

THE ACTIVIST INVESTING HALF-YEAR REVIEW

IN ASSOCIATION WITH OLSHAN FROME WOLOSKY

COAST CAPITAL

EQT CORPORATION

FTI CONSULTING

 **Activist Insight**

O L S H A N

ACTIVIST INSIGHT MONTHLY
VOLUME 8 ISSUE 6 | JULY 2019

CONTENTS

ACTIVIST INSIGHT MONTHLY | JULY 2019

EDITOR'S LETTER	03	<i>A WORD FROM ELANA DURÉ</i>
ACTIVISM WITHOUT BORDERS	04	<i>STEVE WOLOSKY AND ANDREW FREEDMAN, OLSHAN FROME WOLOSKY</i>
A STEP CHANGE	05	<i>THE ACTIVIST INVESTING HALF-YEAR REVIEW</i>
2019: THE NUMBERS BEHIND THE YEAR SO FAR	10	<i>INFOGRAPHICS PRESENTED BY ACTIVIST INSIGHT</i>
DEALING WITH CHANGE	12	<i>JAY FRANKL, FTI CONSULTING</i>
COAST TO COAST	14	<i>AN INTERVIEW WITH COAST CAPITAL'S JAMES RASTEH</i>
NEW TRADITIONS	16	<i>Q&A WITH OLSHAN FROME WOLOSKY</i>
FAMILY FEUD	18	<i>CAMPAIGN IN FOCUS: EQT CORPORATION</i>
PLAYING AROUND	20	<i>VULNERABILITY PROFILE: PLAYA HOTELS & RESORTS</i>
SHORT ON ACTIVISM	22	<i>ACTIVIST SHORT SELLING IN EUROPE</i>
SHORT NEWS IN BRIEF	24	<i>DEVELOPMENTS FROM ACTIVIST INSIGHT SHORTS</i>
NEW SHORT INVESTMENTS	25	<i>RECENTLY DISCLOSED POSITIONS FROM ACTIVIST INSIGHT SHORTS</i>
RESOLUTION ROUNDUP	26	<i>ESG CORNER</i>
UPCOMING EVENTS	27	<i>CONFERENCES, EVENTS, AND MEETINGS TO LOOK OUT FOR</i>
NEWS IN BRIEF	29	<i>RECENT UPDATES FROM ACTIVIST INSIGHT ONLINE</i>
NEW INVESTMENTS	32	<i>RECENTLY DISCLOSED POSITIONS FROM ACTIVIST INSIGHT ONLINE</i>
MOST READ	34	<i>THE MOST POPULAR STORIES FROM ACTIVIST INSIGHT ONLINE</i>

All rights reserved. The entire contents of *Activist Insight Monthly* are the Copyright of Activist Insight Ltd. No part of this publication may be reproduced without the express prior written approval of an authorized member of the staff of Activist Insight Ltd, and, where permission for online publication is granted, contain a hyperlink to the publication.

The information presented herein is for information purposes only and does not constitute and should not be construed as a solicitation or other offer, or recommendation to acquire or dispose of any investment or to engage in any other transaction, or as advice of any nature whatsoever.

PUBLISHED BY:
Activist Insight Ltd

4 Old Park Lane,
Mayfair, London, W1U 6PZ
+44 (0) 207 129 1314

1350 Avenue of the Americas,
Floor 4, New York, NY, 10019
+1 646 475 2214

www.activistinsight.com
info@activistinsight.com
Twitter: @ActivistInsight

Image credits (All Shutterstock.com)

Page 6: Bed Bath & Beyond; Photobyphm
Page 7: Barclays; Photobyphm
Page 8: Hyundai; Renovacio
Page 15: FirstGroup; Tupungato
Page 24: Babcock International; Peter Titmuss
Page 29: Sotheby's; Gina Power
Page 31: Sony; Kobby Dagan
Page 32: AECOM; JHVEPhoto
Page 34: Etsy; kenary820
Page 34: Red Robin; JuanLlauro
Page 34: Bayer; Sirada Wichitaphornkun

EDITOR'S LETTER



ELANA DURÉ
EDURE@ACTIVISTINSIGHT.COM

ELANA DURÉ, SENIOR FINANCIAL REPORTER
AT ACTIVIST INSIGHT.

The first six months of 2019 have provided plenty of interesting activist activity in what seems like a longer proxy season than last year's. Late-season fights at HomeStreet and EQT (this month's campaign in focus) have kept us on our toes, as have a slew of Japanese contests at Lixil, Tosho Printing, and Kyushu Railways.

Indeed, this proxy season was a global one, with activist and short seller campaigns hitting almost every continent (no one has made it to Antarctica yet). Elliott Management led the way in Europe, with investments in France's Pernod Ricard, Germany's SAP, and Energias de Portugal. The activist also launched a proxy contest at South Korea's Hyundai, the first major Asian fight of the season. Elsewhere, Third Point Partners revisited old target Sony and ValueAct Capital Partners gained board seats at Japan's Olympus (the activist is going abroad more, with another investment at U.K.-based Merlin Entertainments). Concerned shareholders targeted Australian firms like Smiles Inclusive, TikForce, and DataDot Technologies, and short sellers looked as far as Africa-focused Jumia Technologies and Costa Rica's Establishment Labs.

"INDEED, THIS PROXY SEASON WAS A GLOBAL ONE, WITH ACTIVIST AND SHORT SELLER CAMPAIGNS HITTING ALMOST EVERY CONTINENT."

This year there were plenty of settlements – notably those at Bed Bath & Beyond and MiMedx – and a push against deals as Starboard Value denounced Bristol-Myers Squibb's acquisition of Celgene, Carl Icahn opposed Occidental Petroleum's bid for Anadarko Petroleum and may launch a proxy fight, while Third Point Partners and Pershing Square Capital Management dislike Unitech Technologies' proposed merger with Raytheon. Excluding a day-long board seat campaign at Marriott International, the three companies were the largest by market cap targeted by dedicated activists this year.

The first half of 2019 was also a busy time for Activist Insight, as we enhanced our product suite and expanded our coverage for clients.

On *Activist Insight Online*, we rolled out an update to the landing page and news sites that allows for faster navigation and provides additional detail. We also increased the number of in-depth articles, focusing on **withdrawn demands**, activism in the **telecoms sector**, and **activist opposition to deals**. Subscribers also get an exclusive new newsletter called *The Weekly Wrap*, in which senior financial reporter Iuri Struta highlights the best of our reporting.

We also made improvements to *Activist Insight Vulnerability* – adding an additional report per week and company comparison functionality – and *Activist Insight Governance* – including nomination deadlines and annual meeting dates. For *Activist Insight Monthly*, we expanded our coverage of personnel moves to a quarterly schedule (please email me with news of any moves!) and launched a new quarterly data report ([see our H1 stats page here](#)).

I've also continued to publish two podcast episodes a month, including conversations on **M&A**, **Canada**, and **environmental, social, and governance** issues.

Speaking of Canada, last month we published our first special report of the year, *Activist Investing in Canada 2019*, and we anticipate a busy second half of 2019 for special reports, too. If your organization would like to produce a special report with Activist Insight, please get in touch.

Finally, I would like to thank our sponsors for this half-year review: Olshan Frome Wolosky and FTI Consulting. We have benefited from their insight and hope you do too.

And with that, I wish you a relaxing summer and an even more exciting second half of the year. 🍷

edure@activistinsight.com
[@ActivistInsight](https://www.activistinsight.com)

ACTIVISM WITHOUT BORDERS

MANY OF THE LARGER, MORE-SEASONED ACTIVISTS CONTINUED TO SCOUR FOREIGN JURISDICTIONS, PARTICULARLY CANADA, JAPAN, AND EUROPE, FOR NEW OPPORTUNITIES DURING THE 2019 PROXY SEASON, WRITE STEVE WOLOSKY AND ANDREW FREEDMAN OF OLSHAN FROME WOLOSKY'S SHAREHOLDER ACTIVISM PRACTICE.

Our shareholder activism practice experienced a heightened presence outside the U.S. during the 2019 proxy season. Although the spillover of shareholder activism into foreign lands has long been predicted by the activism community, we don't think anyone expected the degree to which numerous activists would publicly seek to catalyze change abroad in such a short period of time.

ValueAct Capital Partners had the first international success story of the year when Olympus announced a "transformation plan" in early January, agreeing to appoint a ValueAct representative to its board and putting two other new director candidates to shareholders at its next annual meeting. Third Point Partners recently resurfaced at Sony with suggestions reminiscent of its 2017 engagement with Nestlé. Elliott Management's numerous overseas investments continue to make headlines.

BOARD DIVERSITY TAKES A FRONT SEAT

2019 was a seminal proxy season with respect to board diversity enhancement. Institutional Shareholder Services (ISS) and Glass Lewis sent clear messages regarding the heightened importance of diversity and their desire to promote real change when they updated their board diversity guidelines last November. Major institutional investors continued their efforts to promote greater gender diversity in the boardroom. California also stepped up – becoming the first state to require public companies headquartered there to comply with certain gender quota requirements for boards, including having a minimum of one female on the board by the end of this year. Similar legislation is in the works in other states.

As a result, real headway was made in enhancing board diversity during 2019. In its review of the 2019 proxy season, ISS recently reported that the percentage of women joining boards of Russell 3000 companies and ethnic diversity on boards reached record highs.

We believe shareholder activism played a key role in driving these positive developments. During the last two proxy seasons, most of our clients included diversity as a core

consideration in selecting their slates of nominees and, in the case of short-slate contests, choosing the incumbent directors they sought to replace. Since January 1, 2018, Olshan's activist clients have nominated over 75 female director candidates.

M&A ACTIVISM HEATS UP

A large subset of shareholder activism during the 2019 proxy season involved M&A, including campaigns where activists pushed a company to conduct a strategic review, where activists sought to block an ill-advised transaction, or where they pushed for a higher consideration. These M&A engagements comprised close to 50% of all new campaigns during the first fiscal quarter.

Once again, familiar names in activism were front and center in many of these campaigns, and as the economic environment remains conducive to M&A, we expect M&A activism to stay hot.

MINORITY SLATES AND SETTLEMENTS – THE 'BREAD AND BUTTER'

While we continue to see spikes in various forms of shareholder activism, from M&A activism to withhold campaigns, obtaining board seats via settlement agreements has continued to be the "bread and butter" of activism during 2019. Shareholder activists continue to view having a seat in the boardroom as the most direct and effective means of effectuating change and, consistent with prior years, a vast majority of these board seats were obtained through settlement agreements.

Olshan alone has negotiated 30 settlement agreements resulting in over 55 new directors being seated this proxy season. While seeking minority representation on boards continued to be a dominant pillar of shareholder activism during 2019, an uptick in nominations of majority slates (17 in the U.S. during the first six months of the year alone, according to *Activist Insight Online*) is a noteworthy development that we are watching closely. 

O L S H A N

A STEP CHANGE

2019 HAS SO FAR BEEN A DEVELOPMENTAL YEAR FOR ACTIVISM, TEMPTING INSTITUTIONAL INVESTORS TO TAKE TOUGHER PUBLIC STANCES AND GIVING CAUSE FOR OPTIMISM FOR NEW CAMPAIGNS IN ASIA. AMID A COMPLICATED BUSINESS CLIMATE, ACTIVISTS' MOMENTUM IS UNCERTAIN, WRITE JOSH BLACK, ELANA DURÉ, IURI STRUTA, AND ELEANOR O'DONNELL.



“581 COMPANIES WERE PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN THE FIRST HALF OF THE YEAR, DOWN SOME 16% FROM LAST YEAR’S RECORD-BREAKING START.”

Activism got off to a middling start in 2019. According to *Activist Insight Online*, 581 companies were publicly subjected to activist demands in the first half of the year, down some 16% from last year’s record-breaking start and just the third-highest total of the past five years (albeit well above even earlier years). Explaining that trend is not easy, especially when the fourth quarter of 2018 saw assets temporarily written down. While some activists had cash ready to go, others may have been chasing the market.

While political tensions – a trade war between America and China, and continued uncertainty around Brexit – would seem another potential explanation, the U.S. and U.K. increased their share of all companies targeted worldwide. Activist campaigns actually increased in the U.K.

Neither is it obvious that activists are going abroad in greater numbers, despite high-profile campaigns and the sense that Japan may be on the brink of a historic step forward. The proportion of non-U.S. companies targeted by an activist that faced a demand from a U.S. investor was down a percentage point on 2018, as well as falling in absolute terms.

Uncertainty may have led to some quick settlements, but activists may also lack conviction. The number of fights for

board seats has fallen; most fights involved newcomers with a point to prove or operators – especially in energy. So far, management wins have been the norm, even including close-run FirstGroup and PDC Energy.

“UNCERTAINTY MAY HAVE LED TO SOME QUICK SETTLEMENTS, BUT ACTIVISTS MAY ALSO LACK CONVICTION.”

Anti-deal activism, including at Bristol-Myers Squibb, Occidental Petroleum, and United Technologies, has so far been toothless, although the two former examples encouraged activist-lite public stances from Wellington Asset Management and T. Rowe Price, respectively, in a proxy season where institutional investors were conspicuous in their efforts to preserve their rights.

NORTH AMERICA

The U.S. witnessed a slight dip in the number of companies publicly subjected to activist demands during the first half of 2019. According to *Activist Insight Online*, just 350 U.S.-based companies faced activist demands as of June 30, down from 379 during the same period the previous year.

While board-related activism was proportionally a more significant focus than in past proxy seasons, activists rarely took fights all the way to a vote in the first half of 2019 – and when they did, the results were notably unimpressive. Only one activist won board seats in a contested meeting in the first half of 2019, according to data from *Activist Insight Online*.

“Activists have had more recent success getting seats by settlement than vote because boards are becoming much more selective about which fights to take to a vote, and typically only those where they like their chances,” Andrew Freedman, a partner at Olshan Frome Wolosky, told *Activist Insight Monthly*. Indeed, activists won 129 board seats from 72 settlements during the first half of the year, including at eBay, Legg Mason, and Bed Bath & Beyond.



BED BATH & BEYOND SETTLED WITH A TRIO OF ACTIVISTS IN LATE MAY.

“ACTIVISTS HAVE HAD MORE RECENT SUCCESS GETTING SEATS BY SETTLEMENT THAN VOTE BECAUSE BOARDS ARE BECOMING MUCH MORE SELECTIVE ABOUT WHICH FIGHTS TO TAKE TO A VOTE.”

In Canada, the number of companies publicly subjected to activist demands during the first half of 2019 shrunk by 39% compared to the same period the previous year, with 35 companies targeted as of June 30 versus 57 in the first half of 2018.

Specifically, Canada witnessed a drop in M&A activism during the first half of the year, with just four companies publicly subjected to M&A and breakup activism, down from six during the same period in 2018. However, *Activist Insight Online* data show that, proportionately, M&A and breakup demands represented 7% of all public demands made in the country, slightly higher than the 6% recorded in the first half of 2018.

Kingsdale Advisors’ Victor Li attributed the slowdown in M&A activism to market uncertainty, although he told *Activist Insight Monthly*, “This level of activity is still very healthy in Canada.”

EUROPE

Europe also experienced a decline in the number of companies publicly subjected to activist demands during the first half of 2019. Only 86 Europe-based companies faced activist demands as of June 30, down from 106 during the same period in 2018, according to *Activist Insight Online*.

Although increasing proportionately from 45% to 55% of all public demands made in the region, board-related activism

held steady so far this year compared to the first half of 2018.

Indeed, more U.S. activists have been crossing the pond this year to run aggressive campaigns in Europe, with Coast Capital’s unsuccessful proxy contest pushing to replace six of FirstGroup’s directors, ValueAct Capital Partners successfully urging Madame Tussauds’ owner Merlin Entertainments to go private, and Sherborne Investors trying – and failing – to appoint founder Edward Bramson to Barclays’ board. Squarewell Partners’ Ali Saribas attributes the flock of outside activists to the U.K. to the “depreciation of the pound and the sophistication of the U.K. capital market.”

Saribas also told *Activist Insight Monthly* that board composition is key to ensuring management has the right skill set to run the company, a fact traditional investors are paying more attention to. Activists are finding more success across the pond because contests are actually going to a vote in Europe, he said, whereas a lot of fights in the U.S. are being settled before reaching a head.

Saribas also pointed to an increase in the number of contested M&A situations in the first half of the year. Indeed, M&A and breakup activism accounted for 15% of all activist demands in the first half of 2019, compared to 11% in the same period last year, according to *Activist Insight Online*. Of the 23 companies publicly subjected to M&A and breakup-related demands so far this year, nine of those were pushed



SHERBORNE INVESTORS FAILED TO WIN A SEAT ON THE BARCLAYS BOARD IN ONE OF THE MOST TALKED ABOUT PROXY CONTESTS OF THE SEASON.

“AS USUAL, MOST DEMANDS IN JAPAN WERE BOARD- OR BALANCE SHEET-RELATED, WITH REQUESTS FOR SHARE REPURCHASES AND DIVIDENDS OFTEN COMPLEMENTED WITH APPEALS FOR FRESH DIRECTORS.”

to sell, while eight faced opposition to M&A and six were urged to spin off assets or break up businesses.

Institutional investors were also active in Europe, with Schroders Investment Management helping defeat a Sports Direct takeover of Findel after claiming the deal undervalued the company. Another activist pushing for M&A is Cat Rock Capital, which urged Just Eat to combine with a peer to better compete with rival Deliveroo.

ASIA

Nearly 60% of the 71 Asia-based companies publicly subjected to activist demands so far this year were headquartered in Japan. Indeed, the country is now the second-busiest market for activism behind the U.S., although the number of companies targeted is below last year's half-year high water mark of 44. Landmark activist victories at Japan's Olympus, Toshiba, and lesser-known Lixil show a changing mood toward activism, particularly at troubled companies.

“ONE PLACE TO WATCH IS TAIWAN, WHOSE CUMULATIVE VOTING SYSTEM MAKES ACTIVIST DEMANDS FOR MINORITY REPRESENTATION RELATIVELY EASY TO ACHIEVE.”

Elsewhere, Third Point Partners launched its second campaign at electronics and entertainment conglomerate Sony, treading carefully by praising management's operational execution as it hopes to convince it to pursue a breakup.

As usual, most demands in Japan were board- or balance sheet-related, with requests for share repurchases and dividends often complemented by appeals for fresh directors. M&A activism has declined noticeably, although a reversal of the trend would not be surprising. New rules allowing issuers to spin off holdings tax free could spur activist demands for divestments (Sony is a case in point), while potential new guidelines on mergers between parents and subsidiaries may prompt more opposition to deals and successful bumpitrague campaigns.

Despite such progress, the glacial dissolution of cross-shareholdings, a taboo on domestic activists pushing publicly for changes, and resistance to outsiders still hinder activists. ValueAct Capital Partners gaining board representation at Olympus through partner Rob Hale is an exception to the rule.

In South Korea, the 2018 Stewardship Code triggered a wave of campaigns that has since cooled – albeit at historically high levels (six companies targeted year-to-date versus 10 at the same point last year) and with Elliott Management launching unsuccessful proxy fights at two Hyundai Group companies. Korean Air parent Hanjin KAL dodged a bullet by disqualifying a dissident slate on a technicality.

One place to watch is Taiwan, whose cumulative voting system makes activist demands for minority representation relatively easy to achieve, according to Cas Sydorowitz, CEO of Georgeson's proxy solicitation services. A dissident victory at Taiwan Styrene Monomer is testament to that. Activity in Singapore and Hong Kong has been low and will probably remain subdued as insiders still exercise disproportionate control over companies. 🇹🇼



ELLIOTT MANAGEMENT LAUNCHED UNSUCCESSFUL PROXY FIGHTS AT TWO HYUNDAI GROUP COMPANIES IN FEBRUARY.



ACTIVIST INSIGHT

1 SUITE, 5 PRODUCTS.

THE DEFINITIVE RESOURCE ON ACTIVIST INVESTING
AND CORPORATE GOVERNANCE

ACTIVIST INSIGHT ONLINE

2,500+ ACTIVIST PROFILES, LIVE NEWS &
ALERTS, COMPREHENSIVE HISTORICAL
CAMPAIGN DATABASE.

ACTIVIST INSIGHT GOVERNANCE

3,500+ U.S. ISSUER PROFILES, GOVERNANCE
RED FLAGS, SEARCHABLE DIRECTOR
DATABASE.

ACTIVIST INSIGHT VULNERABILITY

3,000+ U.S. ISSUER ACTIVISM
VULNERABILITY PROFILES, PEER
COMPARISONS, IN-DEPTH REPORTS.

ACTIVIST INSIGHT SHORTS

150+ ACTIVIST SHORT SELLER PROFILES,
LIVE NEWS AND ALERTS, SHARE PRICE
TRACKING.

ACTIVIST INSIGHT MONTHLY

IN-DEPTH FEATURES & INTERVIEWS, CAMPAIGN
OVERVIEWS, NEWS AND INVESTMENT SUMMARIES.

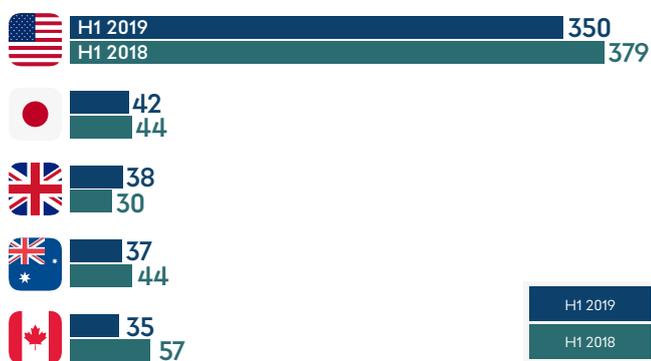
START YOUR FREE TRIAL AT WWW.ACTIVISTINSIGHT.COM



2019

THE NUMBERS BEHIND THE YEAR SO FAR

TARGETS AT THE BIG FIVE



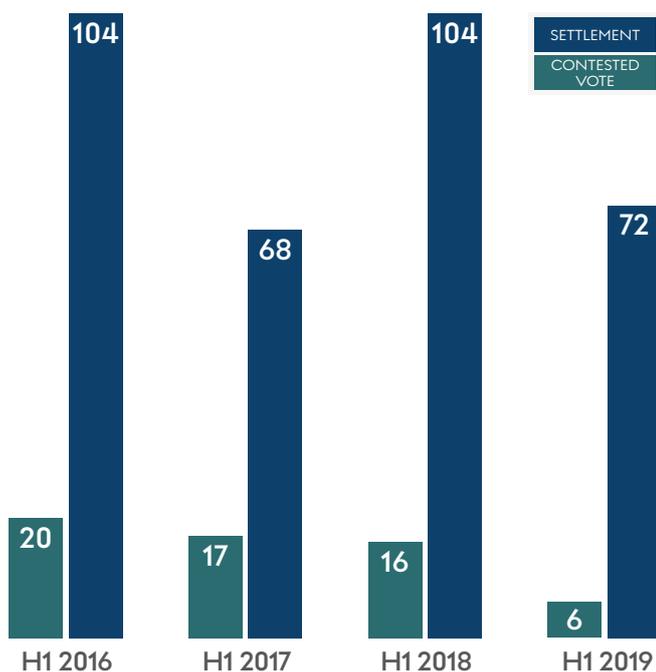
NUMBER OF COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS BY COMPANY HQ LOCATION AND TIME PERIOD.

GLOBAL TARGETS AT THIS STAGE



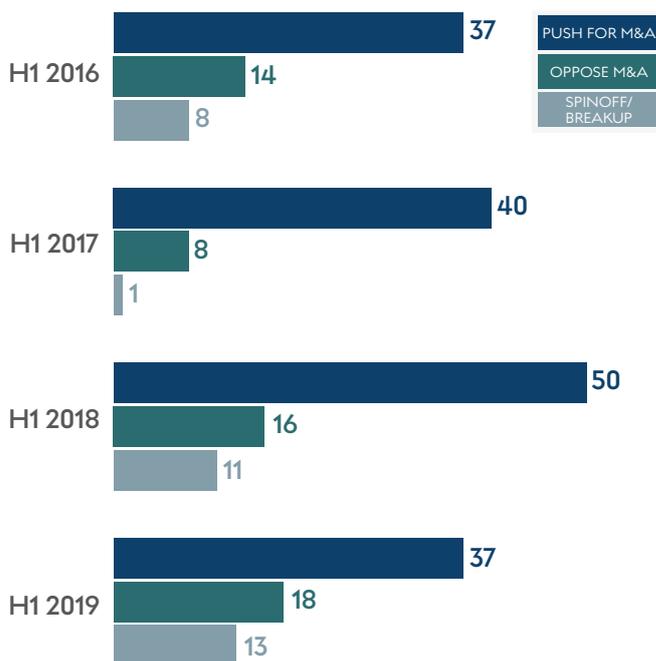
NUMBER OF COMPANIES GLOBALLY PUBLICLY SUBJECTED TO ACTIVIST DEMANDS.

CONTESTED VOTES AND SETTLEMENTS FOR BOARD SEATS IN THE US



TOTAL NUMBER OF SETTLEMENTS AND CONTESTED VOTES FOR BOARD SEATS AT U.S.-BASED COMPANIES BY TIME PERIOD.

M&A ACTIVISM IN THE US

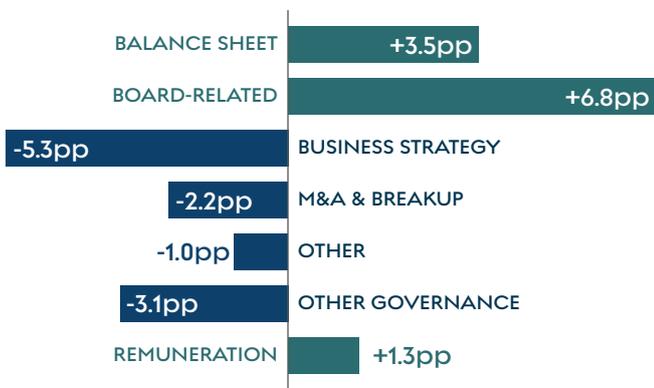


NUMBER OF U.S.-BASED COMPANIES PUBLICLY SUBJECTED TO M&A & BREAKUP-RELATED ACTIVIST DEMANDS, BY DEMAND TYPE AND TIME PERIOD.



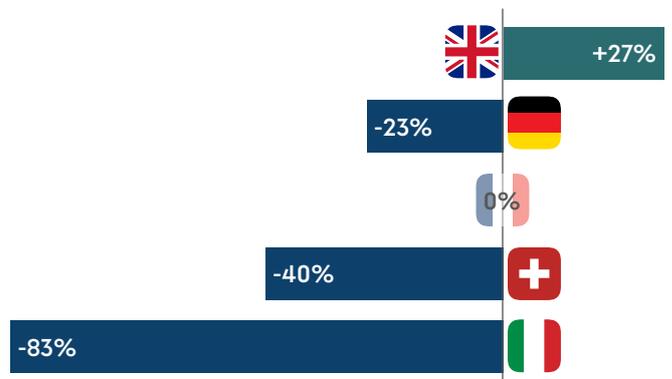
FOR MORE STATISTICS LIKE THESE, CLICK HERE TO
 DOWNLOAD *SHAREHOLDER ACTIVISM IN H1 2019*.

DEMAND TYPE CHANGE IN ASIA



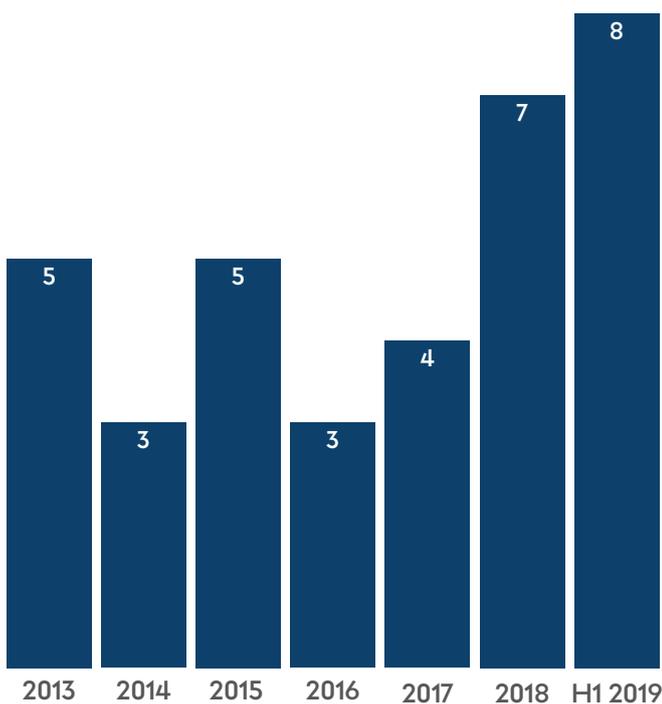
PERCENTAGE POINT CHANGE BETWEEN PUBLIC ACTIVIST DEMAND TYPES MADE AT ASIA-BASED COMPANIES IN H1 2018 & H1 2019.

CHANGES IN EUROPEAN ACTIVISM



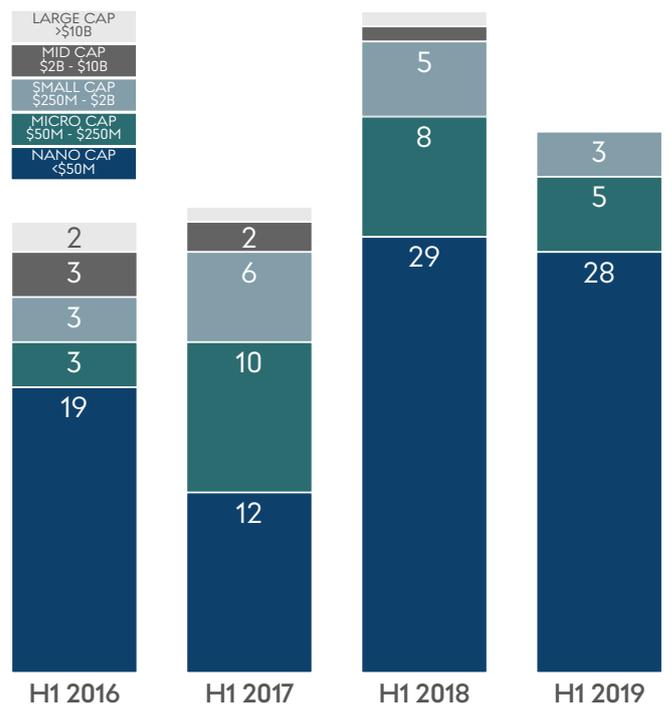
PERCENTAGE CHANGE OF THE NUMBER OF COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN H1 2018 & H1 2019.

U.S. ACTIVISTS' TARGETS IN JAPAN



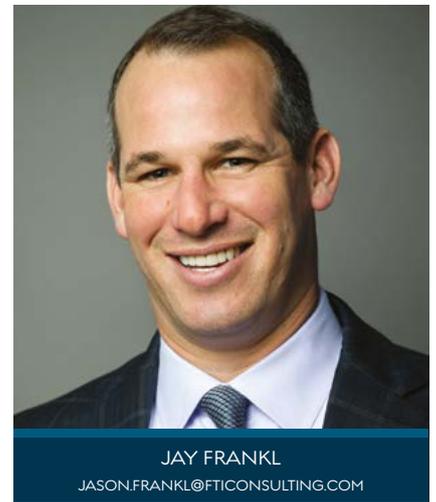
NUMBER OF JAPAN-BASED COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS, BY U.S.-BASED ACTIVIST INVESTORS, BY TIME PERIOD.

AUSTRALIAN TARGETS BY MARKET CAP



NUMBER OF AUSTRALIA-BASED COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS, BY MARKET CAP (US\$) AND TIME PERIOD.

DEALING WITH CHANGE



JAY FRANKL, SENIOR MANAGING DIRECTOR AND CO-LEADER OF FTI CONSULTING'S ACTIVISM AND M&A SOLUTIONS PRACTICE, ON BALANCE-SHEET ACTIVISM, M&A CAMPAIGNS AND NON-TRADITIONAL ACTIVISM.

SHOULD COMPANIES FACING TOUGH CAPITAL ALLOCATION CHOICES BE WARY OF ANNOUNCING BUYBACKS?

Absolutely. Most situations in which activist investors choose to engage with management have a capital allocation component. Often, capital allocation is the primary issue. A buyback may be the right answer if the value that can be derived by buying back shares is greater than the likely return on capital from an alternative use. However, sophisticated investors recognize that, when a buyback increases earnings per share (EPS) by lowering the number of total shares outstanding, buybacks can also be utilized to achieve earnings guidance. In some cases, buybacks can also be used to increase management compensation when incentive compensation is based on metrics such as EPS that is not adjusted for measures such as buybacks. We believe that management should be as transparent as possible in its public disclosures to explain why it has chosen to allocate capital to share buybacks.

HAS BALANCE SHEET ACTIVISM BECOME RARER OR JUST MORE DISCREET?

I think it is simply more discreet. There is no shortage of investor views on what levels of leverage are most optimal. Similarly, most sophisticated investors have strong views on how much cash should be on the balance sheet and how cash surpluses should be utilized. Although we do not often see situations akin to Carl Icahn using a shareholder proposal and public letter to press Apple to repurchase shares, conversations between investors and management on the use of cash occur frequently.

ACTIVISTS HAVE OPPOSED BIG M&A DEALS IN 2019. HOW CAN COMPANIES MITIGATE OR BEAT THIS CHALLENGE?

I don't think it is a question of mitigating or beating such a challenge. So long as there is a cultural and product fit among the businesses, and regulatory risk is low, the

primary question is whether the price is right. However, it is important that there is no risk around the financing or the underlying value of the equity being utilized for a deal. When equity is being used to fund an acquisition in whole or in part, it is critical that the target does considerable diligence on the offeror before accepting a proposal. If the underlying value of the equity offered is misjudged by the market, then the offering price may be inadequate.

DO CAMPAIGNS FROM NON-TRADITIONAL ACTIVISTS REQUIRE A DIFFERENT PLAYBOOK?

Typically they do, for both the investor and the issuer. After assessing whether a suggestion is credible and thought through, the next question for a board and management is, "What is this investor's track record for working with companies to implement such change?" Traditional activists have track records, which is one reason why we often see settlements in connection with public activist campaigns. In contrast, non-traditional activists do not have track records that can be evaluated by a board and management team. This requires a different approach to the proposal, to ensure that the proposal has received the level of thought and vigor required to look at it seriously.

WHERE DO YOU SEE THE MOST POTENTIAL FOR ACTIVISM IN THE NEXT PROXY SEASON?

We are not big on forecasting what we think will happen a year from now. We would anticipate that, if this bull market continues, we will likely see more non-traditional activists engage in public campaigns; as so much capital has gravitated to passive funds, active managers need to find ways to earn their fees. If this protracted bull market gives way to a bear market, I would anticipate even more campaigns from traditional and larger activist funds, as there will likely be more value to be found in quality businesses. 📈



F T I
CONSULTING

ACTIVISM AND
M&A SOLUTIONS

*A player surprised is
half beaten.*



FTIactivism.com



@FTIActivism

Jay Frankl

Senior Managing Director
+1 202 312 9216
Jason.Frankl@fticonsulting.com

Brian Kushner

Senior Managing Director
+1 512 415 2741
Brian.Kushner@fticonsulting.com

Glenn Tyranski

Managing Director
+1 212 651 7120
Glenn.Tyranski@fticonsulting.com

Roxana Fariborz

Managing Director
+1 646 576 8115
Roxana.Fariborz@fticonsulting.com

EXPERTS WITH IMPACT

© 2019 FTI Consulting Inc. All rights reserved.

COAST TO COAST

EUROPE-FOCUSED COAST CAPITAL HAS AN INVESTMENT STRATEGY THAT UTILIZES EVENT-DRIVEN ACTIVISM WHEN NECESSARY. ALTHOUGH ITS FIRST PUBLIC CAMPAIGN AT FIRSTGROUP DID NOT GO AS PLANNED, THE INVESTOR IS HOPEFUL, WRITES ELANA DURÉ.

COAST CAPITAL	
FOUNDED	2016
HQ LOCATION	NEW YORK, NY, U.S.
KEY PEOPLE	JAMES RASTEH
FOCUS	PARTIAL
AUM	\$77 MILLION

New York-based **Coast Capital** is an event-driven hedge fund primarily focused on Europe and other developed markets. The firm, founded by James Rasteh in 2016, has nominated seven board seats at troubled transportation company FirstGroup in its debut proxy contest, though one candidate later withdrew from the fight.

At a special meeting on June 25, shareholders voted against the appointment of Coast's nominees, dealing a blow to the activist, which thought at least Chairman Wolfhart Hauser would be booted off the board. A little more than 29% of investors voted for his removal at the meeting, indicating that there was some support for change.

Coast uses activism as a tool when necessary, arguing that its "active investment process" – which includes approaching companies with transformational plans and including key fellow investors in dialogue – leads to value enhancement.

A NEW WORLD

Rasteh unwittingly entered the world of shareholder activism in 1998 when he openly opposed the acquisition of Cellular Communications International by Olivetti and Mannesmann for \$65.75 per share or \$1.4 billion. Then a fund manager at Sierra Global Management, Rasteh said he wouldn't sell his stock for less than \$80. The bidders later sweetened their offer to that exact price after failing to attract sufficient shareholder support.

"As it turns out that was my first case of activism," Rasteh told *Activist Insight Monthly*. "I learned a lot from every single case of activism that I've pursued."

Since then, Rasteh has enjoyed stints at Claiborne Capital and Jana Partners – where he primarily managed the Europe portfolio and oversaw investments like the one at British foodservice group Compass – before launching his first fund, White Eagle Partners, in 2008 with \$150 million of seed money from Investcorp.

"I DECIDED TO START MY OWN FUND BECAUSE THERE WAS NO PLACE WHERE I COULD DO WHAT I ACTUALLY WANTED TO DO. I WANTED TO TAKE A REALLY LONG-TERM PERSPECTIVE ON THE INVESTMENTS THAT I WAS MAKING AND FOCUS ON OPERATIONAL TURNAROUNDS."

At White Eagle, Rasteh worked with companies to oversee operational value-creation plans. At Hess, his agenda was adopted by other shareholders and "publicly championed" by Elliott Management, according to Pamplona Capital Management Partner Carsten Boekhorst.

NOT HOSTILE

Coast tries to avoid hostility when it can, a trait Rasteh acquired early in his investing career. At White Eagle, he worked with companies like business process outsourcing firm Tele-Performance, oilfield services firm Tesco, and delivery services provider TNT Express to formulate turnaround plans, support management in restructurings, and return cash to shareholders.

“RASTEH WAS VERY ENTHUSIASTIC, ENGAGED, AND DEVELOPED A DETAILED UNDERSTANDING OF THE COMPANY THROUGHOUT OUR EXCHANGE.”

“White Eagle developed a very detailed and sophisticated model on our company,” Daniel Julien, chairman and CEO of Tele-Performance, noted in a letter viewed by *Activist Insight Monthly*. “Mr. Rasteh was very enthusiastic, engaged, and developed a detailed understanding of the company throughout our exchange.”

However, Rasteh was ultimately forced to close the doors of White Eagle in 2015 after Investcorp – the firm’s only large institutional investor – redeemed its capital. A year later, he founded Coast.

“I decided to start my own fund because there was no place where I could do what I actually wanted to do,” Rasteh said. “I wanted to take a really long-term perspective on the investments that I was making and focus on operational turnarounds.”

FIRST TARGET

In November of last year, Coast revealed FirstGroup as its first public target, calling on the firm to replace a majority of its board and commence a sale-and-leaseback on some of the company’s assets in the student bus division. The 9.8% shareholder also demanded FirstGroup separate its U.K. and U.S. assets, pull out of Britain’s railways, and replace its CEO.



COAST FAILED TO WIN BOARD SEATS AT A SPECIAL MEETING OF FIRSTGROUP IN JUNE.

It returned in May with a meeting requisition and seven independent board candidates, although one decided not to run shortly before the June 25 meeting (Rasteh told *Activist Insight Monthly* the candidate, who gained support from Institutional Shareholder Services, did not want to serve under Chairman Wolfhart Hauser). When asked why he didn’t suggest a board seat for himself, Rasteh said that “it’s very important for us to signal to our fellow investors that we’re not trying to take control of this board.” He also noted the importance of “fresh beginnings.”

“It’s like a rotten piece of wood,” he said. “I don’t want to be next to it. I want to cut it... I want fresh and strong foundations. That’s the only way that you can rebuild.”

FirstGroup believed its 11-member board is equipped with the necessary skills and qualifications to “provide safe, sustainable, and environmentally friendly travel solutions for the people and communities we serve.” Coast, however, claimed most directors, including new CEO Matthew Gregory, lacked relevant transport service experience. After seeing the large shareholder discontent at the meeting, Chairman Hauser decided not to run for re-election at the July 25 annual meeting. Coast’s nominees received between 15% and 26% support, indicating that some shareholders did believe a board revamp was warranted.

NOT ALONE

Coast is not the only activist to have targeted FirstGroup in recent years. Canada’s West Face Capital criticized FirstGroup’s “chronic underperformance” and pushed the transport company to sell itself, preceding the resignation of then-CEO Tim O’Toole last year. Even as far back as 2014, Sandell Asset Management advanced a breakup plan for FirstGroup, arguing that selling U.S. assets would help the firm concentrate on its U.K. rail and bus businesses.

Rasteh said he does not believe FirstGroup’s share price will improve without Coast’s nominees on the board, though he noted that Hauser’s departure “is the first right step the company has taken in 10 years.”

“The problem, ultimately, is a human one,” Rasteh said. “A great board, a great management team is intelligent, experienced, and humble. When we work with management teams and boards that don’t have this Holy Trinity of characteristics, it usually leads to underperformance.” 🐼

NEW TRADITIONS

PARTNERS OF OLSHAN FROME WOLOSKY'S SHAREHOLDER ACTIVISM PRACTICE DISCUSS M&A ACTIVISM, THE RISE OF THE NON-TRADITIONAL ACTIVIST, AND THE UNIVERSAL BALLOT WITH ACTIVIST INSIGHT MONTHLY.

ACTIVISTS HAVE HAD LIMITED SUCCESS IN SOLICITING AGAINST ANNOUNCED DEALS THIS SEASON. WHAT KIND OF HURDLES EXIST IN THESE CAMPAIGNS?

STEVE WOLOSKY: A tremendous part of the shareholder base turns over when a deal is announced and arbs come into the stock. Arbs are generally going to vote for a deal absent a better deal being on the table. They'll look at what the pre-deal price was before announcement and say "Gee, it can go back to that level if the deal is voted down." So, absent a competing deal, it's very hard to oppose an M&A deal.

ANDREW FREEDMAN: While it may be true that it's becoming more difficult to vote down a deal at the special meeting, we're still seeing an incredible number of merger deals receive sweetened offers following public agitation. The idea of "bumpitragage" is alive and well. It's when activists look to block a deal altogether that it's sometimes more difficult to ratchet up the level of support required, even where the process and merits of the deal are highly questionable.

WHAT WAS THE MOST EGREGIOUS ENTRENCHMENT TOOL USED THIS SEASON?

MEAGAN REDA: The lengths that public companies go to manipulate the nomination process and make it as difficult as possible for a shareholder to nominate a slate of candidates.

The cornerstone of shareholder democracy is the ability to nominate. The battle lines of fights shouldn't be drawn around the nomination process. A proxy contest should be fought on the merits of the need for board change and the opportunities to enhance shareholder value.

Unfortunately, this year we've seen director nominee questionnaires that go so far beyond what is reasonable or what should be required informationally for a nominee and a proxy fight. It wastes expenses on both sides. We've also seen companies manipulate the corporate machinery through the invalidation of shareholder nominations on mere technicalities that have little significance in the grand scheme of things, like failing to hold shares in record name – an archaic requirement under companies' bylaws.

THIS PROXY SEASON SAW MANY NONTRADITIONAL ACTIVISTS MAKE PUBLIC DEMANDS. DO YOU THINK WE CAN EXPECT TO SEE MORE OF THIS MOVING FORWARD?

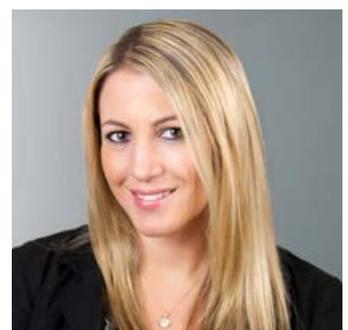
RYAN NEBEL: I think that would be reasonable to expect. Not just in terms of "reluctavists" who begrudgingly undertake an activist campaign to protect the value of their investment, but also private equity firms and even operating companies. If there's an opportunity for value creation, I think that more parties are willing to take the necessary steps to unlock value. "Activist" isn't the dirty word that it used to be. Activism continues to be more and more accepted as a strategy and an asset class.



STEVE WOLOSKY
SWOLOSKY@OLSHANLAW.COM



ANDREW FREEDMAN
AFREEDMAN@OLSHANLAW.COM



MEAGAN REDA
MREDA@OLSHANLAW.COM

“THE CORNERSTONE OF SHAREHOLDER DEMOCRACY IS THE ABILITY TO NOMINATE. THE BATTLE LINES OF FIGHTS SHOULDN’T BE DRAWN AROUND THE NOMINATION PROCESS.”

ELIZABETH GONZALEZ-SUSSMAN: Non-traditional activists also tend to run a slightly different campaign than traditional activists because they are usually reluctant to go public in the first place. They try to give the company more opportunities to make meaningful change and they want to give the benefit of the doubt to the company that it will do the right thing. There are more attempts to try to resolve things amicably and more effort to hold back highly critical attacks on the company. That being said, without these non-traditional activists going public, many companies do not seem to take them seriously enough.

I expect more nontraditional activists will see the benefit of going public with their demands if they continue to be brushed aside by management or boards in their private engagements.

THE UNIVERSAL PROXY SEEMS TO BE MAKING A COMEBACK THIS SEASON AS A DEFENSE TOOL FOR COMPANIES. IS THIS ULTIMATELY A GOOD THING FOR ACTIVISTS?

EGS: I don’t really view the use of a universal proxy as a defense tool for companies. We’ve seen activists propose the use of a universal card in a number of situations this year. The benefit to using a universal card is that it allows shareholders the ability to choose the most qualified directors from both slates without having to attend the annual meeting in person to achieve this same result.

However, since the Securities and Exchange Commission (SEC) has yet to pass rules on the use of a universal proxy card, companies can try to propose its use to gain an unfair advantage in a proxy contest. For example, companies can try to manipulate the presentation of the card so it

becomes confusing for shareholders to understand the activist’s recommendations on how to vote. Companies are also increasingly requiring, as a condition to submitting a nomination notice, that the activist deliver consents from each of its nominees to being named on the company’s proxy card without the company providing reciprocal consents to the activist to name the company’s nominees on the activist’s card.

Until the SEC adopts rules on universal proxies, these issues will continue to be negotiated on a private basis or, in some instances, end up in threatened or actual litigation to force a more equitable solution. It should be interesting to see how this past season will impact any rules adopted by the SEC on universal proxies.

WHAT TRENDS DO YOU EXPECT TO CONTINUE INTO NEXT SEASON?

RN: International campaigns are becoming more prevalent, and I expect that to continue next season. As investors see success with international campaigns, let’s say in Canada and Japan, other U.S.-based funds may see these markets as being “open” and ripe for activism.

KENNETH MANTEL: I agree that there will continue to be plenty of international campaigns, likely by a growing cast of activists. There’s a certain amount of learning that activists do when they look into their first potential situation in a new jurisdiction, and once they have that baseline knowledge about the environment and available pathways, which may or may not have resulted in something that became public, they’re going to be more willing to move forward the next time around. 🏆



RYAN NEBEL
RNEBEL@OLSHANLAW.COM



ELIZABETH GONZALEZ-SUSSMAN
EGONZALEZ@OLSHANLAW.COM



KENNETH MANTEL
KMANTEL@OLSHANLAW.COM

FAMILY FEUD

THE FINISHING POST FOR PROXY SEASON, EQT MAY BE THE YEAR'S BIGGEST AND MOST-ANTICIPATED FIGHT. THE FIGHT REPRESENTED A TEST OF WALL STREET'S SUPPORT FOR NONTRADITIONAL ACTIVISTS, AS WELL AS THE UNIVERSAL PROXY, WRITES JOSH BLACK.

EQT CORPORATION

SECTOR:
BASIC MATERIALS

MARKET CAP:
\$4.0B (MID CAP)

EXCHANGE:
NYSE

TICKER:
EQT

HQ:
PITTSBURGH, PA

In a year when many companies have opted to settle rather than risk losing a contest, **EQT** offered an energetic defense in the face of a campaign by **Toby Rice** – mixing concessions with attacks on the activist's independence and credibility. Even so, the second major U.S. energy company this year to face a proxy contest from an asset operator failed to replicate the result at PDC Energy, which held off **Kimmeridge Energy Management** in May.

Pittsburgh-based EQT bought publicly traded **Rice Energy** in November 2017, making Rice and his brothers not just wealthy but significant shareholders of EQT. **Rice Investment Group (RIG)** controls 3.1% of EQT's stock and has been exposed to disastrous returns.

NO SHAW THING

Indeed, weak performance cost **Rob McNally**, who moved from the chief financial officer's office to the CEO's in November, his job. Despite divesting its midstream business and returning nearly \$600 million to shareholders, mostly in buybacks, EQT shares have halved since the deal closed. Three active managers owning 18% of the stock – **D.E. Shaw Investment Group**, **Kensico Capital Management**, and **T. Rowe Price**, the largest single shareholder with around 10% of the stock – declared for the Rice slate in the last stretch of the campaign, as did **Institutional Shareholder Services**.

According to **Proxy Insight**, a voting data provider, **T. Rowe** voted on dissident cards in 49% of fights between July 2012 and June 2018, well ahead of second and third-largest shareholders **BlackRock** and **Vanguard**, which supported dissidents in less than one-third of contests. The trio

supported the 2017 merger with **Rice Energy**, with **Fidelity Management & Research** its most high-profile opponent, according to **Proxy Insight**.

As a result, **Toby Rice** is expected to be the next CEO of EQT – a critical step in the operational reforms he says will boost cash flow beyond what the company hopes to achieve from an efficiency drive. Another proxy adviser, **Glass Lewis**, said EQT has raised reasonable doubt about his ability to replicate **Rice Energy's** success and the company had warned that its board “should not be a friends and family club.”

PLAYING THE MAN

With both sides using universal ballots, the Rice team's decision to cut its slate from nine to seven nominees gives it a tactical advantage, since investors wanting to back one or two dissidents might disagree on which incumbent board members to sacrifice and inadvertently help elect additional dissidents.

To counter this dynamic, EQT has run a tough personal campaign against **Toby Rice**, writing in a May 8 letter to the prospective CEO of “serious concerns, based on a review of what others have said about your time at **Rice Energy**, about your professionalism and experience.” The company also suggested that **RIG's** side businesses present a potential conflicts of interest, since it invests in companies that sell products and services to EQT.

At the same time, EQT has re-nominated **Danny Rice**, the eldest sibling. **RIG's** website notes that **Danny Rice** “sources, structures, and executes **RIG** investment opportunities,” although EQT has accused **Toby Rice** of

“WITH BOTH SIDES USING A UNIVERSAL BALLOT, THE RICE TEAM’S DECISION TO CUT ITS SLATE FROM NINE TO SEVEN NOMINEES GIVES IT A TACTICAL ADVANTAGE.”

going a step further by contacting EQT employees to solicit business for RIG companies.

And diversity played a part in the fight, with EQT adding two female directors so that of the combined 19 candidates seeking 12 board seats, nine were women. As the company trumpeted, 42% of its slate was female. Three new additions to the board in the course of the fight bolstered EQT’s industry expertise – an area it was previously lacking.

CASH PIPE

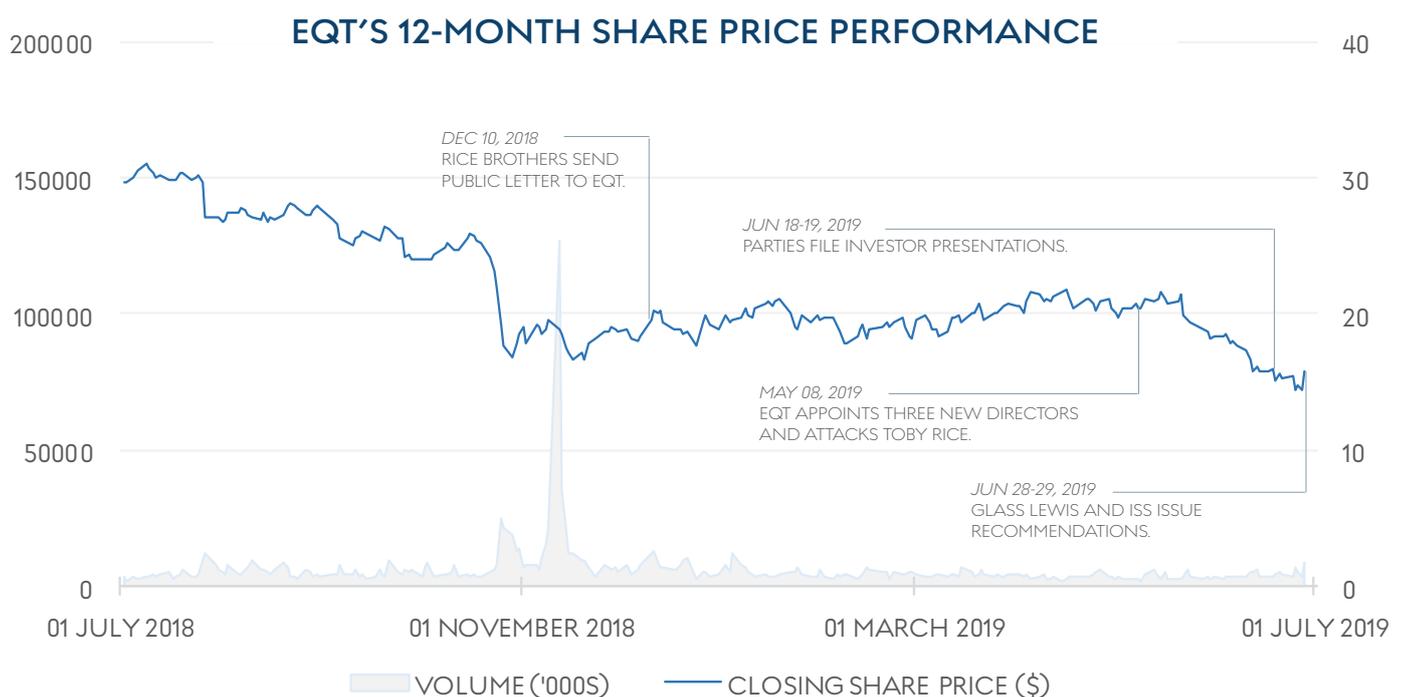
At the root of the Rice argument is the claim that EQT is running at a high-cost basis, which management contested. In any case, McNally says the company has “transformed into a free cash flow machine,” finding \$175 million in efficiencies on its way to providing \$300-\$400 million in additional annual cash flow.

The Rice team scorned that record, accusing EQT of slashing capital expenditures intended to grow the business, in order to meet its targets. The activist group also said its plan, which promises “transformational

results” from developing all of EQT’s wells in large “combo developments,” will deliver \$500 million in annual cash flows on top of EQT’s forecasts.

Analysts from Goldman Sachs, Wells Fargo, and RBC have grown increasingly bullish on EQT’s promised improvements, although those at Cowen expressed guarded support for the Rice plan early in the campaign, writing in April, “we find merit in a number of their assertions,” and suggesting EQT monetize a remaining 20% stake in its former midstream business, now known as Equitrans, to counter a potential increase in leverage.

Given McNally’s recent elevation to the top job and the Rice team’s demands, a settlement has long looked unlikely. Yet in an interview with Bloomberg in mid-June, Toby Rice appeared willing to sacrifice his goal of becoming CEO. If it was meant as an olive branch, it wasn’t picked up on. The campaign slid toward a vote and active managers started to voice support for the Rice slate. The battle was won. 🏆



SOURCE: CSI & XIGNITE

PLAYING AROUND

AFTER CARL ICAHN CHECKED INTO CAESARS ENTERTAINMENT'S SHARE REGISTER AND BOARDROOM, MORE INVESTORS HAVE FOCUSED ON THE HOTEL INDUSTRY. WITH OPERATING EXPENSES THAT HAVE INCREASED IN THE PAST YEAR AND PRICE-TO-EBITDA DOWN ON PEERS, PLAYA HOTELS & RESORTS COULD BE THE NEXT ACTIVIST TARGET, WRITES ELEANOR O'DONNELL.

PLAYA HOTELS & RESORTS



SECTOR:
SERVICES



MARKET CAP:
\$1.0B (SMALL CAP)



EXCHANGE:
NASDAQ



TICKER:
PLYA



HQ:
FAIRFAX, VA

Playa Hotels & Resorts has a strong hand, with 54% of its shares represented by the four stockholders which have agreements to designate board members. However, an activist might create dissension in the ranks by pushing for a strategic review or a sale to one of the hotel chains partnering with management. Although Playa has not yet encountered an activist investor's public campaign, the small-cap luxury hotel owner has faced bad press in the form of an activist short seller thesis in August 2017. FG Alpha posted a short investment thesis relating to Playa on the Geoinvesting website based on a U.S. State Department travel warning for the Yucatán Peninsula.

Playa's stock fluctuated around the \$10.90 mark immediately after the post was published but did not prove the short seller right until the following year when it plummeted 41.3% in four months to land at \$6.15 on December 14, 2018.

The market's negative reaction coincided with an announcement from Hilton Worldwide in September 2018 that it had entered a strategic alliance with Playa to expand the hospitality company's all-inclusive resort portfolio. The stock has recovered slightly since but has yet to hit \$9. Total shareholder returns for the past year are negative 28.6%, over three times as bad as peers' negative 8%.

Hilton shared plans to welcome two new resorts, to be owned and managed by Playa by the end of 2018, and told investors the companies had plans to open eight additional resorts together by 2025. Hilton's stock also suffered in the latter part of last year due to poor prospects in the hotel industry as insurgents such as Airbnb snatched customers. Although Hyatt is a significant shareholder of Playa and has a more longstanding relationship, Hilton

has larger financial firepower and could be tempted to steal Playa away from its rival.

The opening of the new resorts has increased Playa's assets, which run parallel to liabilities that are also increasing. According to *Activist Insight Vulnerability*, total liabilities sit at \$1.3 billion, slightly up from \$1.29 last year, and the company's free cash flow has hit the red at negative \$26.4 million. Playa's revenue has increased 3% to \$635 million but so have its operating expenses, which have jumped nearly 8% from \$186 million to over \$200 million this year.

HIGH STAKES

Although the disappointing figures have not yet catalyzed an activist campaign, Cabana Investors and Playa Four Pack, affiliates of activist investor Farallon Capital Management, collectively own a 23.5% stake and two of the firm's directors have been designated by Cabana.

Armistice Capital and HG Vora Capital Management also hold small stakes in Playa and both have previously run successful campaigns at other firms. Last year, LaSalle Hotel Properties entered a merger agreement with Pebblebrook Hotel Trust, asserting that the hostile bidder offered a superior proposal to the already agreed-upon Blackstone transaction, after HG Vora pushed the REIT to explore a sale. At the time, the activist had indicated that it would have voted its stake against the Blackstone deal.

GAMBLE ON A DEAL

Amid a craze for mergers and acquisitions, an activist could push Playa to merge with another luxury resorts

“AN ACTIVIST COULD ALSO TAKE A LOOK AT THE COMPANY’S UNWIELDY CORPORATE STRUCTURE, WHICH MAY EXPLAIN THE HIGH SG&A COSTS.”

company that has the funds and management to help the business improve.

Playa’s *Activist Insight Vulnerability*-selected peer Caesars Entertainment sold itself to its rival, Eldorado Resorts (another Playa peer), amid pressure from Carl Icahn to consider a sale.

Icahn reached an agreement with Caesars earlier this year, granting the veteran activist three seats of eight that were filled by his representatives Keith Cozza, Courtney Maher, and James Nelson. Shortly after the three were placed on the board, Caesars appointed Anthony Rodio as CEO.

Alternatively, an activist could propose a strategic review with a view to sell some of Playa’s assets to streamline its portfolio or shrink its geographical focus, which currently includes the Yucatán Peninsula, the Pacific Coast, the Dominican Republic, and Jamaica.

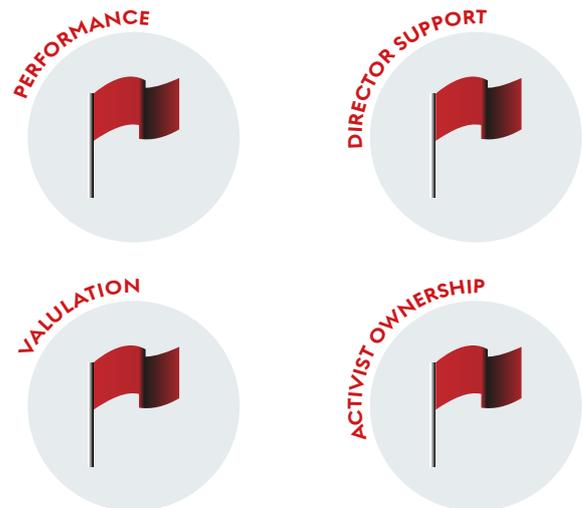
BREWING DISCONTENT

Shareholder discontent seems to already be brewing, with director Gloria Guevara receiving only 80.8% of shareholder votes in favor of her re-election at this year’s annual meeting. Six other directors received support of 92% or less; only four of 12 received more than 95% of the votes in favor of their placement on the board.

This is unsurprising considering Playa’s governance leaves a lot to be desired. The board is a lot bigger than

the U.S. average of eight at 12 and the chairman and CEO roles are held by the same person, Bruce Wardinski. Although Wardinski received nearly the highest percentage of votes for his re-election, an activist could argue that a new independent chairman needs to be placed on the board alongside the chief executive. An argument could also be made for lack of diversity, with only two women on a board of 12. Should an activist wish to push for a board refreshment or influence any changes, they have until December 20 to submit proposals. 🇺🇸

PLAYA HOTELS AND RESORTS’ VULNERABILITIES



PLAYA HOTELS AND RESORTS’ 12-MONTH SHARE PRICE PERFORMANCE



SHORT ON ACTIVISM

UNLESS EUROPE'S REGULATORY FRAMEWORK ON ACTIVIST SHORT SELLING CHANGES, SHORT SELLERS MAY CONTINUE TO BE PURSUED EVEN IF THEIR THESES ARE PROVEN CORRECT, WRITES IURI STRUTA.

Muddy Waters Research's Carson Block is at last vindicated for his short theses on French grocer Casino and its parent company, Rallye, after the latter filed for bankruptcy three and a half years after Block said CEO Jean-Charles Naouri had to choose between bankrupting Rallye or unsustainably "leveraging up" Casino to pay dividends to its parent.

While Block will not benefit financially, having closed short positions in both stocks, the symbolic victory comes amid an active campaign by French regulators against the short seller. Shortly after Rallye entered bankruptcy protection in late May, markets regulator Autorité des Marchés Financiers (AMF) concluded that Muddy Waters intended to manipulate the stock prices of both Rallye and Casino, allegations strongly refuted by Block. The regulator said the short seller's report did not meet the principles of "probity, impartiality, clarity, and precision."

"WHILE BLOCK WILL NOT BENEFIT FINANCIALLY, HAVING CLOSED SHORT POSITIONS IN BOTH STOCKS, THE SYMBOLIC VICTORY COMES AMID AN ACTIVE CAMPAIGN BY FRENCH REGULATORS AGAINST THE SHORT SELLER."

The AMF's report comes shortly after neighboring Germany's BaFin, the stock market watchdog, imposed a ban on short selling in Wirecard stock and as prosecutors probe the activist short sellers and journalists involved in publishing the fraud allegations against Wirecard, despite some of their suspicions being confirmed by an independent investigator.

TREADING CAUTIOUSLY

Regulatory hostility in the heart of Europe has deterred short sellers from launching campaigns, although it has not prevented them from taking short positions.

Gabriel Grego's Quintessential Capital Management, which took down Greek retailer Folli Follie in 2018 and U.K. mobility firm Globo in 2015, told *Activist Insight Monthly* that he did not take an active role in Wirecard because of the regulatory pressure. Daniel Yu of Gotham Research, which successfully targeted France-based Criteo in 2017 and Spain's Let's Gowex in 2014, among others, described Europe as worse than Hong Kong, where Citron Research's Andrew Left was banned from public markets following a negative report on China Evergrande Group. Yu, who studied Wirecard independently, received threats "of the libelous variety" despite not publishing any research on the company, he said.

In mid-May, Block disclosed a short position in French computer training firm Solutions 30 without putting forward any research. The stock still lost more than 30% on the news, prompting Block to tweet that shareholders are worse off because they don't know why shares plunged. Block told *Activist Insight Monthly* that the main reason for not publishing his thesis was regulatory hostility to criticism, "even if that means investors are going to pour more money into those companies, ultimately resulting in greater losses."

If the regulators' goal is to block the publication of short research, they can congratulate themselves. After publishing short theses on 17 European companies in 2015 – a relative and absolute peak – activist short selling in Europe has gradually declined. According to *Activist Insight Shorts* data, activists published on seven European companies in each of 2018 and 2017. In the first half of 2019, only three European companies were targeted, all of them all in the U.K.

TOO ETHICAL

Whether hostility to criticism is due to a lack of understanding of activist short selling or coziness with business elites is up for debate. Yu believes European regulators have a natural aversion toward short sellers and treat them as "second-class citizens" of equity markets. Block said he closed his position in Casino after learning that Naouri "had obtained support from certain powerful individuals." The AMF launched its investigation into Muddy Waters

“IF THE REGULATORS’ GOAL IS TO BLOCK THE PUBLICATION OF SHORT RESEARCH, THEY CAN CONGRATULATE THEMSELVES.”

shortly after Naouri complained about the short attacks. If found guilty, Block may receive an administrative fine, although Casino also wants him to be pursued criminally.

Sophie Vermeille, an independent French lawyer who has been investigating the legal landscape around short selling, told *Activist Insight Monthly* in an interview that market authorities in both France and Germany misunderstand the role they should be playing, although she does not rule out collusion at Casino. While U.S. market authorities focus on encouraging price discovery, which short sellers

“WHILE U.S. MARKET AUTHORITIES FOCUS ON ENCOURAGING PRICE DISCOVERY, WHICH SHORT SELLERS MAY HELP TO ACHIEVE, IN EUROPE THEY ‘FOCUS TOO MUCH ON QUESTIONS OF FAIRNESS AND ETHICS.’”

may help to achieve, in Europe they “focus too much on questions of fairness and ethics,” Vermeille said.

European Union regulation regarding activist short selling, or its lack thereof, may also be at fault. Activist short selling falls into the category of traditional investment research – under which analysts give “buy” or “sell” recommendations – instead of being regarded as a matter of freedom of speech like journalism. As all activist short sellers make sure to disclose, their research pieces are not investment recommendations.

A study by Vermeille, seen by *Activist Insight Monthly*, concludes that EU regulations need to evolve as “the standards for investment recommendations are incompatible with short selling activism.” With the European Securities and Markets Authority applauding the short selling ban on Wirecard, a change to the legal framework is hard to envision. If anything, successful precedents of national regulators crushing activist shorts could prompt other countries to follow suit and short sellers to look elsewhere. 🙌

ACTIVIST INSIGHT SHORTS

START YOUR FREE TRIAL TODAY AT WWW.ACTIVISTINSIGHT.COM

SHORT NEWS IN BRIEF

A ROUNDUP OF DEVELOPMENTS IN ACTIVIST SHORT SELLING IN JUNE.

DETAIL [CLICK ON THE DETAIL BUTTON TO VIEW FURTHER INFORMATION ON THIS CAMPAIGN ON ACTIVIST INSIGHT SHORTS](#)

Yangtze River Port & Logistics stock was delisted from the Nasdaq, triggering a 20% drop in the stock price, more than a year after short seller Hindenburg Investment Research accused the company of siphoning money away from investors. **DETAIL**

ShadowFall Capital & Research said Irish consumer foods provider Kerry Group may be inflating its profitability to cover up an ineffective rollup. **DETAIL**

Former presidential candidate Marco Rubio proposed a bill that could see U.S.-listed Chinese firms removed from exchanges if they fail to meet the transparency standards required of U.S.-based companies. **DETAIL**

Citron Research claimed FleetCor Technologies CEO Ronald Clarke led the “largest clean energy fraud in U.S. history” and called for his immediate resignation. **DETAIL**

First-time activist short seller Wolfpack Research disclosed a bet against GTT Communications, claiming the telecommunications and internet service provider is an “over-levered, fundamentally broken business.” **DETAIL**

Aurelius Value said it uncovered evidence that Pareteum’s purported valuable global customers are just “small or defunct entities.” **DETAIL**

Hindenburg Investment Research placed a bet against Eros International, claiming a significant portion of the firm’s receivables and advances do not exist. Hindenburg joined a host of short sellers in questioning the company’s finances, including Mangrove Partners and Geolvesting. **DETAIL**

The Friendly Bear claimed that shares in The Meet Group are “uninvestible” because the firm’s alleged monetization of explicit live camera content threatens its app store revenues. **DETAIL**

Viceroy Research filed a complaint with a Florida court against MiMedx and its former CEO Pete Petit, seeking damages in excess of \$15 million in relation to the drugmaker’s 2017 and 2018 legal campaign against the

research firm. Meanwhile, MiMedx fended off a proxy challenge from Petit. **DETAIL**

Spruce Point Capital Management predicted Axon Enterprise’s stock will fall between 40% and 60% as it faces weakening margins from export tariffs and competition in its software and sensors division. **DETAIL**

Bonitas Research issued a report on Hong Kong-based Bosideng International Holdings claiming the company’s chairman stole money from minority shareholders. Shares fell 25% on the announcement but recovered some of the losses after the company described the allegations as “biased, selective, inaccurate, and incomplete.” **DETAIL**

White Diamond Research placed a bet against Applied Energetics, claiming the “shell company” will not start reselling its old defense technology to the U.S. military despite recent hype that it will. **DETAIL**

Babcock International, the short target of Boatman Capital Research, turned down the second takeover offer advanced by fellow contractor Serco. In 2018, Boatman said the company may face “massive exceptional costs, revenue pressure, and declining margins in its core business.” **DETAIL**



BABCOCK INTERNATIONAL TURNED DOWN A SECOND TAKEOVER OFFER FROM SERCO IN JUNE.

NEW SHORT INVESTMENTS

A SELECTION OF THE LATEST ACTIVIST SHORT INVESTMENTS FROM AROUND THE WORLD IN JUNE.

DETAIL [CLICK ON THE DETAIL BUTTON TO VIEW FURTHER INFORMATION ON THIS CAMPAIGN ON ACTIVIST INSIGHT SHORTS](#)

ACTIVIST	COMPANY	HQ	DATE ANNOUNCED	DETAIL
KERRISDALE CAPITAL MANAGEMENT	TUCOWS		JUNE 26, 2019	DETAIL
Kerrisdale predicted Tucows will miss its 2019 consensus revenue and profit, with shortfalls widening in 2020 and 2021.				
VICEROY RESEARCH	PARETEUM CORPORATION		JUNE 26, 2019	DETAIL
Viceroy claimed Pareteum's revenues were overstated, some of its customers were non-existent, and its 36-month backlog was inflated.				
BONITAS RESEARCH	BOSIDENG INTERNATIONAL HOLDINGS		JUNE 24, 2019	DETAIL
Shares in Bosideng sunk 25% after Bonitas accused the firm of fabricating 807 million renminbi of profits "to generate investor interest."				
SPRUCE POINT CAPITAL MANAGEMENT	AXON ENTERPRISE		JUNE 19, 2019	DETAIL
The short seller predicted Axon's shares will plunge 40%-60% as the taser manufacturer faces weakening margins from export tariffs and competition in its software and sensors division.				
WHITE DIAMOND RESEARCH	APPLIED ENERGETICS		JUNE 18, 2019	DETAIL
White Diamond said shareholders are being deceived by unrealistic hype that the "shell company" will start reselling its old defense technology to the U.S. military.				
THE FRIENDLY BEAR	THE MEET GROUP		JUNE 14, 2019	DETAIL
After nearly three years of silence on the company, The Friendly Bear returned to The Meet Group, claiming it is "uninvestible" because explicit live camera content threatens its app store revenues.				
AURELIUS VALUE	PARETEUM CORPORATION		JUNE 07, 2019	DETAIL
Aurelius said the stock of internet services provider Pareteum is "completely uninvestible" because the firm's "public claims simply don't hold up to investigative scrutiny."				
HINDENBURG INVESTMENT RESEARCH	EROS INTERNATIONAL		JUNE 07, 2019	DETAIL
The short seller alleged that a significant portion of Eros' receivables and advances do not exist, claiming its accounts indicate that almost a year's worth of revenue has been booked but never collected.				
CITRON RESEARCH	FLEETCOR TECHNOLOGIES		JUNE 06, 2019	DETAIL
More than two years after Citron first accused FleetCor of egregious and aggressive billing practices, the short seller claimed FleetCor was involved in the "largest clean energy fraud in U.S. history."				
WOLFPACK RESEARCH	GTT COMMUNICATIONS		JUNE 06, 2019	DETAIL
Dan David's Wolfpack claimed the telecommunications and internet services provider is an "over-levered, fundamentally broken business" that does not "generate organic growth or enough free cash flow to service its debt."				
SHADOWFALL RESEARCH & CAPITAL	KERRY GROUP		JUNE 05, 2019	DETAIL
Shadowfall said it suspected that Kerry may have inflated its profitability in an effort to cover up an ineffective roll-up.				

RESOLUTION ROUNDUP

WHILE THE SHARE OF ENVIRONMENTAL SHAREHOLDER PROPOSALS MORE THAN HALVED THIS PROXY SEASON, SOCIAL TOPICS INCREASED BY NEARLY 20%, WRITES ELEANOR O'DONNELL.

As with last year, shareholders of U.S.-based companies have been most concerned with general governance enhancements this proxy season, according to data provider Proxy Insight (Activist Insight's sister company). Of the 575 shareholder proposals voted on in the 2018-2019 proxy season, 31 related to environmental topics. That was down from 47 in the season prior. Nearly half of all demands focused on improving shareholder rights, up from around 30% in the previous period.

At Netflix, nearly 88% of shareholders voted to adopt a simple majority vote, while 60% of Occidental Petroleum investors pushed through a proposal to reduce the ownership threshold for shareholders to call special meetings after the firm agreed to take over Anadarko Petroleum despite public opposition from investors.

"IT'S ALL ABOUT GOVERNANCE BUT THE ENVIRONMENTAL AND SOCIAL PORTION IS HOW THE BOARD IS OPERATING. INSTITUTIONAL INVESTORS ARE CONCERNED WITH BOARDS TALKING ABOUT ENVIRONMENTAL AND SOCIAL RISKS AND IF IT'S A WELL-FUNCTIONING BOARD."

Meanwhile, 47 proposals regarding social issues were put forward this proxy season, up from 42 the season prior. Courteney Keatinge, Glass Lewis' environmental, social, and governance research senior director, told *Activist Insight Monthly* that unsurprisingly, human capital management seemed to be an issue that shareholders have been concerned about so far this year. "There are no companies that don't operate and are dependent on human capital management so it's a risk for every company out there and has been talked about a lot more," Keatinge explained.

Keatinge drew upon the "#MeToo" and human capital movements to explain her overview of the uptick in proposals. According to the director, human capital management is gaining traction among every kind of investor, especially as the competitiveness of the job market increases and businesses are competing more for talent.

Institutional Shareholder Services' environmental and social research associate vice president, Enver Fitch, explained to *Activist Insight Monthly* that shareholders are focusing more on political issues, especially political spending, as the 2020 U.S. elections come into focus.

At Mallinckrodt, 80% of shareholders backed a proposal to create a political and lobbying contributions report. The same proposal received narrow support from investors at Macy's, Cognizant, and Alliant Energy.

Surprisingly, shareholders were less concerned about environmental resolutions this year despite a worldwide push to correct climate change. Strategic Governance Advisors managing director Steve Balet told *Activist Insight Monthly* that investors, particularly activists, deal with these issues when focusing on governance. "It's all about governance but the environmental and social portion is how the board is operating," Balet explained. "Institutional investors are concerned with boards talking about environmental and social risks and if it's a well-functioning board."

Only one of 31 environmental proposals filed this past proxy season gained the support of a majority of shareholders, with 78% of votes cast for a proposal at Rite Aid Corporation to create a sustainability report.

Fitch explained that he has seen a drop in proposals purely on the subject of climate change, which he said could be attributed to the fact that many oil and gas companies and utilities have responded to the proposals they've received over the past two years. "Another reason for the drop could be that climate change is also a motivating factor in many proposals on other topics, such as requests for sustainability reports and political lobbying reports and proposals asking for an independent chairman, such as at Exxon this year." 📌

UPCOMING EVENTS

ACTIVIST INSIGHT MONTHLY HIGHLIGHTS WHAT TO WATCH OUT FOR DURING JULY.

DATE	COMPANY	EVENT TYPE
10 JULY	EQT	AGM
Rice Investment Group's proxy contest for control of EQT, another test for the universal proxy.		
10 JULY	BED BATH & BEYOND	EARNINGS REPORT
A chance to put years of underperformance and six months of activism behind the company.		
11 JULY	PROGENICS PHARMACEUTICALS	AGM
Rejecting an activist slate invited a withhold campaign. Can the board survive?		
15 JULY	ELEGANCE OPTICAL INTERNATIONAL HOLDINGS	EGM
The Hong Kong-based company has called a special meeting requisitioned by shareholder Great Panorama International and announced that incumbent director Liu Shufeng will not seek re-election.		
16 JULY	EBAY	EARNINGS REPORT
The online marketplace won't comment on its strategic review, initiated under pressure from Starboard Value and Elliott Management, until it's finished. Will that be as early as July?		
16-18 JULY	INTERNATIONAL CORPORATE GOVERNANCE NETWORK	CONFERENCE
The ICGN's Tokyo event comes at a time of rising activism in Japan.		
17 JULY	RITE AID	AGM
The troubled retail pharmacy operator faces a special meeting threshold proposal.		
22 JULY	UNITED TECHNOLOGIES	EARNINGS REPORT
With activists opposing CEO Greg Hayes' latest deal, earnings season could bring tough questions.		
30 JULY	CHINA EVERBRIGHT BANK CO	EGM
The Beijing-based joint-stock commercial bank faces a proxy contest.		
30 JULY	LEGG MASON	AGM
Shareholders get a chance to welcome back Trian Partners' Nelson Peltz and Ed Garden, along with other new board recruits.		



In a Changing Landscape

Ultimate Shareholder Voting Intelligence



Proxy Insight

NEWS IN BRIEF

A ROUNDUP OF DEVELOPMENTS IN ACTIVIST INVESTING IN JUNE.

DETAIL [CLICK ON THE DETAIL BUTTON TO VIEW FURTHER INFORMATION ON THIS CAMPAIGN ON ACTIVIST INSIGHT ONLINE](#)

NORTH AMERICA

Caesars Entertainment sold itself to casino operator Eldorado Resorts, following pressure from Carl Icahn, who owns a third of the shares and has three board seats.

DETAIL

Pershing Square Capital Management is opposing a deal between United Technologies and Raytheon, arguing it makes no strategic sense.

DETAIL

Land and Buildings threatened a new proxy contest at Taubman Centers if the company fails to “drive material outperformance by maximizing value for all shareholders.”

DETAIL

Starboard Value is unhappy with Aecom’s plans to spin off its management services business and wants a strategic review of the construction unit instead.

DETAIL

Shareholders in Centene and WellCare Health Plans approved a \$15 billion merger despite opposition from Third Point Partners, Corvex Management, and Sachem Head Capital Management.

DETAIL

Bow Street’s four nominees joined the board of Mack-Cali Realty after the company agreed not to re-nominate four directors due to low support from shareholders.

DETAIL

HomeStreet shareholders rejected the nominee advanced by Blue Lion Capital as well as its proposal to split the CEO and chairman roles.

DETAIL

Land and Buildings came out against a management buyout of Hudson’s Bay, urging the company to widen its strategic review process.

DETAIL

Third Point Partners said it backs a take-private deal of Sotheby’s, the auction house where it won board seats back in 2014 following a proxy contest.

DETAIL

Medley Capital won a proxy contest against NexPoint Advisors, which admitted defeat but said only two non-insider entities backed the status quo.

DETAIL

Viex Capital called for board changes at Immersion and said it opposed all independent directors at the annual meeting on June 14. All directors were re-elected, although dissent was high for a few.

DETAIL

Ancora Advisors claimed that a majority of shareholders in restaurant chain J. Alexander’s voted against the re-election of two directors, although the board members will continue serving the company since J. Alexander’s does not have a majority standard in uncontested elections.

DETAIL

The California Public Employees’ Retirement System (CalPERS) targeted Red Rock Resorts for its lack of gender diversity.

DETAIL

Many Legacy Reserves shareholders sent management a strong signal of discontent after they followed Baines Creek’s advice to withhold from voting their shares in order to deny the company quorum at the annual meeting.

DETAIL

Orchestra-Prémaman is back at Destination Maternity with a request for a board seat after losing a proxy contest there last year.

DETAIL

MiMedx won a proxy fight against its former boss Pete Petit, weeks after it struck a board change agreement with short seller Prescience Point Research, which is looking to break into long activism.

DETAIL

Cove Street Capital is leading a group of shareholders that advanced a slate for election to the board of Wright Investors’ Service Holdings, with the aim of putting the firm on the auction block.

DETAIL

Jana Partners reportedly acquired a stake in U.S. specialty chemicals company Axalta Coating Systems, which recently announced a strategic review. The activist also built a position in Callaway Golf.

DETAIL / **DETAIL**

Global shareholder consultancy firm Morrow Sodali appointed Daniel Oh as a managing director at its corporate governance practice in the U.S.

DETAIL

EUROPE

Triam Partners disclosed a 6% stake in U.K. plumber Ferguson, the former target of Cevian Capital, which Cevian Capital targeted before exiting in 2014. Triam did not reveal much about its intentions beyond saying Ferguson “is an attractive business that trades at a discount to comparable U.S. peers.” [DETAIL](#)

Allergan agreed to sell itself to U.S. biopharmaceutical company AbbVie in a \$63 billion cash-and-stock transaction, nearly two months after it marginally defeated Appaloosa Management’s proposal for a split of the chairman and CEO roles. [DETAIL](#)

Charity Investment Asset Management (CIAM) expressed opposition to the terms of a proposed merger of equals between Renault and Fiat Chrysler Automobiles, a transaction that was later called off after the French government, a larger Renault shareholder, allegedly interfered too much. [DETAIL](#)

Amber Capital lost a proxy contest for a board seat at Greece-based Hellenic Telecommunications Organization, also known as OTE, in a rerun of last year’s campaign when it failed to get the same director elected due to the opposition of Deutsche Telekom, the company’s controlling shareholder. Deutsche Telekom resisted the change this year as well. [DETAIL](#)

French insurer Scor confirmed the accuracy of the vote count at its April 26 meeting for the resolutions seeking the removal of Chairman Denis Kessler and the rejection of two pay resolutions, after activist CIAM disputed the results. [DETAIL](#)

PrimeStone Capital’s resolutions to appoint two new directors at U.K.-based social care provider Mears Group marginally failed to garner enough votes. The company said it was aware of the discontent among a part of the shareholder base and committed to adding two new independent directors, one by the end of June and another before the summer holidays “if possible.” [DETAIL](#)

U.K.-based passport maker De La Rue announced a leadership shakeup, amid pressure for improved performance from activist investor Crystal Amber. [DETAIL](#)

Luminus Management urged Enco Rowan to take on debt to fund a special dividend that could catalyze a rerating of the stock. [DETAIL](#)

Gatmore Capital Management disclosed a 10% stake in menswear retailer Moss Bros., although the fund told *Activist Insight Online* that it had not engaged with management yet. [DETAIL](#)

Samuel Tak Lee sued British real estate investment trust Shaftesbury in connection with the firm’s 2017 share placing, after he failed to oust directors in early 2019. [DETAIL](#)

Germany-based Pyrolyx won a vote against former CEO Niels Raeder, who sought the removal of three directors. [DETAIL](#)

Elliott Management entered the race to acquire Majestic Wine’s retail business, after the company put the unit on the auction block following pressure from Gatmore Capital Management. [DETAIL](#)



DE LA RUE’S CHIEF EXECUTIVE, CHAIRMAN, AND SENIOR INDEPENDENT DIRECTOR ALL RESIGNED AMID PRESSURE FROM CRYSTAL AMBER TO IMPROVE PERFORMANCE.

REST OF THE WORLD

Third Point Partners launched its second campaign at Japanese conglomerate Sony in the amicable tone that has become common for its Asia-based targets, in contrast to its more assertive approach in the U.S. Third Point praised management's operational execution but said the firm should reform its strategic configuration by spinning off the chip business and stakes in public companies Spotify and Olympus, and focusing on entertainment. The company did not respond to the suggestions beyond saying it is "always striving to enhance the company's corporate value." [DETAIL](#)

Fir Tree Partners' proposals for change at Japanese railway company Kyushu failed to garner enough shareholder support. Fir Tree's key proposals were for the addition of three new directors and a 10% share buyback. The loss came despite support from a host of foreign shareholders and proxy advisers. Fir Tree said the buyback proposal received support from many shareholders and hailed the company's adoption of a performance-based stock compensation plan and nomination of its own independent candidates. [DETAIL](#)

Shareholders in Japan's Lixil endorsed former CEO Kinya Seto's comeback campaign, putting an end to one of Japan's most belligerent proxy contests in recent years. Seto, who was removed by former management under suspicious circumstances, now has control of the board. [DETAIL](#)

Dalton Investments lost a proxy contest for one board seat at Japanese financial institution Shinsei Bank, although the



activist told *Activist Insight Online* it was happy with the recently announced share buybacks. [DETAIL](#)

South Korea-based KB Asset Management called on K-pop firm SM Entertainment to merge with Like Agency, a company owned by SM founder Lee Soo-man. [DETAIL](#)



ARGYLE STREET IS BETTING WITH HOUSE MONEY AT DONACO.

Delta Air Lines purchased a 4.3% stake in Hanjin Kal, the parent company of Korean Air, and may increase it to 10%, in what is likely a white knight move to save the company from activist investor Korea Corporate Governance Improvement (KCGI). [DETAIL](#)

Activist investor Sandon Capital Investments will more than double its net assets after it completes a merger with Mercantile Investment, the publicly listed vehicle of Sir Ron Brierley who has retired due to age and ill-health. Mercantile has a market capitalization of about AU\$50 million, while Sandon's is about AU\$40. The deal would create an entity with around AU\$100 million of net assets and AU\$140 million of total assets, a source close to the situation told *Activist Insight Online*. [DETAIL](#)

Casino and hotel company Donaco International is at the center of a triangular standoff between its founder, Joey Lim Keong, distressed debt investor Argyle Street Management, and Spenceley Management. [DETAIL](#)

A group of dissident investors in Benjamin Hornigold won control of the board in a proxy contest, shortly after another group failed to replace the incumbents. [DETAIL](#)

Keybridge Capital requisitioned a special meeting at hostile takeover target Yowie Group to oust Chairman Louis Carroll and two other directors. [DETAIL](#)

NEW INVESTMENTS

A SELECTION OF THE LATEST ACTIVIST INVESTMENTS FROM AROUND THE WORLD IN JUNE

DETAIL CLICK ON THE DETAIL BUTTON TO VIEW FURTHER INFORMATION ABOUT THIS INVESTMENT ON ACTIVIST INSIGHT ONLINE

ACTIVIST	COMPANY	HQ	DATE NOTIFIED	DETAIL
CONCERNED SHAREHOLDERS	ORION EQUITIES		JUNE 28, 2019	DETAIL
Orion rejected a requisition notice advanced by two shareholders, which sought to oust Orion's executive chairman from the board.				
UAB KONCERNAS ACHEMOS GRUPE	KLAIPEDOS NAFTA		JUNE 27, 2019	DETAIL
Achemos is demanding that Klaipedos disclose further information on its operations and provide the reasoning behind the proposed transfer of its liquified natural gas unit to one of its subsidiaries.				
SEARCHLIGHT CAPITAL PARTNERS	LATECOERE		JUNE 27, 2019	DETAIL
Searchlight offered to buy the aircraft company for 3.85 euros per share, a 34% premium to the company's closing price on June 28.				
HG VORA CAPITAL MANAGEMENT	OWENS CORNING		JUNE 26, 2019	DETAIL
HG Vora is urging Owens Corning to explore strategic alternatives, including a sale or breakup.				
FIRST COBALT	ECOBALT SOLUTIONS		JUNE 26, 2019	DETAIL
First Cobalt is opposing the sale of fellow miner eCobalt Solutions to Australia-listed Jervois Mining, calling instead for a "formal and competitive sale process."				
ELLIOTT MANAGEMENT	ALLERGAN		JUNE 26, 2019	DETAIL
Elliott has reportedly been pushing Allergan to split before AbbVie agreed to acquire the Irish drugmaker for \$63 billion.				
XIE QIANGMING	PROSPERITY INTERNATIONAL HOLDINGS		JUNE 26, 2019	DETAIL
The dissident wants to replace six board members with his own nominees.				
SANDON CAPITAL	GINDALBIE METALS		JUNE 21, 2019	DETAIL
Sandon is urging investors to vote against a takeover by Ansteel following a demerger of Coda Minerals, saying the current arrangement will result in a suboptimal outcome for shareholders.				
STARBOARD VALUE	AECOM		JUNE 20, 2019	DETAIL
Starboard called on Aecom to commence a strategic review and consider a sale of its construction unit, a week after the company said it plans to spin off its management services business.				
JAMES MCRITCHIE	LEGG MASON		JUNE 20, 2019	DETAIL
The shareholder is urging Legg Mason to adopt a simple majority vote as part of the firm's bylaws.				
SAVVAS HATSISAVVIDIS, RYAN YEARSLEY	REFFIND LIMITED		JUNE 20, 2019	DETAIL
Two investors requisitioned a special meeting for the purpose of replacing director David Jackson with Ryan Yearsley.				

ACTIVIST	COMPANY	HQ	DATE NOTIFIED	DETAIL
ZENITH STERLING ADVISERS	ELCTROMED		JUNE 13, 2019	DETAIL
Zenith urged Electromed to cut costs and improve overall profitability, authorize a share buyback, introduce a regular cash dividend, and add one or more board directors with investment management experience.				
JANA PARTNERS	CALLAWAY GOLF		JUNE 13, 2019	DETAIL
Jana plans to engage with the board and management team of Callaway about ways to enhance shareholder value at the sporting goods company.				
TRIAN PARTNERS	FERGUSON		JUNE 13, 2019	DETAIL
Trian hopes to work with Ferguson's management team "to explore and implement initiatives that it believes can create long-term shareholder value."				
EMINENCE CAPITAL	ASHLAND GLOBAL HOLDINGS		JUNE 13, 2019	DETAIL
Eminence said it plans to hold talks with the board regarding operational and strategic opportunities to enhance shareholder value.				
CTW INVESTMENT GROUP	MYLAN		JUNE 07, 2019	DETAIL
CtW is urging shareholders to vote against the re-election of Mylan's nominating and governance committee members, contending that there is "a serious disregard" for shareholder rights at the board level.				
MYRA YOUNG, JAMES MCRITCHIE	ELECTRONIC ARTS		JUNE 06, 2019	DETAIL
The duo submitted a shareholder proposal requesting the right of shareholders owning 15% of the company to call a special meeting. The company currently does not grant any shareholder that right.				
MOAB CAPITAL PARTNERS	KYUSHU RAILWAY		JUNE 06, 2019	DETAIL
Moab announced its support for Fir Tree Partners' resolutions at Kyushu, saying it strongly backed both the proposed share buyback and the addition of three independent directors.				
FALCON EDGE CAPITAL	KYUSHU RAILWAY		JUNE 05, 2019	DETAIL
Falcon Edge also came out in support of Fir Tree's nominees and resolutions, saying it believed the proposals "will unlock significant shareholder value, importantly while remaining highly conservative."				
JAKE NOCH	INDEPENDENT FILM DEVELOPMENT CORP		JUNE 05, 2019	DETAIL
Noch contended that Independent Film Development's lack of a meaningful business plan "disproportionately impairs" the interests of common shareholders and "unfairly advantages" the board, management team, and preferred shareholders.				
CONCERNED SHAREHOLDERS	VENTUS 2 VCT		JUNE 05, 2019	DETAIL
The dissident shareholders are seeking to remove and replace three members from the board at the upcoming annual meeting.				
SANDON CAPITAL	MERCANTILE INVESTMENT		JUNE 03, 2019	DETAIL
Sandon is set to acquire fellow activist investment firm Mercantile after Sir Ron Brierley retires, due to the latter's age and health issues.				
CHARITY INVESTMENT ASSET MANAGEMENT	RENAULT		JUNE 03, 2019	DETAIL
French activist investor CIAM opposed the proposed merger between Renault and Italian peer Fiat Chrysler Automobiles.				

MOST READ

VIEW THE MOST-READ NEWS STORIES FROM ACTIVIST INSIGHT ONLINE OVER THE LAST MONTH.



**ETSY CEO
TRASHES ISS
RECOMMENDATIONS**

THURSDAY, JUNE 06, 2019



**DONACO NAMES
CEO AMID ACTIVIST
CHALLENGE**

WEDNESDAY, JUNE 12, 2019



**VINTAGE STEPS UP
PRESSURE ON RED
ROBIN**

THURSDAY, JUNE 20, 2019



**ELLIOTT BELIEVES
BAYER CAN
UNLOCK VALUE**

TUESDAY, JULY 02, 2019



GENERATE AWARENESS

PROFESSIONAL CO-BRANDED REPORTS

PRODUCED IN-HOUSE FOR YOUR ORGANIZATION



Activist Insight

OLSHAN SHAREHOLDER ACTIVISM PRACTICE

Ranked #1 Legal Advisor by *Activist Insight* based upon campaigns since 2010

“For the fourth year, Olshan placed first in our law firm rankings with an impressive gap between it and the rest of the advisers.”

— *Activist Insight Monthly*

Our 2019 Proxy Season Highlights Include:

42 Nominations delivered

30 Settlements negotiated

More than **55** new Directors seated

Featured 2019 Campaigns:

BED BATH & BEYOND

 **Cerner**

ebay

EQT

Magellan HEALTH

“Steve receives plaudits from across the market for his leading shareholder activism practice, which is utilized by leading investment partnerships and hedge funds in significant campaigns”

“Andrew Freedman is a respected attorney who focuses his practice on representing activist investors in shareholder activist campaigns”

— *Chambers USA “Leading Lawyer” in Shareholder Activism*

“Practice Co-Chairs Steve Wolosky and Andrew Freedman named as elite Tier 1 Leading Lawyers” — *Legal 500 United States*

“The Go-To Advisers for Activist Investors” — *Reuters*

“The Go-to Legal Adviser for Many of Wall Street’s Biggest and Most Successful Activists” — *Business Insider*

“Top Go-To Law Firm used by Mainstream Activists” — *MSN.com*

Steve Wolosky

212.451.2333

swolosky@olshanlaw.com

 contact 

Andrew Freedman

212.451.2250

afreedman@olshanlaw.com

OLSHAN FROME WOLOSKY LLP

1325 AVENUE OF THE AMERICAS NEW YORK, NY 10019

@ProxyFightGroup www.olshanlaw.com