Canada Special

Produced for The Activist Investing in Canada Conference

October 2014

ACTIVISM MONTHLY *Premium*

Activist Insight

www.activistinsight.com

Editor's letter

Josh Black, Activist Insight

Contents

> "Now, home-grown activists are intent on blazing a similar trail and pension funds are under increasing pressure to engage"

The emergence of activist investing in Canada has been a talking point for several years now, with new developments each proxy season. Where Bill Ackman was once warned about taking on "the establishment," the country is now described as an activist's paradise, and FrontFour Capital, Orange Capital and Crescendo Partners are frequent visitors.

Activist Insight has been tracking campaigns in Canada since 2010 and noted a significant increase around 2012, which has continued to this day, in parallel with contemporaneous growth in US markets. There has also been diversification away from energy and mining companies, although there is still plenty of action in these sectors. For several years now, US-based activists have been looking for targets in Europe, Japan and, indeed, Canada. Now, home-grown activists are intent on blazing a similar trail, and public pension funds are under increasing pressure to engage with portfolio companies.

However, the data tell only one story, with battles like Agrium bucking the trend of activists getting their way. As a result, we regularly interview both activists and service providers to better explain the landscape and are proud of our reputation for being the only data provider to do so on a global basis. Indeed, you may have seen our name in reports from the likes of Reuters, the FT, and Wall Street Journal, as well as the Globe and Mail and Financial Post.

This primer on activism in Canada, featuring interviews conducted over more than six months, is intended as a supplement to the sessions at ArrowCon Partners' conference on October 16, and a sample of Activism Monthly Premium, Activist Insight's highly regarded print magazine.

We are fortunate with this publication to carry interviews with advisers whose names are synonymous with activism in Canada. In particular, we thank Walied Soliman and Orestes Pasparakis from law firm Norton Rose Fulbright, and Wes Hall, of proxy firm Kingsdale Shareholder Services, for their cooperation.

This is the second conference on which we have had the pleasure of working with ArrowCon and we are grateful for their repeated invitations to collaborate. Simply by looking at the cast list for this event, we are sure that it will be a tremendous success, and look forward to meeting as many attendees as possible.

If you have any queries about Activist Insight or ideas for a feature, please don't hesitate to contact me or a member of the team. We look forward to hearing from you.

jblack@activistinsight.com

Activism in Canada

"With Agrium, Viterra and Telus, Canada's largest companies are under siege." So said the Co-Chair of Norton Rose Fulbright's Special Situations team, Orestes Pasparakis, in an interview with Activism Monthly in April this year. Ever since Pershing Square Capital Management recorded a stunning victory over Canadian Pacific Railway ("CP") in 2012, the country has become something of a magnet for US activists, with Activist Insight data showing more than 30 companies targeted by activists in each of 2012 and 2013, up from 18 in each of the two preceding years.

A favorable regulatory regime and abundance of mining and energy companies, often targets for spin-off and restructuring campaigns, have continued to entice activists. Since 2010, half of activist campaigns have been in basic materials stocks.

In 2013, the revolution appeared to stall when JANA Partners was beaten in a proxy contest by Agrium. "Wrong target and wrong thesis," is the verdict of Pasparakis, who advised the fertilizer company. Yet this year, the number of companies targeted is down to 16 (as of end September), and part of the reason may be that Canadian investors are yet to develop the same capacity to shake up corporations as their counterparts south of the border.

This special report, adapted from the April 2014 edition of Activism Monthly Premium and containing data from the Activist Insight Online database, explores the unique approach of activist investors to Canada.

Shaking the establishment

Patricia Olasker, a Partner at the Canadian law-firm Davies Ward Phillips & Vineberg, represented Pershing Square against CP, where she says the activist was seen as taking on practically the whole Canadian establishment. Others say the issuer was pretty widely despised, but there is no doubt that Bill Ackman's campaign was perceived to be "a game changer," in Olasker's words.

So how did they do it? Olasker highlights three key advantages. First, she says, "Pershing Square is a very sophisticated player, and very strategically-minded." It stole an advantage by filing its proxy statement well in advance of the issuer—an unusual ploy, but one that gave it the opportunity to solicit shareholders long before its opponent. The tactic, previously unheard of, has been used at least once since.

Second, the activist had a willingness to spend on a scale not many Canadian funds could afford to, and third, Olasker says it was "hard to disregard the business case" Pershing Square made, adding that this was helped by the fact that the activist ran "a relatively high-minded campaign," avoiding personal attacks and taking advice from a number of advisers, including legal and communications specialists.

The corporate fightback

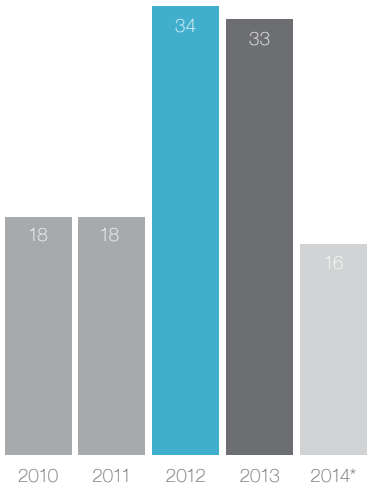
Fast forward to 2013, and JANA Partners found to its disappointment that the floodgates hadn't opened. The New York-based hedge fund hasn't ruled out investing in Canada in the future, but felt pretty sore about defeat in its proxy contest against Agrium.

The campaign itself proved controversial on at least two fronts. Many Canadians were repelled by the activist compensating its nominees, while the company's decision to pay brokers soliciting votes for the management's slate but not JANA's rankled. The latter point was seen by US firms, Olasker concedes, as "a low point in Canadian corporate governance." Moreover, the furore was so fierce that the Ontario Securities Regulator felt compelled to intervene. Although no formal judgement has been issued, Olasker says the regulator made it clear that the next company to engage in so-called "vote-buying" does so "at its peril."

Some have perceived a reaction on behalf of Canadian corporates to increased levels of activism. Hundreds of companies have now adopted advance notice bylaws, and there is talk of giving them the right to implement poison pills. However, Olasker says a trend of companies settling with activists is emerging.

Time for the home-grown activists?

According to Riyaz Lalani, CEO



* as of September 30, 2014

Unique Canadian companies publicly targeted by activists

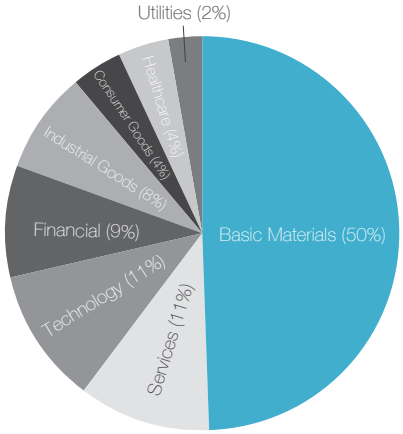
The cost of activism

Some activists have complained that plying their trade in Canada is a more expensive business than in the US, where more competition exists among advisory services. "It certainly isn't cheap," says Wesley Hall, founder and CEO of Kingsdale Shareholder Services, "but I don't know if it's anymore expensive than anywhere else."

Nonetheless, Hall gives the example of a recent proxy contest, which settled before the final meeting, running up fees worth nearly 10% of the company's market capitalization. The reason, he explains, is that litigation is much more common in a market where procedures and rules are less established than in the US. "You have to build in litigation as a potential cost," he says, citing information requests and voting procedures as two commonly fought out areas.

So why do these US activists bother? "These days it seems like the only asset class making any money," says Hall. "Bill Ackman's campaign at Canadian Pacific must have cost $15 million, but he probably made $2 billion in profits. It's a no-brainer."

"SHAREHOLDERS CAN BE TURNED OFF BY PERSONAL ATTACKS. THE BUSINESS CASE ULTIMATELY REIGNS SUPREME"



*Sector breakdown of unique Canadian companies publicly targeted by activists since 2010 **

** as of September 30, 2014*

at the Toronto-based strategic communications firm Bayfield Strategy, there are plenty of shareholder actions each year, but professional activist investing remains in the minority.

Stephen Griggs, an activist investor at the Canadian firm Smoothwater Capital, says the country can be "dangerous" for Americans to do business in. "We may look the same and talk the same language," he says, "but there are some pretty fundamental differences beneath the surface." Griggs says he has had some interest from US firms looking to partner with Canadian activists in order to avoid some of the pitfalls other activists have seen, but these haven't yet come to anything.

The tone of shareholder activism is not nearly as aggressive in Canada, says Lalani, who works on Orange Capital's campaigns. "Shareholders can be turned off by personal attacks. The business case ultimately reigns supreme." Glenn Keeling, from proxy services firm Phoenix Advisors (soon to be DF King Canada), disagrees. "Canadians are learning how this game gets played from US activists," he says, adding that institutions are increasingly weighing in with recommendations at their portfolio companies. This year, former-Clarke CEO George Armoyan became a very visible figurehead for his firm's proxy contest at Sherritt International, and refused to walk away after the company's nominees were elected.

Nevertheless, in this game, US firms have an advantage over their Canadian peers. According to Griggs, no Canadian firm has raised funds as an activist, although there are multi-strategy funds with public backing, such as West Face Capital. The funds for practicing activism are still coming largely from outside the country, which means that US activists in particular, given their familiarity with the institutional investors and corporate governance teams, will continue to be predominant, so long as they continue to see opportunities.

Case Study: Mason Capital Management versus Telus

Norton Rose Fulbright scored a famous victory representing Telus Corp against US hedge fund Mason Capital Management. The activist took a significant stake in the company in 2012, after Telus announced it would collapse its dual-class share structure, making non-voting shares into common stock.

Controversy emerged when the activist sought to requisition a special meeting, because by employing a mixture of share ownership and short positions it had minimal economic exposure to the company. This came to be known as "empty-voting", ('borrowing' votable shares from other stockholders when the investor has an economic interest in the company is described as 'benign empty voting').

Telus took the requisition request to the courts, where it was struck down on two points—that the ultimate beneficial owner of the shares was not listed on the requisition, and because non-voting shareholders deserved a say on a matter affecting their share class at the special meeting. However, much of the debate surrounding the case concerned empty-voting, which was described by one judge as "a challenge to shareholder democracy."

Because the meeting was cancelled, a formal ruling on economic voting has still not materialized. As Orestes Pasparakis told Activism Monthly in April 2014, empty voting remains a "very powerful tool" in certain situations, "if you're sophisticated enough to use it properly."

Special situations

NORTON ROSE FULBRIGHT

An interview with Walied Soliman and Orestes Pasparakis, Co-Chairs of Norton Rose Fulbright's Canadian Special Situations Team.

Canada has been described as an activist's paradise. Is it still favourable to activists?

Canadian corporate law rules continue to make it one of the most activist friendly jurisdictions in the world. For example, in Canada, shareholders who own 5% of the voting equity are able to requisition a meeting of shareholders and are only required to disclose their ownership once they acquire beneficial ownership of 10% or more of any class of equity or voting securities and for every additional 2% thereafter (as opposed to the US, where the lower threshold is 5%). It is also easier for shareholders of Canadian public companies to conduct proxy fights, as they are able to solicit up to 15 shareholders or rely on the "broadcast" exemption, rather than file and mail a proxy circular.

Have there been any significant developments in the legal sphere over the last year?

Over the last 12 months, we have seen varied forms of activism in Canadian capital markets, including advocating for change in corporate policies, applying pressure to drive improved company performance, forcing board changes or exerting influence on companies' M&A governance practices. It seems, however, that in the 25 fights that have occurred so far this year, we have seen the majority of activists focus their campaigns on a target issuer's M&A strategy. That is, more and more activists are pushing issuers to make a sale or enter into a merger. This has a lot to do with the fact that an increasing number of sophisticated activists are entering the Canadian market and are able to identify M&A strategies which will create value.

> "More and more activists are pushing issuers to make a sale or enter into a merger"

How are Canadian institutional investors responding to activism?

Whereas Canadian institutional investors have in the past been wary about aligning themselves with a dissident shareholder or campaign, such reluctance is waning. Activism in Canada has matured to the extent that many of the activist funds that have entered into the Canadian capital markets have recognizable brands and pre-existing relationships with Canadian institutional investors.

Such activists have already demonstrated that they can create value in both the short- and long-term and there is a view that activism is on an upward trajectory.

As a result, Canadian institutional investors feel it is necessary to at least meet with dissident shareholders and evaluate their proposals. Oftentimes, we are seeing them support the dissident's campaign.

Are more Canadian hedge funds/asset managers becoming activists, or do US activists create the bulk of the work?

We have always had Canadian hedge funds/asset managers take on more activist roles in their investments when it made sense to do so (West Face Capital, Goodwood and Clarke are all examples), but what we are witnessing now is an emergence of Canadian born event-driven funds whose focus is solely on Canadian public companies. Smoothwater Capital, for example, launched in 2013 and has already engaged in a number of successful and high profile activist campaigns. It's our guess that we will only see a proliferation of these home-grown activist funds.

Are there advantages to working both for and against activists?

Of course. Who better to defend a company against an activist campaign than the advisors who help develop the activist playbook? Who better to advise an activist than advisors who have worked with the boards and management of Canadian issuers in the context of a proxy fight and have identified common weaknesses and vulnerabilities that activists can capitalize on?

A frequent visitor

An interview with Daniel Lewis from Orange Capital

As a frequent visitor to Canada and an enthusiastic investor in its equity markets, Daniel Lewis has to admit the legal climate is fair, even if he is unwilling to call it favorable to activists. The Co-Founder of New York-based Orange Capital has just been through a bruising proxy battle with Partners REIT, a Canadian shopping mall owner, in which it won a series of legal battles, but lost the broader war. "The reality is, we were not successful," he rues. "But reputationally, we added value and were seen as a good actor in the securities market. That's important."

Return to tender

Orange Capital went into the situation in dramatic style, raising a series of questions about a deal for Partners to buy three properties from Holyrood Holdings, which it described as a related party transaction. Within a week, the CEO had resigned and a strategic review had been announced. Within six weeks, the transaction had been rescinded.

From there, Orange Capital's luck started to run dry. It had only a minimal position in the stock and needed to boost its firepower. After Partners announced then delayed its annual meeting, Orange Capital announced an unusual method of attack, launching a tender for up to 10% of the stock and simultaneously nominating candidates for the board of directors. Partners called foul, claiming the fund had missed the advanced notice deadline for nominations set out in its bylaws, but the Ontario Securities Court ruled the advanced notice referred to 30 days prior to the rescheduled annual meeting, not the initial date.

> "Activism is not a strategy but a useful tool. We want to be seen as a constructive player"

Ultimately, however, the tender was a bust and Orange failed to meet the 10% threshold, even when it withdrew its nominees. Lewis thinks the problem was not that shareholders rejected the approach as too hostile, but that Orange Capital's involvement made them more buoyant about their own investments. "It's difficult to tender for shares when you feel you have a plan that will drive value," he says. "If we had bid higher, we wouldn't have had that much of an issue, but we wanted the tender to be at a level where we didn't eat too much into our returns."

International experience

Previously, Lewis was working for Citigroup's Global Special Situations team, a proprietary trading group dedicated to bankruptcies, reorganizations and governance reforms. Time spent in Asia, during the 1990s financial crisis, and Europe has followed through into a global focus at Orange Capital, which he left Citigroup to found in 2005. The firm, now managing more than $1 billion, has positions in Brazil, Western Europe and Australia, although its activism tends to be limited to North America.

A matter of diligence

Indeed, Lewis is loath to refer to Orange Capital as an activist at all, although he admits he is not afraid to act aggressively if required. "Activism is not a strategy but a useful tool," he says. "We're conscious of our reputation, and want to be seen as a constructive player."

Instead, Lewis prefers to be thought of as a value investor that targets companies looking to improve their stock performance. "We always, as a matter of diligence and investment style, talk to management." One relatively friendly engagement came at PHH Corporation, where Orange Capital still retains a small stake. Still another is ongoing at Canada's Newalta. "The easiest way to do this is to engage with companies on a strategy we agree with," Lewis says. Between two-thirds and three-quarters of Orange Capital's

"THE EASIEST WAY TO DO THIS IS TO ENGAGE WITH COMPANIES ON STRATEGIES WE AGREE WITH"

7
public campaigns in Canada

10%
rise in BXE stock on Aug 19, when Orange disclosed its stake

> "Institutions are going to look more favorably on firms with good governance"

investments are carried out privately.

Most engagements focus on capital allocation or balance sheet issues, but governance is an increasingly important area of focus. It is, says Lewis, a way to lower a company's cost of capital. "At the highest levels, institutions are going to look more favorably on firms with good governance," he says.

The firm is a generalist when it comes to sectors, but has tended to be drawn to companies with real estate or infrastructure value that can remain hidden. Energy companies and real estate investment trusts are staples of the Orange Capital playbook, although the fund has also taken activist positions in US hotel chain Strategic Hotels, and casino operator Pinnacle Entertainment.

Gaming Pinnacle

Indeed, it is Pinnacle that Lewis is currently most optimistic about. In mid-September, the company announced that it had retained Skadden Arps and Goldman Sachs to review Orange Capital's prop-co spin-off idea. CEO Anthony Sanfilippo told an investor conference Pinnacle had "been taking a deep dive and a serious look at that sort of transaction and the financial benefit for us to have that," something Lewis calls a "material event." Indeed, he believes the company is not merely paying lip service to the idea, with management saying it will have a defined point of view in the next couple of months.

Pinnacle is currently holding its cards close to its chest and is unwilling to talk publicly about leverage and cash flow considerations, the very thing that attracts Lewis to REITs. Only time will tell whether Orange Capital's reputation for generating good ideas is enough for the company to follow through.

Orange Capital in Canada

For most investors, Canada's lack of poison pills and easy procedures for calling shareholder meetings are the chief incentives for launching activist campaigns there. Lewis, however, cites two slightly more unusual ones. First is the "really interesting" array of companies listed on Canadian exchanges.

Second is the team of advisers Lewis has assembled, with proxy solicitor Wes Hall, the legal team at Norton Rose Fulbright, PR firm Bayfield Strategy and real estate advisers Trimaven, headed by ex-RBC banker Jeff Dean, all regular features on Orange Capital campaigns.

Right now, Lewis is occupied with Bellatrix Exploration, which he says is "materially undervalued" on a relative and absolute basis. Since disclosing a stake he has encouraged management to take steps to improve the valuation of infrastructure on the firm's balance sheet by investors.

Bellatrix should aspire to meet two goals, Lewis argues. First, to maintain control of the assets, and second, to make them work as efficiently as possible. A partial IPO has been mooted but might be difficult, Lewis says, with private equity buying a non-controlling stake the more likely outcome. So far, Lewis's dialogue with the firm is ongoing, and he refuses to be drawn on a timeline for Bellatrix acting before Orange steps in to force the issue.

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 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.

> "More of the action has moved behind the scenes"

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 defence 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.

Pershing at Allergan

Speaking on a conference call following the announcement of Valeant Pharmaceuticals International's offer for botox-manufacturer Allergan, Bill Ackman explained why his fund, Pershing Square Capital Management, didn't often take its medicine. "Now, we've never looked in pharmaceuticals before," he said. "And why is that? Because [with] the typical pharmaceutical business, you've got products constantly coming off patent, you have companies investing huge amounts of money on very speculative R&D. You have price pressure from multiple different players and the government."

Nonetheless, the call was more a love-in for Valeant than an examination of the opportunity at Allergan. "What we like here [at Valeant] is a very low percentage of the products here have patent cliffs," Ackman said. "So they're very durable. There's a very highly-diversified collection of products and not a lot of exposure to any one product."

Allergan

Industry	*Drug Manufacturers*
Sector	*Healthcare*
HQ	*Irvine, California, US*
Market cap	*$ 52.90 bn **
Exchange	*NYSE*
Ticker	*AGN*

* accurate as of September 26, 2014

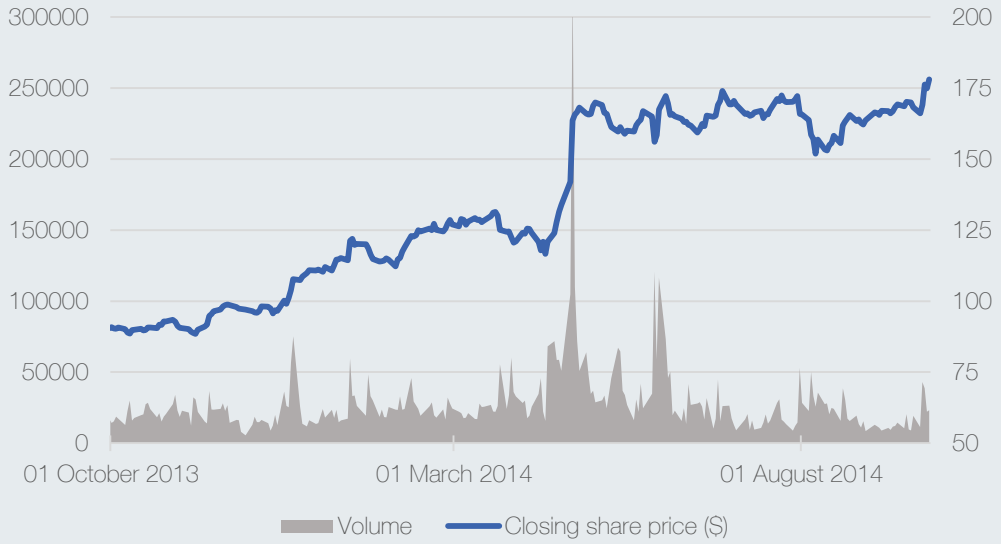
With a perspective like that, it's a wonder Ackman didn't invest in Valeant. Except he nearly did. Indeed, when Pershing Square initially approached Valeant about an investment it found Valeant and major shareholder ValueAct wanted an acquisition, leading to an unusual partnership. Valeant would announce an offer for Allergan, and Pershing Square would buy a significant stake in Allergan and agitate for the target to sell itself. Activists have done this before, but the level of collusion with the bidder is something altogether new and has landed Ackman with a lawsuit for front-running the stock.

Since then, Pershing Square has labored to force a conclusion to the deal. It first sought a shareholder referendum, then settled on a traditional proxy contest to replace a majority of the board by special meeting. But Allergan's bylaws allowed the company to delay a special meeting until December and to keep the pressure on, Valeant has launched a tender offer. Meanwhile, litigation has clogged up federal and state courts on the company's poison pill, special meeting bylaws and Pershing Square's trading activity before the offer.

Last month, Allergan struck a deal with

"WE STILL HAVE AN OPPORTUNITY TO TAKE THE TEMPERATURE DOWN AND BEGIN A CONVERSATION"

AGN stock since October 2013



AGN Snapshot

52 week high	$ 179.59 *
52 week low	$ 88.34 *
Share price	$ 178.00 *
EV/EBITDA	22.82 **
P/B	7.65 ***
P/Sales	7.71 **

** accurate as of Sep 26, 2014*
*** trailing 12 months, accurate as of 30 Jun 30, 2014*
**** most recent quarter, accurate as of Jun 30, 2014*
Data provided by CSI, Capital IQ

the activist; it would hold the special meeting in return for Pershing Square dropping its two suits. The company will, however, continue to seek a declaration on the front-running allegations that would prevent the activist's shares being counted at the special meeting. That sets up a showdown on December 18, but the hearing on October 28 will be one to watch.

The merits of the deal are an altogether different story, with UBS analyst Marc Goodman not budging from his price target of $200 per share. "We still expect M&A and/or share repurchases," Goodman wrote in mid-August, adding shareholders were likely "to vote for the company to remain independent because of the medium and long-term value Allergan can create on its own."

In the last update on its tender offer, in mid-August, Valeant said it had received 4.1% of Allergan's shares, though this may have something to do with the summer sag in Valeant stock. Given that the deal is structured as $72 in cash plus 0.83 Valeant shares per Allergan stock, the end price is highly dependent on Valeant's performance over the next three months. On May 30, when Valeant hiked its offer to this level, the deal's implied value was $190, before sinking to a low of $169 in August. It has since rebounded to just above $188 (as of September 25).

Allergan, in contrast, has gained 11% since the end of May, buoyed most recently by talk of alternative deals, including a potential takeover bid from Actavis, which would likely take a kinder view on R&D, or a deal for Allergan itself to buy Salix Pharmaceuticals.

The first response from the Valeant-Pershing Square team has been to threaten a lawsuit if Allergan pursues an alternative transaction that puts it beyond Valeant's reach, but a softer approach, and potentially a revised offer, could be forthcoming. In a September 22 letter, Valeant Chaiman and CEO J. Michael Pearson extended an olive branch to his counterpart at Allergan, writing "I believe we still have an opportunity to take the temperature down, and come together to see if we can begin a conversation that could lead to even more value for your stockholders, while still being the right transaction for ours… And we are open to seeing any information you may have that would show that there is more value for your company."

Notable AGN shareholders

Investor	Shares	%	Date
Pershing Square Capital Management	28,878,638	9.68	Sep 23
Price T Rowe Associates	15,919,404	5.33	Jun 30
Vanguard Group	15,179,657	5.09	Jun 30
State Street	12,840,057	4.30	Jun 30
State Farm Mutual Automobile Insurance	10,526,400	3.53	Jun 30
Blackrock Institutional Trust Company	8,822,451	2.96	Jun 30
Jackson Square Partners	6,704,009	2.25	Jul 31
Paulson & Co	5,602,000	1.88	Jun 30
Jennison Associates	4,487,566	1.50	Jun 30
FMR	4,169,883	1.40	Jun 30

Source: Activist Insight Online

Riding the rails

An interview with Paul Hilal from Pershing Square Capital Management

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 Railyway ("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."

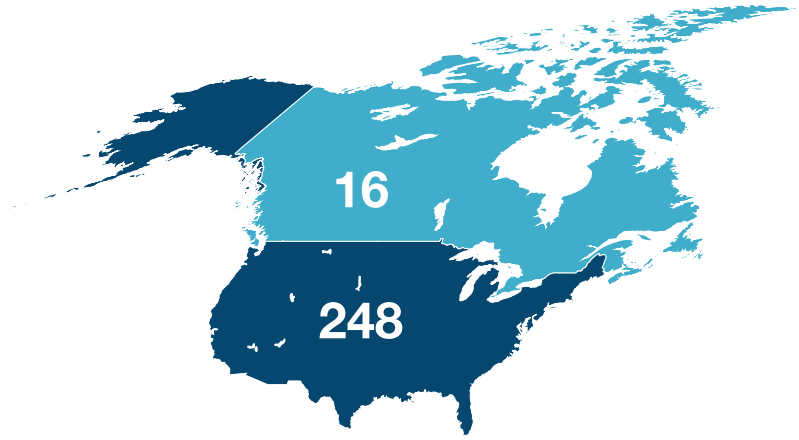
And on the news that would have left Canadians reaching protectively for their TimBits? Pershing Square thinks Tim Hortons could do with some hands-on support to become more efficient, starting with Burger King's zero-base costing approach (which requires budgetary requests be re-evaluated repeatedly). "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

US still leads the way

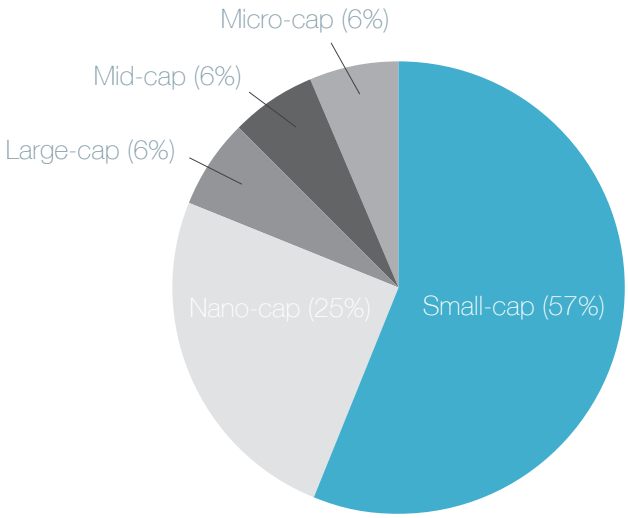
Despite Canada emerging as an "activist's paradise," activists have publicly disclosed over 15 times as many new holdings* in unique companies across the US than across Canada, so far in 2014. **

* long positions only
** as of September 30, 2014

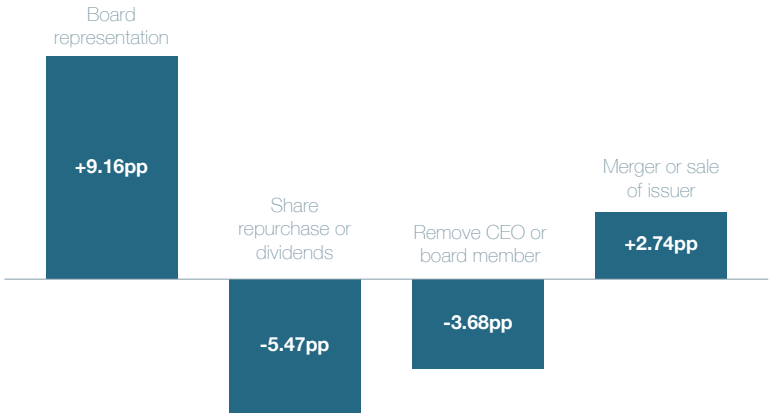


Small-caps popular in Canada

57% of activist-targeted Canadian companies in 2014 have been small-caps with market capitalizations in the $250mn to $2bn range. Examples include InnVest REIT, which settled with Orange Capital in a deal which saw the activist claim five board seats, and Sherritt International, which was successful in its proxy contest against dissident George Armoyan.



A shift in tactics



The proportion of activists worldwide seeking board representation increased by 9.16 percentage points in a survey of all activist tactics used in H1 2014 against H1 2013. Pushing the issuer towards a sale or merger was also more popular in the first half of the year. Conversely, activist demands for share repurchases or dividends fell in popularity, while the removal of a CEO or board member was also called for less frequently as a proportion of all strategies used.

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