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HALF YEAR
REVIEW

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Editor's letter

Josh Black, Activist Insight.

This issue of our monthly magazine marks the halfway point of 2015, and provides an opportunity to take stock on what has happened over the last six months. As will become all too apparent as you read through this report, the growth in activism shows no signs of tailing off, particularly in the US.

We are not the only ones considering the impact of this surge in activist activity, it must be said. Proxy Mosaic, a new voting advisory firm based in New York City, recently published an analysis of 100 instances of what it terms “financial engineering” by activists since 2010, in essence, successful campaigns for acquisitions, spin-offs, share buybacks, and divestitures. The conclusion it came to is a cautionary one; “not all types of activism, and indeed, not all activists, are necessarily equally adept at creating shareholder value,” it concludes. “Some may be largely beneficial, but others merit additional scrutiny.”

The average total shareholder return of the surviving parent company after a spin-off was around 20%, they found, rising to over 25% at the end of the assessment period. Of the four types of campaigns studied, acquisitions proved the least valuable and spin-offs by some way the most. However, the proportion of buybacks and divestitures that led to negative total shareholder return was high,

at two in every five instances. And perhaps more significantly, only in divestiture campaigns did the Proxy Mosaic data see earnings per share growth in more than half of cases.

“Not all activists are equally adept at creating shareholder value, is the conclusion to a new report by Proxy Mosaic”

Indeed, a similar message came out of an analysis conducted by the Florida State Board of Administration (SBA), a \$183 billion pension fund. The report's authors decided to investigate the impact of their proxy voting policies by looking at the proxy contests they had participated in directly, and whether their decisions had driven shareholder value. The results will come as a relief to the SBA; when the side it supported won the contest, the average relative performance of the company was much improved over a three-year period pre- and post-vote. When the side the SBA backed lost, returns were negative.

Given the SBA's voting was identical to the ISS recommendation 89% of the time, it might be safe to say that proxy voting advisers can be a good indication of a stock's prospects after a contest. (However, as a Proxy Insight contribution in this Review notes, it is

questionable whether they are really as influential on voting as they seem).

With both studies based on sample sizes of around 100, however, the results are far from academic-level empirically. Moreover, they will likely be heavily weighted towards the years 2013 and 2014, when activism surged (as did most markets). In a few years, if activism continues at its current pace, much more comprehensive conclusions may be drawn. But for the meantime, they provide a useful addition to the debate, and point out that while activists certainly can create value, they present no magic fix.

Our sponsors in this issue certainly know the amount of hard work that goes into activist campaigns. Olshan Frome Wolosky almost certainly acts as legal advisers on the greatest number of campaigns each year, while solicitation specialists Okapi Partners are a frequent name on activist proxies. It's great to have their insights at a time when activists are launching ever more creative campaigns to unlock value, and I'm sure you'll find their interviews in this issue fascinating.

If you enjoyed this report, you may consider subscribing to a new weekly e-mail that I will be writing for readers of our free newsletter, Activism Monthly Lite. Drop me a line at the address below to be added to the list. ■

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Proxy season 2015: activism as the new normal

Olshan Frome Wolosky Partners Steve Wolosky and Andy Freedman reflect on the 2015 proxy season and the road ahead.

Some dubbed 2014 the year of the activist investor. Indeed, it would be hard for 2015 to top Starboard's historic full board victory at Darden Restaurants, Pershing Square's tag-team takeover saga at Allergan, a trio of activists bidding for change at Sotheby's and Carl Icahn's dust up with eBay over PayPal. Yet 2015 has proven to be every bit as eventful as its predecessor, and once again Olshan's Activist & Equity Investment Practice has been right there in the thick of it. We are excited to again be partnering with Activist Insight to share our unique insights and takeaways from the 2015 Proxy Season, and to take a look at what lies ahead for this dynamic and vibrant space.

So far this year, the number of campaigns we have advised on has risen more than 20% from our 2014 numbers. Notably, among our clients, we saw H Partners bring about significant leadership changes at Tempur Sealy without nominating a slate, Marathon Partners take Shutterfly to task over its executive compensation, winning two board seats and securing the largest negative say-on-pay vote in recent years, and Engaged Capital win two board seats and oust the Chairman in a hotly-contested proxy battle at Rovi Corp.

This is in no small part because activism continues to enjoy

widespread credibility as an asset class unto itself. At a conference in Tulane this spring, SEC Chairman Mary Jo White admitted that in "certain situations, activism seeks to bring about important changes at companies that can increase shareholder value." Long-time corporate defense pundit Marty Lipton took many by surprise in late April by softening his anti-activist rhetoric in a client memo which stated that "careful consideration should be given to adopting some or all" of an activist's recommendations, including board seats for the activist, in order to avoid a proxy contest.

 The 2015 proxy season has proven to be every bit as eventful as its predecessor"

Another significant credibility boost for activists has been the remarkable success to date of Darden under the auspices of an entirely new board elected in Starboard's 2014 proxy contest. Darden's shares have gained more than 20% year-to-date, as the company continues to execute on portions of Starboard's transformation plan. Olive Garden's turnaround continues to gain traction, and Darden recently announced a REIT spinoff to maximize the value of its real estate assets.

More broadly, the activism landscape in 2015 continued to evolve and mature. We expect to see existing funds rebrand themselves as activists to take advantage of the capital pouring into this space. Another, more unexpected outcome has seen funds out to find new ways to deploy capital, and we're seeing some activists taking a page right out of the private equity playbook in making bids for companies outright.

[The next activist to approach your company may not be well-known](#)

While the big name activists continue to dominate the headlines, 2015 has seen scores of new activist firms get funding and publicity. Expect to hear more in the next year from funds like Sarissa Capital, RDG Capital and Vertex Capital. More and more traditionally passive firms, institutions, other non-activist funds, and even a labor union, sought board seats this year (including Broadfin Capital, CalSTRS, Maglan Capital, Mangrove Partners, Okumus Fund Management and UNITE HERE). Notably, GAMCO also ramped up its activism, waging four proxy contests.

[Against the grain](#)

The Wall Street Journal called H Partners' successful withhold campaign at Tempur Sealy earlier this year "something of a precedent-

setting victory for activism.” Indeed, never before had a shareholder brought about such changes, including the resignation of the CEO and two other directors and board representation for H Partners, without having nominated its own slate. Key to this campaign was getting the SEC’s approval for a dissident withhold proxy card, which was previously uncertain. Not long afterward, our client TIG Advisors used a withhold campaign to put pressure on Altera’s to negotiate in good faith with Intel, effectively creating a referendum on a sale of the company at the right price. A little more than a month later, it was announced that Intel would acquire Altera for \$54 per share in cash. Again, the withhold had worked.

More settlements, but more votes too

Settlements continue to be the primary way most activist campaigns are resolved. So far this year, 81 activist campaigns globally have concluded in a settlement for board seats, according to data gathered by Activist Insight. More than 70% of our clients’ 2015 campaigns resulted in a settlement. Yet, while many believed companies would bow to activist pressure in 2015 after stunning board defeats at Darden and Equity Commonwealth, we’ve actually seen an uptick in the number of contests going to a vote. Fully 26 proxy contests have gone the distance in

2015 according to Activist Insight, including seven involving our clients. Companies seem more willing to battle lesser-known activists while ducking fights with marquee activists.

But following DuPont’s victory over Trian Partners, we wouldn’t be surprised if more company boards become emboldened and brazenly took on even the most established activist investors in 2016.

“ It is illogical to surmise, as some have, that the DuPont contest has somehow dealt a major blow to shareholder activism”

What about DuPont?

Trian’s proxy fight at DuPont laid bare the risks of targeting a large, generally well-performing company. But the fact a company is performing well doesn’t mean that value-enhancing opportunities don’t exist. In fact, some of the most vigorously fought proxy battles we’ve seen have resulted in the greatest changes and subsequent value-creation for shareholders, win or lose. In certain situations the outcome of the vote may not be paramount; what matters is that shareholders are better off afterward than they were prior to the

activist’s involvement. It is illogical to surmise, as some have, that this contest has somehow dealt a major blow to shareholder activism.

Leaders of the pack

We have previously pointed to the increasing number of shareholder groups formed to conduct activist campaigns in what has become an increasingly crowded market. In 2015, seven of our activist campaigns involved a group formed by two or more activists. We would expect to see even more 13D groups formed moving forward, despite recent reports that the SEC is intensifying its scrutiny in this area.

The future of activism

Ultimately, shareholder activism is about working with a company to improve shareholder value. We are seeing activist campaigns result in more engaged, accountable, highly qualified and better-performing boards, which, in turn, is creating the right mix for significant enhancement of shareholder value.

The rise of activism continues, moreover, to have indirect effects as more companies enhance their governance and board composition through self-evaluation in anticipation of a potential activist campaign. By all accounts, 2015 is the year shareholder activism has cemented itself as the ‘new normal’ in corporate America. ■

The year so far

Just six months into 2015, the number of companies publicly targeted by activist investors is two-thirds of the total for the whole of last year. Globally, exactly 300 companies have found themselves involved in a public tussle with an activist since January. More public demands have been made in the past six months than in all of 2012.

Activism continues to set new records and, as in previous years, this is predominantly a US phenomenon. Although activism has gained in prominence in Asia and Europe this year, together these jurisdictions account for just 16% of the total campaigns launched in 2015.

Despite equity markets stuttering this year, it seems a considerable number of firms have been attracted by a benign outward environment to take their own demands public. Over 200 activists have launched campaigns in 2015, and of those around 40% have no recorded history of activism as far back as 2010, according to Activist Insight data. This year, there is every expectation that there will be yet more to come. The question on everyone's lips is how much more?



“UNUSUALLY, THE FIRST HALF OF 2015 ALSO SAW TWO SUCCESSFUL ‘WITHHOLD’ CAMPAIGNS”

On and on

Without question, the year’s stand out campaign has been Trian Partners’ proxy contest at DuPont, which ended with Nelson Peltz just a few percentage points short of gaining a board seat. For Trian, it was always going to be a more difficult target than some of those where it has found success in the past: DuPont’s relative performance has been reasonable, its R&D budget sacrosanct, and its CEO popular. But the result was close nonetheless, and the company’s decision to deem Peltz’s demand that he personally be put on the board in any settlement unacceptable could have looked foolish had a few shareholders voted differently. Even with DuPont’s riches, its victory over Trian can only embolden companies responding to activists. But thus far its influence is muted. Of the resolved demands made this year, more than two-thirds of demands have been at least partially successful (roughly half the total have been resolved).

Pete Michelsen, the former Goldman Sachs banker now heading the activism defense practice at CamberView Partners, says we’re not yet at peak activism, but the number of campaigns, together with a long bull market in equities, has left fewer opportunities for activists. “Nearly everything is fully priced,” he says, “and even companies that are underperforming on fundamentals are trading with the expectation that they will be targeted by an activist priced in.” As a result, he believes activists are looking beyond their traditional universe to companies further afield, “testing the limits of different geographies,” and going after companies which historically have not been targeted, such as companies with significant inside holders, where

they may be able to gain additional leverage either by working behind the scenes or by using public scrutiny to influence outcomes.

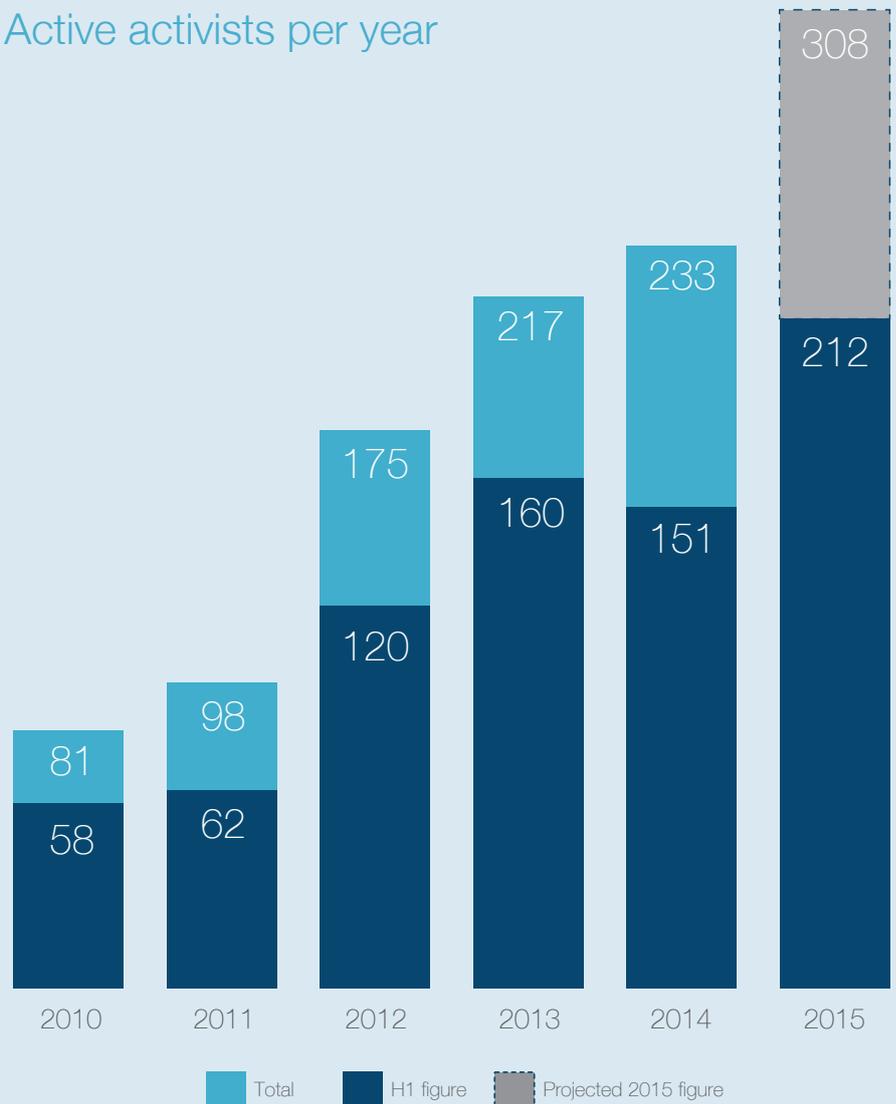
“A board’s defense has to center on its track own record, with no competing activist nominees to beat up on”

Unusually, the first half of 2015 also saw two successful “withhold” campaigns, whereby the activists sought to turn

director elections at Tempur Sealy and Altera into referenda on the companies’ performance without putting up rival slates. At the former, some 80% of shareholders voted against management, leading to the resignation of three directors including CEO Mark Sarvary and Chairman Andrews McLane, while at Altera, use of the tactic by TIG Advisors was said to be instrumental in forcing the company to sell itself to Intel.

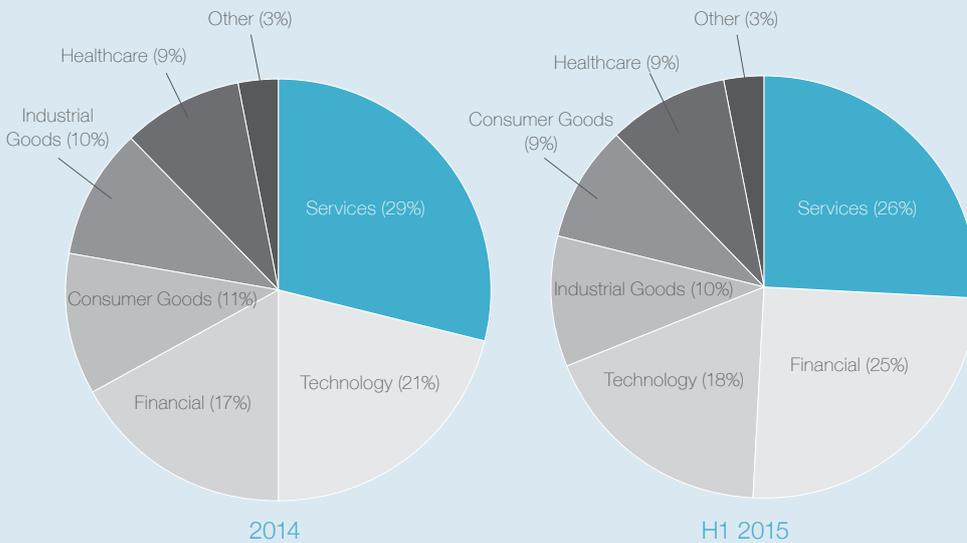
According to Riyaz Lalani, whose communications advisory firm Bayfield Strategy worked on the TIG campaign, the withhold campaign is an attractive

Active activists per year



“WE’RE SEEING ACTIVISTS ACT AS AIR COVER AND SUPPORT FOR THE STOCK IN BIG DEALS”

Activist targets by sector



Activists appear to be shying away from overvalued technology and volatile energy stocks for the time being, instead crowding into financials (particularly fund management, it seems). Although some stocks may be hit by an interest rates rise in the autumn, others will benefit from a greater return on capital.

Services and consumer goods remain popular targets, perhaps because of real estate and M&A opportunities.

option when nomination deadlines have passed. “These are much more focused campaigns since you are not comparing the incumbents against a competing set of nominees,” he told Activist Insight. “A board’s defense has to center on its track record, with no competing activist nominees to beat up on.”

Where are the targets?

It will come as no surprise that the biggest proportional fall in activist campaigns has been in the basic materials sectors, down 5.7 percentage points as a proportion of all targeted companies. Amid this fall, there have been hardly any calls for spin-offs or divestments in the sector, and much less attention paid to more peripheral governance concerns, such as bylaw changes. But with plenty of board-related activism and a consistent number of CEOs under attack by activists, incumbents cannot rest easy.

Jeff Eberwein, whose fund Lone Star Value Management is a regular player in the energy sector, says he expects both activism and M&A activity to pick up soon. “Too many companies out

there shouldn’t exist because they don’t do anything special,” he says.

Perhaps surprisingly, the financial sector has taken up much of the slack from the lower number of energy companies being targeted. Closed-end fund arbitrage, led by Elliott Management, Bulldog Investors and Karpus Investment Management, has made up a big chunk of the activity, with Elliott even cracking the notoriously difficult UK institutional investor base with its proxy contest at Alliance Trust.

Andrew Dakos, a Principal at Bulldog, says the team there has taken a tougher stance than in previous years, and is more willing to go to a proxy contest to get its way. “Bottom line is, we haven’t been happy with the performance,” he says. “[Activism]’s a lot of work, but if you’re successful, why not increase your activity?” The fund is in no danger of running out of targets, Dakos adds.

Separately, Richard McGuire’s Marcato Capital Management began agitating for change at BNY Mellon, where Trian Partners is already on the board. Even a bond fund at formerly unassailable PIMCO was rocked by 1%

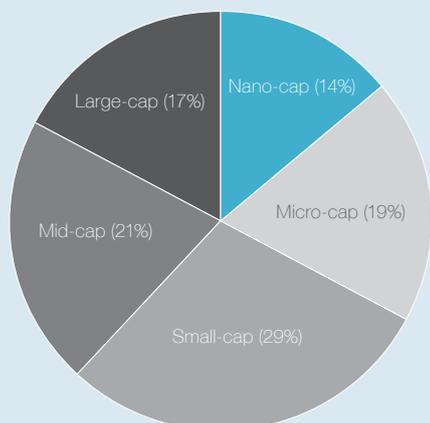
shareholder Ironsides Capital, although management recovered sufficiently in the wake of Bill Gross’s departure to win the proxy contest.

Services continue to be popular among activist investors, with directors at retailers The Children’s Place, Christopher & Banks and Big 5 Sporting Goods subject to criticism by activist investors. Three advertising companies, YuMe, Interpublic and Sizmek, have also found themselves in need of rebranding, and movie distributor Cinedigm in need of a new scene. Meanwhile, activists have shown themselves keen gamblers, targeting five casino operators.

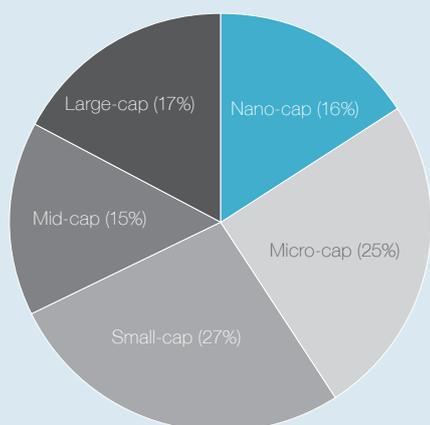
Finally, the first chink in Silicon Valley’s silicon armor may have been struck by Marathon Partners’ successful proxy contest at Shutterfly, coming on the back of last year’s near-defeat for the company’s Say on Pay vote. Resolutions against the dual class share structures at Google and Facebook put forward by NorthStar Asset Management may add weight to the idea that online and technology companies can no longer consider themselves immune from maintaining

“THERE’S GREATER CONCERN ABOUT BUYING BACK STOCK AT ELEVATED VALUATIONS, AND SHAREHOLDERS ARE NOT KEEN TO HAVE EXTRA CAPITAL”

Activist targets by market capitalization



H1 2014



H1 2015

Perhaps inevitably, given the amounts managed by some activist funds, campaigns at large-cap issuers make up a steady proportion of the total. But a significant number of activists have turned their eyes away from the \$2-10 billion bracket, in favor of greater focus on small- and micro-cap stocks.

high corporate governance standards. That said, Carl Icahn’s decision to sell the last of his Netflix stock (while trumpeting his enthusiasm for Apple) was closely followed by a note of concern about the state of the markets, tying the sector closely to already toppish valuations.

A tactical shift?

Unsurprisingly, board representation remains a popular demand from activist investors. But its importance relevant to other demands appears to be stagnating, rather than increasing. In the first half of 2015, 36% of demands were requests for board seats, an exact match for the same period a year earlier.

With merger activity considerably higher this year, the role of activists in deals has come to the fore. Pershing Square Capital Management has lauded the acquisitiveness of Valeant Pharmaceuticals International, and Starboard Value has tried to match-make successfully in stationery (Staples and Office Depot) and unsuccessfully in digital advertising (AOL and Yahoo), while pursuing better terms for a buyout of semiconductor company ISSI.

“We’re seeing activists advocating buy-side and merger of equals deals,” says Michelsen. “Activists can provide significant support by acting as a shock-absorber for the acquirer or merger partner’s stock, giving management air cover and the confidence to pursue the deal, and by exerting pressure to take ‘social issues’ that might otherwise stymie deals out of the equation.” The CEO of FIAT, Sergio Marchionne, was even reported by the Wall Street Journal to have been looking for an

activist investor of his own to help him pursue a merger with General Motors.

Activists pursued roughly the same number of break-up plays in the first half of this year in absolute terms, but given the increasing number of demands generally, they rank relatively less frequent. That said, the really big plays appear to be working in the activists’ favor, with PayPal’s separation from eBay and the Yahoo-Alibaba split on track to take place later this year. Manitowoc, another target for Carl Icahn and Relational Investors before him, has become something of a honey trap for activists, with several piling into the stock.

More operational varieties of activism have seen an uptick, continuing a trend from last year. These involve focusing on growth strategies or cost-reductions, suggesting that with the return of capital to shareholders already well underway at most companies, outperformance today requires a different approach. And directors or executives whose firms underperform have faced much greater heat, with the proportion of demands aimed at removing these figures rising from 2.9% to 5.5%, and more than doubling in absolute terms.

Share repurchases have now comfortably overtaken dividends as a demand by activists, but even their time might be limited. “If an activist’s sole agenda item is to ask for buybacks, there is less inclination on the part of institutional investors to support that activist,” says Michelsen. “There’s greater concern about buying back stock at elevated valuations, and shareholders are not keen to have excess capital for redeployment into the current market.” ■



Why ISS couldn't win it for Peltz

Proxy Insight on how much influence proxy voting advisers really have.

The moment most observers thought Trian Partners' Nelson Peltz was in with a chance of winning a board seat at E I Du Pont de Nemours was when the veteran activist investor received the support of both of the major proxy voting advisers, Institutional Shareholder Services (ISS) and Glass Lewis. After all, don't institutional investors always follow their recommendations?

These firms are still seen as influential—as is noted elsewhere in this publication several high-profile individuals seem to be waging campaigns to make investors less reliant on their judgments—and it is true that many votes still align with their recommendations. According to a Proxy Insight study of contested director elections in 2013 and 2014, revealed for the first time here, the top ten institutions vote in accordance with the recommendations of the proxy advisers more than nine times in ten.

But this does not tell the whole story. For one thing, ISS and Glass Lewis do not always concur themselves. Proxy Insight's analysis shows that our ten investors voted the same way as ISS 91% of the time on average, and Glass Lewis 94% of the time, which is perhaps surprising, given that ISS is seen as the more established player. Secondly, there is a wide variation between the institutions that make up our analysis. Two of the ten—Wellington and Fidelity—voted with ISS on every single occasion over the

past two years. Vanguard voted against the ISS recommendation on 18% of resolutions. BlackRock, JP Morgan and State Street all diverged more than 10% of the time. Clearly, with names like these on your register, you would be unwise to rely on ISS for the result of a vote.

This brings us to DuPont, where Peltz fell just short, with 46% of the vote. Although many funds won't disclose their voting until the end of August, Proxy Insight has already captured results from more than 120 funds, including CalPERS, Canada Pension Plan and TIAA-CREF (all of whom sided with management). Interestingly, CalPERS provided a full rationale for their decision, which cited factors as diverse as the company's recent relative performance, Moody's warning about the potential impact on DuPont's credit rating, and management's attempts to

settle the fight as important factors in its decision. It is also worth noting that the pension fund was already in talks with DuPont about introducing proxy access, which would provide an alternative way of changing the board.

So while Peltz received support from the likes of AXA, CalSTRS, MFS, Norges, OTPP, PGGM and USAA, many key shareholders decided to support management in spite of advice from ISS and Glass Lewis. We see this as another reminder that institutional investors may be widely subscribed to proxy voting advisers, but continue to adopt and apply their own policies in individual situations. For more information about how we capture these policies and votes, visit proxyinsight.com. ■

Voting in proxy contests versus proxy adviser recommendation, 2013-2014

Investor	Against ISS %	Against GL %
BlackRock	11%	6%
Vanguard	18%	6%
SSgA	15%	9%
Fidelity	0%	0%
BNY Mellon	14%	3%
JP Morgan	6%	12%
Capital	8%	3%
Goldman Sachs	1%	12%
Northern Trust	13%	7%
Wellington	6%	0%
Average	9%	6%

Raise the bar

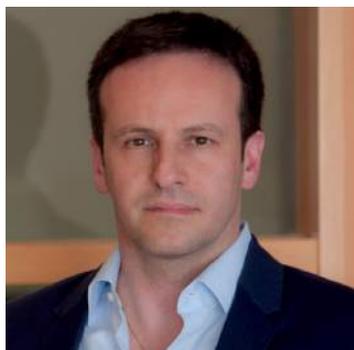


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Spearfishing

An interview with Alex Denner,
CIO of Sarissa Capital Management.

As a kid, Alex Denner always liked the stock market. Yet he admits that it has been quite a surprise to see his career take off from that early point, when commissions were “meaningful” in relation to the size of his trades. In recent years he has worked as a portfolio manager for a Wall Street bank, then for Carl Icahn, and now runs his own activist hedge fund. Named for the spear carried by Alexander the Great’s armies, Sarissa Capital Management instead employs proxy fights and cash-flow analysis as its weapons.

Throughout his career, Denner has specialized in healthcare, a sector where valuations rocket or crash on the results of specialized trials, and where picking winners requires wading long patent numbers and drugs with unpronounceable names.

It helps that Denner is equipped with a PhD in biotechnology, from Yale, and an assumption that all shareholders want management to take their views under consideration. “Earlier in my career, I was amazed at how shareholders did not take an active role,” he says. “The default stance was not to get involved, and that was antithetical to how I think of things. “Now, many more investors express their views, which is great for all shareholders.” Indeed, with capital markets much less passive, Denner is busy agitating with the singularity of

purpose you’d expect from someone who was once hired by Carl Icahn.

Bad medicine

In May 2006, while a Portfolio Manager at Viking Investors, Denner joined the board of ImClone, the pharmaceutical company that five years earlier had been at the center of the insider-trading scandal that landed Martha Stewart in prison. The company was

“Healthcare is a fantastic place for activism. The sector is full of profitable businesses with high barriers to entry”

already up for sale at this point, but in the end it was famed activist investor Carl Icahn who swooped, forcing out the company’s CEO, Joseph Fischer. Denner stayed on the board until the company was sold two years later, but in the meantime he accepted an offer to run Icahn’s health arbitrage efforts, staying for nearly seven years. “Healthcare is a fantastic place for activism,” Denner says. “The sector is full of profitable businesses with high barriers to entry—it’s a high-margin business, and society accepts that.”

Indeed, many activists have dabbled in the sector over the years and it

appears to be acquiring a new lease of life as ever more event-driven traders seek to cash in on mergers between the big players. Just last month, John Paulson was said to be considering starting a healthcare fund, while Valeant Pharmaceuticals, AbbVie and Allergan are all expected to continue buying in the near future.

Denner’s brand of activism owes relatively little to this kind of arbitrage, however. Instead, the activist often goes for board seats (Denner and his employees sit on four boards currently) and prefers to spear companies that have lost discipline in their spending (particularly in research and development, or R&D). That can make for big returns—the fund often aims to double its money, but can set out to achieve more or less, depending on the risk at stake.

Trial and error

Drug companies typically have exclusive licenses over a product, says Denner, which means they can face less competitive pressure. “Management teams don’t necessarily lose focus as a result of the lack of competition, but they often do,” he says. “They can lose discipline, and the timescales over which R&D [research and development] is funded are not very well-defined.” That’s when Sarissa Capital Management, the activist

“NET, ACROSS ALL OF THE COMPANIES WE’VE INVESTED IN, WE HAVE INCREASED R&D SPENDING”

fund he launched in 2013, comes in and gets the board thinking about return on investment. “As a result, we often seek to take money out of late-stage trials, and put it back into early-stage projects,” he says.

As a discounted cash flow value investor, Sarissa is closely focused on the bottom line. “Thanks to the experience we have on the team, I think we do a good job of estimating generally what a company’s cost-basis should be if it were optimally run from the bottom-up,” Denner says. The team builds a model on that basis, then incorporates new products, he adds.

At a time when activists are often attacked for being short-term in their approach to investments, talk of cutting R&D can be controversial. Trian notably struggled to shake off the suspicion it would choke innovation if it won seats on the board of DuPont.

But contests can also swing the other way. Last year the Clinton Group lost a battle at Xenoport, which warned it would be “irresponsible and contrary to our fiduciary duties” to allocate all of its resources to a drug still in Phase 1 trials.

“Denner sees no significant limitations to the size of company Sarissa can target”

Denner admits his fund faced criticism in its first few years for daring to suggest changes to R&D spending from outside of the boardroom, but says that line of attack has become less frequent now that Sarissa has built a reasonably good reputation.

Nonetheless, he is at pains to point out that his fund is not simply engaged in cost-stripping. “Net,

across all of the companies we’ve invested in, we have increased R&D spending.” he says.

Plenty of worlds left to conquer

Until recently, Sarissa held more than half of its portfolio in cash—“the opportunities were what they were,” he says. Now valuations in the sector are high, and Sarissa is raising capital to take advantage. But despite managing just under \$600 million, Denner doesn’t see any significant limitations in the size of company Sarissa can target. Institutional shareholders have long been willing to back an activist whose agenda chimes with their own, he points out, and a significant dollar ownership is now considered more important than the percentage of common shares. Which is just as well, because according to Denner the opportunities in larger-cap healthcare stocks are terrific. ■

Ariad Pharmaceuticals

Even at the height of Sarissa’s battle with Ariad Pharmaceuticals, the activist needed little leverage from the outside world. In February this year, word went out in a Schedule 13D that Sarissa would launch a second consecutive proxy contest at the firm, and that the resignation of CEO Harvey Berger would need to be part of any settlement agreement.

By the end of April, and five days before Denner was to pitch the stock at an investment conference in New York, Berger announced his retirement from the company he founded. Denner, who says he sees Ariad’s major problem as its credibility

on Wall Street and with industry regulators, is now leading the board process to find his replacement.

It’s a mark of Sarissa’s good timing that it has made a significant return even while working on its main objective, with shares rising from \$3.79 on the day it disclosed its stake in October 2013 (not long after an FDA-enforced halt to trials on cancer drug Iclusig), to around \$8 today. Denner joined the board in 2014 and continues to view Ariad as “a great company, with fantastic assets that have great promise for cancer patients.” With a new CEO in place, he believes it could go even higher.

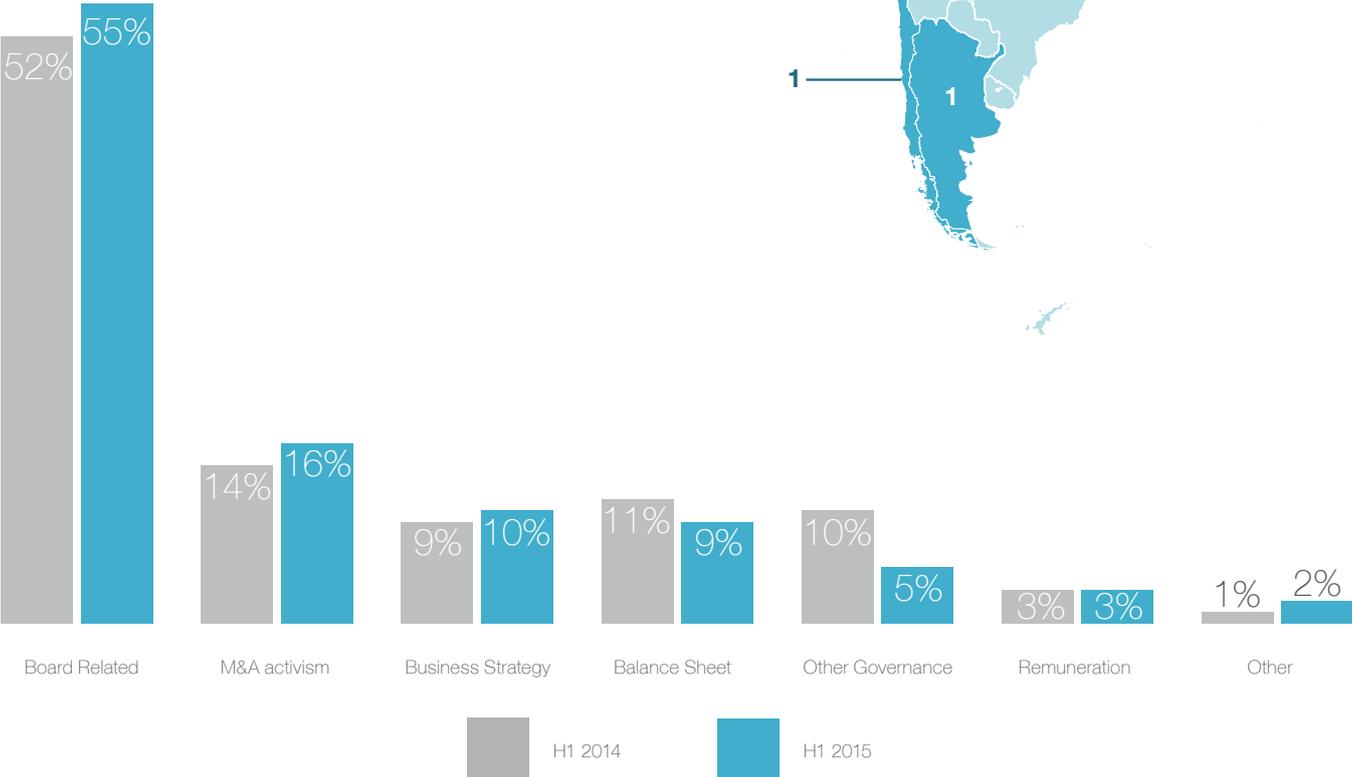
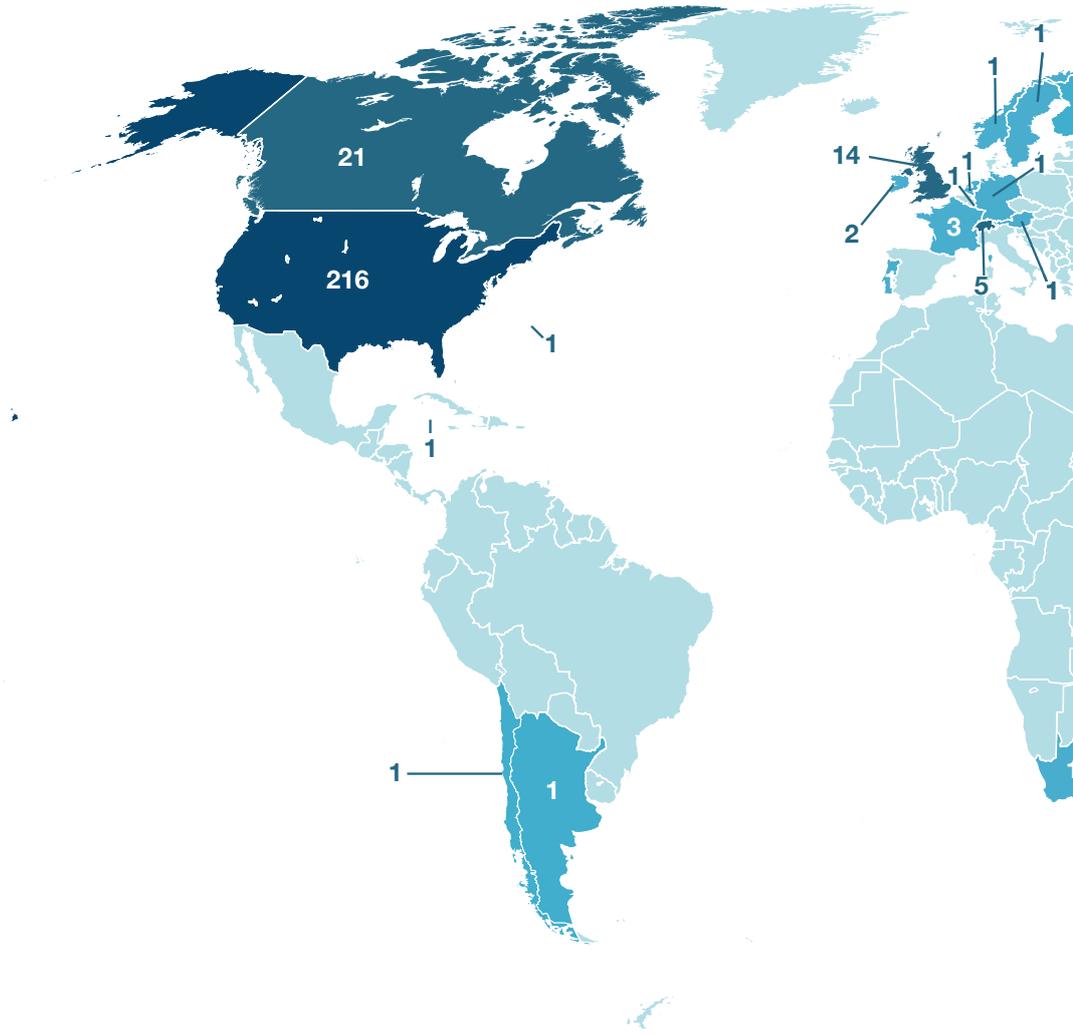
2015: the first half in numbers

America sprints ahead, Australia picks up the pace

While the US continued to dominate public instances of activism (with 216 companies publicly subjected to activist demands), a significant number of targets were located throughout Europe, Canada and the rest of the world. Australia in particular is fast becoming a hotspot.

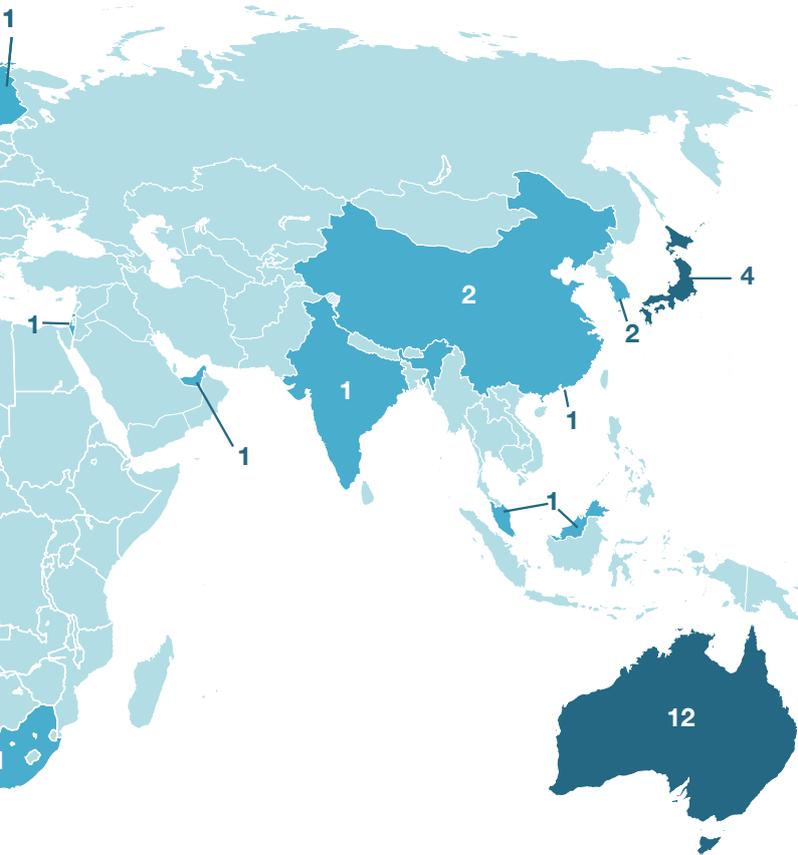
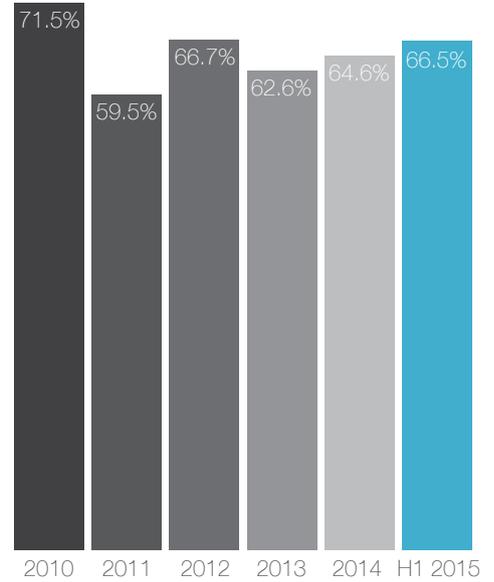
More board, less governance

Activists continue to push for board seats above all other objectives—in public at least. The shift to a more board-focused variety of activism could be a response to the falling prevalence of balance sheet-driven campaigns, and a sign that activists are more interested in operational strategies, although M&A activism is also rising.



Activist success rates

Around two-thirds of activist demands including shareholder proposals were at least partially successful in the first half of 2015.



The big movers

Down 5

Only five companies were asked to pay bigger dividends in H1 2015—
Down five on H1 2014

Up 9

Activists opposed takeover terms 14 times in H1 2015—
Up nine on H1 2014

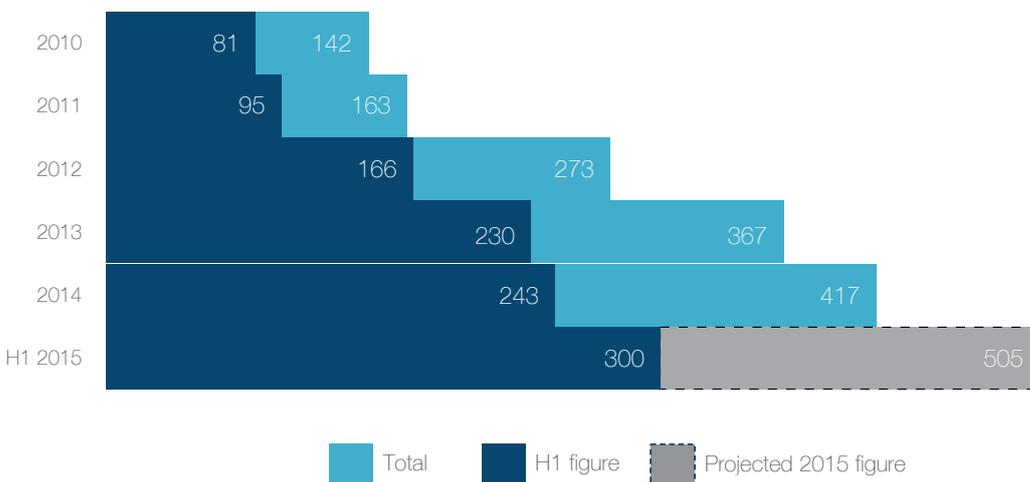
Up 14

Activists sought the removal of a CEO or board member 25 times in H1 2015—Up 14 on H1 2014

Down 4

Activists demanded the separation of CEO & Chairman twice in H1 2015—
Down four on H1 2014

Number of companies subjected to activist demands



The number of publicly targeted companies keeps on rising, hitting 300 within a six month period for the first time this year. If the rate of growth continues through the end of the year, over 500 companies will have been targeted. (Please note the expansion of our dataset since previous reports).

Unchartered waters

An interview with Steve Wolosky and Andy Freedman of Olshan Frome Wolosky.

More record numbers of activist campaigns—are you surprised to see activism growing so fast?

AF: We're not at all surprised by the level of activity in the space this year. Money continues to pour into activist funds, and the number of campaigns is at an unprecedented level. This year alone, we've advised on 46 campaigns, submitted 40 nominations and reached 30 settlements, surpassing last year's totals. And that doesn't take into account behind-the-scenes activism, which is also increasing.

SW: From a practical point of view, activism is moving up to large market-cap companies. A lot of positions are now disclosed on 13Fs [portfolio snapshots filed 45 days after the quarter-end], rather than 13Ds, which allows private dialogue and earlier engagement.

Can activity continue to increase?

AF: Well, it's been increasing for five years, and it may be difficult to keep increasing at the rate it has, but if it levels off, it will be at an already elevated level.

SW: As long as you continue to see superior returns from activist funds, there will continue to be a lot of activity in this area.

What have been the main trends this proxy season?

AF: We continue to see an increase in the number of settlements, and early settlements at that. Yet, some activists are finding that early settlements do not necessarily give you the mandate needed to drive sought-after change.

“Some activists are finding early settlements do not necessarily give you the mandate needed to drive sought-after change”

Some companies may be seeking a settlement as a way to take the focus off their performance and avoid having to make reactive changes to sway the shareholder vote. We've actually seen activists nominate directors in successive years where they have not been happy with the board's post-settlement decision-making and performance.

We also continue to see increased activity in this space from investment firms who are not your traditional, household “activist funds,” such as H Partners [which led a successful withhold campaign for leadership change at Tempur Sealy], Broadfin Capital [successful in getting board representation last year at Cardica and this year at Derma Sciences],

Marathon Partners [which won two board seats and defeated executive compensation at Shutterfly], and Mangrove Partners [which reached a settlement for a board seat at Atlantic Power]. Five or ten years ago, these funds might have cut their losses and moved on to their next investment. Now they realize they have an alternative.

SW: We've also seen more shareholder proposals, which has typically been the preserve of the long-only institutional community. These present a potentially different form of activism—if successful proposals get implemented, you get change, and if they don't, proxy advisory firms will likely recommend against incumbent directors at the next meeting.

AF: Activists have also started to push into international waters, which you've seen with Elliott at Samsung in Korea and Third Point in Japan. I think there could be a real opportunity in Asia and Europe in the next two to three years.

How significant was the DuPont contest for activists? Will other large-caps be concerned it might happen to them, as after Starboard's win at Darden in October, or will the result embolden issuers?

SW: Darden put companies on alert,

“THESE CONTESTS ARE ALWAYS CASE-BY-CASE... IT WOULDN'T BE A GOOD THING IF ACTIVISTS WERE WINNING ALL OF THEM HANDS-DOWN”



Steve Wolosky, Partner



Andy Freedman, Partner

and I think DuPont did the same for the Fortune 100 companies. Peltz did not win board seats there, since I think DuPont was worried he would be disruptive. There the stock went up and the CEO went out and made her case aggressively to the shareholder base. Shareholders ultimately gave management another chance.

AF: We'll see next year. Boards may become a bit more brazen in their willingness to tackle an activist head-on, but I don't necessarily view the DuPont outcome as a bad thing for activism. These contests are always case-by-case, and it wouldn't be a good thing if activists were winning all of the contests hands-down.

The issue here wasn't that of fundamental underperformance, but not capturing opportunities. It may take more to make the case at large market-cap companies. And also let's not forget it's not always about winning versus losing in a contest, it's more about influencing positive change and enhancing value.

[This year the universal ballot became a factor in two contests—at DuPont and Shutterfly—although it wasn't ultimately used in either. Do you think we will see more use of the universal ballot in the near future?](#)

SW: Properly adopted, we believe the universal ballot is in the best interests of all shareholders and something that institutional shareholders have been requesting for a long time. At the moment, it's being looked at selectively, but if the SEC and Broadridge can adopt it, we think it could give a clearer say for shareholders in an election contest.

AF: I don't think the concept of a

universal ballot should arise in the middle of a proxy contest from either side. Then, it takes on gamesmanship rather than a true desire to further the democratic process. The regulators and Broadridge have to take it forward.

[Executive remuneration played a big role in the Shutterfly fight, which is actually quite unusual for a proxy contest. Does that give other activists a model to follow?](#)

AF: It's difficult to run a proxy contest with compensation as the sole issue. There have to be fundamental problems. At Shutterfly, compensation was emblematic of an entrenched board rubber-stamping a CEO's decisions and demands.

I do think it suggests that Silicon Valley could be somewhere that activism is heading. As the venture capital and private equity firms exit, they leave more activist-friendly shareholder bases. Maybe not this year, but five to ten years down the line, the likes of Groupon or even Facebook could be vulnerable.

Some funds are already bringing governance issues to light in Silicon Valley, and that's a good thing. Just recently, Jim Cramer said, "Twitter Badly Needs an Activist Investor."

[What's next on the agenda for Olshan's activist practice?](#)

SW: We're working on a number of situations for next year already. There's something of a blending of the seasons. Activists that have spent a fair amount of time raising dollars are looking at more opportunities and opportunities up the cap-scale. ■



FrontFour & SpringOwl at OM Group

When FrontFour Capital Management agreed in March to settle a proxy contest with OM Group for three seats on the board, it understandably chalked the campaign up as a win. The fund had identified an opportunity to implement ambitious cost-reductions and a big share repurchase it said could drive the stock as high as \$60, representing an upside of nearly 120%. It had now been guaranteed board seats for co-Founder and Portfolio Manager David Lorber, the Chairman of A. Schulman, Joseph Gingo, and chemicals industry consultant Allen Spizzo. “These individuals will further strengthen our board,” said OM Group CEO Joe Scaminace, “and will contribute to our ongoing efforts to strengthen OM Group and create sustainable, long-term value for all shareholders.”

As investors voted their proxies, however, a surprise was waiting. On June 1—the same day two of FrontFour’s directors were due to take their seats—OM Group announced it would be acquired by a private equity-led consortium in a deal worth \$1 billion, or \$34 per share. Two days later, Lorber resigned from the board.

Many investors were up in arms.

OM GROUP

Industry	<i>Specialty Chemicals</i>
Sector	<i>Basic Materials</i>
HQ	<i>Cleveland, OH</i>
Market cap	<i>\$1.03 bn*</i>
Exchange	<i>NYSE</i>
Ticker	<i>OMG</i>

* accurate as of 1 July, 2015

Wynnefield Capital, Nelson Obus’ activist fund, was “stunned” to find directors had agreed “to sell the company out from under shareholders—especially given new board members would be confirmed in just a few hours and that the company had agreed... [to] a renewed focus on operational improvements.” Jeffrey Bronchik’s Cove Street Capital called the agreement “Another Weasel-like Deal Where Public Shareholders are Sold-Out.”

Andrew Wallach, the co-CEO of SpringOwl Asset Management, said in a statement issued June 3 that his fund had purchased shares “intending to be long term participants” in a process of value realization. Speaking to Activist Insight, he said his fund had begun discussions by telephone and in person with management in late 2014,

trying to pin the company down into a more comprehensive cost review and improving margins in its magnetics segment, which he saw as having a particularly bright future. “There was already a roadmap for \$40 million in cost cuts, and it was close to approval by the unions” Wallach said in the interview. Management is “basically in cahoots with private equity to capture the value” from the company, he added. He points to the stock’s one-year, five-year and all-time highs (\$33.56, \$41.88 and \$73.70) as evidence of the potential being left on the table.

Particularly controversial is the structure of the buyout. Apollo Global Management, a \$163 billion private equity firm, will acquire the company’s magnetic and battery technologies businesses, while Platform Specialty

“ACTIVISTS HAVE OFTEN FOUND THEIR INTERESTS ALIGNED WITH THOSE OF PRIVATE EQUITY... BUT AT OMG, AN OLD CONFLICT HAS RE-EMERGED”

Products, a rollup backed by Pershing Square Capital Management, will acquire its Electronic Chemicals and Photomasks businesses. Platform is getting \$28 million in EBITDA and \$20 million in synergies, says Wallach, while he estimates the price paid by Apollo for the magnetics business at roughly 1.5-times EBITDA. “You can see how well they’re going to do from this,” he says. Instead of selling the whole company, OM Group should have looked to sell the businesses separately.

Yet another source of criticism lies in OM Group’s apparent lack of engagement with shareholders. Wynnefield, which attended the annual meeting, said there was no opportunity to ask questions. It has since called on shareholders to vote against the election and compensation of OM Group’s directors at other companies where they hold management or board-level positions.

“I cannot remember a recent deal with a public company where there was NOT a conference call for shareholders to understand the motivation and math of

the deal,” said Cove Street on its blog.

In its proxy statement, OM Group revealed that it had effectively been for sale since September 2014, and had spoken to seven potential buyers, after being advised by its bankers at BNP Paribas that its conglomerate structure would make it an ungainly target for most strategic buyers. It estimated valuation, on a discounted cash flow basis ranges from \$29 to almost \$42.

Although the agreement provides for a 35-day “go-shop” period (which was due to expire as Activism Monthly went to press), allowing the company to accept higher offers during that period, investors are crying foul at both the shortness of the period and the fact that it runs over the July 4th holiday weekend. Management “truncated shareholder value by the process” it adopted, says Wallach, leaving maybe \$8 per share on the table. The termination fee doubles if the eventual buyer had been approached before the go-shop period began, he added, although the company argues this is

unlikely to preclude a higher bid.

Which leaves FrontFour. Lawyers familiar with settlement agreements of the kind signed by the activist say the investor is likely able to vote against the deal, but cannot solicit votes without going to court to cancel the agreement. “FrontFour hosed themselves—and in effect us—with poor strategy,” Bronchik said in an e-mail to Activist Insight. “They should have gotten a guy on [the] board immediately upon signing... I bet this will be an inclusion in every new agreement going forward.”

Activist investors have often found their interests aligned with those of private equity, particularly when they agitate for targets to be sold. But at OM Group, an old conflict has re-emerged, between a style of investing that takes companies private and harnesses the benefits of any free cash flow, and one that agitates for the opportunity to keep the company public and create long-term value for all. With Wallach predicting a live situation throughout the summer, this could be one to watch. ■

OMG, they’ve sold the company!



OMG Snapshot

52 week high	\$34.63 *
52 week low	\$21.87 *
Share price	\$33.57 *
EV/EBITDA	11.84 **
P/B	1.31 ***
P/Sales	0.97 **

* accurate as of 1 July, 2015
 ** trailing 12 months, accurate as of 31 Mar, 2015
 *** most recent quarter, accurate as of 31 Mar, 2015

Source: Capital IQ, CSI data.



Getting the vote

By Bruce H. Goldfarb and Patrick J. McHugh, co-Founders of Okapi Partners, a New York-based proxy solicitation and investor response firm.

As shareholder activism in the US reaches record levels, both investors and companies should pay close attention to shifts in voting behavior by institutional investors. Alongside new regulatory guidance, these shifts are starting to impact the outcome of corporate elections, making what used to be considered “certain” votes yet more difficult to come by. As a result, both companies and activists will need to be more engaged with major shareholders on a one-to-one basis, and present credible analyses demonstrating long-term strategy in order to prevail in contested elections in situations ranging from mergers and spin-offs to proxy fights.

One significant change came last year when the Securities and Exchange Commission issued new guidance on shareholders’ use of proxy advisory firms, such as ISS and Glass Lewis. Part of that guidance made clear that investment advisors like mutual funds and ETFs are required to vote in their clients’ best interests. But the SEC clarified that voting in their clients’ best interests can also mean not voting at all, leaving smaller institutional holders who don’t have the resources to analyze every voting decision free to not vote in as many elections.

Less voting overall could have a profound impact on the outcome of campaigns, making shareholder engagement even more crucial ahead of important meetings.

Proxy advisory firms are an important part of the voting landscape, but many shareholders are employing a more independent tack and activist campaigns are sure to be affected. While we continue to see a heavy reliance on proxy advisory firms, there has been outside pressure for investors to shy away from unflinching use of outside recommendations. Jamie Dimon, CEO of JPMorgan Chase, and outgoing SEC Commissioner Daniel Gallagher, have recently spoken out against dependence on these, while Commissioner Gallagher said he was encouraged by the recent proxy fight at DuPont, where the company’s top three institutional shareholders decided to vote against the adviser recommendations, instead supporting management.

Large shareholders themselves are also weighing in on voting behavior. BlackRock CEO Larry Fink recently wrote a letter to the CEOs of the S&P 500 and other large companies around the world warning that support will not come easy unless management demonstrates appropriate action and commitment. In other words, activists need to have a clear vision for bringing long-term value to the company, but companies can’t rest on value they’ve created in the past; they have to communicate a clear vision for the future.

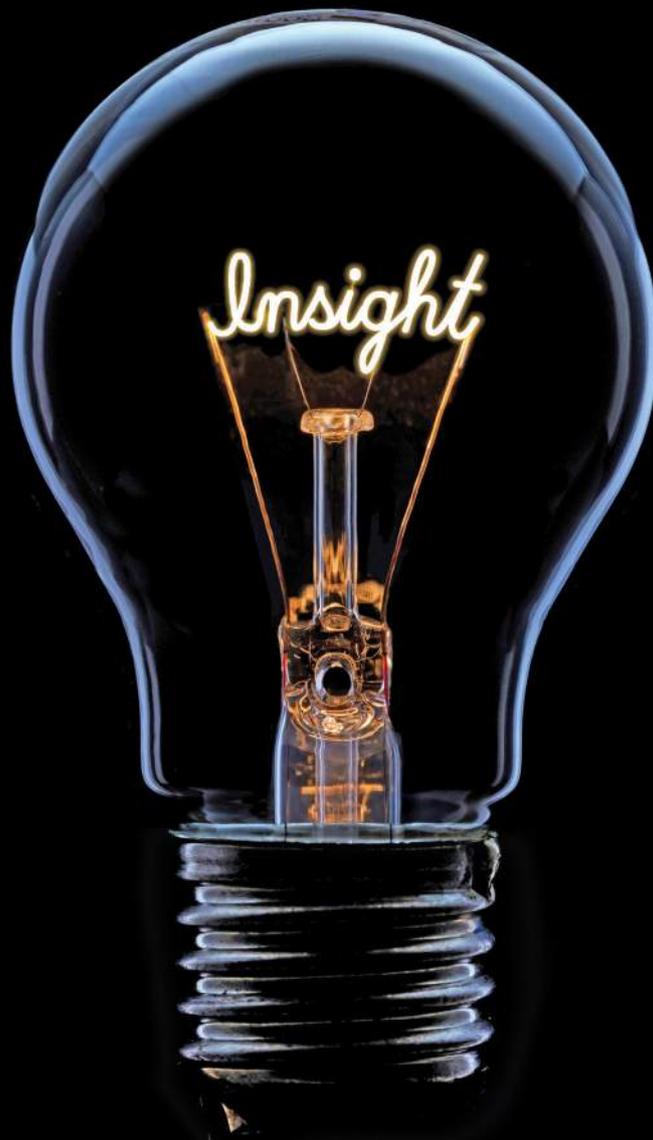
Other investors have made similar calls. We saw this new reality play out in several recent proxy fights, but none

more starkly than the one at Darden Restaurants. In that campaign, as proxy solicitor for Starboard Value, we heard from shareholders who were frustrated at the company’s lack of long-term strategy and inspired by Starboard’s plan to create value by rejuvenating the company’s brands, among other measures. In the end, Starboard successfully replaced the entire board of Darden. Since the campaign, performance has improved and, the company recently announced plans to spin-off its real estate holdings into a REIT as another way to further unlock shareholder value.

Importantly, both activists and companies need to have a vision for the future that investors can understand and buy into. Spin-offs, buybacks and dividends will garner some votes, but they may not convince big investors like BlackRock or Vanguard unless there’s a strategy behind it.

Understanding which shareholders are likely to vote and the issues about which they care is now vitally important to winning a proxy campaign. Some activists may now have to evaluate more closely whether they go after a certain target based on the makeup of the shareholder base and how those shareholders are likely to respond. ■

@OkapiPartners



OKAPI PARTNERS is a proxy solicitation, information agent and corporate governance advisory firm with **UNRIVALED INSIGHT** into how investors respond and make voting decisions. We design and execute thoughtful, results-oriented strategies that ensure our clients succeed in any scenario requiring an **INVESTOR RESPONSE**. We offer clients superior intellectual capital, extensive industry relationships and unmatched execution capabilities.

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Activism in Asia

Last year was the busiest on record for activists in Asia, where a steady increase in pressure on corporations has begun to generate real momentum.

It's a salutary fact that in Asia there have been more public activist campaigns in the past eighteen months than in the previous four years combined, according to Activist Insight data. In 2014, 17 companies found themselves in the sights of activist investors, and the total for 2015 is well over halfway to exceeding that record this year.

Much of the growth has been driven by corporate governance reforms and the arrival of high-profile US activists in Japan, but there are now activist funds dedicated to finding Korean and Chinese opportunities. If activism continues to prove both popular and successful in Japan, it may spill over into neighboring countries, Activist Monthly finds.

Japan

Long considered unfriendly to foreign influence, Japan's corporations are softening up to activist investors. If Sony gave Third Point Partner's Dan Loeb a cold reception (but generated a good return, according to the activist), Fanuc seemed an even more improbable target. But the robotics company has adapted quickly to the new rules of the game, inviting Loeb to a meeting with management, opening an investor relations team and setting a new metric for returning capital to shareholders.

That success is becoming replicated more and more widely as the 'third

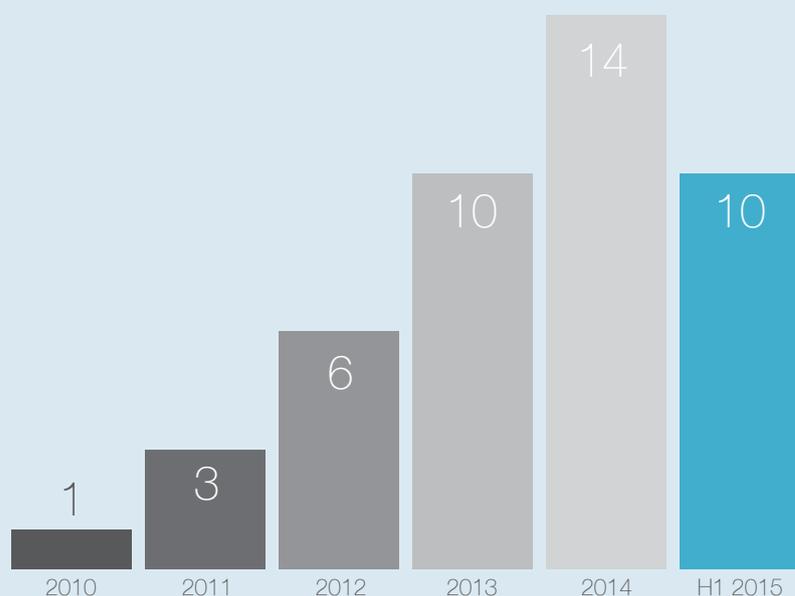
arrow' of Prime Minister Shinzo Abe's corporate reforms strikes its target. Masaki Gotoh, a Partner at activist investor Misaki Capital, says it wasn't as if Japan woke up one day and decided its governance was broken and needed fixing, but that the Abe government "legitimized" change by kickstarting a movement "that improved governance must be embraced" (which, he says, is arguably much more powerful than any legal framework in Japan).

This year, the country has adopted a new corporate governance code, which recommends boards include at least two "outside" directors, and Institutional Shareholder Services (ISS) has begun to recommend voting

against directors at companies where return on equity falls below 5%. A new index, the JPX-Nikkei 400, tracks companies with stronger governance and higher ROE; to increase its attractiveness the Government Pension Investment Fund (GPIF) has begun allocating assets to it. Alongside the reduction of cross-ownership, domestic investors have become less reflexively supportive of management, observers of the country's proxy voting scene note.

Marc Goldstein, who used to head ISS's research on Japanese companies and still works on the country during proxy season, says the rate at which companies have brought in outside directors has exceeded

Asian companies subjected to activist demands



“THE ELLIOTT CASE IS INTERESTING FOR EVERYONE. IF THE NPS VOTE AGAINST THE MERGER, IT COULD BE A VERY POSITIVE STATEMENT FOR ACTIVISTS IN KOREA”

expectations, but that it is too early to tell what the long-term impact of some changes will be. Outsiders are defined “very strictly,” he says, but independence is a much vaguer term. More importantly, the quality of input from outsiders will be important. “The Olympus scandal showed that having outsiders on a board is not enough,” he says. “There was a Nobel Prize winning economist on the board, but he didn’t live in Japan, or speak Japanese. How much could he contribute to the boardroom deliberation, or to oversight of management?”

Gotoh is similarly wary of the country being portrayed as suddenly embracing the maximization of shareholder value as a goal, when in reality it is still a fairly new concept. “If we get the wrong type of activism (such as confrontational public campaigns), I fear that the mood can reverse overnight,” he says. Nonetheless, Goldstein argues that issuers are currently keen not to be seen as overcapitalized. “Companies understand that cash on the balance sheet is no longer something they can just hang onto, but now makes you vulnerable,” he says.

Korea Development

Elliott Management’s intervention in a merger between two companies in the Samsung Group (Samsung C&T, in which Elliott is a 7% shareholder, and Cheil Industries) has highlighted the growing popularity of shareholder activism in South Korea, coming a few months after Hyundai bowed to investor pressure for a new governance committee following a botched rights issue. Moonok Bang, a researcher at the ratings company Korea Corporate Governance Service, says “The action by Elliott management is the hottest

issue in Korea,” especially now that APG has joined the campaign.

According to SC Fundamental Partner David Hurwitz, the legal underpinnings for minority rights in Korea are “quite robust.” There is no poison pill, and any stockholder who has held a 1% stake for at least six months can advance proposals at a general meeting (any stockholder can also request a shareholder list). Moreover, he says, and in contrast to neighbouring Japan, foreign investors (who tend to be more supportive of activists than domestic ones), are seen as a source of pride.

“The Elliott case is interesting for everyone. If the NPS vote against the merger, it could be a very positive statement for activists in Korea”

SC Fundamental has been an activist in Korea since 2011, when it joined Petra Capital Management in a proxy fight at Kukbo Design over the “gigantic pile of cash” on the company’s balance sheet. Hurwitz says the activists secured a raft of changes, including a reduction in the Chairman’s compensation, a restructuring of a foreign subsidiary, and a new statutory auditor. The stock has been flying ever since, and in 2013, Petra and SC Fundamental launched the Korea Value Opportunity Fund. “Mispriced Korean companies can become more efficient if they unlock value by returning capital to shareholders,” says Albert Yong, Petra’s Managing Partner.

Although Elliott has indicated it will pursue its goal of halting the merger through the courts, everyone is now

watching the National Pension Service (NPS), the largest owner of equities in Korea. A couple of years ago, it abandoned its previous passivity, and can now vote against management and propose resolutions. “The Elliott case is interesting for everyone,” Yong says. “If [the NPS] vote against [the merger], it could be a very positive statement for activists in Korea.”

China next?

US-listed Chinese stocks are hardly considered the best advertisements for corporate governance, but to Peter Halesworth, of the Boston-based investment outfit Heng Ren, the potential for activism is already there. “There are constraints, but if you can overcome those constraints it can be quite lucrative,” he told Activist Insight in a recent interview. So far, he has pushed Jiayuan, a dating site operator, Sinovac, a pharmaceuticals company, and Nepstar, which owns a chain of drugstores, to improve their governance and transparency. Progress has been slow, he admits, but the feedback from other shareholders has been positive.

To Halesworth, however, demography makes improvements in corporate governance inevitable. He suggests watching China’s Social Security Fund, which is under pressure to up returns amid fears of a pension shortfall, for signs of influence being exerted on state-owned enterprises.

If pension funds do look to adopt best practice from elsewhere in Asia, reform won’t take a decade, Halesworth argues. “We think it’s worth the patience,” he says. But that doesn’t mean it will be easy. “If it happens it will happen in a Chinese way, on its own terms,” he concludes. ■



North America

Marathon Partners triumphed in its proxy contest with photo products company **Shutterfly**, winning two seats on the board. **Ancora Advisors**, which backed the activist, published a letter after the vote calling for changes to executive compensation at the company.

Trian Partners reduced its stake in **Wendy's** to less than 22%, after negotiating private stock repurchases with the company. It was also revealed that Trian's Nelson Peltz was closer than expected to winning a board seat at **DuPont**; a final tally put support at 46%.

Gas supplier the **Williams Companies** said it had received a takeover offer dependent on it not continuing with plans to acquire the remaining shares in Williams Partners it does not already own. The board, which includes **Corvex Management's** Keith Meister, will consider the company's options.

Activist investors took over as interim-CEOs at **Famous Dave's** and **Town Sports International**. **Blue Clay Management's** Adam Wright took over at Famous Dave's, where he has been a board member since 2013, while Patrick Walsh (a board member at Famous Dave's since last year), will help oversee the transition at Town Sports, where his **PW Partners** was part of an activist "wolf pack" that won five out of eight board seats in March.

Macellum Advisors, which earlier this year teamed up with Barington Capital to

secure changes at The Children's Place, said it would withhold votes on directors at **Christopher & Banks**, following disappointing earnings results and the company's refusal to reappoint its former CEO, Joel Waller. A withhold campaign at **TheStreet** by **Cannell Capital** failed despite a rebellion, with all directors re-elected. The financial media company did appoint a new director endorsed by Cannell, however.

“Although Hill International has scrapped its poison pill, it seems unwilling to engage with a potential private equity buyer”

Shareholders in **Office Depot** approved the company's merger with its rival Staples, a move urged four months ago by activist investor **Starboard Value**. Several other mergers involving stocks owned by Starboard also progressed in June, including **Micrel** and **Integrated Silicon Solution**, where a consortium led by Uphill Investment Co was forced to increase its bid.

The attractiveness of Canada as an investment destination was confirmed when **ValueAct** allocated more capital to potash producer **Agrium**. The activist has been forced to trim its stake in Valeant in recent months, following the stock's exponential growth.

Gas station operator **TravelCenters of America** said it would sell and

leaseback 30 of its properties for just under \$400 million, a transaction urged on the company in February by activist investor **RDG Capital**. Elsewhere, **Bob Evans Farms** agreed to monetize its real estate, two years after **Sandell Asset Management** won a proxy fight on that platform. The stock was badly hit earlier in the year by the board's rejection of a spin-off for the company's food packaging division, and weak earnings.

Construction manager **Hill International** delayed its annual meeting after a court found nominations by activist fund **Bulldog Investors** were valid. Although it has scrapped its poison pill since the start of the contest, Hill has not been willing to engage with interested private equity firm DC Capital.

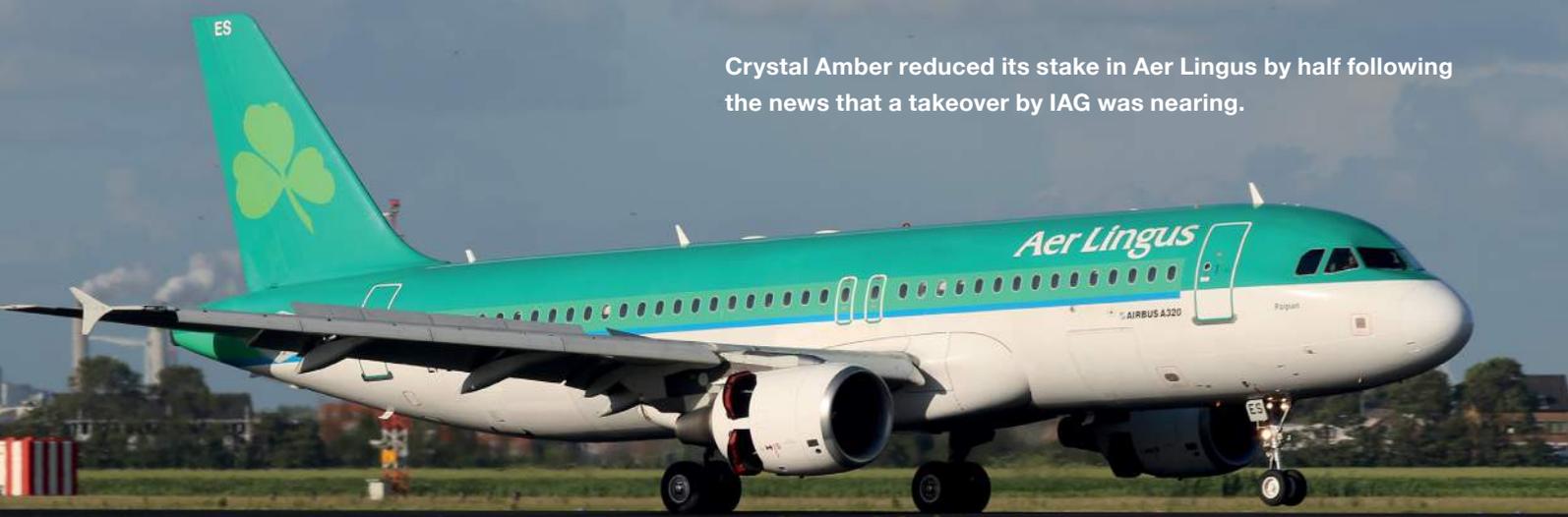
Roumell Asset Management became the latest activist to call for Rosetta Stone to sell up, after **RDG Capital** made a takeover offer and **Osmium Partners** said a deal at \$16 or more per share would be good for shareholders.

GAMCO Investors was narrowly defeated in an attempt to stop **Layne Christensen** converting debt into common stock.

Google and **Facebook** shareholders rejected proposals from **NorthStar Asset Management** to collapse the companies' dual class share structures.

Vertex Capital Advisors sold almost its entire stake in **Audience**, five months after disclosing the position. Shares had risen a healthy 11% during the period.

Crystal Amber reduced its stake in Aer Lingus by half following the news that a takeover by IAG was nearing.



Nelson Obus' **Wynnefield Capital** rebuked **MusclePharm**, accusing the nutritional supplements company of exaggerating claims of improving liquidity, and demanding an explanation for the resignation of three directors.

Centennial Group reached an agreement to settle a proxy contest against **Temple Hotels**, just a week after announcing its intention to nominate five nominees for election to the board. The dissident will receive two board seats.

Europe

The new CEO of **Bilfinger Berger** announced plans to divest the company's power generation unit, a major drag on its earnings in recent years. Activist investor **Cevian Capital** is thought to have been behind the installation of new Chairman Eckhard Cordes.

The co-CEOs at **Deutsche Bank** announced plans to resign after a stormy annual meeting, rows with labor unions and increased regulatory pressure. Former UBS CFO John Cryan was announced as the sole replacement.

Dissident shareholders represented by **Ian Dearing** elected four new directors at London-listed miner **Mwana Africa**, against the recommendation of ISS. Mwana's largest shareholder, the China International Mining Group, had sued over earlier board appointments.

UK-based chocolatier **Thorntons** was in line for a takeover, after Ferholding bought out **Crystal Amber** and other

shareholders to take its stake to just below the mandatory bid threshold. The acquisition valued the company at around £112 million.

Crystal Amber also halved its stake in Irish airline **Aer Lingus**, as a deal with British Airways owner IAG appeared closer than ever to takeoff.

Baillie Gifford said an offer from the Emirates National Oil Company (ENOC) for **Dragon Oil** "materially undervalues" the company. The asset manager said Dragon Oil's long-term prospects should be taken into account and not just its current cash-flow.

A high premium placed by Rupert Murdoch on his stake in television network **Sky** is believed to have scared off Vodafone and France's **Vincent Bolloré**. Murdoch's Twentieth Century Fox owns 39% of Sky, and was said to want £18 per share for the asset. Shares rose on news of the talks, suggesting the drama might not be off-air for good.

Bwin.party sold the World Poker Tour to Ourgame for \$35m, after purchasing it in 2009 for \$12.3m. The move is part of a strategy involving divesting of non-core assets, which has picked up since activist investor **SpringOwl Asset Management** joined the board. Bwin itself is the subject of two takeover bids, a process expected to be resolved soon.

Elliott Management used its voting power at Swedish video company **Axis** to bring in a special auditor, who will review the company's takeover by

Canon. The activist also won a small minority dividend, after failing to secure popular support for a resolution calling for a much larger payout.

Rest of the World

Elliott also disclosed a 7% stake in **Samsung CT&T** and said a takeover by its affiliate Cheil Industries undervalued the company. Samsung responded by hiring investment banks Goldman Sachs and Credit Suisse, and upping efforts to persuade ISS of the deal's merits.

Vast Profit Holdings submitted a revised takeover bid for **Jiayuan.com International**, days after the company announced that its special committee was evaluating additional proposals. The Chinese online-dating site sought other proposals after **Heng Ren Investments** said Vast Profit's initial bid significantly undervalued the company.

Sandon Capital published a presentation calling **BlueScope Steel** "the cheapest steel company in the world" and demanded the mothballing of furnaces at Port Kembla. The company admitted it was looking for a "game-changing approach."

Sandon also requisitioned a meeting at biochemical company **Alchemia**, where it will seek to replace two of the three directors, including Chairman Tim Hughes. Alchemia has been seeking to reduce costs and monetize assets following the failure of an anti-cancer drug trial in January. ■



New investments

A selection of the latest activist investments.

Activist	Company	Date Notified	Stake
Trian Fund Management	Pentair	Jun 30, 2015	7.2%
Trian believes Pentair can be a prudent consolidator in the industrials space, lighting a fire under the company's peers.			
Elliott Management	Alcatel-Lucent	Jun 26, 2015	1.3%
Alcatel-Lucent is being bought by Nokia, perhaps presenting an arbitrage opportunity for the activist.			
Crystal Amber	Grainger Plc	Jun 26, 2015	3.0%
Property developer Grainger announced the replacement of its CEO just days after the filing, saying it was a planned move.			
Vertex Capital Advisors	Electro Scientific Industries	Jun 25, 2015	6.3%
Vertex joins the D3 Family Funds on the ESI register, but is likely to take a more proactive stance, including pushing for a sale.			
Baker Street Capital Management	Walter Investment Management	Jun 22, 2015	22.3%
The activist, which recently exited an investment in USA Truck, said it planned to keep its Walter Investment stake passive.			
Wexford Capital	Famous Dave's of America	June 22, 2015	19.0%
Wexford converted its passive stake to an activist one day after the company fired its CEO. It will likely seek to hold the new management team, led by an activist investor, accountable in the transition period.			
Roumell Asset Management	Rosetta Stone	Jun 22, 2015	5.5%
Roumell became the third activist to call for the sale of the language software provider this year. An offer is on the table.			
JANA Partners	ConAgra Foods	Jun 18, 2015	7.2%
JANA hopes to lead a turnaround at the company, saying an impairment following the 2013 acquisition of Ralcorp could prove a watershed moment. It has nominated three directors to the board, and asked for more time to negotiate with management.			
Livermore Partners	Zargon Oil & Gas	Jun 18, 2015	Unknown
The investor offered help insulating the stock from market volatility, but called for cuts and increased focus from management.			
Fundamental Global Partners	1347 Property Insurance Holdings	Jun 18, 2015	5.2%
Fundamental became the third activist on the register with this investment, but no public demands have yet been voiced.			
Cartica Capital Management	PI Industries	Jun 16, 2015	3.9%
The emerging markets specialist thinks the company is already well-run, but stands to benefit from a productivity boom in India.			
Damille Investments	The Local Shopping REIT	Jun 15, 2015	20.0%
The REIT's market-cap was £23 million at the date of the activist's filing, well short of its £34 million net asset value.			
Ancora Advisors & Barington Capital Group	DHI Group	Jun 15, 2015	4.0%
In a lengthy letter to the board, the investors argued the company currently trades at a deep discount, and blamed management for failing to grow the firm organically and efficiently manage its recently acquired businesses. They called for a strategic review.			
Elliott Management	Citrix Systems	Jun 11, 2015	7.1%
Elliott formally requested a meeting with the board to discuss a new operational plan the activist believes will help share prices climb to prices as high as \$100 per share, nearly \$35 per share higher than before its announcement.			

http://www.

DHI Group gained two activist investors in the shape of Ancora Advisors and Barington Capital Group—the pair sent the company a lengthy letter claiming it trades at a “deep discount.”

Vertex Capital	Numerex	Jun 11, 2015	6.6%
In a regulatory filing, the activist said the company has failed to achieve its full potential due to shortcomings in the board's growth strategy and its level of transparency. It is likely to push for a sale of the company in due course.			
Knight Assets	Eros International	Jun 08, 2015	3.0%
Knight Assets apparently convinced the company to focus on its online subscription service, rather than investing in a new television channel. Eros is now reprioritizing its online streaming platform as a bulwark against the likes of Amazon and Netflix.			
Fundamental Global Partners	RELM Wireless	Jun 05, 2015	13.1%
Fundamental is the second activist on RELM's register. Another, Privet Fund Management, has several board seats.			
Norman Pessin	LiqTech International	Jun 04, 2015	5.3%
Shares in the liquid and gas purification company have been in freefall, raising the question of how Pessin can arrest that slide.			
Bulldog Investors	Full Circle Capital	Jun 04, 2015	5.7%
One of the most active investors this year, Bulldog is likely to look for a partial liquidity or value creation event in order to profit.			
Elliott Management	Samsung CT&T	Jun 03, 2015	7.1%
Elliott is seeking to disrupt a deal to restructure the Samsung empire, arguing that investors in CT&T will lose out. It has filed two lawsuits against the company, and begun making the case for a re-think in a rare public fight in South Korea.			
Third Point Partners	Nomad Foods	Jun 03, 2015	6.8%
Nomad has already acquired Iglo Holdings and is now setting its sights on Findus Foods, according to reports. Run by serial acquirer Martin Franklin, its appeal to activists could point to concerns over high equity valuations.			
Oasis Management	JAKKS Pacific	Jun 03, 2015	12.2%
The Hong Kong-based investor has hinted at wanting toy manufacturer JAKKS to sell up. A 2012 effort by Clinton Group failed.			
As You Sow	Time Warner Cable	Jun 03, 2015	Unknown
The ESG investor has called on the company to be more cautious about smoking in films that could be viewed by children.			
Pershing Square Capital Management	Nomad Foods	Jun 02, 2015	21.7%
Bill Ackman is a friend of Nomad's founder, Martin Franklin, and has lauded his ability to wring synergies out of businesses.			
Glenview Capital Management	Manitowoc	Jun 01, 2015	7.1%
Activists have piled into Manitowoc since Carl Icahn pushed for a spin-off of the company's food service unit. Glenview hasn't spelt out a particular agenda, but is likely hoping that its presence will keep management honest.			

Ranked the #1 Legal Advisor
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of campaigns worked on since 2010.

Our 2015 Proxy Season Highlights So Far Include:

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30 Settlements
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