THE ACTIVIST REPORT
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NAVIGATING THE UNCERTAIN WORLD OF UNLAWFUL INSIDER TRADING

By Steve Wolosky and Andrew Freedman

Introduction

The recent rise in the popularity and public visibility of shareholder activism has led to increased regulatory scrutiny of the investment strategies employed by activist investors. Over the past year, certain activist investors, including Carl Icahn and Bill Ackman, have found themselves at the center of high-profile insider trading investigations. To nobody's surprise, corporate defenders like Wachtell have seized the opportunity to further paint activist investors as a threat to corporate America in the hopes that regulators will react by expanding the reach of the insider trading rules. Regardless, there appears to be some level of uncertainty among investors as to what types of activities may implicate the cur-

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Tim Hortons - Good for BK but not Wendy's?

On July 11, 2005, as a 9.9% shareholder of Wendy's International, Inc., Pershing Square sent a letter to the Company's Chairman/CEO strongly urging the Board to spinoff the Tim Hortons business from Wendy's. Pershing Square made cogent arguments like it is easier to attract, retain and incentivize talented management in a separate public company and a separate Tim Hortons would attract a strong investor and research following. These argu-

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Under the Threshold Activism Below 5%

NEW

ANN TAYLOR

On August 25, 2014, it was reported that **Engine Capital LP** and **Red Alder LLC** sent a letter urging **Ann Inc.** (the owner of the Ann Taylor Chain) to sell itself. Engine and Red Alder stated that the Company would be worth $50-$55 per share to a private equity firm or even more to a "strategic buyer". Engine believes that the Company should conduct a strategic review.

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1 Question 10 Activists

In a new segment for *The Activist Report*, instead of asking one individual ten questions, we decided to ask ten of the top activists the same question. We would like to thank each activist for taking the time to answer our question for this month's edition of *1 Question, 10 Activists*.

13DM: What are your three most important criteria in selecting an activist investment and why?

Bill Ackman (Pershing Square): Business quality, price, governance structure.

David Batchelder (Relational Investors): Most activist investors are looking for the same thing - an undervalued stock with a clear path to correct the undervaluation and no structural impediments such as concentrated insider ownership. The secret sauce is predicting the likelihood and degree of success versus the time and effort necessary to achieve the goal. If you have the patience and ability to work constructively, then you can take on a long-term project like Relational did at The Home Depot. If

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rent insider trading rules.

Here, we seek to provide a basic understanding of the current insider trading laws and to help clarify the applicability of insider trading rules in certain common circumstances involving activist investors.

While insider trading scandals have dated back to at least the mid-80s, recently hedge funds have found themselves at the center of enforcement efforts. In fact, just as this article goes to print, Mathew Martoma, the portfolio manager who worked for an affiliate of billionaire Steve Cohen's SAC Capital Advisors, was sentenced to nine years in prison, one of the longest prison sentences ever handed out for an insider-trading conviction. The recent high-profile investigations also include the FBI's and SEC's investigation of Carl Icahn and Phil Mickelson in connection with trades made in 2011 and 2012 and Allergan's recent lawsuit and the SEC investigation into Pershing Square's nearly 10% investment in Allergan.

Of particular note, Pershing Square-Valeant's hostile bid for Allergan is one of the first known instances where the activist's acquisition program, itself, has been at the heart of the insider trading allegations. When Pershing Square and Valeant first filed their Schedule 13D reporting a nearly 10% position in Allergan, there was nothing at the time that seemed to suggest any classic insider trading was involved. While Pershing Square acquired its stake with knowledge that certain future events, including the filing of its Schedule 13D and its public acquisition proposal, would certainly lead to an increased Allergan share price, neither Pershing Square nor Valeant had obtained any material nonpublic information (or MNPI) from Allergan.

It is well-settled that a prospective bidder can accumulate a stake in a target without disclosure of its own plans. So what then served as the basis for Allergan's allegation that Pershing Square and Valeant had violated the insider trading rules? As we will see later, SEC insider trading rule 14e-3 relating to tender offers provides that once a prospective bidder has "taken a substantial step or steps to commence a tender offer," then any person other than the bidder who is in possession of MNPI relating to such tender offer is prohibited from acquiring shares in the prospective target. For its part, Pershing Square will seek to show that it was, in fact, a co-bidder with Valeant and that they had not taken steps to start a tender offer when Pershing Square acquired its Allergan position.

The insider trading rules are largely guided by the rationale of promoting transparency and informational parity in the marketplace. The fact remains, however, that informational asymmetry will always exist among investors. Activist investors have the ability to potentially move markets by making their views public on a given company or by merely filing a Schedule 13D. Investors commonly trade knowing that such a future event within their control is likely to result in an increase in a company's share price. This does not mean that by doing so such investors somehow run afoul of the insider trading rules. In fact, as the insider trading rules have developed in the courts, the Supreme Court has specifically rejected the notion that the mere possession of MNPI can rise to insider trading and has dictated that a breach of duty is also required. Note, however, that things are different in the European Union, which has embraced a more expansive view of insider trading where anyone who obtains MNPI concerning an issuer or a security, or misappropriates it, should either disclose it (when allowed) or abstain from trading, and that tippees aware of the material and nonpublic nature of the information received should also disclose it or abstain from trading.

The process of information-gathering is fundamental to any activist investor's diligence on a potential portfolio company. Activist investors will typically speak with analysts, investment bankers, investment firms, company management and IR, and other shareholders prior to acquiring a significant stake in a company. Each of these situations could create a scenario where an investor unintentionally comes into possession of MNPI. In order to maintain maximum trading flexibility and avoid any implication of unlawful insider trading, the investor should take care to establish certain guidelines for these discussions and ensure that the third party in question is not sharing information in confidence.

As the number of activist investors continues to grow, it is becoming increasingly common for these investors to exchange views with one another on their portfolio positions as a way to test and fine-tune their investment theses. It is generally permissible for investors to share information about their trades before announcing them, and though there are certain exceptions, it is generally not insider trading for an investor to transact in the shares of a company based on information learned during non-confidential discussions with another shareholder, even when such information has market-moving potential and may provide the investor with an inherent advantage over other shareholders. Of course, such investors will want to take the necessary care and precaution to avoid any implication that they have formed an unintended Section 13(d) group.

The recent insider trading investigations have only exacerbated the confusion among investors as to how the insider trading rules operate. At the end of this article we present some basic fact-patterns to help clarify the applicability of insider trading rules in certain common scenarios involving activist investors.

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UNLAWFUL INSIDER TRADING (cont'd. from pg. 2)

Activist investors are also increasingly joining the boards of directors of their portfolio companies. Regardless of whether an activist investor may be wearing its shareholder or director "hat" at any given time, it is vitally important that they fully grasp how the insider trading rules operate.

This article is not meant to be a comprehensive treatise on the complex nuances of US insider trading laws, but rather attempts to provide a basic understanding of the insider trading rules, as well as the general types of activities that are permitted and proscribed, particularly those activities in which activists may be involved on a day-to-day basis.

Current Insider Trading Rules

There is no specific statutory definition of what constitutes illegal insider trading in the US. Instead, insider trading is covered under the broad anti-fraud provisions of federal securities law. The law of insider trading has been largely developed on a piecemeal basis by the courts, with the definition of illegal activity alternately expanding and contracting.

The conceptual confusion in how we define unlawful insider trading is perhaps best summed up by William D. Cohan in a NY Times Dealbook column from earlier this year:

> "What constitutes the legal definition of insider trading is a messy, murky business, and always has been. There is no law that defines 'insider trading' per se, only a few rules promulgated by the Securities and Exchange Commission (and that only a securities lawyer could love) that define insider trading as the buying or selling of securities knowing you have 'material nonpublic information' about them, obtained from someone who breached a duty of confidentiality or trust."

There are generally three legal theories on which one could be found to have engaged in unlawful insider trading. Two have emerged under Section 10(b) of the Exchange Act and Rule 10b-5 and the third under Section 14(e) of the Exchange Act and Rule 14e-3.

Classical Theory

Under the so-called classical theory, a person engages in unlawful insider trading by trading on MNPI without first disclosing that information to the marketplace if he or she owes a fiduciary duty to the company's shareholders or prospective shareholders (i.e., is an insider) and breaches that duty. Insiders generally include officers and directors, controlling shareholders, employees of the issuer, the issuer itself, temporary insiders and other fiduciaries.

In the tipping scenario, under the classical theory, the person receiving the tip, and the tipper, will only be liable if the tipper breaches a fiduciary duty with the intention to personally benefit and the recipient knew or had reason to know that the insider breached its fiduciary duty and would benefit personally (either monetarily or as a gift) from the tip.

The classical theory is being overshadowed, however, by the misappropriation theory as the more common enforcement approach.

Misappropriation Theory

Under the misappropriation theory, a person engages in unlawful insider trading when, in connection with a purchase or sale of securities, a person misappropriates MNPI provided to him or her by trading on the basis of such MNPI for personal benefit, in violation of a fiduciary duty or similar duty.

There is a misappropriation where there is a fiduciary (or similar) relationship between the trader and the source of the information, and the trading was in breach of a duty not to misuse the information in question. Courts have held that a person is not entitled to profit as a result of fraud. Many times the fraud is perpetrated on the trader's employer. The tipping analysis is the same under the misappropriation theory.

Under 10b-5 the Supreme Court has been clear that there must be a breach of a fiduciary duty. Courts have acknowledged several relationships that create a fiduciary duty at common law, including attorney and client, executor and heir, guardian and ward, trustee and beneficiary, principal and agent, and senior corporate executive and shareholder. Rule 10b5-2 expands traditional fiduciary duty concepts by proving a non-exhaustive list of instances which create a duty specifically for purposes of the misappropriation theory: (1) whenever a person agrees to maintain information in confidence, (2) where the person disclosing material nonpublic information and the recipient have a history of sharing confidential information and the recipient reasonably should know that the person communicating the material nonpublic information expects the information to be kept confidential, and (3) whenever a person receives material nonpublic information from his or her spouse, parent, child or sibling (this is rebuttable if the recipient can demonstrate that he or she did not have reason to know that the person disclosing would expect confidentiality based on their history of sharing confidential information).

The scope of tippee liability is also subject to uncertainty based on recent rulings in the federal courts. In the criminal prosecution of Rengan Rajaratnam, the Judge dismissed insider trading claims for lack of evidence that the defendant knew that the stock tips that he received from his brother, Raj Rajaratnam, were obtained in exchange for a benefit. The SEC takes the position that this additional element of proof, namely actual knowledge of a quid pro quo, is not essential. The threat

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of enforcement alone, however, requires adherence to the SEC's position until the law becomes settled.

Tender Offers

Rule 14e-3 establishes a special insider trading rule when a shareholder has knowledge regarding a tender offer. For liability under 14e-3 in the tender offer context, the rule is that: subject to certain exceptions, if a person has taken substantial steps to commence a tender offer, (1) it is unlawful for a person, who is in possession of information which he or she has reason to know is nonpublic and which he or she has reason to know has been acquired from the offering person, issuer, or any officer, director, partner or employee or any other person acting on behalf of the offeror or issuer, to trade in the issuer's securities without first disclosing such information and (2) it is unlawful for the offering person, issuer, or any of their respective officers, directors, partners, employees or advisors, including anyone acting on their behalf (or anyone in possession of material nonpublic information that has reason to know is nonpublic and acquired from such persons) to communicate material nonpublic information relating to the tender offer to any other person in which it is reasonably foreseeable that such communication will result in a violation of the rule.

Rule 14e-3 requires there to have been "substantial steps" to commencing a tender offer. There is no arbitrary timing cutoff and instead courts look at the facts and circumstances.

According to the SEC, a "substantial step" includes, but is not limited to, "voting on a resolution by the offering person's board of directors relating to the tender offer; the formulation of a plan or proposal to make a tender offer by the offering person or the person(s) acting on behalf of the offering person; or activities which substantially facilitate the tender offer such as: arranging financing for a tender offer; preparing or directing or authorizing the preparation of tender offer materials; or authorizing negotiations, negotiating or entering into agreements with any person to act as a dealer manager, soliciting dealer, forwarding agent or depository in connection with the tender offer." This issue has arisen recently in the Pershing Square-Allergan case. Allergan's complaint alleges, among other things, (1) that by the time Valeant and Pershing Square entered into their financing agreement, Valeant had taken substantial steps toward a tender offer, including: (i) hiring financial and legal advisors, (ii) holding multiple board and committee meetings, and (iii) negotiating the respective financial commitments of the parties, and (2) that after taking these substantial steps toward a tender offer, a Pershing Square entity purchased significant amounts of Allergan stock and other securities using zero-strike price call options and equity forwards, without disclosing Valeant's intentions to the market. It appears, however, that Allergan may have an uphill battle in showing that Valeant had, in fact, taken substantial steps to commencing a tender offer that did not launch until months later and only after Valeant first approached Allergan to try to negotiate a 'friendly' deal.

Rule 14e-3 provides an exception for trades made by the bidder itself. This carve-out, however, is itself limited to prohibit the act of warehousing, whereby a bidder tips off someone friendly who then buys shares in the target so that the bidder will have shares in the hands of someone who will tender. This particular exception is also at-play in the Pershing Square-Allergan case, as Pershing Square will argue it is a single person, or co-bidder, with Valeant for purposes of the tender offer, and therefore falls under this exception.

14e-3 does not require knowledge of the trader that a substantial step in a tender offer has been taken or that the information is even related to a prospective tender offer, but rather the information could be more general, for instance, that some significant transaction will occur.

There are two specific exceptions to 14e-3: purchases by a broker or another agent on behalf of an offering person and sales by any person to the offering person. There is also a general exception for a multiservice institution where certain employees have knowledge of the MNPI regarding the tender offer and another group of employees that trades in the target securities does not. The safe harbor requires that a Chinese Wall be established. There are also exceptions to the tipping prohibition in 14e-3 for communications in good faith to directors, officers, agents, advisors or employees of the offering person or the target in connection with the bid, or communications made in good faith pursuant to a requirement of a statute or regulation.

Material Nonpublic Information

Information subject to insider trading laws must be "material" information. According to the Supreme Court, information is material if "there is a substantial likelihood that a reasonable shareholder would consider it important" in making its investment decision and that there must be a substantial likelihood that it "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." With respect to contingent or speculative events the answer will depend on a balancing of the probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company's activity.

With respect to the requirement that the information is nonpublic, the rule is whether the information is accessible to the public generally (which requires public dissemination). Different lengths

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of time have been applied to determine when an insider can trade on information that has been publicly disseminated. Another approach used in litigation is whether the information has been fully internalized into the price of the company's securities (when the stock price levels off after the release of news).

Enforcement

The SEC investigates insider trading activities and the US Department of Justice and the US Attorney's Office may bring either a criminal case or a civil case against an alleged violator of insider trading laws. There is also a private right to sue under 10b-5 and 14e-3 for people who trade in the subject securities contemporaneously with the trades made by the alleged violator.

In civil cases brought by the government, courts may require all profits to be disgorged and may issue an injunction on further activity. In addition, courts may also impose a civil penalty on the trader or tipper of up to 3x the trading gains or losses avoided. Courts may also impose a civil penalty on persons who control such primary violator. The civil penalty in that case is up to the greater of (i) $1 million or (ii) the profits resulting from the underlying violation. Liability may be avoided by a controlling person if it cannot be established that they knew or recklessly disregarded the fact that the controlled person was likely to engage in the actions leading to the violation and failed to take appropriate steps to prevent them. Broker-dealers and investment advisors, by contrast, will incur liability if it can be shown that they knowingly or recklessly failed to establish and enforce a policy or procedures with respect to insider trading and that such failure substantially contributed to the insider trading.

In a criminal case, the penalty for a person who willfully violates insider trading laws is a fine of up to $5 million ($25 million for companies) and/or imprisonment for up to 20 years. Defendants may be able to escape imprisonment and only be subject to fines if they can establish that they had no knowledge of the rules that they violated. Defendants in insider trading cases are also typically charged with mail and wire fraud.

Regulation FD

The SEC adopted Regulation FD in 2000 to address the selective disclosure of information by publicly traded companies and other issuers. Regulation FD provides that when an issuer discloses material nonpublic information to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

The timing of the required public disclosure depends on whether the selective disclosure was intentional or unintentional. Accordingly, the company must make this public disclosure (i) simultaneously, in the case of intentional disclosures, or (ii) promptly afterwards, in the case of unintentional disclosures. The public disclosure may be made through an Exchange Act filing (such as a Current Report on Form 8-K) or through any method reasonably designed to effect broad, non-exclusionary distribution of the information. Regulation FD does not provide a private right of action and does not impact the analysis of whether one has engaged in unlawful insider trading.

Common Scenarios Facing Activist Investors

The following fact-patterns have been simplified and are intended to help clarify the applicability of insider trading rules in certain common circumstances involving activists. To be clear, actual factual scenarios that arise from time to time often entail a more complex set of facts and circumstances, and therefore activist investors are urged to consult with their respective legal counsel whenever there is uncertainty about whether the activist investor may be in possession of MNPI.

Question 1

If I receive information from a former employee of Company X, does it constitute insider trading if I trade on the basis of that information?

It depends. Generally, employees owe a fiduciary duty to their employer (and its shareholders) and therefore if they provide material nonpublic information to someone and receive, and that person reasonably knows they will receive, a personal benefit, then that person is prohibited from trading while in possession of such information. While there are cases which have imposed a similar duty on former employees, provided that sufficient time has passed since their employment ended, they would likely no longer owe a fiduciary duty (provided no other duty applied at the time) and therefore any information that they provide which may be material and nonpublic should no longer be subject to insider trading restrictions. Additionally, the more time that has passed since their employment ended, the less likely that any such information conveyed by such former employee is deemed "material." However, it is less clear where the employment has more recently terminated.

Question 2

If I received information from an investment banker about Company X, which the banker learned through independent research or through general word of mouth each in the course of his work and neither the investment bank nor the banker have engaged in a representation of Company X, does it constitute insider trading if I trade on the basis of that information?

Probably not. The Supreme Court has held that, other than in a tender offer

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context, liability will only be imposed if there is a breach of a fiduciary duty. In this case neither the investment bank nor the banker owes a fiduciary duty to Company X as it was not a client (or former client) and there is no indication that the banker misappropriated the information from the investment bank.

What if Company X was a client of the investment bank?

Probably. An investment banking relationship has been identified by courts as being a fiduciary relationship. MNPI regarding a client is confidential and therefore the banker would likely be in breach of such duty by disclosing the information to the investor.

Question 3

If I anticipate filing a Schedule 13D or making public statements about Company X and I expect that Company X's stock will increase as a result, does it constitute insider trading if I trade today on the basis of this information?

No. Since this is not in the context of a tender offer, in addition to the possession of MNPI there must also be a breach of a fiduciary duty. Trading on MNPI without breaching a duty does not constitute unlawful insider trading. A non-controlling shareholder does not owe a fiduciary duty to the company or its shareholders and therefore trading on the basis of this information is in all likelihood not insider trading.

Question 4

If a fellow shareholder, Fund Y, informs me that Company X has rejected Fund Y's private, unsolicited acquisition offer for Company X and that Fund Y has therefore decided to commence a hostile tender offer for Company X (and has hired advisors, prepared tender offer documentation and is securing financing for the tender offer), would it constitute insider trading if I trade on the basis of that information?

Most likely. Rule 14e-3 prohibits trading while in possession of MNPI from an offeror regarding a tender offer which the offeror has taken substantial steps in furtherance of commencing. Here, where it appears that Fund Y has made a determination to commence a tender offer, it is likely that Fund Y would be found to have taken substantial steps to commencing its tender offer. On these facts, you would be well advised to refrain from trading prior to the public disclosure of the tender offer.

What if I don't trade on the information but I tell another activist friend who indicated he may want to trade in Company X securities, would that violate insider trading rules?

Probably. Rule 14e-3 expressly prohibits someone who is in possession of MNPI regarding a tender offer, if they have reason to know the information has been acquired directly or indirectly from the offering person, from communicating to any person under circumstances where it is reasonably foreseeable that the communication will result in a violation of Rule 14e-3.

Question 5

If I meet with a fellow shareholder, Fund Y, to discuss our respective views on Company X, and during the course of our discussion Fund Y indicates that it intends to file a Schedule 13D and submit public nominations of director candidates in the coming weeks, would it constitute insider trading if I trade on the basis of that information prior to the filing of the Schedule 13D and public nominations?

Probably not. It is generally permissible for investors to share information regarding their investments before announcing them, and any such information that an investor shares with another investor regarding its intentions with respect to an investment is not MNPI. This assumes that the disclosing investor does not otherwise have a duty to keep such information confidential, and has not shared this information in confidence. The investors will want to take the necessary precautions to avoid being deemed a "group" under Section 13(d) of the Exchange Act.

Conclusion

Given the recent and substantial increase in the popularity and public visibility of shareholder activism, public and governmental scrutiny into activists' activities has increased. It is important for activists, particularly given their engaged involvement, to be mindful of the rules regulating insider trading and to consult with their counsel.

Steve Wolosky and Andrew Freedman are attorneys in Olshan Frome Wolosky's Activist Practice Group, one of the nation's premier practices representing investors in activist situations.

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1 QUESTION, 10 ACTIVISTS (cont'd. from pg. 1)

the undervaluatiuon is significant and the path clear (think Timken Co.), then a persistent and concentrated effort is called for. Occassionally, the company is already headed in the right direction and the activist role is just complimentary as it was for us in Flowserve Corp. In all cases, the activist agenda must be based on sound analytics focused on creating long-term shareholder value.

Alex Denner (Sarissa Capital Management): We estimate the valuation of the company assuming it is run optimally for shareholders, and then compare that valuation to the current stock price. When the market price is at a big discount (to the value when optimally run for shareholders), we carefully study what is causing the discrepancy, and evaluate plans (and their probability of execution) to focus the company better on shareholder value.

Mick McGuire (Marcato Capital Management): First, we must like all of our activist investments as passive investments; activism is a tool we use to amplify the value of an already compelling passive holding. We consider business quality, hard asset value, cash flow generation, macro/micro trends, and valuation and must be confident that we have both downside protection and are likely to earn an attractive return even without the catalyst of activism. Second, we look for activist ideas that enhance the long-term strategic objective of the company. Our most successful activist investments have been in companies that can execute their existing business strategy with lower capital requirements (increasing returns on capital) or with the same capital employed but can fund the business with lower cost sources of debt and equity capital. Significant long-term value can be created when an already good business can find ways to execute its business plan more efficiently. Third, we are conscious of the ownership structure and corporate governance of the company; it must allow for shareholder influence. For example, a board of directors is charged with doing what is best for all shareholders, so it is critical to have confidence that either the existing shareholders are supportive of change or that the shareholder base is likely to shift towards investors who will appreciate the value to be gained by change.

Keith Meister (Corvex Management): In considering investment opportunities, Corvex looks for the following attributes:

o A fundamentally high quality business that can benefit from change, and where implementing change will lead to value creation

o A protected business model with strong long-term financial prospects and cash flow, and

o Management and boards who are willing to engage constructively with us as a stakeholder regarding our thoughts on value enhancement.

Nelson Peltz (Trian Fund Management): Trian invests in undervalued and under-performing publicly traded companies with the goal of working constructively with the management teams and boards of those companies to enhance shareholder value through a combination of strategic re-direction, improved operational execution, more efficient capital allocation and stronger focus. Trian typically invests in companies that meet the following three criteria:

1. Leading public companies in the consumer, fee driven financial and industrial sectors, where Trian has significant experience and sees little exogenous risk;

2. Companies that are prolific cash flow generators with strong balance sheets; and,

3. Companies where Trian sees opportunities to execute operating and strategic initiatives to unlock long term shareholder value.

Trian seeks to invest in businesses that meet the above criteria at prices we deem to be materially below intrinsic value and trading at a discount to peers. We often see opportunities where investors do not have confidence in the reward side of the equation or do not have the vision for the potential of these businesses. In most cases, management has stumbled as a result of poor capital deployment, unsuccessful acquisitions, poor execution, flawed strategy or some combination of all of these factors. In other cases, management has been overly cautious and failed to capitalize on market opportunities. To a passive investor, the result is a stock that represents minimal risk, but questionable upside. This is where we believe our business model differentiates us.

Because Trian has a track record of direct operating and corporate turnaround experience and strong relationships with other institutional investors, we are often able to influence corporate behavior (strategy, cost structure, capital deployment, growth initiatives, etc.) of our core portfolio companies. For Trian, that same company with minimal risk and seemingly limited upside can actually possess the potential for meaningful equity upside. We believe this ability to influence corporate behavior, and thus have a level of control over our destiny, provides us an attractive risk/reward dynamic that leverages our operations-centric investment strategy. This is the essence of Trian.

Steve Quamme (Cartica Management): Compared to the US and other developed markets, emerging markets are characterized by controlling shareholders, lower liquidity and, often, less price discovery. These factors can work to create great investment opportunities

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but we must then persuade the company to do things differently. After deciding which countries present the most favorable investment environment from a macroeconomic and political perspective, the most important criteria are:

1. Identification of engagement opportunities on issues where change could have a meaningful impact on the stock price within a reasonable period of time;

2. Some level of belief that the controlling shareholders or management are receptive to considering the necessary changes; and

3. The fundamentals of the company show it to be an attractive investment – valuation, integrity of management, strong balance sheet, defensible business model, etc.

Cliff Robbins (Blue Harbour Group): For Blue Harbour, the criteria is straightforward and always the same: (1) the company needs to be trading at what we believe to be a very significant discount to its intrinsic value, (2) we need to have identified a number of actionable steps that can be taken to close that gap to create and unlock shareholder value, and (3) we need to have confidence that the senior management and the Board not only run the business well but also have a real desire to close the value gap and deliver shareholder value.

Barry Rosenstein (JANA Partners): We call it our "v-cubed" test, which refers to Value, Votes and a Variety of ways to win. "Value" means investing at a compelling valuation which provides a margin of safety, which is crucial to any investment we make whether active or passive. "Votes" means that we feel confident that, if necessary, the requisite level of shareholder support can be obtained. Last, "Variety of ways to win" means that ideally we are not dependent upon a single outcome to be successful. No matter how well you plan things out, there is always some level of unpredictability in any activist investment, so it's best to have multiple paths to value creation in case one of them gets blocked. Requiring that all of these criteria be met means that we pass up a lot of situations, but because activism is only one part of our broader strategy we can afford to be selective and wait for the stars to align.

Jeff Smith (Starboard Value): Activist investing is different than traditional investing. Traditional investing requires one to analyze whether a company is undervalued and will appreciate in value based on management's ability to execute according to their existing business plan. Activist investing, on the other hand, requires one to identify companies that are undervalued based on the opportunity to either change the business plan or improve the execution of the company and one's confidence that such a change can, and will, be implemented based on influence from shareholders.

The three most important criteria for us in selecting an activist investment are value, plan, and path. We believe these three elements, and the discipline around them, are far and away the most important prerequisites for a successful activist idea. We believe our value, plan, path discipline allows us to avoid value traps, create our own catalyst, and improve performance and value at companies.

Value:

We look for companies that trade at a significant discount to intrinsic value. We measure this value on an absolute basis. In other words, we look for companies which trade at material discounts to their asset value or a conservative measure of the expected improved cash flow after the implementation of our value creation plan.

Plan:

For every position in our portfolio, we have identified an alternative plan to unlock value on a stand-alone basis which, we believe, is significantly better than management's existing plan. Our research team spends a significant amount of time developing a plan for each company that focuses on actions that are within the company's control, such as reducing costs, exiting money-losing businesses, generally improving operations, and optimizing assets. We generally develop plans aimed at significantly improving the profitability and performance of the operations of a business. In most cases, we publish in-depth presentations which detail the opportunities available to the company to improve value for shareholders.

Path:

Identifying an undervalued company and developing an alternative plan to unlock value is not enough if we do not believe that an alternative plan will be implemented. We need to have confidence that if management and the board do not respond to our involvement by improving operations and value at the company, that we will have the ability to run, and win, an election contest in order to effect change on the board. If management and the board choose not to work with us and are not creating value on their own, replacing board members may be necessary in order to ensure that our plan, or something better, can be implemented to drive value. We call this "path". An evaluation of the path requires a deep understanding of the company's corporate governance mechanics as well as the sentiment of the shareholder base.

It is only after we have gained confidence that we have fully identified, evaluated, and confirmed these three criteria -- Value, Plan, and Path -- that we are prepared to move forward with an activist investment.

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TIM HORTONS (cont'd. from pg. 1)

ments ultimately proved to be valid, and less than a year later, Tim Hortons was spun off into a separate public company. Since then, Tim Hortons Inc.'s ("THI") common stock has returned 198% versus 53% for the S&P500.

In April of 2012, Pershing Square announced that it had acquired a significant stake in Burger King Worldwide, Inc. ("BKW") through its specialty purpose acquisition vehicle, Justice Holdings. Pershing Square's stake today is 11.9%. In August of 2014, Burger King announced that it was in talks to buy Tim Hortons and THI would become a part of BKW ceasing to be a separate public company.

Why is it that Pershing Square fought vehemently to separate THI from one burger chain and less than 10 years later is offering a premium to make them a part of another burger chain? A deeper look and comparison of 2005 Wendy's and 2014 Burger King shows that both strategies may be correct.

In 2005, Wendy's was a company that owned most of its restaurants, was poorly managed and was using the cash flow from the successful, primarily franchised Tim Hortons to fund the capital intensive Wendy's business. Spinning off THI freed this business from the Wendy's anchor allowing it to thrive as a separate company while at the same time unmasking many of the problems at Wendy's for which it would have to find a solution. This set the stage for Trian Partners, who assumed a significant level of control over Wendy's in 2008. Trian made several changes, including selling the Arby's business, and Wendy's stock price stopped declining and is up 60% since Trian got involved.

Burger King, on the other hand, is a company like THI that franchises almost all of its restaurants making it a better fit for THI. Also, while Wendy's 2005 management was widely believed to be underperforming, 3G Capital and the Burger King management team are almost universally believed to be one of the best operators in the business. Moreover, 3G Capital and Burger King have vast experience and expertise in international expansion, something that is the primary growth area for THI. Burger King has franchises in 97 countries and US territories, including over 7,000 in the US. THI has restaurants only in the US and Canada, except for 38 in the Middle East (primarily United Arab Emirates), with less than 1,000 in the US. So, having access to Burger King's international infrastructure, managerial expertise and network of franchisees and other contacts could greatly accelerate domestic and international growth of Tim Hortons.

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New Filings for August

Company Name	Investor	Mkt. Cap.	Filing Date	%	Cost	Item 4 Action
Armstrong World Industries (AWI)	ValueAct	$2.67B	8/1/14	16.80%	n/a	n/a
Micrel Inc. (MCRL)	Starboard	$607.73M	8/7/14	12.00%	$10.61	n/a
Gannett Company, Inc. (GCI)	Icahn	$7.68B	8/14/14	6.63%	$31.77	n/a
Rackspace Hosting, Inc. (RAX)	Blue Harbour	$4.55B	8/18/14	6.40%	$32.59	n/a
Bellatrix Exploration Ltd. (BXE)	Orange Capital	$1.39B	8/19/14	5.30%	$8.26	increase shareholder value
Hertz Global Holdings, Inc. (HTZ)	Icahn	$13.29B	8/20/14	8.48%	$28.35	potential board representation
LNB Bancorp Inc. (LNBB)	PL Capital	$126.03M	8/20/14	9.30%	$12.07	sell company
Town Sports Int'l Holdings (CLUB)	HG Vora	$104.02M	8/21/14	16.00%	n/a	consider strategic alternatives
Investors Bancorp Inc. (ISBC)	Blue Harbour	$3.80B	8/21/14	5.70%	$10.36	n/a
Layne Christensen Company (LAYN)	Van Den Berg Mgmt.	$223.90M	8/25/14	16.20%	$18.75	reorganization of business

One to Watch

Company

Armstrong World Industries (AWI)
Market Cap.: $2.67B ($48.68)
Enterprise Value: $3.63B
Cash: $156.80M
Debt: $1.12B
EBITDA: $300.90M

Investor

ValueAct Capital
13F Holdings: $13.53B
# of 13F Positions: 14
Largest Position: $3.10B
Avg. Return on 13Ds: 60.82%
Versus S&P500 avg: 10.00%

Investment

Date of 13D: 8/1/14
Beneficial Ownership: 16.80%
Average Cost: n/a
Amount Invested: ~$448.55M
Highest price paid: $55.24
# of larger shareholders: 1

ValueAct Capital is a "governance-oriented investor" and historically has been on the boards of approximately half of the companies in its portfolio. While ValueAct is active in many of its portfolio companies, it files 13Ds in all of its 5% positions (as opposed to passive 13Gs), regardless of its intended level of involvement. In half of its companies, it will support management from afar and in the other half they will get on the Board because they feel it is needed. ValueAct is the type of "activist" investor who generally invests in good businesses with management it likes rather than businesses that need restructuring or management that needs changing. ValueAct will make itself available to management to help strategically, operationally or financially. AWI is a high quality business, particularly its ceiling business that is a dominant player in an effectively two player market. This business has good margins and has grown earnings through the market weakness since 2009. The Company has made good strategic investments in emerging markets like Russia and China and that capex should start declining and those investments should start generating cash flow in the near future. ValueAct is a patient investor who will wait for the best entry points for their investments. This is a Company with temporarily depressed profitability in a commercial construction market that is close to the bottom of its cycle and that has come off of recent earnings misses bringing the stock down from over $60 per share earlier this year

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UNDER THE THRESHOLD (cont'd. from pg. 1)

NEW

On August 14, 2014, Ryan Drexler, President of **Consac, LLC**, sent a letter to the Board of **bebe stores, Inc.** expressing his conclusion that the Company needs to explore possibilities for maximizing value, including a sale of the Company, whether to a third party or through a going private transaction. Drexler questions Manny Mashouf's role as both a paid director and a consultant to the Board. Drexler also believes the Company has been unsuccessful in communicating a convincing strategy that addresses the core issues of declining sales, dwindling customer traffic and lack of fashion focus and imagination. He also notes that progress has been slow in developing an e-commerce offering that can offset the increasingly high cost of rent, personnel and the deleveraging of store infrastructure. He also states that the Board and management lack adequate fast fashion retail experience.

NEW

On August 14, 2014, **Voce Capital Management LLC** filed a definitive proxy statement for the nomination of the following three independent directors to **CONMED's** Board at the 2014 Annual Meeting: James W. Green, Joshua H. Levine and J. Daniel Plants. Voce also sent a letter to shareholders of the Company citing certain areas of ongoing concern: (i) the Company's legacy directors wield enormous power, holding two of the Board's four leadership positions, including Chairmanship; (ii) the Board recently appointed one of its own as "interim" CEO; (iii) the Board, in Voce's view, mishandled its effort to sell the Company; and (iv) according to Voce, the Board blatantly manipulated the electoral machinery, including a four-month delay in the annual meeting.

NEW

On September 10, 2014, **JDS Uniphase Corp.** announced its intention to separate into two publicly traded companies - an optical components and commercial lasers company and a network and service enablement company. Reportedly, **Sandell Asset Management** had been pressuring the Company in recent months to split up.

NEW

On August 12, 2014, **Praesidium Investment Management Co**. sent a letter to **TIBCO Software Inc. (TIBX)** and stated that it was happy to read in the Wall Street Journal that the Company has started to reach out to potential acquirers. Praesidium supports the Company's exploration of a potential sale as a way to maximize value. However, Praesidium notes that the article states that the talks are not part of a formal process and are being spearheaded by the Company's CEO. Praesidium believes a rigorous, formal process is required in order for the Board to make a fully informed decision on whether a sale, stand-alone strategy or another alternative is in the shareholder's best interests. Praesidium believes that in order to avoid a conflict of interest, the Board should form a special committee of independent directors to engage with an investment bank and legal advisors.

NEW

On September 8, 2014, **Walgreen Co. (WAG)** announced that it is giving **JANA Partners, LLC** (approx. a 1% holder) two Board seats. In connection with Barry Rosenstein's election to the Board, JANA and the Company entered into a Nomination and Support Agreement, which, among other things, provides for the appointment of an additional independent director recommend by JANA and agreed to by Walgreens. Also, if there is a vacancy which the Company's Board chooses to fill during the term of the agreement, such replacement director will be mutually agreed to by the Company and JANA.

UPDATE

On June 30, 2014, Ron Zwanziger resigned as CEO, President and director of **Alere**. Namal Nawana, COO, was appointed to serve as Interim CEO and President. Also, on the same day, Jerry McAleer, SVP - Research and Development and a member of the Board, and David Scott, Chief Scientific Officer, resigned their respective positions. On August 4, 2014, Alere stated that the second quarter was a period of significant transition and that the Company is now narrowing its focus on its rapid diagnostic business and pursuing opportunities with the highest potential for value creation.

UPDATE

At the Annual General Meeting held on July 16, 2014, all of **FirstGroup's** resolutions were passed, including the renumeration report.

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UNDER THE THRESHOLD - ONGOING SITUATIONS

Abercrombie &Fitch

On December 3, 2013, **Engaged Capital** sent a letter to the Board of **Abercrombie & Fitch. Co (ANF)** urging them not to renew CEO Jeffries' employment agreement when it expires on February 1, 2014 and to immediately commence a CEO search for candidates with relevant retail apparel and turnaround experience. Engaged believes that the Company's continuing underperformance is a result of a failure of leadership. Engaged notes that management's strategy of investing hundreds of millions of dollars to expand the Company's domestic footprint has resulted in a materially overbuilt U.S. store base which has led to years of store closures and asset impairments. Engaged also notes management has pursued the same "spendthrift capital allocation discipline" internationally through a high-risk flagship store strategy which has saddled the Company with costly and underperforming stores in Europe and Japan. Also, Ruehl and Gilly Hicks, the Company's two newest brands were costly failures. Altogether, according to Engaged, investors have suffered through asset impairments and operating losses of over $500 million during the past six years alone, operating margins that have deteriorated from over 21% in 2007 to below 5% today, and return-on-capital declined from over 20% to levels below the Company's current cost-of-capital. While Engaged believes that investors should benefit from recently announced expense reductions of over $130 million in fiscal 2014, they note these changes are coming a full six years after margins and returns drastically declined. In the letter, Engaged discusses that the Company's management team has a reputation for habitually underestimating and under-executing on the changes needed to remain competitive in the fast moving teen apparel market. Since 2000, the Company has only generated positive same-store-sales five times while experiencing material declines in eight of the last fourteen years, and over this time period, compounded same-store-sales have declined by 41%. However, Engaged notes the Company still maintains brands with domestic and international appeal, a highly profitable direct-to-consumer business, and significant cash flow generation potential. The Company has consistently been cited as an attractive target for private equity investors, and Engaged believes a sale may be the best option for shareholders. Engaged is concerned that the Company has not identified any internal successors to Mr. Jefferies and believes the renewal of Jeffrie's employment contract would be a direct contradiction to what the Company needs and what shareholders want. Engaged points to the say-on-pay voting results of the Company's recent annual meetings as evidence of shareholder unrest. Shareholder support for ANF's say-on-pay proposals was 56%, 25%, and 20%, for 2011, 2012, and 2013, respectively, versus an average approval rating for say-on-pay proposals in the S&P 500 of approximately 90% in each of the past three years. Despite activist pleas to retain a new CEO, on December 9, 2013, the Company entered into a new and restructured employment agreement with Michael Jeffries. The new contract pays a base salary of $1.5 million a year, to be reviewed annually. He will have an annual target bonus opportunity of 150% of his base salary and a maximum bonus opportunity of up to 300% of his base salary. In the new agreement, he is eligible to receive long-term incentive awards each year with a target value of $6 million. Also, he will be entitled to use, for security purposes, the Company's aircraft for up to $200,000 of personal travel.

On January 28, 2014, Abercrombie announced that it appointed Arthur C. Martinez (appointed as Non-Executive Chairman), Terry Burman, and Charles R. Perrin to its Board. Abercrombie also announced separating the roles of Chairman of the Board and CEO. Michael Jefferies, who served as Chairman since 1996, will continue to serve as a director and as the Company's CEO.

On February 20, 2014, Engaged Capital announced that it has nominated the following individuals for election to the Board of Abercrombie at the upcoming 2014 Annual Meeting: (i) Alexander P. Brick, former Chief Executive Officer of Specialty Retail Group; (ii) Robert D. Huth, former Chief Executive Officer of David's Bridal; (iii) Michael W. Kramer, former Chief Operating Officer of J.C. Penney; (iv) Diane L. Neal, former Chief Executive Officer of Bath & Body Works; and (v) Glenn W. Welling, CIO & Managing Member of Engaged Capital. Engaged states that despite governance improvements (instituted only after stockholder pressure), the Board still lacks a majority of qualified, independent voices. Engaged also notes that this public nomination follows the failure of weeks of private outreach to the Board to arrive at a negotiated settlement, which Engaged believes proves the incumbent directors' unwillingness to put the interests of the Company's stockholders ahead of their own interests.

On April 7, 2014, Abercrombie disclosed that the Compensation Committee of the Board made a number of significant changes to the structure of the 2014 equity awards, reflecting shareholder input and the Company's ongoing commitment to the best practices in executive compensation and corporate governance. The Committee believes this approach will support business objectives and will align with stockholders' interests.

On April 30, 2014, Engaged Capital and the Company entered into a settlement agreement pursuant to which Engaged will withdraw its notice of nomination of directions and will vote in support of all the Company's nominees at the 2014 Annual Meeting. The Company agreed it will nominate four new independent director candidates. Engaged Capital will also abide

UNDER THE THRESHOLD - ONGOING SITUATIONS

by customary standstill provisions.

Coppersmith Capital Management was recently a 13D filer on Alere, as part of a group with Scopia Capital Management. The Group nominated three individuals for election to Alere's Board and detailed a strategic plan to enhance value at the Company which included, among other things, divesting the Health Management division, while partnering to preserve any attractive product sales, commencing an aggressive de-leveraging program with divestitures of non-core businesses and rationalizing operations, focusing on cost reductions. At the 2013 Annual Meeting, Coppersmith and Scopia narrowly failed to get their nominees elected, and shortly thereafter, Coppersmith and Scopia terminated their group.

On June 19, 2014, Coppersmith (now as a less than 5% shareholder) sent a letter to the Company expressing its opinion that the Company could be sold at a significant premium. Coppersmith believes the Company's management and strategic plan appear to be failing and shares the following findings: (i) the CEO has created virtually no value and has failed; (ii) the Company does not have the personnel, assets or market positions to be a meaningful competitor; and (iii) even under new management, the Company's underperforming businesses and bloated capital structure will take significant time and risk to fix. Coppersmith believes it is time to engage a new investment to explore strategic alternatives including a sale of the Company.

On June 3, 2014, **Marcato (2.4%)** sent a letter to the Lead Independent Director of **American Realty Capital Properties, Inc.** outlining its concern with the Company's recent actions. Marcato stated its frustration with the Company's recent equity issuance at $12 per share, a price which Marcato believes undervalues the shares. Marcato highlights that the Company had publicly stated it had no intention to issue equity. Also, Marcato notes the fact that the Company upsized the offering by more than 20%. Marcato believes such willingness to destroy value, by issuing shares at an acknowledged discount to fair value, illustrates a disregard for existing shareholders that Marcato finds very problematic.

Marcato also believes the Company's recent acquisitions, sale of the multi-tenant retail portfolio and equity issuance, have made the Company's financials difficult to understand. Marcato emphasizes the fact that the Company has made two material disclosure errors recently, including overstating fees associated with a transaction by a factor of 10. Marcato believes a large part of the reason the share price has not recovered is because of widespread confusion, concern and doubt about the Company's numbers. Marcato thinks the Company should pause on large-scale transaction activity, give investors a chance to see multiple quarters of clean financial results and rebuild credibility. Marcato ends the letter by stating that if the Company continues to contradict its own statements, disregard shareholder interests and commit multiple reporting and disclosure errors, Marcato will consider actions that are necessary to protect its investment.

Western Investment LLC is soliciting proxies to replace the Board of **Anworth Mortgage Asset Corp**. Western has nominated the following individuals for election to the Board: (i) Paul R. DeRosa, (ii) Gregory R. Dube, (iii) Kenneth B. Dunn, (iv) Ronald Mass and (v) Scott F. Richard. Western is also recommending against the advisory vote on executive compensation and against the 2014 Equity Compensation Plan. Western believes the Company's management has failed and it is time to replace the Board with directors who will take action and maximize value for shareholders. Western states shareholders have seen over a decade of investment declines, and Western does not see any indication that management has the necessary experience or competence to employ the new investment diversification strategy, announced by the Company. Western fears this strategy could be a repeat of past failed efforts.

At Anworth Mortage Asset Corporation's 2014 Annual Meeting, none of the five nominees proposed by Western were elected as directors. The advisory vote on executive compensation and the 2014 Equity Compensation Plan were both approved.

On July 21, 2014, **JANA** (who has approximately a $1 billion stake) sent a letter to investors of **Apache Corp.** and called on the Company to sell off its international holdings to drill exclusively on American soil. JANA pointed out that the Company had poor performance compared with rivals, several of which are pure-play companies that drill exclusively in the U.S. shale formations. JANA also called upon the Company to free up cash flow by

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exiting two projects in Canada and Australia that aim to export natural gas. JANA stated that the Company should consider selling itself if it does not take steps to increase its value. On July 31, 2014, the Company stated that it plans to sell interests in two liquefied natural gas projects in Australia and Canada.

On August 13, 2013, **Icahn** tweeted [@Carl_C_Icahn]: "We currently have a large position in **APPLE**. We believe the company to be extremely undervalued. Spoke to Tim Cook today. More to come." Icahn believes that the Company should buy back $150 billion of its common stock. Icahn says that they can do this by borrowing the money at less than 3%, a unique opportunity, and they would still have a ten times interest coverage ratio and $146 billion of cash on the balance sheet, a portion of which would have to be repatriated if necessary. Icahn believes that a tender offer at $525 per share could result in a $625 stock price if the P/E ratio remains the same and assuming earning do not increase, and he believes they will. In three years, Icahn expects shares to appreciate to $1,250, assuming the market rewards EBIT growth of 7.5% per year with a more normal market multiple of 11x EBIT. Icahn had dinner with Tim Cook and conveyed his recommendation to him. Icahn had since increased his position in Apple to $2.5 billion with intentions to buy more. To invalidate any criticism that he would not stand by his thesis in terms of its long term benefits to shareholders, he states that he would withhold his shares from the proposed $150 billion tender offer. Icahn also said that he would explore running a proxy fight if necessary. On December 4, 2013, Icahn announced that he will submit a precatory proposal to Apple's shareholders at the Annual Meeting, calling for a $50 million buy back in stock.

On January 23, 2014, Carl Icahn reported that he bought another $500 million of Apple's stock, bringing his total investment to $3.6 billion. Icahn also reported that he sent out a seven page letter to the Company's shareholders discussing why buyback should be markedly increased. In the letter, he states his belief that the combination of Apple's unprecedented net cash balance, robust annual earnings, and tremendous borrowing capacity provide more than enough excess liquidity to afford both the use of cash for any necessary ongoing business-related investments in addition to the cash used for the increased share repurchase proposed by Icahn. Icahn believes Apple will be able to participate in this growth without sacrificing pricing and gross margins, especially with its competitors, because of the continuing loyalty of Apple's growing customer base. He further states that as software and services improve and become even more important to consumers in the future, he thinks customer loyalty will strengthen even more. Icahn discusses the scale of opportunity that stems from new products in new categories (which he believes Wall Street analysts lack in their financial projections), including the possibility of an Apple TV, opportunities in hardware alone (i.e. rumors of a smartwatch) and a next generation payments solution. Icahn responds to a potential argument that with so much opportunity, the Company should maintain excess liquidity to increase R&D or make acquisitions, by stating that even after taking such factors into account, he believes tremendous excess liquidity remains. While comparing Apple to Microsoft, its next largest competitor, Icahn notes that Apple has $68 billion more net cash and is expected to generate $18 billion more in earnings during 2014. He also notes that since much of the Company's cash and earnings are international and subject to a repatriation tax if returned to the US to repurchase shares, Apple should simply borrow the money in the US to the extent it deems its domestic cash of $36 billion and domestic earnings are insufficient. Icahn believes this is one of the greatest examples of a "no brainer" he has seen in five decades.

On February 6, 2014, Tim Cook stated in an interview that Apple has recently bought $14 billion of its own shares. In a letter on February 10, 2014, Icahn stated that while he is disappointed that ISS recommended against his proposal, he does not altogether disagree with ISS's assessment and recommendation in light of the recent actions taken by the Company to repurchase shares. Icahn states that in light of these actions and ISS's recommendation, he seeks no reason to persist with his non-binding proposal, especially when the Company is so close to fulfilling his requested repurchase target.

On April 23, 2014, Apple unveiled a plan to increase its share repurchase authorization by $30 billion through December 2015. Additionally, the Board has approved an increase to the Company's quarterly dividend of approximately 8 percent and has declared a dividend of $3.29 per common share, payable on May 15, 2014 to shareholders of record as of the close of business on May 12, 2014. Icahn stated that he agrees with the Company's increased buyback and is extremely pleased with results. He also continues to believe the Company is meaningful undervalued.

On May 15, 2014, **Relational** reported a 3.5% stake in **B/E Aerospace Inc.** and said it will monitor the Company's ongoing process to evaluate strategic alternatives to maximize shareholder value. On June 10, 2014, the Company issued a press release announcing it has commenced a process to separate its businesses into two independent, publicly traded companies — one focused on aircraft cabin interior equipment – design, development, manufacturing, certification and direct sales on a global basis, and the other focused on distribution, logistics and technical services for the aerospace and energy

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services markets.

On June 30, 2014, **Trian** unveiled a $1.05 billion position in **BNY Mellon**, representing a 2.5% state and plans to discuss ways of improving shareholder value with management.

On June 21, 2014, Harbinger announced that it offered to acquire Central Pet & Garden for about $505 million ($10/share). Including the assumption of debt, the deal is valued at $1.1 billion. As an alternative to an acquisition of the Company, Harbinger also offered to buy its pet business for $750 million. Harbinger also stated it may be able to increase the value of the current proposals if the Company's Board engages in a constructive dialogue.

On April 3, 2014, **Wintergreen Advisers, LLC** reported that they believe **The Coca-Cola Company's** Compensation Plan is: (i) potentially highly dilutive to shareholders; (ii) unsupported by any strategic rationale; (iii) unnecessary, since adequate capacity exists under the Company's current plan; (iv) inadequately disclosed in the proxy materials; (v) grossly outsized for a company with earnings growth in the single digits; and (vi) a bad precedent for corporate America. On April 15, 2014, Wintergreen issued a letter to shareholders reiterating its belief that the 2014 Equity Plan is deeply flawed and contrary to shareholder interests. In the letter, Wintergreen urged all institutional investors, as fiduciaries for many thousands of individuals, to review the Company's proposed plan for themselves before they decide how to vote. Wintergreen believes existing equity plans at the Company are more than adequate to meet the Company's needs.

Wintergreen also believes the methodology described in the ISS publicly available proxy guidelines understates the true cost to shareholders of the Company's equity plans, and that the 2014 Equity Plan appears to fall short of publicly available ISS guidelines in a number of areas. Specifically, Wintergreen believes: (a) the Company's plan fails to meet the ISS standard for linking pay for performance, because the Company has lowered its performance targets for management over the past two performance periods; (b) the fact that every named officer at the Company has received more equity option grants over each of the past two years, even as the Company's performance has failed to meet targets, demonstrates that the Company is not properly linking pay to performance; (c) the proposed plan fails to meet the publicly available ISS standard for investors that manage union pension plans under the Taft-Hartley Act; and (d) the proposed plan may also fall short of the Taft-Hartley guidelines that discourage excessive pay practices because it does not have a cap on the amount of equity that can be awarded to an individual. The Ontario Teachers' Pension Plan also planned to vote against the 2014 Equity Plan.

At the Annual Meeting held on April 23, 2014, the plan passed. In an interview on May 2, 2014, Warren Buffett told CNBC that he does not approve of the plan but out of respect for management abstained on the issue instead of voting against it, and that he believes the Company will be responsive to shareholder concerns and he wouldn't be surprised if the Company revised the plan before it goes into effect next year.

On July 8, 2014 David Winters sent a letter to the Board criticizing Coca-Cola's governance and operational performance. He also announced the launch of a dedicated website – Fixbigsoda.com – where he will provide his views and provide a forum for disgruntled investors. Winters also questioned the role of Howard Buffett, Warren Buffett's son, on the Company's Board. Winters said that he intends to "remain a long-term investor in the company," but that he had heard from too many investors that they remained concerned about Coca-Cola's poor margins, especially in comparison to other drinks manufacturers.

On October 17, **Barington Capital** announced that they represent a group of shareholders that owns over 2% of the outstanding common stock of **Darden Restaurants, Inc.(DRI)** and sent a letter to the Board on September 23, 2013 making recommendations to improve the financial and share price performance of the Company. Barington points out in their letter that while the Company has outperformed its peers between 1999 and 2008, it has performed poorly against its peers since then. Barington's recommendations include: (i) forming two independently managed restaurant operating companies – one for Darden's mature brands (Olive Garden and Red Lobster) and one for its higher-growth brands (LongHorn Steakhouse, The Capital Grille, Yard House, Bahama Breeze, Seasons 52 and Eddie V's Prime Seafood); (ii) exploring all alternatives to monetize the value of the Company's real estate assets, including the creation of a publicly traded real estate investment trust (REIT); and (iii) reducing operating expenses by bringing Darden's cost structure in line with the Company's better

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performing peers. Barington cites McDonalds, Brinker international (Chili's) and Lone Star Funds (Del Friscos) as three companies that have divested non-core brands resulting in the creation of significant shareholder value. Barington also states that Darden owns more real estate than its peers and estimates its real estate assets are worth approximately $4.2 billion. Moreover, Barington believes the Company can reduce its operating expenses by $100 - $150 million per year. Barington believes that if its first two suggestions are fully implemented, Darden's common stock would trade between $69 and $76 per share without taking into consideration any positive impact of operating improvements or further reduction in operating expenses. On November 21, 2013, Barington Capital Group, L.P. announced that it retained Houlihan Lokey to undertake an independent review of Barington's recommendations for Darden to improve the long-term performance of the Company.

On December 17, 2013, Barington released a detailed presentation setting forth its recommendations to improve long-term value at the Company. The report states that if Barington's recommendations were fully implemented, the Company's common stock would be valued between $71 and $80 per share (higher than Barington's earlier estimate of $69-$76 per share). In the presentation, Barington recommends that the Company explore each of the three following recommended actions: (i) create two focused restaurant companies to improve execution and operate each company to best meet the unique needs of its brands; (ii) unlock the value of the Company's extensive real estate assets – Barington believes a publicly traded REIT would provide shareholders with the most immediate and tax efficient path to unlock the value of the Company's real estate assets; and (iii) reduce operating expenses – Barington believes the Company has numerous avenues to lower operating expenses by up to $100-$150 million and substantially enhance earnings. The full implementation of Barington's Plan would result in investors receiving shares in three separate companies: (a) Darden-Mature: this would consist of Olive Garden and Red Lobster, where the Company could focus on restoring the "crown jewels" of casual dining; (b) Darden-Higher-Growth: this would consist of Bahama Breeze, Capital Grille, Eddie V's Prime Seafood, LongHorn Steakhouse, Seasons 52 and Yard House, and would allow the Company to build on existing growth trajectory with added brand-level agility; and (c) Darden Reit: where the Company could unlock substantially underappreciated real estate value for shareholders. Barington conservatively estimates the value of the Company's fee owned and ground leased real estate to be $4 billion (before leakage costs), which Barington does not believe to be fully reflected in the Company's current stock price.

On December 19, 2013, Darden announced a plan to enhance shareholder value including selling or spinning-off Red Lobster. Darden also announced it would reduce unit growth, lower capital expenditures and forgo acquisitions. This will come primarily from suspending new unit growth at Olive Garden and more limited new unit growth at LongHorn Steakhouse. This reduced unit growth will lower capital spending by at least $100 million annually. Also, the Company will forgo acquisitions of additional brands for the foreseeable future. Darden also stated there will be an increase to its cost savings and an increase in return of capital to shareholders. Finally, Darden announced that the Board intends to refine compensation and incentive programs for senior management to more directly emphasize same-restaurant sales growth and free cash flow.

On December 23, 2013, Starboard filed a 13D and reported that it believes that opportunities exist within the control of the Company's management and the Board to take actions that would create significant value for the benefit of all shareholders. Specifically, Starboard believes there is a significant opportunity to dramatically improve the operating performance at the Company, as well as opportunities to realize substantial value from the Company's real estate holdings and to explore other strategic options available to the Company to maximize shareholder value, including alternative business sale or separation transactions. Starboard believes that the plan outlined by management falls significantly short of the actions required to maximize shareholder value.

On January 13, 2014, Barington stated it was disappointed with a recent plan by Darden to spin off Red Lobster to enhance value. Barington stated that it was especially disappointed that the Company's plan failed to unlock value from the Company's real estate holdings. On January 30, 2014, during a conference call Barington hosted for investors, James Mitarotonda stated that he is "reserving judgment" on whether Clarence Otis should remain CEO of the Company. Mitarotonda continues to remain hopeful that Otis will reconsider the suggestions that Barington and Starboard have made, but that an independent chairman would be best for shareholders. Darden cancelled its analyst and investor meeting scheduled for March 28.

On March 26, 2014, Barington sent a letter to the independent directors of Darden calling upon them to take the following actions: (i) appoint an independent chairman, (ii) directly engage in a meaningful dialogue with shareholders, (iii) permit shareholders to vote on the Red Lobster separation plan, (iv) reconsider the current restructuring plan and explore opportunities to unlock the value of the Company's real estate assets, (v) ensure that shareholders receive full and fair disclosure, (vi) improve the Company's corporate governance, and (vii) consider beginning a search for a new CEO. Barington believes the Company needs a new CEO who

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has exceptional operating and management skills in the restaurant industry, who has the background and experience to run the Company no matter how it may be restructured in the future.

On May 16, 2014, Darden announced it would sell Red Lobster to Golden Gate Capital for $2.1 billion in cash.

On August 4, 2014, Barington sent a letter notifying Darden Restaurants, Inc. that Barington is withdrawing its proposal that the Company should adopt a policy that its Chairman be an independent director after the Company adopted Barington's recommendations last week. The letter also stated that while Barington appreciates the Board has adopted this policy, Barington believes it will have little impact if a majority of the Company's incumbent directors are reelected at the 2014 Annual Meeting. Barington believes the only effective means to improve shareholder value and protect shareholder interests at the Company is through the election of Starboard's slate of independent nominees at the 2014 Annual Meeting. Barington believes the Company's current directors failed to effectively represent shareholder interests and must be replaced for the following reasons: (i) approval of the red lobster transaction; (ii) failure to permit shareholders to vote on the Red Lobster transaction; (iii) failure to engage with shareholders; (iv) failure to ensure that shareholders receive full and fair disclosure; (v) the board's record in the area of corporate governance; and (vi) failure of the Board to amend the Company's multi-brand strategy.

On January 21, 2014, **Third Point** disclosed in an investor letter that its largest current investment is in **The Dow Chemical Company**, but did not disclose its stake. Third Point notes that the Company's shares have "underperformed over the last decade, generating a return of 46% (including dividends) compared to a 199% return for the S&P 500 Chemicals Index and a 101% return for the S&P500." Third Point believes these results reflect a poor operational track record across multiple business segments, a history of under-delivering relative to management's guidance and expectations, and the ill-timed acquisition of Rohm & Haas. Third Point states that the Company's lacking performance is even more surprising given that the North American shale gas revolution has been a powerful tailwind for the Company's largest business exposure – petrochemicals.

Third Point believes the Company should engage outside advisors to conduct a formal assessment of whether the current petrochemical operational strategy maximizes profits and if these businesses align with the Company's goal of becoming a "specialty" chemicals company. Third Point also believes the Company should apply the "intelligent logic" of its recently announced chlor-alkali separation to the entirety of its petrochemical business by creating a standalone company housing the Company's commodity petrochemical segments.

On February 11, 2014, Dow Chemical filed an addendum to its fourth quarter and full-year 2013 earnings teleconference materials stating that it has conducted an evaluation as part of a review of the Company's strategic option. The review found that "a break-up of the Company in a significant manner (simplistically described as petrochemical and specialty chemical assets) created no productivity or capital allocation improvements, but rather negatively impacted Dow's value proposition which leverages scale, integration costs and technology benefits across multiple science-based, vertically integrated value chains." On February 12, 2014, Dan Loeb said that the Company's "lack of transparency" makes it difficult to determine whether the Company should be split up or kept together. In Third Point's statement, it said it has hired financial advisers of its own to look into the Company's options and is prepared to sign a non-disclosure agreement to see how the Company came to decide against Third Point's plan. On March 19, 2014, Dow Chemical told investors that it plans to sell an additional $1.5 billion to $2 billion of assets this year.

In August 2013, **Trian** disclosed that it owned 21 million shares of **DuPont Co.** (valued at $1.25 billion). Trian had met with Chairman/CEO Ellen Kullman and other senior managers to talk about their ideas outlined in a white paper. It was predicted that Trian was proposing breaking DuPont into two companies, one focused on its agriculture business and the other focused on materials. On October 24, it was announced that DuPont was splitting in two, spinning off its performance chemicals segment into a new publicly traded company. The unit — which makes a pigment that turns paints, paper and plastics white, as well as refrigerants and polymers for cables — generated about $7 billion in revenue in 2012. DuPont had announced in July, prior to Trian's involvement, that it would explore "strategic alternatives" for the unit and stated that its decision came after a thorough strategic review process over the last year. DuPont expects the spinoff to be completed in about 18 months, and said it would be tax-free to shareholders, who will receive stock in the new company. The

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DuPont that remains will have three main areas of focus, each trying to make products that address global population growth. Its agriculture business will develop and produce seeds and herbicides aimed at increasing crop yields around the globe. A bioindustrials unit will be involved in the production of biofuels in an effort to reduce the world's reliance on fossil fuels. And an advanced materials segment will make components for green buildings and solar panels, as well as products like Kevlar.

Icahn has taken a stake in **eBay**, proposed a spin-off of eBay's PayPal division and nominated two directors to the Board of the Company. eBay indicated it does not agree with Icahn's plan to spinoff PayPal. On February 24, 2014, Icahn sent a letter to eBay's stockholders criticizing directors Marc Andressen and Scott Cook for, among other things, directly competing with the Company, funding competitors, and putting their own financial gain in ongoing conflict with their fiduciary responsibilities to stockholders. Icahn also states that the Company's CEO, John Donahoe, seems to be "completely asleep or, even worse, either naive or willfully blind to these grave lapses of accountability and stockholder value destruction." Icahn questions his judgment and ability to make decisions that must be made concerning the future of PayPal. Icahn believes separating eBay and PayPal will: (i) highlight the significant value of the disparate business currently shrouded by a conglomerate discount the market has afforded eBay; (ii) focus and empower independent management teams to most effectively build two very different business platforms, make economic decisions independent of each other, and, foster innovation; and (iii) provide an even more valuable currency for future bolt-on acquisition opportunities and for recruiting the top talent necessary for PayPal to remain the market leader in payment technology. Icahn urges shareholders to vote for his slate of directors and for his precatory proposal in order to send a clear message to the Company's Board that it should be separated from PayPal.

On February 27, 2014, Pierre Omidyar, eBay Founder and Chairman, rejected Icahn's call to separate the Company's PayPal unit, saying the businesses were better off together. On March 3, 2014, Icahn reiterated his view that Andressen has conflicts of interests. He also stated that he is in the process of demanding the Company's books and records. On March 5, 2014, Icahn stated that the corporate governance at the Company is the worst he's ever seen.

On March 19, 2014, Icahn called on eBay to sell 20% of PayPal in an initial public offering (even though he initially called for a complete spinoff). Icahn believes conducting a 20% IPO would provide the best opportunity for the businesses to remain competitive over the long-term. He also noted that the 20% IPO structure should alleviate any concern of lost synergies, could preserve all of the benefits of keeping PayPal in-house and could be structured to be tax free to shareholders.

On April 10, 2014, eBay and Carl Icahn entered into an agreement ending their proxy contest for the upcoming annual meeting. Pursuant to the agreement, Icahn is withdrawing both his proposal to separate PayPal and his two nominees to the Company's Board. eBay has agreed at Icahn's suggestion to appoint David Dorman as an independent director to its Board. Icahn has signed a confidentiality agreement covering any non-public information that directors or officers of eBay may share with him, and the Company agreed not to adopt a policy precluding such persons from speaking to Icahn.

On July 21, 2014, it was revealed that **Elliott** has taken a stake of more than $1 billion (about a 2% position) in **EMC Corp.** According to people familiar with the matter, Elliott plans to push the Company to break itself apart, specifically by spinning off VMware Inc., a publicly traded Company that EMC owns an approximately 80% stake in. Under the Company's federation model, it manages three businesses: EMC Information Infrastructure, VMware Virtual Infrastructure and Pivotal.

Sandell Asset Management, which reportedly owns about 3% in **FirstGroup Plc**, sent a letter to the Company urging it to sell its U.S. businesses in order to pay down debt. Specifically, Sandell asked the Company to consider the sale of Greyhound and its school bus division. Sandell stated in the letter that its proposals would help lift the Company's shares to 199 pence.

On January 15, 2014, Sandell published a white paper detailing the operational and financial benefits of the "Sandell Plan". Sandell believes the following steps would immediately unlock value for shareholders at FirstGroup and improve the likelihood of a successful turnaround, while allowing shareholders to benefit from any future improvement in underlying performance: (i) spin-off First Student and First Transit (together "FirstGroup US"), targeting the yield-hungry North American shareholder base willing to pay a premium for FirstGroup US' cash flows; (ii) sell Greyhound, a relatively small non-core asset, following the spin-off of FirstGroup US, to focus management attention on the Company's UK businesses; and (iii) strengthen the balance sheet of UK Bus and UK Rail (together

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"New FirstGroup") through proceeds from Steps 1 and 2 to better prepare the Company for the upcoming UK rail franchise bids and to invest in the operational turnaround of the UK Bus business.

Sandell states that since the public disclosure of the Sandell Plan, it is disappointed that the Company characterized the Proposals as containing "structural flaws" and "inaccuracies," but believes the Company's rejection was premature without fully appreciating the rationale behind the proposals. Sandell notes that the Sandell Plan does not replace a sound turnaround plan, but instead, its proposals would be best carried out in conjunction with such a plan to improve the plan's chances of success and to provide additional flexibility should a turnaround fail to materialize in the anticipated timeframe. Although Sandell believes that the basic tenets behind the Company's strategic plan are sound, Sandell remains concerned about its execution. Sandell states that its Plan is designed to address what it believes is the key reason behind the Company's consistently poor execution, namely the Management team's inability to manage the increased complexity of the business since the acquisition of Laidlaw International Inc.

On July 1, 2014, it was reported that Sandell is recommencing its hostilities with FirstGroup. Sandell stated its belief that the Company's CEO, Tim O'Toole, makes too much and that a 94% rise in renumeration package is not deserved for his 2013-2014 performance. Sandell stated it would vote against the Company's renumeration report at the annual meeting to be held in the middle of July. Sandell also pushed the Company to name its own nominees for an independent directorship on the Company's Board to provide "sector expertise" on the U.S.

On January 29, 2013 **Elliott Associates** announced that they own 4.0% of the common stock of **Hess Corp (HES)** and were nominating a slate of the following five independent directors to the Company's 14 person Board: (i) Rodney F. Chase - Former Deputy Chief Executive, BP plc; (ii) Harvey Golub - Former Chief Executive Officer, American Express Company; (iii) Karl F. Kurz - Former Chief Operating Officer, Anadarko Petroleum Corporation; (iv) David McManus - Former Executive Vice President, Pioneer Natural Resources Company; and (v) Marshall D. Smith - Chief Financial Officer, Ultra Petroleum Corporation. Upon receipt of notification of Elliott's intention to nominate directors, Hess announced an exit from its refining and terminal business. Elliott views this as a minor step and believes that the strategic, capital, organizational and corporate governance problems at the Company go much deeper, and Hess needs to address the larger problem. Elliott concludes that Hess requires a thorough restructuring that realigns its current multitude of businesses and assets into manageable, focused enterprises. Elliott believes that the appropriate board unlocking value could lead to a share price of at least $126. To that end, they believe the Hess board should: (i) spin off the Bakken along with the Eagle Ford and Utica acreage; (ii) divest downstream assets and monetize resource play infrastructure; and (iii) streamline the remaining international portfolio. On May 16, 2013, Elliott and Hess entered into an agreement to resolve Elliott's proxy contest. Pursuant to the agreement, Elliott agreed to withdraw its slate of five director nominees and support the election of Hess' five new directors. Three of Elliott's director nominees, Chase, Golub, and McManus were added to the 2015 director class, to for a 14-person reconstituted Board.

On January 8, 2014, Hess Corp. filed paperwork for the spinoff of its gasoline stations. The separation would be tax free and distribute all shares in newly formed Hess Retail Corp. to holders of Hess Corp., according to the filing. Hess will continue to seek a buyer for the unit while pursuing the spinoff, which may occur this year.

On May 22, 2014, Hess agreed to sell its retail business for $2.87 billion to Marathon Petroleum Corp and will focus on oil exploration and production.

On July 30, 2014, Hess announced its intention to pursue a spinoff of some midstream assets, to create a separately traded company to support growth of its production in the Bakken oil shale play. Hess intends to pursue the formation and IPO of a master limited partnership, which will be used as the primary midstream vehicle to support its Bakken production growth. Hess expects the MLP to file a registration statement with the SEC in the fourth quarter of 2014 and, subject to market conditions, expects to make an IPO of common units representing limited partner interests in the MLP in the first quarter of 2015.

On March 18, 2014, **Voce Capital Management LLC** filed a preliminary proxy on **Intevac, Inc. (IVAC)** and nominated the following three individuals for election to the Board: (i) Marc T. Giles, (ii) Joseph V. Lash and (iii) J. Daniel Plants. Voce disclosed that it is concerned by the Company's long-term underperformance, capital allocation choices and strategic direction. Voce believes the Board faces many strategic decisions relating to the Company's current and

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future portfolio of businesses and does not believe the current Board has the ability to properly address these issues.

On May 12, 2014, Voce and the Company reached a settlement agreement pursuant to which, among other things, Marc T. Giles was appointed to the Board and was included in the Company's slate of nominees at the 2014 Annual Meeting.

InterContinental Hotels Group

On May 29, 2014, **Marcato (3.8%)** urged **Intercontinental Hotels Group (IHG)** to pursue a merger after media reports in the UK that it had turned down an unknown American bidder. Marcato believes combining the Company with a larger hotel operator "represents a unique opportunity to reshape the global hospitality industry."

On August 4, 2014, Marcato announced that it hired Houlihan Lokey as an advisor to help review various alternatives for InterContinental Hotels Group, including improving its capital structure and/or capital allocation and strategic transactions.

On December 30, 2013, **Engine Capital** sent a letter to the Board of **LSB Industries, Inc. (LXU)** stating that the Company is undervalued and that Engine believes there are opportunities to increase value substantially. Specifically, Engine believes the Board should: (i) add a number of new members with relevant backgrounds in chemical asset operations, climate control, and corporate finance, and with no ties to the Golsen family, and (ii) establish a special committee of "truly independent directors" to analyze the Company's strategic alternatives to maximize value, including separating the climate control business from the chemical assets and converting certain of the chemical assets into an MLP structure.

Engine believes the Company's total inherent value is at least $1.5 billion (valuing the climate control business at around $300-$350 million and the chemical plant business at around $1.2 billion), implying a stock price between $65-$75 per share, compared to the Company's present stock price of approximately $38. Engine believes this value gap is caused by the Company's poor governance structure, poor corporate structure, history of poor communication with shareholders, and a recent history of over-promising and under-delivering on operational matters.

Engine points out that the Company has two very different businesses with no synergies. Engine believes the best course of action may be a sale or spinoff of the climate control business. Engine believes in general that the analyst community and investors in general focus on the chemical assets and value the Company using chemical assets multiples, therefore undervaluing the higher quality climate control business that deserves a higher multiple (climate control peers trade at significantly higher multiples than chemical peers). Within the chemical division, Engine believes the Company has an opportunity to improve the tax efficiency of its corporate structure by converting its agricultural-related assets into a publicly traded MLP, which trade at higher multiples than regular corporations.

Engine also discusses the Company's capital allocation in the letter, and its 3-year capital expenditure program of around $600 million. Engine questions whether it is wise to start such a significant capex program and lever up the Company ahead of significant new production supply of ammonia coming on the market. Engine believes shareholders would have been better served by a large repurchase of undervalued stock. Engine also notes that it is difficult to evaluate the merits of this capex program because the Company refuses to share its assumptions and implied returns on investment, and Engine believes better communication with shareholders would improve the market perception of the Company and help close the value gap. Finally, Engine states that the recent operational challenges are too numerous to detail, but Engine is particularly concerned by the frequency of problems at a number of the chemical plants and management's pattern of over-promising and under-delivering when it comes to fixing these issues. Engine concludes its letter by stating that if significant progress is not achieved promptly, it is prepared to nominate five directors by the January 23, 2014 deadline.

Effective January 17, 2014, four of the six members of LSB Industries Board that were not deemed "independent" resigned as directors.

On April 22, 2013 at our Fourth Annual Active – Passive Investor Summit, **Jeff Ubben** of **ValueAct Capital** disclosed that ValueAct had made a $2 billion investment in **Microsoft Corporation**. Jeff made a very compelling and detailed presentation. He said that like Adobe, Microsoft suffered from a divergence of perception and reality. ValueAct thinks Microsoft is a company that is perceived to not be able to win consumers, dying with PCs, losing out to Google and irrelevant in the Cloud world. In reality, ValueAct believes Microsoft is an enterprise company with software businesses that users value, resulting in a growing recurring revenue base. Moreover, ValueAct believes that Office 365 may be a game changer and Micro-

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soft is well positioned for the hybrid cloud world. On August 30, 2013, Microsoft and ValueAct entered into a cooperation agreement providing for regular meetings between Mason Morfit, President of ValueAct, and selected Microsoft directors and management to discuss a range of significant business issues. The agreement also gave ValueAct the option of having Morfit join the Microsoft board of directors beginning at the first quarterly board meeting after the 2013 Annual Meeting. On March 11, 2014, Microsoft Corp. appointed Mason Morfit of ValueAct Capital, as a board member.

A group of independent shareholders led by **Bristol Capital Advisors, LLC** and **Lone Star Value Management, LLC**, formed **Concerned Miller Shareholders ("CMS")** for the purpose of seeking to unlock value at the Company by reconstituting the Board and replacing senior management. CMS stated that while the Company has valuable assets and a strong operational team on the ground in Alaska, CMS believes the Company's shares are significantly undervalued due largely to the Company's management team's lack of experience and industry knowledge together with their excessive compensation and self-dealing. CMS notes that despite failure to achieve the performance targets upon which compensation awards were conditioned, CEO, Scott Boruff, and CFO, Voyticky, each received boosts in salaries by 59% and 58% respectively, bonuses of $500,000 and $475,000, respectively, and restricted stock grants of 100,000 shares of common stock for each.

On March 31, 2014, the Company and Concerned Miller Shareholders reached an agreement pursuant to which, Governor Bill Richardson, former Governor of New Mexico and U.S. Secretary of Energy has been nominated and recommended by the Board of the Company to stand for election as a director of the Company's upcoming Annual Meeting of Shareholders. Concerned Miller Shareholders will withdraw its proposed slate of director candidates and will vote all of its shares in favor of each of the nominees recommended by the Board. The Company also recently announced it has nominated two additional independent director candidates.

On April 19, 2013 **Trian** unveiled its stake in **Mondelez Int'l** Inc. in an amended 13F filing, along with a stake in PepsiCo. At a conference in July, Peltz said that Pepsi should acquire Mondelez and then spin off the soft drink business altogether. He also stated that Pepsi should spin off its Frito Lay unit, if it doesn't want to acquire Mondelez. On October 29, at a conference in Chicago, Peltz stated his belief that Mondelez is poorly run despite its catalog of great brands (i.e. Oreo, Trident and Cadbury). Peltz argued that the cost structure is inflated compared to peers and operating margins are not as high as they could be with a touch of operational improvements. Peltz would also like to see the Company shed its name because it sounds too much like a medicine.

On January 21, 2014 Mondelez added Nelson Peltz to its Board. In return for a seat on the Board, Peltz dropped his push for a merger to PepsiCo Inc.

On April 16, 2014, **Kerrisdale Capital Management LLC** filed a definitive proxy statement in connection with its nomination of the following seven director candidates for election to **Morgans Hotel Group's** Board at the 2014 Annual Meeting: (i) Sahm Adrangi, (ii) John Brecker, (iii) Andrew Broad, (iv) Alan Carr, (v) Jordon Giancoli, (vi) Navi Hehar and (vii) L. Spencer Wells. If Kerrisdale's slate is elected, it would constitute a majority of the Company's Board, which Kerrisdale believes is necessary given the Board's apparent failure to represent the best interests of shareholders. Kerrisdale believes the best way to maximize value would be to work with a financial advisor to fully explore all strategic alternatives and conduct an auction to sell the Company at the highest price possible.

At the Annual Meeting held on May 14, 2014, two of Kerrisdale's nominees, John Brecker and Andrew Broad, were elected to the Board.

On April 14, 2014, **Nabors Industries Ltd.** announced additional changes to its corporate governance and compensation practices. Nabors stated that these changes reflect its ongoing dialogue with its shareholders, including **Blue Harbour** and **CalSTRS**. The changes include: (i) adopting a policy to separate the roles of Chairman of the Board and CEO following the tenure of the current Chairman and CEO, in accordance with shareholder requests, (ii) adopting a policy limiting severance payments to 2.99 times an executive's salary and bonus, formalizing an initiative already implemented in the employment agreements of the CEO and CFO, (iii) instituting a proxy access policy allowing eligible shareholders to include director nominees with those nominated by the Board in the Company's proxy materials (shareholders owning 5% of the Company's shares for at least three consecutive years following

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the Company's 2014 Annual Meeting are eligible, and Nabors will review this policy in three years and consider lowering the ownership threshold in light of prevailing practices of other S&P 500 companies and discussions with shareholders), (iv) planning to ask shareholders to approve an advisory vote to extend its shareholder rights plan at its 2014 Annual Meeting, (v) implementing a policy requiring public announcement of the Board's reasoning if any director resignations tendered pursuant to its director resignation policy are not accepted, and (vi) clarifying in its governance guidelines that the Lead Director may add agenda items for Board meetings and that the Board includes gender in its diversity considerations.

On June 26, 2014, Blue Harbour expressed its support for Nabors Industries Ltd. to merge its completion and production business with C&J Energy Services, Inc. Blue Harbour believes this transaction will allow the Company's shareholders to benefit from the significant growth potential and synergies in the completion and production business, and allow the Company to fully focus on delivering on the significant opportunity embedded in their domestic and international land drilling rig businesses.

On July 17, **Trian Fund Management's Nelson Peltz** said that **Pepsi** should acquire the snack maker Mondelez. Trian is a big shareholder of both companies. Peltz said Pepsi should buy Mondelez and then spin off the soft drink business altogether. He argued that consumer tastes are turning against soft drinks. Peltz also said that if Pepsi doesn't want to acquire Mondelez, it should spin off its Frito Lay unit. Peltz said that the problem with Pepsi has not been management, but structure and that he would be meeting with Pepsi's management to discuss the proposal "in the very near future." Following this disclosure, Pepsi said it had held talks with the hedge fund to "consider their ideas." A day after Peltz revealed his strategy, one of Pepsi's largest shareholder, Blackrock Inc., publicly stated that it opposed Nelson Peltz's proposal. A week later after announcing a better-than-expected second-quarter profit, Pepsi CEO Indra Nooyi effectively dismissed Peltz's idea. Pepsi CFO Hugh Johnston took it one step further, saying: "You'll hear people occasionally advocate for that type of transaction," Johnston said. "The thing that they really need to look at is what's their percentage holdings of Mondelez and what's their percentage holdings of PepsiCo."

On February 13, 2014, PepsiCo stated that it will keep trying to turn around its soft-drink sales instead of splitting up the Company. The Company also stated that it will increase the cash it returns to shareholders by 35% this year, raising its combined dividends and stock buybacks to $8.7 billion. Nelson Peltz of Trian sent a 37-page letter to the Company in which he said he was "highly disappointed" with the Company's decision not to heed his proposal. In his letter, Peltz cited deteriorating North American beverage trends, questionable quality of earnings in 2013 and a disappointing 2014 profit forecast as evidence that the Company needs to act. Peltz urged the Company to spin off its beverage business and focus on the snack business to create "two leaner and more entrepreneurial companies."

On March 13, 2014, Trian sent a letter to Pepsi's Board calling on it to provide shareholders with analytical support for the Company's continued reliance on the "Power of One" strategy and its rejection of Trian's recommendation to separate global snacks and beverages into two independent public companies.

On July 16, 2014, Nelson Peltz said "there will be action" regarding his belief that PepsiCo Inc.'s snack division should be split from the Company's beverage business, stating a proxy fight as one possibility. Peltz said his firm, Trian Fund Management, has spoken with about 100 top PepsiCo shareholders, and some are coming around to his way of thinking. Also, it was recently reported that in late June, CalSTRS sent a letter to one of the Company's independent directors recommending Nelson Peltz as a candidate for the Board.

Concerned Rentech Shareholders, a group led by **Engaged Capital, LLC** and **Lone Star Value Management, LLC**, that owns 4.6% of the Company's outstanding shares, announced on January 13, 2014 that it nominated the following four candidates for election to the Board at the upcoming 2014 Annual Meeting: (i) Jeffrey J. Brown, (ii) Jeffrey E. Eberwein, (iii) Larry Holley and (iv) Glenn W. Welling. Concerned Rentech Shareholders highlighted its frustration at the continued destruction of shareholder value at the Company and the persistent missteps and lapses in oversight that have caused the group to lose confidence in the Board's ability to oversee the Company. Concerned Rentech Shareholders stated that the most egregious of these missteps include: (a) a failed alternative energy business, (b) spending $158 million on a fertilizer plant with no real operating history to then write down the value of the asset by $30 million within a year of completing the transaction, (c) the Board approving expenditures with a total value of around $100 million in a business where the Company has no institutional expertise, (d) after failing to secure support from the Company's experienced joint

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venture partner, Graanul Invest AS, the Board approved using the Company's most valuable asset, RNF shares, as collateral in order to finance the Company's significantly increased capital investment and (e) maintaining an unjustifiably high cost structure built for a business seven times the Company's size. Concerned Rentech Shareholders concluded that immediate Board reconstitution, including through direct shareholder representation, is needed to ensure that all decisions are in the best interests of the Company's shareholders.

Also, on December 27, 2013, Concerned Rentech Shareholders submitted to the Board a formal request for exemption under the Company's Tax Benefit Preservation Plan to allow the group to acquire beneficial ownership in the aggregate of up to 7% of the outstanding shares of the Company's stock. To date, the Board has not responded to this request, and the Rights Plan prohibits any shareholder from acquiring in excess of 5% except in certain limited circumstances.

On April 10, 2014, Concerned Rentech Shareholders settled with the Company where an additional candidate approved by Concerned Rentech Shareholders will be nominated by the Company for election to the Board at the 2014 Annual Meeting. Concerned Rentech Shareholders agreed to withdraw its slate of nominees for the 2014 Annual Meeting and to vote in favor of the Board's slate of nominees.

SONY

On May 14, 2013, **Third Point** sent a letter to the President and CEO of **Sony** informing him that Third Point has acquired an economic stake of more than 6% in Sony, later increased to 7% (including swaps) for a value of $1.4 billion. Third Point recommended that Sony: (i) take public a 15—20% stake in Sony Entertainment through subscription rights to current shareholders, allowing it to thrive independently with the support of the Sony parent company while increasing capital to revitalize Sony Electronics; (ii) focus on its industry-leading businesses to bring growth to Sony Electronics and streamline its product offerings to improve profitability; and (iii) increase its prospects in underappreciated assets such as Sony Financial, M3, Olympus, Japan Display, its intellectual property portfolio, its $11.5 billion of deferred tax assets, and its brand allure. Third Point offered its assistance and stated that they would gladly accept a seat on Sony's Board to help implement their proposal. In an investor letter sent on July 29, 2013, Third Point stated that they are eagerly awaiting the effects from the changes from Prime Minister Shinzo Abe's economic plan, which according to Third Point, should benefit Japanese companies like Sony. Third Point also mentions that the new Sony management team has made difficult decisions in the Electronics business by reducing overhead and cutting products, and Third Point highlights that Sony has gained market share in smartphones. Third Point also notes that growth in the smartphone business has been accompanied by a "perfectly executed introduction of the PlayStation 4 ("PS4") platform." These improvements in the Electronics division has caused Third Point to rethink their approach to valuing Electronics – they believe the Game and Mobile Products divisions are now poised to join the Devices business as meaningful profit contributors, with the Television business becoming a marginal drag. Third Point believes that its proposal to partially list Entertainment should increase overall profitability and provide capital to accelerate restructuring at Electronics. Third Point expressed concern about the Entertainment division, which it believes is poorly managed and is generating profitability levels below its competitors; however, Third Point states its research has revealed Entertainment's hidden value in the film business and meaningful value in the Music division, particularly in VEVO and GraceNote. Third Point would like to see a revived Electronics combined with a well-managed, publicly-listed Entertainment business, and believes it would make for a stronger Sony and offer tremendous value for shareholders.

T-Mobile

On January 21, 2014, in a letter to investors, **Third Point** disclosed that it bought shares of **T-Mobile** at $25.00 per share when the Company conducted a secondary offering in November. Third Point was attracted by the Company's takeover prospects, as well as its improving operating performance and relative valuation compared with peers. Third Point stated in its investor letter that in additional to the Company's fundamental value proposition, the Company is strategically interesting for Sprint and potentially DISH, which has driven the shares higher.

TRIBUNE

Blue Harbour disclosed its investment in **Tribune Co.** in February 2014 at the annual meeting of EnTrust Capital. Blue Harbour has urged the Company to take steps including selling its real-estate holdings and the spectrum its broadcast properties own.

VALUEVISION

At **ValueVision's** 2014 Annual Meeting, four of **Clinton's** nominees were elected to the Board. Clinton was previously part of a filing group with Cannell Capital, which was terminated on February 5, 2014. On June 23, 2014, the Company

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UNDER THE THRESHOLD - ONGOING SITUATIONS

announced that it appointed Mark Bozek as its new CEO, which Clinton proposed the Company do in Fall 2013.

On December 19, 2013, **Clinton** sent a letter to the Board of **Violin Memory, Inc.** (which went public on September 27, 2013) urging the Company to hire a banker and announce a sale process. Clinton's best estimate on value that a buyer would be willing to pay is $400 to $500 million in enterprise value, which equates to approx. $6 to $7 per share on a fully diluted basis. Clinton points out that multiples paid in recent transactions in this sector more than support its valuation expectations. For example, Cisco paid a mid-teens revenue multiple to acquire WHIPTAIL in September 2013. Clinton believes the Company's technology can be best exploited by putting it in the hands of an industry player with an existing global sales, and marketing infrastructure and an established customer base.

On April 12, 2014, Violin Memory, Inc. and Clinton entered into a settlement agreement pursuant to which, among other things: (i) the Company increased the size of the Board from seven to eight members and appointed Vivekanand Mahadevan as a Class II Director of the Board to fill the newly created Board seat; (ii) effective immediately upon Mr. Mahadevan's appointment to the Board, he was appointed to the Audit Committee of the Board, and will be entitled to serve on the Audit Committee of the Board for the remainder of his term in accordance with the terms of the Settlement Agreement; (iii) Clinton has withdrawn its nomination letter to the Company and has agreed to cause all of its shares to be voted in favor of (A) the election of each of the Board's nominees that is currently an incumbent director for election as a Class I Director, (B) approval of the material terms of Violin's 2012 Stock Incentive Plan solely to preserve Violin's ability to receive corporate income tax deductions that otherwise may be disallowed pursuant to Internal Revenue Service Code Section 162(m), and (C) ratification of the engagement of KPMG LLP as Violin's independent registered public accounting firm.

Furthermore, Clinton has agreed to observe normal and customary standstill provisions during the period beginning on the date of the Settlement Agreement until the earlier of (i) the date that is 20 days prior to the expiration of Violin's advance notice period for the nomination of directors or presentation of proposals at the 2015 Annual Meeting or (ii) such date that Violin has materially breached any of its commitments or obligations under certain provisions of the Settlement Agreement (such period, the "Standstill Period"). Both Clinton and Violin have agreed that, during the Standstill Period, neither party may disparage, call into disrepute, or otherwise defame or slander the other party or its subsidiaries, affiliates, officers or directors.

On January 10, 2014, it was reported that **Elliott** and other activists have built up a stake in **Wm Morrison** and are pushing for it to spin-out the majority of its freehold property assets into another company that would then be floated. On January 18, 2014, it was revealed that the second activist investor involved in the Company is **Sandell Asset Management.** " I think we were in Morrisons before Elliott got involved," Mr Sandell said, when asked if there were any other British companies that were ripe for investor activism. He declined to comment on Elliott's proposals for the supermarket group.

Clinton Group, Inc. is seeking to replace three of the nine directors at **Xenoport, Inc.** with its nominees, Kevin J. Cameron, Rael Mazansky, M.D. and Charles A. Rowland, Jr. Clinton believes the Company should adopt a new capital allocation strategy and focus its resources on the development of XP23829 ("829"), the Company's novel fumaric acid ester compound and pro-drug for monomethyl fumarate. Clinton also believes the Board should hire a new Chief Executive Officer. Clinton believes it is time for a change in the composition of the Board and management to help the Company re-orient its capital and efforts to emphasize 829 and the substantial commercial opportunities the compound affords to the Company's stockholders. Clinton also urges shareholders to vote against approving, on an advisory basis, executive compensation.

At the 2014 Annual Meeting, none of Clinton's nominees were elected to the Board.

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