

2021 ADVISER AWARDS

CARL ICAHN

SOUTHWEST GAS

CASSAVA SCIENCES

ACTIVIST INSIGHT MONTHLY
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insightia:
INTELLIGENT ANALYTICS

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EDITOR'S LETTER

JASON BOOTH



This has been a year of change in the activism world. While fewer companies were targeted in 2021, there was plenty to keep lawyers and proxy solicitors busy, from advising companies on how to adopt ESG principles, to helping activists launch special purpose acquisition companies (SPACS), and in some cases fend off criticism by their own investors.

So we dedicate the December edition of *Activist Insight Monthly* to the advisers that work behind the scenes on behalf of activists and companies. Congratulations to Olshan Frome Wolosky, who once again ranked first among law firms for overall activist campaign involvement, and Innisfree, which took the top spot among proxy solicitors, ending the multi-year winning streak of rival Okapi Partners.

For those wondering how they can participate in the rankings, we accept submissions year-round. We also do periodic data drives and a final push in October of each year. To keep us informed of your representations, please ask your marketing teams to add data@insightia.com to their mailing lists.

Our profile this month is on Carl Icahn, who tells *Activist Insight Monthly* that the key to his success over the years, and the reason so many other activists fail, is that he is investing his own money. We then examine Icahn's activist strategy in action in this month's campaign in focus on the ongoing proxy fight at Southwest Gas.

Elsewhere in this edition, Joe Lyons examines short investor Quintessential Capital Management's claim that Cassava Sciences' developmental Alzheimer's drug is based on forged

research, while Iuri Struta explains why low leverage, weak gross margins, and recent operational setbacks could make smartphone parts supplier Qorvo vulnerable to activism.

THE YEAR AHEAD

Activists and their advisers are preparing for a busy 2022. Activist assets under management are on the rise and currently stand at their highest level since 2018, according to Insightia data. Odds are that management teams that failed to match their peers' performance following the COVID-19 downturn will be hearing from their shareholders this spring.

On the regulatory front, increased SEC scrutiny of ESG disclosures and the introduction of mandatory universal proxy ballots later in the year will keep advisers especially busy. We'll be working hard to keep our readers ahead of the game on all these issues in 2022.

Until then, check out the recently released *Proxy Voting Annual Review*, and the definitive qualitative and quantitative overview of voting trends from the 2021 proxy season. And look out for the *Activist Investing Annual Review* in the New Year.

For more insights from this month's edition of *Activist Insight Monthly*, you can listen to an accompanying episode of *The Activist Insight Podcast*, available on our [website](https://www.insightia.com) or wherever you usually get your podcasts. [🎧](https://www.insightia.com)

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THE INSIGHTIA ADVISER AWARDS 2021

insightia:
INTELLIGENT ANALYTICS

Shareholder activism seemed to get even more complex and combative in 2021, keeping intermediaries busy with both proxy contests and advising clients on mergers and acquisitions, the increasing role of ESG, and special purpose acquisitions vehicles (SPACs). Activist targets were larger than in prior years, with large caps accounting for nearly 50% of companies facing demands according to *Activist Insight Online* data, and ESG became the new stick with which to beat management teams. The most notable example was Engine No.1's groundbreaking campaign at energy giant Exxon Mobil, market cap \$264 billion, which required shareholder outreach on a scale rarely seen before.

The campaigns this year were as volatile as the market itself. "The campaigns this year were louder, the attacks more personal, we had to manage that," noted Lawrence Elbaum, co-head of Vinson & Elkins' activism practice

The changing currents of the market meant that intermediaries are shifting away from traditional roles. Firms that traditionally focused on representing issuers saw a jump in the number of activists they represent, while advisers once dedicated to serving the activist cause found themselves representing more management teams.

LAW FIRMS

1st

TOTAL REPRESENTATIONS

**OLSHAN
FROME
WOLOSKY**

1st

TOTAL ISSUER
REPRESENTATIONS

**VINSON & ELKINS
AND
SIDLEY AUSTIN**

1st

TOTAL ACTIVIST
REPRESENTATIONS

**OLSHAN
FROME
WOLOSKY**

1st

AVERAGE MARKET CAP FOR
ACTIVIST REPRESENTATION

**KIRKLAND &
ELLIS**

1st

AVERAGE MARKET CAP FOR
ISSUER REPRESENTATION

**CRAVATH,
SWAINE &
MOORE**

OLSHAN FROME WOLOSKY

Awards:
TOTAL REPRESENTATIONS
TOTAL ACTIVIST REPRESENTATIONS

Total representations | 91
Activist representations | 91
Issuer representation | 0
Average market capitalization | \$4.96 billion

“More so than any other year, 2021 really showcased the versatility of shareholder activism.”

The consistency and breadth of activist-focused law firm Olshan Frome Wolosky once again put it in first place for representing dissidents and overall activism matters.

Olshan represented activists on over 90 campaigns of all different sizes but notable among its projects for 2021 were more than a dozen campaigns waged by market leaders Elliott Management and Starboard Value, including the latter's proxy fight at Box and Elliott's settlements at Duke Energy, Alkermes, and Public Storage.

However, according to Andrew Freedman, co-head of Olshan's activist & equity investment group, the next wave of activism could look quite different to what has come before it – with traditional tactics deployed alongside new aims and strategies in a major acceleration.

“More so than any other year, 2021 really showcased the versatility of shareholder activism and the activist toolkit as change agents at public companies, and our clients were right there in the thick of it,” Freedman told *Activist Insight Monthly*. “And we're just scratching the surface, as important issues like social justice and carbon footprints have joined financial performance and governance as top-of-mind for investors.”

VINSON & ELKINS

Awards:
TOTAL ISSUER REPRESENTATIONS

Total representations | 53
Activist representations | 6
Issuer representations | 47
Average market capitalization | \$1.49 billion

“Vulnerable boards who got a pass during COVID are now getting hit hard.”

Vinson & Elkins placed second in terms of total representation as the traditionally issuer-focused firm took on more activist clients, including Blackwells' successful campaigns to block Monmouth Realty's merger with Equity Commonwealth (EQC) and AB Value's winning bid for two board seats at Rocky Mountain Chocolate Factory.

Vinson tied with rival Sidley Austin in terms of representing companies, with issuer representations jumping by a third to 47. It represented First Republic Bank as it fought off Driver Management and Hilton Grand Vacations as it closed its \$1.4 billion purchase of Diamond Resorts despite opposition from Land and Buildings.

“I think this year was busier because vulnerable boards who got a pass during COVID are now getting hit hard,” said Lawrence Elbaum, co-head of Vinson's activism practice.

He predicted the trend will continue into 2022, while sky-high valuations will also fuel more M&A driven activism.

SIDLEY AUSTIN

Awards:
TOTAL ISSUER REPRESENTATIONS

Total representations | 47
Activist representations | 0
Issuer representations | 47
Average market capitalization | \$5.38 billion

“Once the shorts are done, the long activists will come to pick up the pieces.”

Sidley Austin matched Vinson & Elkins on its work for issuer clients for the second successive year, with campaign highlights including a successful proxy fight defense for Box against Starboard Value – the activist's first defeat at a vote for nearly a decade – and working with Canadian National Railway as the Quebec-based company came under assault from The Children's Investment Fund (TCI) following an aborted merger with Kansas City Southern.

Kai Liekefett, co-chair of Sidley Austin's shareholder activism practice, expects a rush of new contests in 2022, explaining that, “After the financial crisis, proxy fights exploded in 2009/2010,” he told *Activist Insight Monthly*. There might be a longer fuse attached to the post-COVID activist scramble, he muses.

And while few sectors are totally immune to activists, it's the big increase in new public companies that Liekefett expects to suffer from their attention. “I'm expecting a run on SPACs,” he said. “We've already seen phase one, which is that SPACs have been subject to a disproportionate number of short campaigns. Once the shorts are done, the long activists will come to pick up the pieces.”

SCHULTE ROTH & ZABEL

Total representations | 41
Activist representations | 41
Issuer representations | 0
Average market capitalization | \$17.09 billion

Schulte Roth & Zabel dropped two spots this year after placing second for total representations in 2020. However, the number of representations is higher than last year and Partner Eleazer Klein says the proxy season could not have been busier for the law firm. “We had more high-profile campaigns and more campaigns than ever. ESG activism and M&A activism helped drive activity above and beyond traditional activism,” Klein told *Activist Insight Monthly*.

Indeed, Schulte has been a dominant player in ESG, representing Engine No. 1 in its seminal campaign against Exxon Mobil, and the law firm has represented Jeffrey Ubben's Inclusive Capital Partners in most of its ESG campaigns. Schulte Roth has also been busy in traditional activism, representing Elliott Management in its campaign at Twitter and Jana Partners at TreeHouse Foods and Laboratory Corporation of America.

In the next year, Klein expects M&A and ESG to drive activism along with increased scrutiny on de-SPACed companies.

WILSON SONSINI GOODRICH & ROSATI

Total representations | 18
Activist representations | 4
Issuer representations | 14
Average market capitalization | \$4.63 billion

Wilson Sonsini Goodrich & Rosati joined the top five list for the first time, more than doubling its number of total representations from nine in 2020 to 18 this year.

The law firm represented Twitter as it faced board seat demands from Elliott Management and represented both eHealth and Box in their respective campaigns against Starboard Value.

On the activist side, it helped Camac Partners win board seats at Cedar Realty in a settlement and Global Value Investment in their dealings with Rocky Mountain Chocolate Factory.

THE INSIGHTIA ADVISER AWARDS 2021 | LAW FIRMS

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Law Firm	Total Representations	Total Activist Representations	Total Issuer Representations	Average Market-Cap for Activist Representations (\$M)	Average Market-Cap for Issuer Representations (\$M)	Awards
Akin Gump Strauss Hauer & Feld	4	4	-	641	-	
Arnold Bloch Leibler	2	1	1	266	670	
Bae, Kim & Lee	1	1	-	521	-	
Baker Botts	1	1	-	34	-	
Bass, Berry & Sims	1	-	1	-	764	
Bevilacqua	1	-	1	-	350	
Blake, Cassels & Graydon	1	1	-	44	-	
Brown Rudnick	1	1	-	144	-	
Buchalter Nemer	1	1	-	719	-	
Cadwalader, Wickersham & Taft	13	8	5	4874	2102	
Cooley	1	-	1	-	1127	
Covington & Burling	1	1	-	6721	-	
Cravath, Swaine & Moore	7	1	6	6721	27139	Average Market-Cap for Issuer Representations
Davies Ward Phillips & Vineberg	1	-	1	-	24016	
Dentons	1	-	1	-	5584	
DLA Piper	1	-	1	-	111	
Faegre Drinker	2	-	2	-	54	
Farris	1	1	-	15	-	
Farris Vaughan Wills & Murphy	2	2	-	12	-	
Foley & Lardner	2	2	-	301	-	
Foley Hoag	2	2	-	66	-	
Friedman Oster & Tejtel	1	1	-	99	-	
Gibson Dunn	3	2	1	410	404	
Goodmans	2	1	1	436	15	
Goodwin Procter	4	-	4	-	222	
Gordon Feinblatt	1	-	1	-	120	
Hakim Law Group	2	2	-	1141	-	
Hannuri Law	1	1	-	1724	-	
Haynsworth Sinkler Boyd	1	1	-	46	-	
Hogan Lovells	1	1	-	64	-	
Holland & Hart	1	-	1	-	23	
Holland & Knight	1	1	-	123	-	
Jones Day	1	-	1	-	24097	
Kane Kessler	1	1	-	3	-	
King & Spalding	1	-	1	-	1346	
Kirkland & Ellis	9	1	8	24342	3930	Average Market-Cap for Activist Representations
KL Partners	2	2	-	3585	-	
Kleinberg, Kaplan, Wolff & Cohen	7	7	-	450	-	
Kohrman Jackson and Krantz	1	1	-	46	-	
Latham & Watkins	11	-	11	-	4489	
Mayer Brown	1	1	-	129	-	
McCarthy Tetrault	1	1	-	4528	-	
McDermott Will & Emery	3	-	3	-	2280	
McMillan	1	1	-	29	-	
Morgan, Lewis & Bockius	2	2	-	5023	-	
Morrison & Foerster	2	2	-	1379	-	
Norton Rose Fulbright	3	2	1	97	589	
Olshan Frome Wolosky	91	91	-	4963	-	Total Representations and Total Activist Representations
One Law Partners	2	2	-	844	-	
Paul, Weiss, Rifkind, Wharton & Garrison	1	1	-	6721	-	
Perkins Coie	1	-	1	-	45	
Schulte Roth & Zabel	41	41	-	17097	-	
Seward & Kissel	1	1	-	7761	-	
Shartsis Friese	1	1	-	21	-	
Sheppard, Mullin, Richter & Hampton	1	1	-	223	-	
Sidley Austin	47	-	47	-	5386	Total Issuer Representations
Simpson Thacher & Bartlett	1	-	1	-	2464	
Siwan Law Firm	1	1	-	875	-	
Skadden	16	-	16	-	7921	
Stradley Ronon	1	-	1	-	855	
Stroock & Stroock & Lavan	1	-	1	-	10	
Sullivan & Cromwell	4	3	1	1531	758	
Thompson	1	1	-	13	-	
Thompson Hine	1	1	-	10	-	
Venable	1	1	-	53	-	
Vinson & Elkins	53	6	47	565	1589	Total Issuer Representations
Voorheis	1	-	1	-	436	
Wachtell, Lipton, Rosen & Katz	8	-	8	-	8843	
Weil, Gotshal & Manges	1	1	-	6086	-	
White & Case	15	11	4	3581	7124	
White Summers Caffee & James	1	1	-	22	-	
Willkie Farr & Gallagher	2	1	1	564	4180	
WilmerHale	1	-	1	-	24016	
Wilson Sonsini Goodrich & Rosati	18	4	14	60	5944	
Winstead	2	2	-	156	-	
Woolery & Co	1	1	-	4180	-	
Yoon & Yang	2	-	2	-	4924	

PROXY FIRMS

1st

TOTAL REPRESENTATIONS

INNISFREE

1st

TOTAL ISSUER
REPRESENTATIONS

INNISFREE

1st

TOTAL ACTIVIST
REPRESENTATIONS

**OKAPI PARTNERS
AND
SARATOGA PROXY
CONSULTING**

1st

AVERAGE MARKET CAP FOR
ACTIVIST REPRESENTATION

**KINGSDALE
ADVISORS**

1st

AVERAGE MARKET CAP FOR
ISSUER REPRESENTATION

**MACKENZIE
PARTNERS**

INNISFREE

Awards:

TOTAL REPRESENTATIONS
TOTAL ISSUER REPRESENTATIONS

Total representations | 62
Activist representations | 11
Issuer representation | 51
Average market capitalization | \$9.74 billion

“A frustrated shareholder base is a fertile seedbed for an activist, regardless of the size of its holdings.”

While Innisfree M&A topped the proxy solicitor league table by representing five times as many issuers as dissidents, an activist was their highest-profile client this year. The firm helped upstart Engine No. 1 win three board seats at Exxon Mobil in a landmark proxy battle that trod new ground by marrying economic and environmental messages to persuade shareholders to back change.

“The key takeaways from the Exxon contest are hardly new lessons, but were certainly dramatically illustrated,” Innisfree’s president, Art Crozier, told *Activist Insight Monthly*. “A frustrated shareholder base is a fertile seedbed for an activist, regardless of the size of its holdings [and] doing your homework still matters.” In particular, Crozier noted that activists would have “the credibility edge” if they had already built strong relationships within the governance community and recruited highly qualified candidates.

The firm was also in the thick of the action elsewhere, working for GameStop and Canadian Pacific Railway in the contested bid for Kansas City Southern.

Looking ahead to 2022, Crozier says M&A activism is unlikely to disappear and that the recent run of management victories in proxy fights is no guarantee the trend will continue into the 2022.

OKAPI PARTNERS

Awards:

TOTAL ACTIVIST REPRESENTATIONS

Total representations | 38
Activist representations | 22
Issuer representations | 16
Average market capitalization | \$7.97 billion

“We are probably the most balanced working with both investors and companies.”

Okapi Partners comes second on our list of total proxy solicitation representations table, the first time in six years that it didn’t make the top spot. But that doesn’t mean the firm was less busy than in prior years, according to founder Bruce Goldfarb.

Okapi was involved in some of the most contentious contests of the year. It represented Starboard Value in its ultimately unsuccessful bid for board seats at cloud storage firm Box and Elliott Management at Duke Energy.

Given its reputation for representing top-line activists, Goldfarb is particularly proud that Okapi is increasingly representing issuers as well. “What is unique about our firm is that we are probably the most balanced working with both investors and companies.”

While there were fewer traditional activist campaigns, Goldfarb said his firm saw more work to be done, often behind closed doors, advising on M&A situations, the launching of special purpose acquisitions companies (SPACs), and advising clients on ESG issues.

MORROW SODALI

Total representations | 38
Activist representations | 5
Issuer representations | 33
Average market capitalization | \$10.73 billion

“If these campaigns continue to take shape I expect a busy 2022 season.”

Morrow Sodali’s representations stretched from Brazil to South Korea, and Australia to Switzerland, even as the U.S. asserted itself once again as the dominant marketplace for activism. There, the firm faced Carl Icahn on behalf of FirstEnergy and Southwest Gas, and Jana Partners on behalf of LabCorp of America.

“During the 2021 annual meeting season, we were involved in many contested situations across international markets,” Michael Verrechia, managing director of the M&A and activism advisory group, told *Activist Insight Monthly*. And while some of those international campaigns were led by intrepid value-seeking U.S. hedge funds, many were the product of local investors, he said.

And even now, the firm is looking forward to a busy proxy season. “The last six months of 2021 has been incredibly busy for us in working with companies to prepare for potential threats of shareholder activism,” Verrechia told us. “If these campaigns continue to take shape I expect a busy 2022 season, the second half of which will be further impacted by the recently announced universal proxy mandate.”

SARATOGA PROXY CONSULTING

Awards:

TOTAL ACTIVIST REPRESENTATIONS

Total representations | 24
Activist representations | 22
Issuer representations | 2
Average market capitalization | \$1.16 billion

“Many shareholders, as well as the proxy advisory firms appeared to be less tolerant to activist driven change during 2021.”

Saratoga Proxy Consulting made a big jump in the rankings this year as the number of its representations nearly doubled. Saratoga, which was founded in 2016 by three Morrow & Co. veterans, placed eighth last year.

“Many shareholders, as well as the proxy advisory firms appeared to be less tolerant to activist-driven change during 2021, a trend that started prior to last year. Whether this occurs in 2022 is an open question,” Saratoga co-founder John Ferguson has told *Activist Insight Monthly*.

Saratoga primarily works with activists, representing the likes of Ancora Advisors in its campaigns at Blucora, Forward Air, and Kohl’s; Legion Partners Asset Management in its battle with OneSpan; and MG Capital at Alpha Metallurgical Resources.

Next year, Ferguson sees a particular focus on the universal proxy card, which was mandated by the Securities and Exchange Commission starting from August 31, 2022. “Will a company’s or activist’s refusal to agree to the use of a universal proxy before the rule is implemented hurt their campaign in the eyes of other shareholders? Whatever the answer, I think you’ll see the topic come up in more situations,” Ferguson said.

Total representations | 22
 Activist representations | 4
 Issuer representations | 18
 Average market capitalization | \$27.42 billion

D.F. King fell in the overall representation rankings this year but still made the top five with 22 total representations. Last year the proxy firm came joint second with 41 total representations.

It represented Blucora in its successful proxy vote defense against Ancora Advisors and Exxon Mobil in its unsuccessful fight with Engine No.1.

D.F. King was especially busy on the international front. In Japan it represented Farrallon Capital Management in its push for change at Toshiba and in France it helped Amber Capital take on media giant Lagardère and Danone versus Bluebell Capital.

Speaking on *The Activist Insight Podcast* earlier this year, D.F. King's David Chase Lopes noted that attitudes toward activism continue to evolve, especially in Europe. "In 2007 an activist in Europe was treated like a marauder, in 2021 there is a great deal of interest and enthusiasm in activism."

THE INSIGHTIA ADVISER AWARDS 2021 | PROXY FIRMS

Proxy Firm	Total Representations	Total Activist Representations	Total Issuer Representations	Average Market-Cap for Activist Representations (\$M)	Average Market-Cap for Issuer Representations (\$M)	Awards
Alliance Advisors	2	1	1	22	5	
AST Fund Solutions	1		1		499	
AST Phoenix Advisors	1		1		119	
Boudicca Proxy	3	1	2	747	50	
Carson Proxy Advisors	5	2	3	240	106	
D.F. King	22	4	18	5842	32509	
Equiniti Group	1		1		71	
Georgeson	18	6	12	3502	3544	
Gryphon Advisors	8	5	3	56	25637	
Harkins Kovler	4	4		1838		
Innisfree	62	11	51	22088	7087	Total Representations and Total Issuer Representations
Investorcom	10	10		275		
Kingsdale Advisors	19	2	17	38798	707	Average Market-Cap for Activist Representations
Laurel Hill	5	2	3	2278	85	
MacKenzie Partners	21	5	16	277	39948	Average Market-Cap for Issuer Representations
Morrow Sodali	38	5	33	2942	11707	
Okapi Partners	38	22	16	10668	4208	Total Activist Representations
Saratoga Proxy Consulting	24	22	2	1263	69	Most Activist Representations
Shorecrest Group	1	1		223		

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THE LAST TRUE ACTIVIST

CARL ICAHN IS ARGUABLY THE FOUNDING FATHER OF SHAREHOLDER ACTIVISM, BUT WITH MANAGEMENT WIELDING POISON PILLS AND HEDGE FUND INVESTORS SKITTISH HE THINKS FEW CAN FOLLOW IN HIS FOOTSTEPS, WRITES JASON BOOTH.

Carl Icahn's latest spat at Southwest Gas is the fifth company he has targeted this year. He's won eight board seats since January, his highest annual haul since 2018. Not bad for a guy who turns 86 in February.

The key to his longevity as an activist, according to Icahn himself, is permanent capital. His personal wealth, including a 90% stake in publicly traded Icahn Enterprises (IEP) worth around \$12.6 billion, provides the veteran activist with the financial leverage to take large activist bets without having to please his own limited partners.

"All these hedge funds like to call themselves activists but they can't be activists because they don't have permanent capital," Icahn told *Activist Insight Monthly* in an interview.

POKER PLAYER

That power allows Icahn to pursue activism on his own terms, according to industry insiders. "Carl has a swagger that is more akin to a poker player than to a disciplined hedge fund manager that has to answer to institutional investors," said one proxy adviser who asked to remain anonymous given ongoing professional relationships.

THESE HEDGE FUNDS LIKE TO CALL THEMSELVES ACTIVISTS BUT THEY CAN'T BE ACTIVIST BECAUSE THEY DON'T HAVE PERMANENT CAPITAL.

This enables him to move quickly based on gut instinct, and in many cases offer to buy the target company, typically when it's a strategic fit with IEP's existing portfolio. A case in point is Southwest Gas, where Icahn has offered to buy for \$75 per share.

Making a buyout offer "puts a floor under his exit (price)" said one securities lawyer who has worked with and against Icahn over the years. Some, including Southwest's management, have called the tender a negotiating tactic, implying Icahn

has no interest in actually acquiring the utility. Yet the lawyer disagreed, saying "I think Carl really wants to own every company he invests in." Indeed, IEP acquired Federal-Mogul in 2017 via a tender offer, which succeeded in part because Mario Gabelli (also a large investor in Southwest Gas) tendered most of his stake.

CARL HAS A SWAGGER THAT IS MORE AKIN TO A POKER PLAYER THAN TO A DISCIPLINED HEDGE FUND MANAGER THAT HAS TO ANSWER TO INSTITUTIONAL INVESTORS.

PLAY IT LONG

Permanent capital also enabled a long-term value strategy, according to Icahn. "You need time," he said, noting it took years to get Reynolds Tobacco to split with Nabisco. "How are you going to do that if people want their money back?" Icahn has an average holding period of 3.3 years, according to *Activist Insight Online* data, compared to 1.2 years for Starboard Value and two years for Elliott Management.

Icahn has first-person experience in what can happen when a long-term investment strategy faces extreme market volatility. During the 2008 financial crisis he sued fellow activist Warren Lichtenstein of Steel Partners, in which Icahn had invested money, after Lichtenstein refused to liquidate depressed stock positions and return money to investors. Icahn lost the lawsuit, but Lichtenstein hasn't operated as an activist since.

UNDERPERFORMANCE

So, while activists like Dan Loeb face complaints from their limited partners due to the underperformance of their listed funds, IEP's recent underperformance has attracted little attention. Its stock price is down slightly over the last 12 months, versus a 28% gain by the S&P 500. It is down 20% over the past five years. The investment segment, which accounts for around 50% of IEP's total assets, posted negative returns of 15.4% and 14.3% in 2019 and 2020, respectively.

Though over the past 12 months through June 30 the investment segment posted a return of 3.1%, signaling a possible turnaround.

Icahn attributes the underperformance to the firm's extensive hedging and the fact that his long-term investment strategy means that the portfolio can underperform for years before spiking. "These things happen in spurts," he noted. He also stressed that since 2000, IEP investors have enjoyed a 2,000% return on investment, assuming they reinvested all dividends and other distributions, versus 668% for Berkshire Hathaway. And IEP has paid a dividend for 66 consecutive quarters, 90% of which goes to Icahn.

His current big long-term bet is a multibillion-dollar short investment on specific credit default swaps backed by mortgages of corporate offices and shopping malls. He also likes the automotive parts businesses, a \$400 billion market that is "very fragmented," and presents "a lot of opportunities for rolling up."

PERSONAL STYLE

Besides investment strategy, permanent capital also means Icahn can conduct business in his own personal style. "He's running his own money so he has a different way of doing things, he generates his own ideas and takes advice from fewer people," according to the proxy adviser.

"It's not like you cannot talk to him but he prefers to talk himself," said a veteran securities lawyer who has represented

several companies targeted by Icahn. "He likes to show up very late to negotiations, drag it out to 4 or 5 am until everyone is exhausted because he slept in. And you never know if you have a deal until the ink is dry."

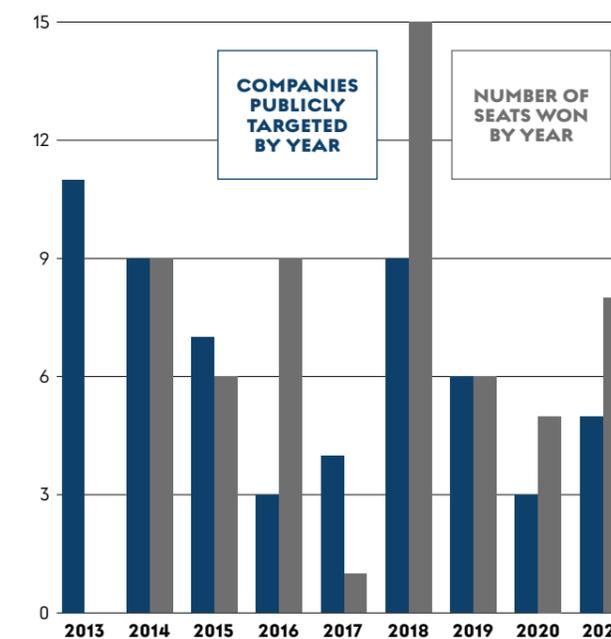
HE LIKES TO SHOW UP VERY LATE TO NEGOTIATIONS, DRAG IT OUT TO 4 OR 5 AM UNTIL EVERYONE IS EXHAUSTED BECAUSE HE SLEPT IN.

Icahn's one-man style has been cited as the reason so many of his executives have left to start their own firms. Icahn has been the starting point for at least five different activists over the years, most notably Keith Meister of Corvex Management, Alex Denner at Sarissa Capital Management, and MHR's Mark Rachesky.

Yet that has raised questions about whether his firm will remain an activist after his eventual retirement. While his son Brett is expected to take control of the investment segment, it is unclear whether he'll follow his father's personality-driven engagement style.

Icahn offered few clues about the firm's long-term plans, saying only that "what we have been doing has worked for us for a long time. We're not going away."

COMPANIES TARGETED AND SEATS WON BY CARL ICAHN



Source: Insightia | *Activist Insight Online*

CARL ICAHN'S TOP DEMANDS SINCE 2013

TYPE OF DEMAND	NUMBER
GAIN BOARD REPRESENTATION	41
PUSH FOR SALE OF COMPANY	6
ACTIVIST TAKEOVER	6
DISCLOSE INFORMATION	6
SPINOFF/SALE OF BUSINESS DIVISION	5
OPPOSE ACQUISITION OF THIRD PARTY	5

GAS CRISIS

CARL ICAHN'S CAMPAIGN AT SOUTHWEST GAS IS NOW IN COURT. BUT CHANCES ARE IT WILL END UP IN A SETTLEMENT, WRITES JASON BOOTH.

SOUTHWEST GAS HOLDINGS

SECTOR	UTILITIES
MARKET CAP	\$4.13B (MID CAP)
EXCHANGE	NYSE
TICKER	SWX
HQ	LAS VEGAS, NV
CORPORATE GOVERNANCE SCORE*	14/20 (AVERAGE)

As with most Icahn campaigns, his first move against Southwest Gas Holdings came with little forewarning on October 5 when the veteran activist sent a letter to the Las Vegas utility asking it not to proceed with a \$2 billion deal to acquire Questar Pipeline.

Southwest agreed to pay \$1.5 billion in cash and assume \$430 million of debt for the 2,160-miles natural gas pipelines. But what angered Icahn most is that Southwest said it might issue up to \$1 billion in additional capital to cover the cost of the transaction.

He's not alone. Mario Gabelli, who controls around 3% of Southwest Energy told CNBC in an October 21 interview that issuing stock to finance the transaction "makes no sense" and that Icahn's efforts would get management "to focus on how to do financial engineering."

Since then, the campaign has accelerated quickly, with Icahn offering to buy out Southwest via a tender offer at \$75 per share, then nominating 10 directors, and most recently, suing the board for violating its fiduciary duties.

TRADING BLOWS

Southwest was quick to defend the Questar deal, arguing that buying the pipelines serving Utah, Wyoming, and Colorado will

diversify its mix of regulated businesses. To keep Icahn at bay it put in place a one-year poison pill.

It recommended shareholders reject the activist's "highly conditional and illusory tender offer," calling it an "opportunistic attempt to acquire Southwest Gas at the inadequate price of \$75 per share – a price that is also contingent upon a long list of ambiguous and illusory requirements."

It argues that Icahn won't be able to gain regulatory approval in time to complete his tender, citing the complexity of the deal and hint that Icahn's past casino-related transactions in Las Vegas could make regulators wary of the buyout. It notes that Icahn must obtain regulatory approval to acquire more than 25% of the utility's outstanding shares.

In response, Icahn's team say they are already in discussions with regulators and their prior Las Vegas experience could smooth the process. Instead, they claim Southwest has faced regulatory questions regarding executive expenses being passed to ratepayers. And to address concerns over control, Icahn said he would waive voting rights for any Southwest shares he acquires in excess of 20% of outstanding shares.

Then on December 2, Icahn requested a court restraining order preventing the utility from selling shares at less than his tender price and an injunction requiring the company to name Icahn nominees to the board.

WEAK GOVERNANCE

Despite the vitriol, there are plenty of indications that a settlement is the most likely outcome.

Southwest Gas' board, for one, looks vulnerable. The company's stock has generated a total shareholder return (TSR) of negative 2.4% per year on average over the last three years, compared with average annual TSR of 4.3% for peers, according to *Activist Insight Vulnerability*.

The board, as Icahn notes, holds less than 1% of shares, versus 4.9% held by the activist. Special shareholder meetings can only be called by the company's chief executive, or a shareholder with at least 33% of voting shares. Icahn was quick to highlight this governance shortfall by proposing a special

meeting. Management duly vetoed the proposal, creating another complaint to add to subsequent fiduciary litigation.

SETTLEMENTS PREFERRED

Icahn's track record, meanwhile, indicates he's unlikely to wait around for a shareholder vote. Since 2014 he has won 59 board seats, all through settlements, according to *Activist Insight Online* data. During that time, only one of his campaigns went all the way to a vote, which ended in failure earlier this year when Delek shareholders rejected a three-person slate nominated by Icahn-controlled CVR.

"He never really wants a proxy fight as its too expensive," said one proxy adviser who requested anonymity. "And if he does one it means he has a pretty good hand."

And from the start, Icahn has made clear he might accept the Questar deal under different financing, writing in his initial letter that if management must issue equity to pay for the deal "a rights offering to all existing shareholders is the best way to ensure that existing shareholders are not massively diluted."

CENTURI SOLUTION

He then suggested another option which, in time, could lay the groundwork for a settlement. Under this plan, Southwest would sell off Questar, worth in Icahn's estimation \$1.6 billion, then

OPPORTUNISTIC ATTEMPT TO ACQUIRE SOUTHWEST GAS AT THE INADEQUATE PRICE OF \$75 PER SHARE.

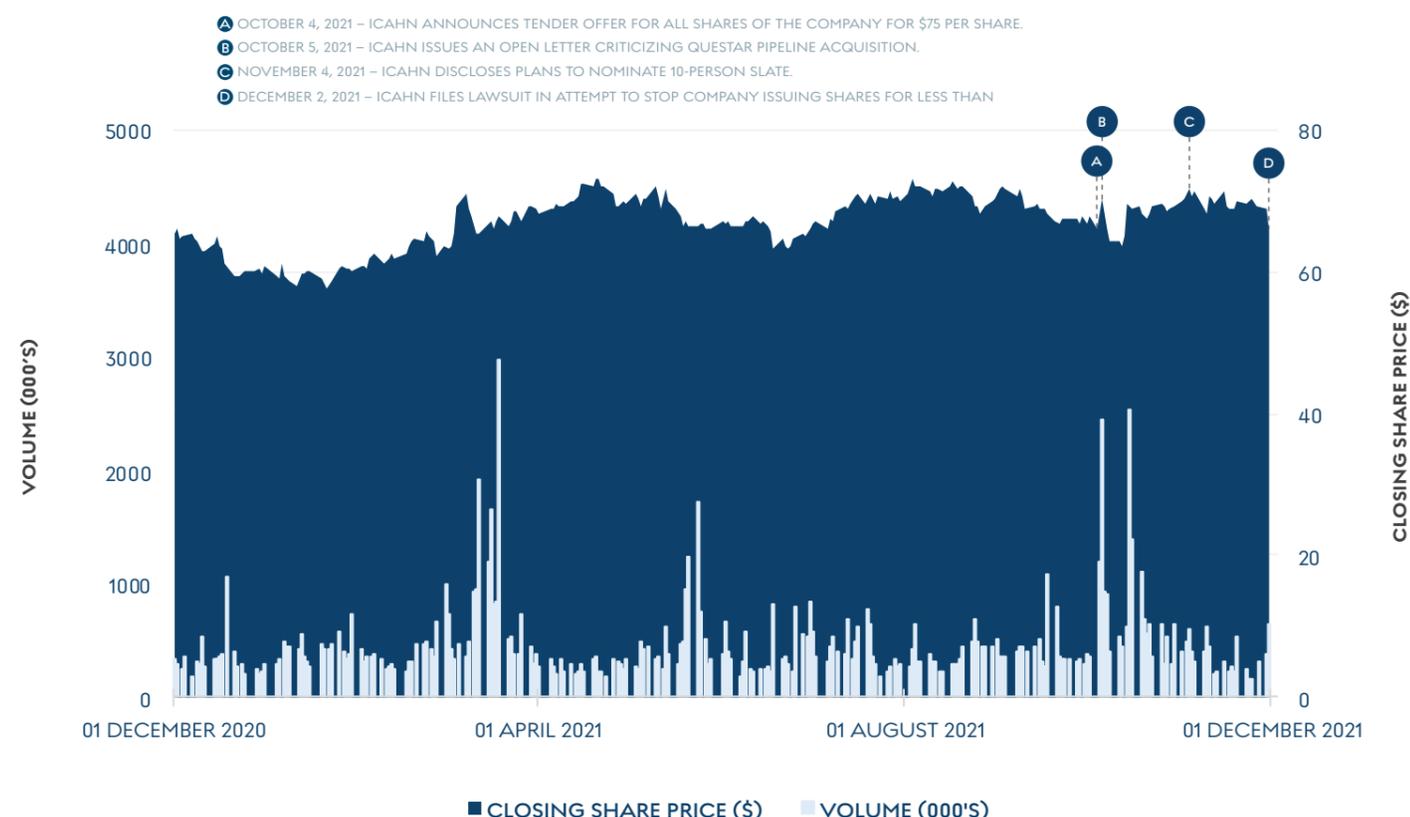
sell 20% of its non-regulated energy services division Centuri via an initial public offering. The proceeds, he estimated, would be enough to pay off the parent company's debt, with \$1.1 billion left over for "green investment," or \$2.6 billion if 100% of Centuri was sold.

That's a path favored by Gabelli, who told CNBC in relation to Centuri, "I don't want them to spin it off, I want them to sell a portion in the market and take that cash and use that to buy Questar." It should be noted that Icahn's 2017 tender for Federal-Mogul succeeded after Gabelli tendered most of his 4.9% stake.

Management says it is already looking at that option. When asked on a recent analyst call about the possibility of selling part of Centuri to finance the Questar deal or acquisitions in general, chief executive John Hester said it "definitely is an option on the table that we're looking at."

With Icahn banging on the door, it is an option likely being looked at with greater urgency. [iQ](#)

SOUTHWEST GAS' 12-MONTH SHARE PRICE PERFORMANCE



Share price data sources: CSI - www.csidata.com and Xignite

WINTER IS COMING

SMARTPHONE PARTS SUPPLIER QORVO BOASTS APPLE AS ITS LARGEST CUSTOMER BUT IT LOOKS UNDERVALUED AND VULNERABLE TO ACTIVISM, DUE TO LOW LEVERAGE, WEAK GROSS MARGINS, AND RECENT OPERATIONAL SETBACKS, WRITES IURI STRUTA.



QORVO	
SECTOR	TECHNOLOGY
MARKET CAP	\$18.0B (LARGE CAP)
EXCHANGE	NASDAQ
TICKER	QRVO
HQ	GREENSBORO, NC
CORPORATE GOVERNANCE SCORE*	18/20 (EXCELLENT)

VULNERABILITIES



At first glance, Qorvo may not look like an obvious activist target. The \$18-billion market capitalization company has performed admirably in recent years and its total shareholder returns are decent. Yet the stock seems woefully undervalued relative to peers, potentially making it a tempting target for an activist looking to close that valuation gap.

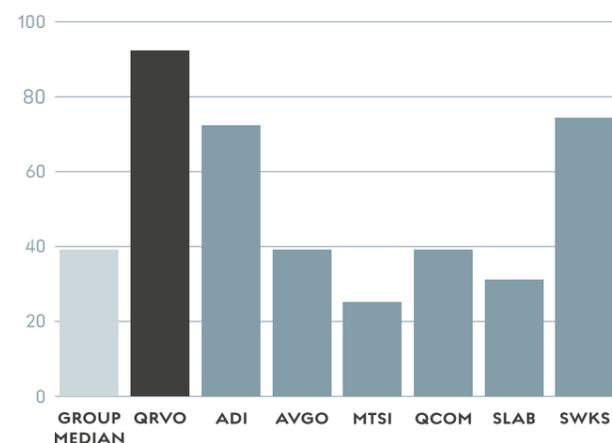
The company sits in the 92nd percentile of firms most likely to face activism over the next nine months, according to *Activist Insight Vulnerability*.

GOOD BUT UNDERVALUED

Qorvo makes radio frequency products for smartphones and other devices that use wireless communication. Apple, the Cupertino-based technology giant, is its largest customer, responsible for a third of revenues. Qorvo has executed well in an industry that has enjoyed strong demand which is unlikely to fade soon. Total shareholder returns are not the best of the company's peers but neither are they the worst. It has grown revenues at a decent pace and its profit margins look good.

Yet the company is undervalued relative to peers by several measures. Its stock trades at price-to-Ebitda ratio of 10.6,

PERCENTILE RANK



Source: Insightia/Activist Insight Vulnerability

versus 20 for its median peer group, according to *Activist Insight Vulnerability* data. Similarly-sized competitor Skyworks Solutions trades at a multiple of 13.1, while larger peer Qualcomm is valued at 16.4 times Ebitda.

*Source: Insightia | Activist Insight Governance. A higher score indicates a more shareholder-friendly corporate governance structure.

UNEXPECTED MISS

The undervaluation could be explained by investor worries about looming competitive threats. The stock has pulled back from record highs recently, largely due to weak earnings and guidance on what management said were supply chain issues. However, Qualcomm posted blockbuster results, raising concerns that Qorvo is losing market share in the smartphones segment.

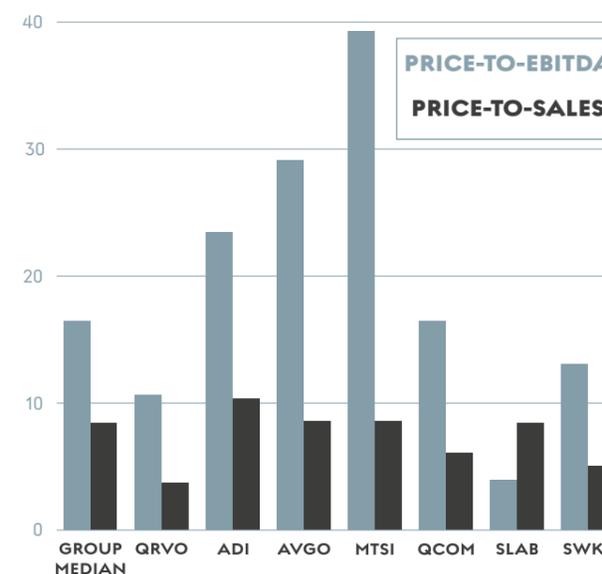
WE FELT THAT QORVO STRUGGLED TO EXPLAIN THE REASON FOR THE DECEMBER MISS, PARTICULARLY SINCE THE WEAKNESS EMERGED SO RECENTLY (WITHIN THE LAST 3 WEEKS), AND THAT IT WAS IN SUCH CONTRAST WITH QUALCOMM.

"We felt that Qorvo struggled to explain the reason for the December [guidance] miss, particularly since the weakness emerged so recently (within the last 3 weeks), and that it was in such contrast with Qualcomm (which Qorvo management didn't seem to be expecting)," Raymond James analysts said in a November 4 note.

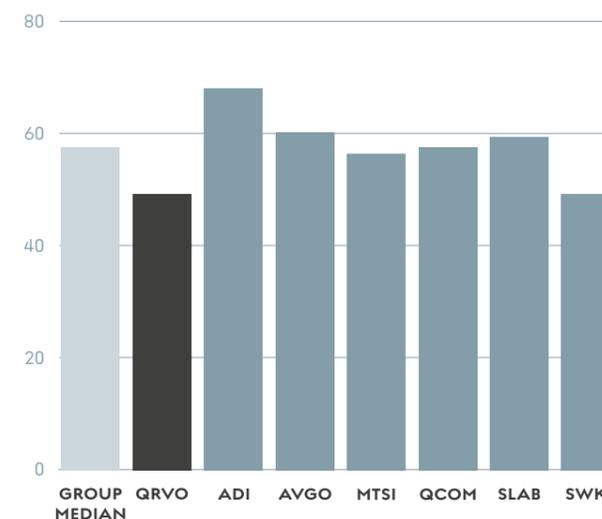
Indeed, Qualcomm has increased its annual revenue from radio frequency products, where it competes with Qorvo, from \$400 million a few years back to around \$1.4 billion now, a pace that should justly worry Qorvo management. "Can Qorvo continue to post significant growth numbers in a market in which Qualcomm is growing...so quickly off what is now a sizable base?" Susquehanna Financial Group analyst Christopher Rolland said in a recent note.

Another reason for the undervaluation may lie in Qorvo's balance sheet. In an industry where peers with higher leverage tend to trade at higher multiples, Qorvo is a cash hoarder and has little debt.

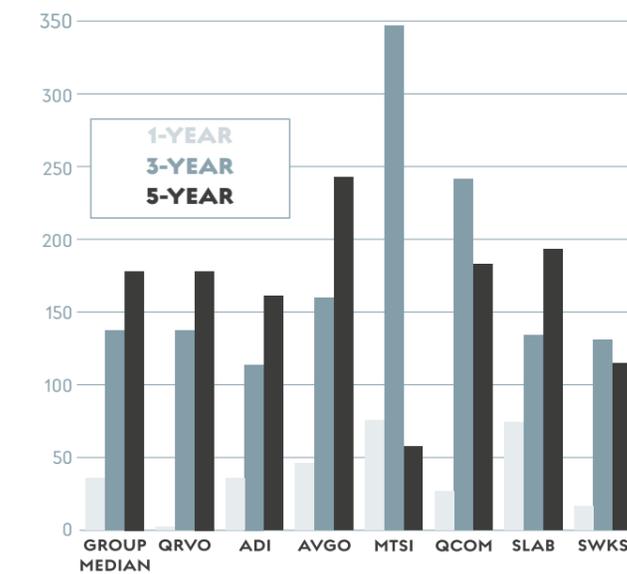
VALUATION



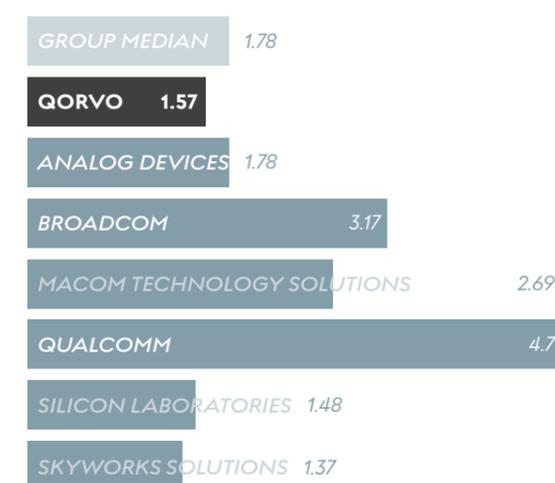
GROSS PROFIT MARGIN (%)



TOTAL SHAREHOLDER RETURNS (%)



AVERAGE FINANCIAL LEVERAGE RATIO



Source: Insightia/Activist Insight Vulnerability

PLUG THE DISCOUNT

An activist investor could demand the company take on more debt and use the proceeds to buy back stock. Qualcomm, a peer, recently announced another \$10 billion share repurchase program, after returning more than \$12 billion of capital to shareholders via buybacks and dividends in 2021 and 2020 combined. During the same period, Qorvo has bought back a little more than \$1 billion of shares. Qorvo's last buyback of \$2 billion was announced in May, and the company pays no dividends.

QORVO HAS A GROSS PROFIT MARGIN OF AROUND 49%, WHILE QUALCOMM, WHICH OPERATES A FABLESS MODEL, HAS A GROSS MARGIN OF MORE THAN 57%.

An activist investor could also push management to improve margins and growth rates. Indeed, Starboard Value made a similar demand at onsemi in 2020 before settling for board seats. While the company already operates a fab-lite business model, there could still be room to outsource production, especially as demand for its products is volatile and running production facilities could impact gross margins. Qorvo has a gross profit margin of around 49%, while Qualcomm, which operates a fabless model, has a gross margin of more than 57%, according to *Activist Insight Vulnerability*.

Another way to fix undervaluation is to pursue an auction, which could likely generate interest from competitors, at least

among U.S.-based acquirors. Singapore-based Broadcom proposed to acquire Qualcomm in 2018, but the deal was blocked by then-President Donald Trump on national security grounds.

VALUE INVESTORS

Baupost Group, Seth Klarman's value investing hedge fund, is the company's third largest shareholder with 4.6% of the shares. Baupost typically invests in out-of-favor companies with strong fundamentals, a further indication that Qorvo is undervalued. Vanguard Group and BlackRock are the top two shareholders, collectively owning more than 20% of the shares. Vulcan Value Partners, another value investor, has owned a near-4% stake since the end of 2016. D.E. Shaw, an occasional activist investor, owns a toehold stake.

The director nomination window for the next annual meeting opens on April 12.

A similar version of this article was first published on *Activist Insight Vulnerability* on December 7.

DISCLAIMER: Activist Insight Vulnerability reports use proprietary data, along with third-party analyst reports and, in certain cases, interviews with industry sources to identify companies that might become activist targets. They represent an analytical attempt at predicting companies that may be engaged by an activist from a wide range of possible targets and are in no way intended to indicate that a speculated event is imminent or will take place. Insightia does not provide investment advice or accept responsibility for the result of trades based on Activist Insight Vulnerability reports or descriptions of Activist Insight Vulnerability reports by third-party media. [ia](#)

QORVO'S 12-MONTH SHARE PRICE PERFORMANCE VERSUS QUALCOMM



CITIZEN PROTEST

QUINTESSENTIAL JOINS OTHER SHORTS CLAIMING U.S. BIOTECH FIRM CASSAVA SCIENCES' ALZHEIMER'S DISEASE DRUG IS BASED ON FORGED RESEARCH, WRITES JOE LYONS.

CASSAVA SCIENCES

SECTOR	HEALTHCARE
MARKET CAP	\$2.0B (MID CAP)
EXCHANGE	NASDAQ
TICKER	SAVA
HQ	AUSTIN, TX
CORPORATE GOVERNANCE SCORE*	8/20 (POOR)

Quintessential Capital released a short report on November 3 arguing that Cassava Sciences' developmental Alzheimer's treatment Simufilam is based on "forged scientific research" and likely will never come to market. It also cited management credibility issues it thinks will send the company's stock to zero.

As is typical for the short investment firm headed by Gabriel Grego, the report was apparently based on a monthslong investigation including "infiltration of undercover investigators into its clinical research centers, surveillance of its research facilities, background checks on the actors involved, and multiple expert opinions from industry leaders."

Despite the effort, shares in Cassava fell only 4% the day Quintessential released its report, and jumped higher in the following days as the company issued a flurry of positive news. And while the stock is currently down around 20% since publication, it remains where it was in late October, when Quintessential was apparently building its position.

CITIZEN PETITION

Other short sellers may have made a lot more.

Allegations that Cassava's single drug is based on fraudulent research were first made in August by another short seller group working independently. Cassava had seen its share price surge from around \$8 at the start of the year to a \$135 high over the summer on the prospect that its drug would become a new Alzheimer's treatment. On August 18, law firm Labaton Sucharow filed a "Citizen Petition" with the Food & Drugs Administration (FDA) on behalf of whistleblowers claiming to

have "grave concerns about the quality and integrity" of the laboratory studies behind Simufilam and requesting the FDA halt the clinical studies.

Subsequent disclosures revealed that the petition was sponsored by two doctors, one being Dr. David Bredt, who earlier this year joined investment firm MPM Capital as an "Executive Partner." The stock lost almost half its value in the following days and prompted the Journal of Neuroscience to request the raw data used for the article supporting the drug.

ALLEGATIONS THAT CASSAVA'S SINGLE DRUG IS BASED ON FRAUDULENT RESEARCH WERE FIRST MADE IN AUGUST.

WIDER PROBLEMS

Despite the dramatic stock price fall, Quintessential felt the petition only scratched the surface of wider problems with Cassava. "We became convinced that the alleged deception could not have been limited to the laboratory analysis mentioned in the complaint," Grego wrote. "Instead, we suspect that the entire clinical research process might have been tainted by deception and misconduct, especially the Simufilam clinical trials."

The short seller also alleged that the company has an "outrageous" compensation policy, "blatantly rewarding short-term stock price appreciation." Particularly damning allegations were aimed at Cassava's chief executive Remi Barbier and Chief Medical Officer Nadav Friedmann, saying they have been caught making fraudulent statements about Simufilam's predecessor Remoxy. They also allege the co-owner of the clinical research company overseeing Simufilam trials has a criminal record for drug possession. "She is not credible in my eyes for someone who should be overseeing clinical trials," Grego told *Activist Insight Monthly* in an interview.

When asked to comment on the recent short report, Cassava Sciences insinuated that Quintessential had closed its short position in the company. Indeed, according to a document

THE WALL STREET JOURNAL REPORTED THAT THE SECURITIES AND EXCHANGE COMMISSION (SEC) WAS INVESTIGATING CLAIMS THAT CASSAVA MANIPULATED RESEARCH RESULTS OF ITS ALZHEIMER'S DRUG.

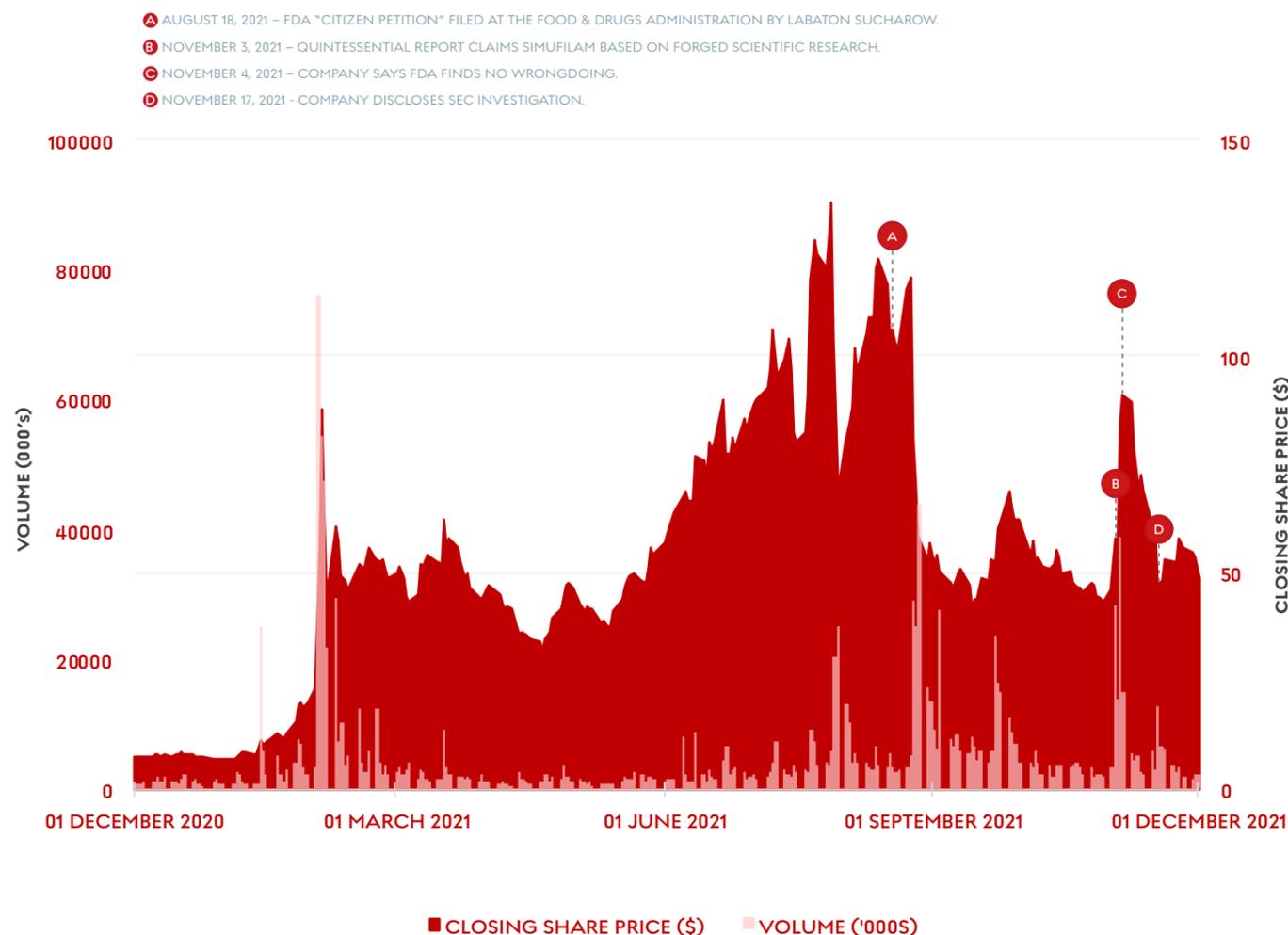
seen by *Activist Insight Monthly*, Quintessential may have closed some positions shortly after the report was issued in response to an unexpected jump in the share price. But Grego insists Quintessential currently maintains an open short position in Cassava, telling *Activist Insight Monthly* in a November 11 email, "We have an open short position on Cassava Sciences right now and had an open position on the day we issued our report," adding that the firm positions are "dynamic" and regularly adjusted for risk management purposes.

Cassava declined to comment further on Quintessential's short report when asked by *Activist Insight Monthly*. But the company's CEO Barbier had called the Citizens Petition allegations false in September and said in a press release on November 4, "pundits...may be louder than they are learned." According to the Wall Street Journal, Barbier said that he hopes "someone in a position of authority is looking into the legitimacy of the allegations," in an email response to questions.

INVESTIGATION

Those hopes were realized later in November, though possibly not in the way Barbier envisioned. In its third-quarter earnings report Cassava disclosed it was being investigated by a government agency but did not specify which one. The following day, the Wall Street Journal reported that the Securities and Exchange Commission (SEC) was investigating claims that Cassava manipulated research results of its Alzheimer's drug. The company's stock fell 22% that day. [iQ](#)

CASSAVA SCIENCES' 12-MONTH SHARE PRICE PERFORMANCE



Share price data sources: CSI - www.csidata.com and Xignite

*Source: Insightia | Activist Insight Governance. A higher score indicates a more shareholder-friendly corporate governance structure.

SHORT NEWS IN BRIEF

A ROUNDUP OF DEVELOPMENTS IN ACTIVIST SHORT SELLING IN NOVEMBER.

Short seller Grizzly Research labeled Chinese solar company ReneSola a fraud and claimed a large chunk of its solar projects in Europe and the U.S. do not exist. ReneSola's New York-listed shares fell as much as 18% the day of the report. Grizzly put a 70% downside target on the stock. [DETAIL](#)

Jim Chanos' Kynikos Associates revealed short positions in sports betting company DraftKings and food delivery platform DoorDash. [DETAIL](#) / [DETAIL](#)

Lithium development company Standard Lithium accused Blue Orca of publishing a "false and misleading" report that resulted in the company's share price falling 10%. [DETAIL](#)

Thermodynamic engineering company ESG Clean Energy, an affiliate of Kerrisdale Capital short target Camber Energy, responded to "misleading and inaccurate information" provided by the short seller. [DETAIL](#)

Shares in Quintessential Capital Management short target Cassava Sciences fell after reports that the U.S. biotech firm is subject to a Securities and Exchange Commission (SEC) investigation. [DETAIL](#)

Iceberg Research raised questions about Hyzon Motors' recent earnings report touting big truck deliveries by year-end and said the company is in fact buying time to allow insiders to offload their shares in January. [DETAIL](#)

Activist short seller Unemon shorted fitness company Nautilus' stock, saying enthusiasm for home fitness as a result of the COVID-19 pandemic has "officially ended." [DETAIL](#)



UNEMON SAYS NAUTILUS' COVID STOCK BOOST IS OVER.

NEW SHORT INVESTMENTS

A SELECTION OF THE LATEST ACTIVIST SHORT INVESTMENTS DISCLOSED IN NOVEMBER.

ACTIVIST	COMPANY	HQ	DATE ANNOUNCED	DETAIL
KYNIKOS ASSOCIATES	DRAFTKINGS		DECEMBER 2, 2021	DETAIL
Kynikos said DraftKings' business model is flawed.				
KYNIKOS ASSOCIATES	DOORDASH		DECEMBER 2, 2021	DETAIL
Kynikos said DoorDash did not make enough money during the pandemic.				
GRIZZLY RESEARCH	RENESOLA		DECEMBER 2, 2021	DETAIL
Grizzly Research said ReneSola is a fraud with a large chunk of solar projects that do not exist.				
BLUE ORCA CAPITAL	STANDARD LITHIUM		NOVEMBER 18, 2021	DETAIL
Blue Orca said independent data suggested the company's technology was "neither economically viable nor scalable."				
UNEMON	NAUTILUS		NOVEMBER 9, 2021	DETAIL
Unemon said it was short the home fitness company as enthusiasm has waned with pandemic restrictions easing.				
UNEMON	UBIQUITI		NOVEMBER 4, 2021	DETAIL
Unemon said chip shortages and import backlogs will lead the company to miss quarter estimates.				
QUINTESSENTIAL CAPITAL	CASSAVA SCIENCES		November 3, 2021	DETAIL
Quintessential said Cassava Sciences' Alzheimer's drug is based on fraudulent research.				



KYNIKOS SAYS DRAFTKINGS' BUSINESS MODEL IS FLAWED.

NEWS IN BRIEF

A ROUNDUP OF DEVELOPMENTS IN ACTIVIST INVESTING IN NOVEMBER.

NORTH AMERICA

Engine Capital sent a letter to Kohl's urging the department store chain to consider putting itself up for sale or separating its online business. Engine reckoned Kohl's could fetch a 50% premium in a takeover. [DETAIL](#)

R.R. Donnelley & Sons said it will accept Chatham Asset Management's \$10.25 per share buyout proposal, unless rival suitor Atlas Holdings comes up with a better offer. [DETAIL](#)

Right-leaning non-profit group National Legal and Policy Center (NLPC) asked Coca-Cola to oust Activision Blizzard chief executive Bobby Kotick from the board, citing his involvement in a sexual harassment scandal at the videogame giant. [DETAIL](#)

Jana Partners urged Zendesk to abandon a deal to buy Momentive Global, worth roughly \$3.2 billion. *Activist Insight Vulnerability* recently noted that investors and analysts were skeptical of the deal. [DETAIL](#)

Hedge fund Alden Global Capital put forward three director candidates to Lee Enterprises' board in an attempt to force

through its \$142 million takeover proposal after the regional news platform adopted a poison pill to thwart the takeover. Lee is also under pressure from Cannell Capital, which seeks board changes. [DETAIL](#)

Ancora Advisors urged packaging specialist Berry Global to consider a sale and boost share buybacks, while threatening a proxy contest if the company failed to respond. [DETAIL](#)

EHealth, a health insurance firm that settled with three activists earlier this year, announced the resignation of its chief accounting officer. The company's share price fell over 5% that day. [DETAIL](#)

Carl Icahn launched a campaign to replace Southwest Gas' entire board with his own 10 candidates amid an escalating battle for the control of the U.S. utility. [DETAIL](#)

General Electric (GE), in which activist Trian Fund Management long held a stake and called for improvements, will split into three separate companies starting in 2023 in a bid to enhance valuation. [DETAIL](#)

EUROPE

Petrus Advisers accused Czech lender Moneta Money Bank and financial group PPF of trying to force through a deal that unfairly favors PPF at the expense of Moneta's independent shareholders. [DETAIL](#)

Elliott Management reportedly took a stake in U.K. homebuilder Taylor Wimpey, but its plans remain unknown. Elliott began building a stake in the U.K.'s largest construction company after its shares underperformed this year despite strong demand for new housing, according to *The Mail on Sunday*. [DETAIL](#)

Third Point Investors, a London-listed closed-end fund, defeated an attempt by Asset Value Investors (AVI) to unseat one of its directors. Third Point said it had heard from "many shareholders" that the activist campaign had been "counter-productive." [DETAIL](#)

Activist hedge fund Bluebell Capital urged commodities group Glencore to separate its thermal coal business, shed non-core assets, and tackle governance issues. Bluebell argued the changes would address what it called Glencore's "coal discount" and attract new investors. [DETAIL](#)

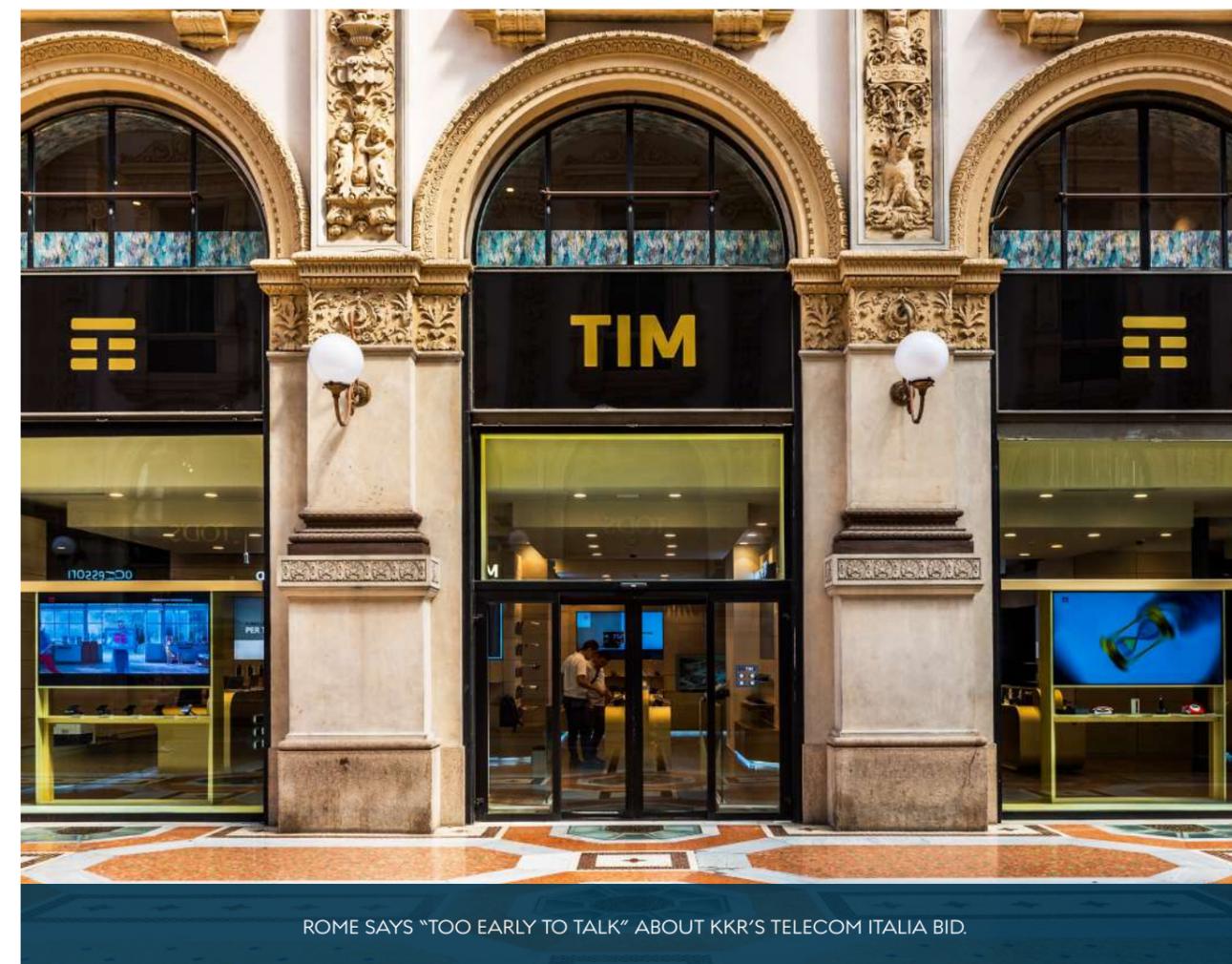
Institutional Shareholder Services recommended shareholders support Royal Dutch Shell's plan to relocate its head office to the U.K., amid activist pressure at the company to break up. [DETAIL](#)

Insurance brokerage giant Willis Towers Watson announced several board changes, including the departure of its chairman, and a new turnaround committee after "constructive engagement" with activist investor Elliott Management. [DETAIL](#)

The Italian state indicated it will discuss KKR's takeover offer for Telecom Italia (TIM) when the private equity firm makes a binding bid. Industry Minister Giancarlo Giorgetti said during a parliamentary hearing Wednesday that it is "too early to talk" about KKR's proposal. [DETAIL](#)



GENERAL ELECTRIC ANNOUNCED IT WILL SPLIT INTO THREE SEPARATE COMPANIES.



ROME SAYS "TOO EARLY TO TALK" ABOUT KKR'S TELECOM ITALIA BID.

REST OF THE WORLD

Elec-Tech International nominated a director to NVC International's board, more than three months after failing in a proxy contest at the Hong Kong-listed lighting company. [DETAIL](#)

Activist investor IsZo Capital Management won six board seats at Chinese company Nam Tai Property where it has been fighting since the summer of 2020. The Chinese property developer's top shareholder, Kaisa Group responded by selling its shares in the company. [DETAIL](#)

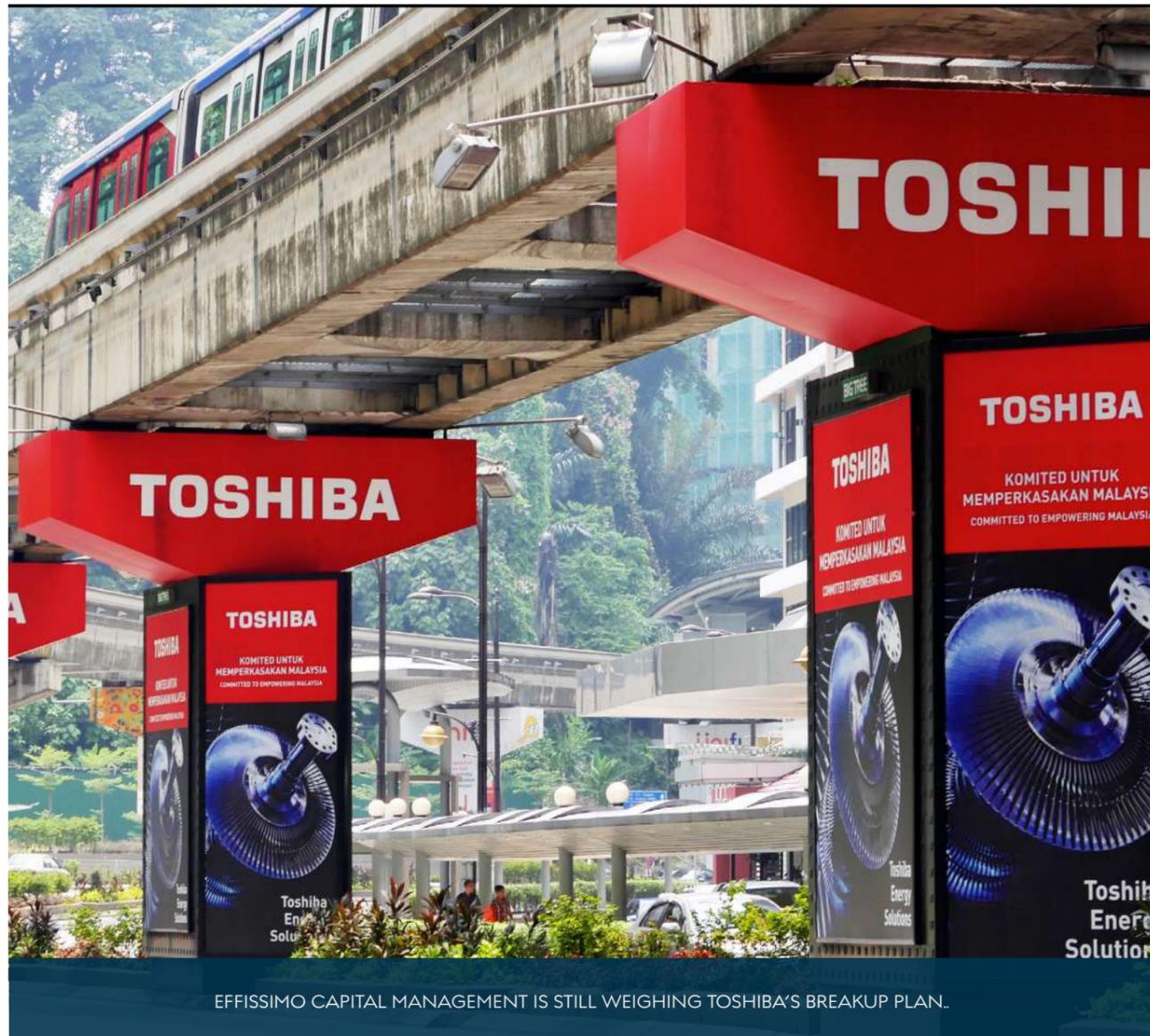
Japanese meat producer Shikishima Farm proposed three new directors at Taiyo Bussan Kaisha but the food company is resisting change. The vote is scheduled for December 28. [DETAIL](#)

South Africa-based Impala Platinum Holdings came out with a new offer for smaller rival Royal Bafokeng, after an initial deal was thwarted by Northam Platinum Holdings. [DETAIL](#)

Hanssem, South Korea's largest furniture and home furnishing company, dismissed the board candidate proposed by 9.2% activist shareholder Teton Capital Partners, setting the stage for a proxy and legal fight. [DETAIL](#)

Shinsei Bank abandoned plans to hold a shareholder vote on adopting a poison pill, paving the way for SBI Holdings to significantly increase its stake via a hostile tender offer. [DETAIL](#)

Toshiba's top shareholder Effissimo Capital Management dispelled rumors it was opposing the conglomerate's plan to split into three companies and said it is still weighing the breakup announced by Toshiba. [DETAIL](#)



EFFISSIMO CAPITAL MANAGEMENT IS STILL WEIGHING TOSHIBA'S BREAKUP PLAN.

OUT OF SYNC

AMERICA'S CORPORATE BOARDS ARE FAILING TO CATCH UP WITH INVESTOR EXPECTATIONS, RESULTING IN GROWING SHAREHOLDER OPPOSITION TO DIRECTORS, WRITES IURI STRUTA.

Support for directors at U.S. corporations has declined over the past five years, as companies have failed to adapt to the gradual shift in policies from institutional investors.

The number of companies with at least one director receiving below 95% support has grown from 2,032 in 2016 to 2,498 in 2020, and 2,683 so far this year. Furthermore, in 2016 there were 489 companies with at least one director with support between 55% and 80%, compared with 716 companies in 2020 and 757 in 2021.

PASSIVE POWER

While the broader shareholder base might have become more likely to voice their opposition via votes, the three largest passive index funds – BlackRock, State Street Global Advisors (SSGA), and Vanguard, which between them typically own at least 20% of any public company – have led the pack.

On average, BlackRock backed management-elected directors 95.1% of the time in 2015, *Proxy Insight Online* data show. This number abruptly declined in 2019 to 91.1% and has stayed low in the following two years. Vanguard's support also fell in 2019 but recovered somewhat in the following years, although it is still below the four-year period through 2018.

Meanwhile, SSGA, which has historically been the least indulgent with directors from the trio of the largest passive index funds, voted for against directors 87.8% of the time in 2021, down from 90.8% in 2016.

MORE DILIGENT

"Institutional investors vote against directors more frequently and for more reasons than they would have in the past," said Brian Valerio, senior vice president at Alliance Advisors. Overboarding and diversity are two key reasons for votes against directors, but not the only ones. Climate change, executive compensation, and human capital management are just three issues that have been driving 'against' votes more recently, according to Valerio.

James Hamilton, a director at PJT Camberview, agrees. "Whereas directors used to receive against or withhold votes primarily for traditional governance deficiencies such as independence and attendance, today, many investors are

putting in place policies that hold directors accountable for outside board commitments, board and workforce-related disclosures and oversight of ESG," Hamilton said.

Indeed, the key reason BlackRock has stepped up its opposition to directors in the Americas since at least 2019 is lack of diversity on boards. In 2020, when BlackRock's number of "withhold" or "against" votes for directors reached a record, diversity was cited in 1,367 cases in the Americas region. The runner-up reason was lack of independence with 246 companies.

SSGA, while not disclosing a breakdown of reasons it voted against directors, dedicates a good part of its engagement to diversity. Its Fearless Girl campaign is focused on engagement with companies around diversity and those companies that fail to improve are typically penalized.

"We believe that the director vote is the most effective tool in holding directors accountable for the oversight of ESG risks and opportunities. As the financial materiality of ESG-related issues increases, so does the responsibility for effective oversight," said Ben Colton, global co-head of asset stewardship, at State Street.

And SSGA's policies are only getting stricter. For the first time this year, SSGA expects S&P 500 companies to disclose the racial diversity of their board. Starting in 2022, SSGA will vote against directors at S&P 500 companies that don't feature at least one director from an underrepresented community.

Institutional investors are expected to continue to change their policies and hold directors accountable for implementation. Those companies that fail to comply with this moving target face the risk of seeing high dissent against their directors. [iQ](#)

(A smaller version of this story ran on *Proxy Insight Online* on November 15.)

NEW INVESTMENTS

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

ACTIVIST	COMPANY	HQ	DATE NOTIFIED	DETAIL
JANA PARTNERS	ZENDESK INC		November 30, 2021	DETAIL
Jana urged Zendesk to abandon an acquisition worth \$3.4 billion.				
BLUEBELL CAPITAL PARTNERS	GLENCORE PLC		November 30, 2021	DETAIL
Bluebell advised Glencore to spin off coal business.				
PETRUS ADVISERS	RECTICEL SA		November 29, 2021	DETAIL
Petrus labeled Greiner's hostile bid for Recticel detrimental to shareholders.				
BRADLEY RADOFF	NEWPARK RESOURCES		November 23, 2021	DETAIL
Radoff approached Newpark and pushed it to split.				
NORTHAM PLATINUM	ROYAL BAFOKENG PLATINUM		November 23, 2021	DETAIL
Northam nominated two executives to the company's board.				
FRANK KAVANAUGH	FRIENDLY HILLS BANK		November 22, 2021	DETAIL
A shareholder group called for a board refresh at the bank.				
DAVID ELLIOT LAZAR	SCHMITT INDUSTRIES		November 19, 2021	DETAIL
Lazar took a 9.9% share in Schmitt Industries as he believed the stock was undervalued.				
ELLIOTT MANAGEMENT	KONINKLIJKE AHOLD DELHAIZE		November 17, 2021	DETAIL
Elliott took a stake and said its supported the company's plans to spin off its online marketplace business.				
ENGAGED CAPITAL	QUOTIENT TECHNOLOGY		November 17, 2021	DETAIL
Engaged was unhappy with Quotient's corporate governance and hinted at a proxy contest at the company.				
TAYLOR PARTNERS LIMITED	EAST IMPERIAL PLC		November 17, 2021	DETAIL
Corvus, acting under, Taylor Partners, nominated two directors to East Imperial's board.				
WILLIAM HEATH HAWK (OCEAN CAPITAL)	PUERTO RICO RESIDENTS TAX-FREE FUND		NOVEMBER 16, 2021	DETAIL
Ocean Capital nominated two directors at the fund managed by UBS.				

ACTIVIST	COMPANY	HQ	DATE NOTIFIED	DETAIL
GABI GLIKSBERG	TEXAS PACIFIC LAND CORPORATION		NOVEMBER 16, 2021	DETAIL
Gliksburg called on the board to declassify.				
ELLIOTT MANAGEMENT	HELLA GMBH & CO		NOVEMBER 15, 2021	DETAIL
Elliott took a position hoping Faurecia will move to take out Hella's remaining shareholders.				
JCP INVESTMENT MANAGEMENT	FARMER BROTHERS COMPANY		NOVEMBER 15, 2021	DETAIL
JCP is opposed to the company's proposal to double its share count.				
DAEWOO SHIPBUILDING & MARINE ENGERNIEERING	SUNGJEE CONSTRUCTION		NOVEMBER 12, 2021	DETAIL
Daewoo demanded 15 board seats and wanted to oust the company's CEO.				
LETKO BROSEAU & ASSOCIATES	COMINAR REAL ESTATE		NOVEMBER 10, 2021	DETAIL
Letko opposed the sale of the company which was agreed in late October.				
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM	CIM COMMERCIAL TRUST		NOVEMBER 5, 2021	DETAIL
CalPERS demanded the company adopt a majority vote standard.				
DRIVER MANAGEMENT	FIRST REPUBLIC BANK		NOVEMBER 3, 2021	DETAIL
Driver called on the bank to stop making capital raises and consider removing CEO Vernon Hill.				



DAEWOO DEMANDED 15 BOARD SEATS AND REMOVAL OF SUNGJEE CONSTRUCTION'S CEO.

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