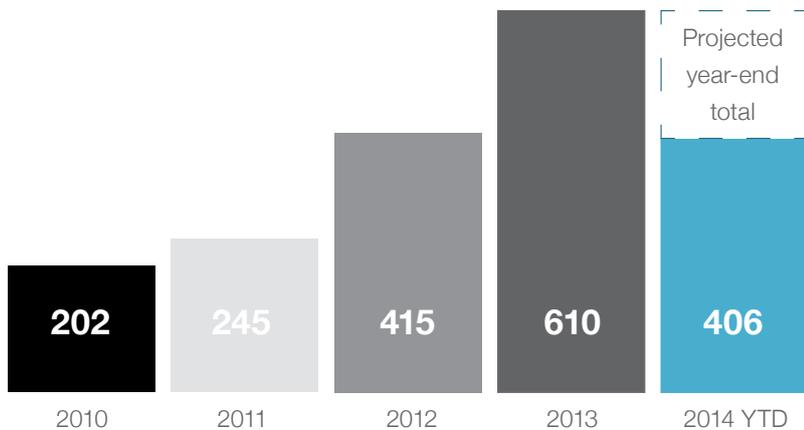
Activism in numbers

Activists get more of what they want in the services sector



In a statistic that bodes well for Carl Icahn in his campaign at Hertz, activists have been fully successful in achieving their objectives in 58.1% of all resolved campaigns in the services sector since 2010, a figure 4.3 percentage points greater than that when all sectors are considered.

Demands for issuer sales and mergers on course to match 2013 high



M&A activism came roaring back slightly ahead of the deals market, and this year is set to match the high of 610 actions seen in 2013.

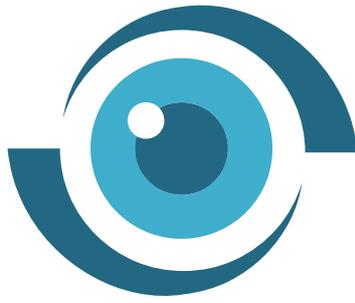
As to why there haven't been more than last year (yet), it may be that companies are beating activists to the punch.

13D digest



Activism now a daily occurrence

165 US-listed companies were publicly subjected to activist actions in the **166** working days in 2014 up until 31st August.



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