



Activist Insight

Monthly

2017 INTERMEDIARY AWARDS

ACCENDO
CAPITAL

WHIRLPOOL

DECKERS
OUTDOOR

Volume 6 Issue 11 | December 2017



Activist Insight

Editor's letter



Josh Black, editor-in-chief at Activist Insight.

Welcome to the magazine that gets it right first time, unlike the vote counters at **Procter & Gamble**. The big news in November, upstaging even **General Electric's** overhaul and **Pershing Square Capital Management's** defeat at **Automatic Data Processing**, was that Nelson Peltz might win a seat on the board of the consumer products giant after all, negating dozens of half-drafted think pieces about how P&G successfully defended itself.

In addition to the high drama, this year's intermediary awards go some way to indicating why interest in activism was so high this year. A surfeit of large proxy contests and M&A provided some big paydays for advisers in the activism world and allowed several firms to improve on their numbers from last year. Congratulations to our winners, **Olshan Frome Wolosky** (lawyers) and **Okapi Partners** (proxy solicitors).

The advisory business was notably dispersed this year, however. *Activist Insight Monthly* tracked 230 law firm representations in 2017, compared to 175 last year. Other big names in the space, such as **Schulte Roth & Zabel**, made up ground.

For 2018, the competition among proxy solicitors and law firms will be just as intense, but the space to watch will be the banks. **Citi**, **Deutsche Bank**, and **Stifel** go into next year with new heads of their shareholder activism practices, a year after **UBS** and **Raymond James**, and two years after **Evercore** began to build teams.

November saw two launches from Activist Insight. To coincide with the release of our third issue of **Activist Investing in Europe: a Special Report**, produced in association with the law firm **Skadden**, we have interviewed the thoughtful activists at **Accendo Capital** on the peculiarities of Nordic governance. And on the product front, we unveiled *Activist Insight Shorts*, a major upgrade of our short seller database.

“We unveiled *Activist Insight Shorts*, a major upgrade of our short seller database.”

At the end of November, Activist Insight reported that Goldman Sachs is reorganizing its advisory teams into a new M&A Solutions unit, with the shareholder advisory team's co-head, Steven Barg, one of two leaders of the remodelled unit.

As we have done for some time now, we intend to keep covering short activism in these pages, and our short campaign in focus is **AeroVironment**, where **Engaged Capital** once tried and failed to engineer a governance and culture shift. **Spruce Point Capital** says it is not betting against the robotics industry per se, but believes the drone operator shares a competitive weakness in the industry

with another company it has bet against, Roomba-seller **iRobot**.

Elsewhere in this issue, we look at the first U.S. full slate contest outside of a hostile takeover since **Darden Restaurants** in 2014. Following the company's exhaustive strategic review, **Marcato Capital Management** made good on a threat it made earlier this year to run a contest if a sale was not arranged, shifting the focus to a breakup and dramatic cost reduction. It has already helped usher **Deckers'** ex-chairman off the board, forced changes to executives' change-of-control payouts, and secured the appointment of two new directors to the board before the December 14 meeting.

If victorious, the **Deckers** will mark the end of a successful year for Marcato. During November, the company's last proxy contest conquest, **Bulffalo Wild Wings**, sold itself to private equity firm Roark Capital rather than execute a turnaround as a public company. That meant money left on the table, compared to Marcato's handsome valuation. At Deckers it will really want to follow through on its vision.

With that, I am left only to offer my thanks for all the support we have received this year at *Activist Insight Monthly* and across the company. We'll be back in 2018 with our fifth *Activist Investing Annual Review* and look forward to keeping you informed on activism across all our platforms. 📌

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The definitive resource on
activist investing worldwide



Activist Insight



2017 INTERMEDIARY AWARDS

Advisers were greeted with a bustle of activity in 2017, leaving our leading law and proxy firms with more work than ever in the world of activist investing. “We see no signs of the space waning,” said Andrew Freedman, a partner with the most prolific law firm for the third consecutive year, **Olshan Frome Wolosky**. “It’s been an extraordinarily busy year, even in offseason.”

Advisers also saw an increase in the number of large-cap companies targeted by activists this year, a factor that seemingly dictated whether a company was willing to settle with an activist. Large-cap companies like **Procter & Gamble (P&G)** and **Automatic Data Processing (ADP)** often refused to walk away from a fight while small- and mid-cap companies sought to avoid the expense and distraction.

“When companies settle, they determine that at the end of the day, the time, the expense, and the distraction wasn’t worth it,” said James Dougherty, M&A chair for the Americas of corporate law firm **Jones Day**.

In addition, many of our highest-ranking intermediaries participated in activist campaigns outside of the U.S. “Activists are expanding their horizons globally as the U.S. space has become more crowded,” Freedman said.

Methodology

This is the third consecutive year Activist Insight is publishing its listings of those law firms and proxy solicitors who make their livings from activism. The following records are derived from public announcements – proxy statements, regulatory filings, and press releases – supplemented by the records of the firms themselves. To be included, a campaign must have seen the company in question subjected to a public demand by an activist during 2017 (up until November 30), and the full listings made available on *Activist Insight Online*. Several firms listed operate internationally – the data included overleaf are global where possible.

We welcome submissions for next year’s listing, including from PR firms and investment banks. To arrange a call with a member of the team, email support@activistinsight.com.

1 Olshan Frome Wolosky

Key contacts: Andrew Freedman, Steve Wolosky

Activist campaigns worked on: 61

For the third year, **Olshan** placed first in our law firm rankings with an impressive gap between it and the rest of the field. The New York-based firm worked on **Elliott's** proxy contest against aerospace company **Arconic**, helping the activist gain two board seats in a late settlement with the defense products manufacturer.

Andrew Freedman, a partner at Olshan, said settlements are not as easy to come by as they used to be, forcing activists to fight harder for what they want. He said this is especially true in the large-cap market where “companies are becoming a bit more emboldened.”

“Companies are becoming a bit more emboldened.”

-Andrew Freedman, Olshan Frome Wolosky



2 Schulte Roth & Zabel

Key contacts: Ele Klein, Marc Weingarten

Activist campaigns worked on: 40

New York-based **Schulte** placed second with 40 campaigns in 2017, including a handful of highly publicized campaigns such as **Greenlight Capital's** crusade at **General Motors** and **Elliott Management's** stint at **Marathon Petroleum**.

Most notable, however, was Schulte's involvement in **Triam Partners'** proxy contest at **P&G**, which may have been the most expensive ever, costing the two parties over \$100 million in total. Schulte partner Eleazer Klein said he has seen a slight decrease of companies that are willing to “come to the table,” as was the case with Procter & Gamble, which may have lost a proxy contest to Nelson Peltz by a narrow margin. On the flip side, Klein said he thinks most activists are willing to settle. “I don't think most are looking to go to a vote unless a company wants to do so,” he said.



“I don't think most [activists] are looking to go to a vote unless a company wants to do so.”

-Eleazer Klein, Schulte Roth & Zabel

3

Vinson & Elkins

Key contact: Kai Haakon Liekefett

Activist campaigns worked on: 29

The activist defense firm increased its activity to representations in 29 campaigns in 2017, making it the busiest law firm representing companies subjected to activism for a second consecutive year. This past year, **Vinson** was involved with **EQT**'s \$8 billion acquisition of **Rice Energy**, which was opposed by activist investor **Jana Partners**, and **Fiesta Restaurant Group**'s landslide win in **JCP Investment Management**'s proxy contest.

"I've never been busier in my life," said Kai Haakon Liekefett, a partner with the firm's M&A and capital markets division. Liekefett predicted 2018 will be an even busier year with more campaigns targeted at large-cap companies and more fights openly attacking CEOs.

"I've never been busier in my life."

Kai Haakon Liekefett, Vinson & Elkins



Olshan Frome Wolosky represented Elliott Management in its campaign at Arconic (top); Schulte Roth & Zabel was involved in one of the biggest campaigns in recent times at P&G (bottom left); while Vinson & Elkins represented Taco Cabana owner Fiesta Restaurant Group (bottom right).

4

Kleinberg, Kaplan, Wolff & Cohen

Key contact: Christopher Davis

Activist campaigns worked on: 9

Kleinberg moved up three spots to number four on our law firm rankings with a total of nine campaigns. The New York-based law firm advised **Viex Capital** in its fight for board seats at U.S. storage and data protection company **Quantum**. In March, the activist successfully reached a settlement with Quantum where the company agreed to reconstitute its board with a majority of new members and appoint three Viex representatives as directors. “I think all shareholders are going to benefit from that,” said Christopher Davis, a partner at Kleinberg.

Davis predicts 2018 will be a busy year for activist investors, specifically in the small- and mid-cap markets. “You will always have companies who underperform value peers and therefore stand out,” he said.



“You will always have companies who underperform value peers and therefore stand out.”

Christopher Davis, Kleinberg, Kaplan, Wolff & Cohen

5

Goodwin Procter

Key contact: Joseph Johnson

Activist campaigns worked on: 8

Goodwin represented the second most issuers in 2017, gaining a spot in our rankings for the first time. After a lengthy battle, Goodwin’s client **Cognizant Technology Solutions** reached a cooperative agreement with **Elliott Management** to replace three directors over the next two years.

Joseph Johnson, a partner with the Boston-based firm, said the trend of settlements really depends on the activists and the companies involved. “In some situations, if a company feels it’s right, it’s willing to spend the big bucks to fight,” he said.

“In some situations, if a company feels it’s right, it’s willing to spend the big bucks to fight.”

-Joseph Johnson, Goodwin Procter





Skadden

Key contact: Richard Grossman

Activist campaigns worked on: 8

Tech companies were well-represented among **Skadden's** clients in 2017, with mandates from **Cypress Semiconductor** and **Sina**. Richard Grossman, a New York-based partner at the firm, told *Activist Insight Monthly*, "What's interesting is that a few high-profile targets opted to let shareholders vote at the [annual] meeting, rather than follow what was a growing trend of companies seeking to quickly reach a settlement. Activists also have increasingly been targeting CEOs for removal as part of short-slate nominations, which I believe warrants a higher standard of review from proxy advisory services like ISS."



Morgan, Lewis & Bockius

Key contact: Keith Gottfried

Activist campaigns worked on: 7

Morgan Lewis' activism defense practice saw the company involved in a proxy fight at **Sito Mobile** in 2017, but settlements were more numerous, including at **RAIT Financial Trust**, **Harte-Hanks** and **The Meet Group** (formerly MeetMe). Keith Gottfried, who leads the practice, told *Activist Insight Monthly*, "Unlike years past when a board's lack of experience and preparation resulted in a general sense of pessimism among boards that they could prevail against an activist in a proxy contest, I believe boards are today more confident in their dealings with activists and such confidence has been bolstered by the increased level of proactive preparation that boards have done to prepare themselves for shareholder activism."



Jones Day

Key contacts: James Dougherty

Activist campaigns worked on: 7

Jones Day represented a handful of issuers in high-profile campaigns this past year, most notably **Marathon Petroleum** in its clash with **Elliott Management**. "It was a pretty public engagement and we ultimately came to a truce," said James Dougherty, the firm's M&A chair for the Americas. Other noteworthy clients included **P&G** in its battle against **Triam Partners** (Jones Day and Paul Weiss both worked on the campaign) and **comScore** in its settlement with **Starboard Value**.



"It was a pretty public engagement and we ultimately came to a truce."

James Dougherty, Jones Day

9

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Cadwalader, Wickersham & Taft

Key contact: Richard Brand

Activist campaigns worked on: 5

Tied with Akin and Thompson Hine at five representations, **Cadwalader** represented activists in a handful of campaigns including **Marcato Capital Management**'s stints at **Buffalo Wild Wings** and **Deckers Outdoor**. Most notable, however, was Cadwalader's involvement in **Pershing Square**'s high-profile proxy contest at **ADP**, where Bill Ackman's hedge fund nominated three candidates to ADP's board with the aim of expanding margins and improving efficiency at the company. The months-long campaign ultimately ended in a loss for the activist, but Ackman suggested he may launch another proxy contest at ADP next year if the company fails to improve its business.

9

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Akin Gump Strauss Hauer & Feld

Key contact: Jeffrey Kochian

Activist campaigns worked on: 5

This year, **Akin** rose one place, taking joint ninth spot in our rankings. The New York-based law office participated in a couple of big-name campaigns including **Engaged Capital**'s successful settlement with **Hain Celestial**, which allowed the activist to nominate six new directors with the promise that three incumbents will step down. Not every proxy contest, however, had a silver lining. The firm's client, **Corvex Management**, is currently battling **Energen** for the right to call a special meeting to appoint directors to the company's board.

9

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Thompson Hine

Key contact: Derek Bork

Activist campaigns worked on: 5

Thompson Hine's Derek Bork says activism in small caps is "just as busy as it has been in the past." Yet he notes that more discrete practices, including private communication and settlements, have trickled down from larger companies. "While activity is up, funds are looking for a different way to achieve outcomes — without having to go public," he says.

"While activity is up, funds are looking for a different way to achieve outcomes."

-Derek Bork, Thompson Hine



1 Okapi Partners

Key contact: Bruce Goldfarb

Activist campaigns worked on: 26

For the second consecutive year, **Okapi** ranked first on our list of proxy firms, representing both issuers and activists for a total of 26 campaigns in 2017. The firm's largest contest, according to CEO Bruce Goldfarb, was the fight between **Elliott Management** and **Arconic**, which ended in a settlement. "It was a significant situation for activism in general as you look at the discussion of how value is going to be created," said Goldfarb, who represented Elliott in the fight. "It's really a discussion of vision."

The proxy solicitor said 2017 was a busy year filled with campaigns launched at bigger targets, many of which were settled more quickly despite their complexity. "The reality is, sometimes a settlement makes sense and sometimes it really doesn't, especially in situations where there are almost diametric points of view on how to create value for business."

"The reality is, sometimes a settlement makes sense and sometimes it really doesn't."

-Bruce Goldfarb, Okapi Partners



2 Innisfree

Key contact: Scott Winter

Activist campaigns worked on: 20

Once again **Innisfree** claimed the second spot in our proxy firm rankings, working on three of the largest campaigns of 2017: **Trihan Partners'** battle for a board seat at **P&G** (with MacKenzie in a rare double), **Pershing Square's** proxy fight at **ADP**, and **Greenlight Capital's** contest at **General Motors**.

Managing Director Scott Winter said he thinks the number of proxy fights in 2017 was fairly consistent with past years, but the market cap of the companies targeted has increased. "The activists go where they see opportunities to make money," he said. When asked if he expects any changes for activism next year, Winter remarked that he anticipates 2018 will follow 2017's pattern. "I don't know if proxy fights will change other than in regard to the size of the target companies - this year they were massive."



"The activists go where they see opportunities to make money."

-Scott Winter, Innisfree

3

Morrow Sodali

Key contacts: Charlie Koons, Michael Verrechia

Activist campaigns worked on: 19

The 2016 merger of Morrow & Co with Italian shareholder services firm Sodali created a global proxy solicitation powerhouse that went on to acquire Australia's Global Proxy Solicitation in March. The global expansion paid dividends this year, allowing **Morrow Sodali** to move up three places to third.

Charlie Koons, who joined the firm from MacKenzie Partners in 2017 to lead the contested situations practice alongside Michael Verrechia, told *Activist Insight Monthly*, "Activism in 2017 was a bit like Formula One racing: expensive, high speed, dramatic, and involving some spectacular crashes and photo finishes."



"Activism in 2017 was a bit like Formula One racing: expensive, high speed, dramatic, and involving some spectacular crashes and photo finishes."

-Charlie Koons, Morrow Sodali

4

MacKenzie Partners

Key contact: Paul Schulman

Activist campaigns worked on: 16

MacKenzie Partners made a comeback this year, jumping a spot and earning fourth place in our proxy firm intermediary awards. Like last year, the proxy solicitor had a more issuer-heavy workload, dedicating 13 of its 16 campaigns in 2017 to the corporate side. The firm worked on many M&A contests this year, including **Whole Foods'** fight with **Jana Partners**. But for its most high-profile case, MacKenzie represented **P&G** as it fought **Trian Partners'** Nelson Peltz in his crusade to gain a board seat.

Paul Schulman, MacKenzie's managing director, noted the strong turnout by retail shareholders in favor of P&G's incumbent directors. "It has always been the case that retail investors side with management," he said. The challenge, he explained, was getting those shareholders to vote.

"It has always been the case that retail investors side with management."

-Paul Schulman, MacKenzie Partners



5

D.F. King

Key contact: Edward McCarthy

Activist campaigns worked on: 12

D.F. King dropped a place this year, ranking fifth with 12 campaigns. The firm, which represents both activists and issuers, enjoyed stints with multiple high-profile contests including **P&G**'s battle with **Triun Partners**, where D.F. King represented the company, and **ADP**'s fight with **Pershing Square**, where the firm represented the activist.

D.F. King's senior vice president Edward McCarthy says the average market capitalization of targeted companies is growing from previous years. "No company is immune to a proxy contest – regardless of market cap," he adds, explaining that in past years, the market cap of a company used to indicate the cutoff for activist attacks because it was difficult for hedge funds to raise enough capital to reach the 5% stake necessary to launch a contest. However, "Activists do not need large positions nowadays to be successful in a proxy contest or influence change," McCarthy said, citing Bill Ackman's 2% stake with voting rights in ADP.



“Activists do not need large positions nowadays to be successful in a proxy contest or influence change.”

-Edward McCarthy, D.F. King

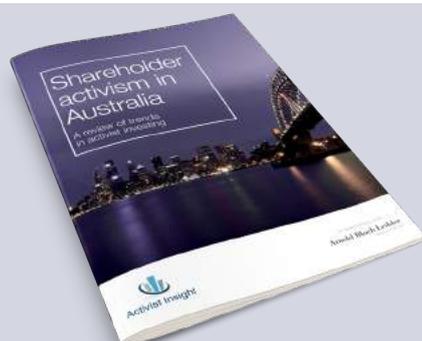
6

First Advisers

Key contact: Victoria Geddes

Activist campaigns worked on: 9

Australia's **First Advisers** has taken advantage of a bustling market for corporate control to establish itself as a solicitor to both activists and issuers, including fights at **Molopo Energy** and **Bellamy's Australia**. At the end of November, activity in the country was just a few campaigns short of beating 2016's record.



Shareholder Activism in Australia

A special Activist Insight report produced in association with Arnold Bloch Leibler.

[Click here to download your free copy.](#)

Alliance Advisors

Key contact: Waheed Hassan

Activist campaigns worked on: 8

Alliance Advisors increased its involvement in activism this year, marking its first opportunity to rank among the top 10 spots in our intermediary awards. The proxy solicitor represented a couple of banks, including **Wayne Savings Bancshares** in its bout with **Stilwell Value**, which plans to seek board representation at the company's 2018 annual meeting.

The firm also advised quite a few issuers in the energy industry, some of which were pressured by activists to conduct a strategic review, including the exploration of a potential sale. "We feel investors have reached a tipping point with respect to the energy sector," said Waheed Hassan, senior managing director at Alliance. "They want companies to focus on maximizing value with capital allocation strategies, instead of production at any cost. A volatile oil market coupled with continuous share price underperformance is likely to keep the sector under activist pressure, with investors demanding a serious review of all strategic alternatives."

"We feel investors have reached a tipping point with respect to the energy sector."

-Waheed Hassan, Alliance Advisors



Laurel Hill

Key contact: David Salmon

Activist campaigns worked on: 7

For the first time, **Laurel Hill** moved itself up the rankings to the number eight spot in our intermediary awards. The Canadian firm, which saw seven campaigns in 2017, represented issuers in some of the largest fights in the Canadian market. Clients included **Agellan Commercial REIT**, which settled a clash with **Sandpiper Asset Management**, and **Synex International**, which won a proxy contest against dissident director **Daniel Russell**.

Laurel Hill's president, David Salmon, said 2017 was an interesting year as the cost of campaigns began to deter proxy battles. However, Salmon also said activists and companies that won fights in the past were more likely to proceed with a fight in the future because of their increased chances of winning the next contest. "Success breeds success and, of course, a lack of success breeds the same," he said.



"Success breeds success and, of course, a lack of success breeds the same."

-David Salmon, Laurel Hill

9

Kingsdale Advisors

Key contacts: Amy Freedman, Michael Fein, Ian Robertson

Activist campaigns worked on: 6

Kingsdale Advisors fell two spots this year to number nine in our proxy firm rankings. The Toronto-based firm worked with activists for two of its biggest campaigns of the year despite usually representing issuers.

Kingsdale represented **PointNorth Capital** in its board overhaul at Canada-based **Liquor Stores** and advised **Oaktree Capital Management** in its attempt to thwart **Rayonier Advanced Material's** merger with Canadian paper company Tembec. Despite these high-profile cases, the firm estimated that only a third of the campaigns it worked on in 2017 were made public. "You're finding more companies who are willing to engage earlier, quietly, and for a longer duration than in the past," said Ian Robertson, Kingsdale's executive vice president of communication strategy.



"You're finding more companies who are willing to engage earlier, quietly, and for a longer duration than in the past."

-Ian Robertson, Kingsdale Advisors



Kingsdale Advisors represented PointNorth Capital in its proxy contest against Canadian company Liquor Stores (top); MacKenzie Partners defended Whole Foods against Jana Partners (bottom left); while Innisfree, ranked second, worked with Greenlight Capital at General Motors (bottom right).

10 = Georgeson

Key contact: William Fiske
Activist campaigns worked on: 5

Georgeson split its time quite evenly in 2017, representing three issuers and two activists for five campaigns this year. The proxy solicitor ranked joint 10th in our intermediary awards, moving down seven spots. On the activist side, the proxy firm represented **Voce Capital Management** as it pressured medical helicopter company **Air Methods** to sell itself for \$2.5 billion.

Meanwhile, on the issuer side, Georgeson advised French delivery company **XPO Logistics Europe** as **Elliott Management** fought to remove CEO Troy Cooper and make changes to its supervisory board. “CEOs seemed to be targeted specifically much more frequently,” said William Fiske, a senior managing director at Georgeson. However, Fiske also said companies were more prepared for activists. “Issuers are increasingly taking proactive steps to assess their vulnerabilities,” he explained.

“CEOs seemed to be targeted specifically much more frequently.”

-William Fiske, Georgeson



10 = Saratoga Proxy Consulting

Key contacts: Joseph Mills, John Ferguson
Activist campaigns worked on: 5

Since launching at the end of 2016’s proxy season, **Saratoga** has hit the ground running, representing **Macellum Advisors** and **Engaged Capital** in 2017. John Ferguson, one of Saratoga’s founding partners, told *Activist Insight Monthly* that the growing influence of index funds means that, for activists in proxy fights, “it’s increasingly difficult to be successful without proper guidance.”

“If a situation escalates to a proxy contest, in addition to winning advisory firm support, many activists will need to gain support from at least one of these funds in order to win,” he explains.

“It’s increasingly difficult to be successful without proper guidance.”

-John Ferguson, Saratoga Proxy

Law firm

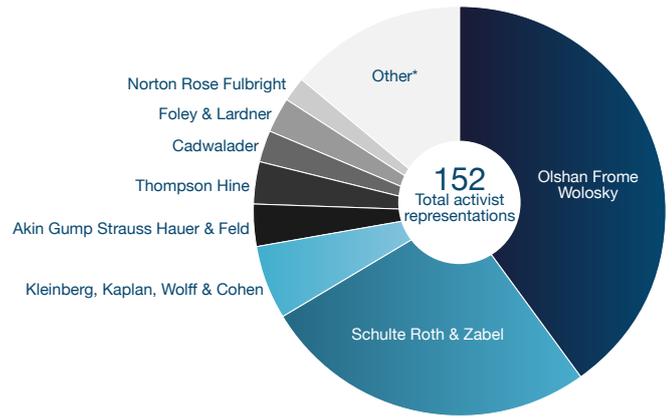
Law firm	Number of times represented activist	Number of times represented issuer	Total
Olshan Frome Wolosky	61	-	61
Schulte Roth & Zabel	40	-	40
Vinson & Elkins	-	29	29
Kleinberg, Kaplan, Wolff & Cohen	9	-	9
Skadden	1	7	8
Goodwin Procter	-	8	8
Morgan, Lewis & Bockius	-	7	7
Jones Day	1	6	7
Cadwalader, Wickersham & Taft	4	1	5
Akin Gump Strauss Hauer & Feld	5	-	5
Thompson Hine	5	-	5
Wilson Sonsini Goodrich & Rosati	1	3	4
Gibson Dunn	2	2	4
Foley & Lardner	4	-	4
Norton Rose Fulbright	3	-	3
Willkie Farr & Gallagher	2	1	3
Bryan Cave	2	-	2
Cravath, Swaine & Moore	-	2	2
Foley Hoag	2	-	2
Kane Kessler	2	-	2
Kirkland & Ellis	1	1	2
Paul, Weiss, Rifkind, Wharton & Garrison	-	2	2
Simpson Thacher & Bartlett	-	2	2
Barnes & Thornburg	-	1	1
Cleary Gottlieb Steen & Hamilton	1	-	1
Davis Polk & Wardwell	-	1	1
Dechert	1	-	1
Dentons	1	-	1
Faegre Baker Daniels	-	1	1
Fried Frank	1	-	1
Gunderson Dettmer	-	1	1
Latham & Watkins	-	1	1
Legal One Securities & Corporate Law	1	-	1
Lowenstein Sandler	1	-	1
Shartsis Friese	1	-	1
Stikeman Elliott	-	1	1
Sullivan & Cromwell	-	1	1

Proxy firm

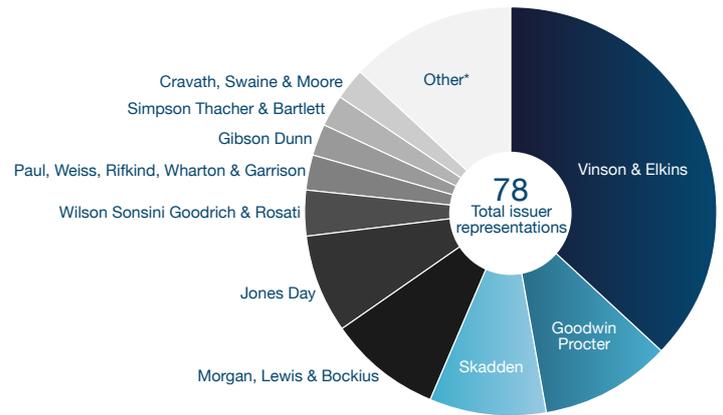
Proxy firm	Number of times represented activist	Number of times represented issuer	Total
Okapi Partners	17	9	26
Innisfree	4	16	20
Morrow Sodali	6	13	19
MacKenzie Partners	3	13	16
D.F. King	7	5	12
First Advisers	3	6	9
Alliance Advisors	2	6	8
Laurel Hill	2	5	7
Kingsdale Advisors	5	1	6
Saratoga Proxy Consulting	5	-	5
Georgeson	2	3	5
Investorcom	4	-	4
Shorecrest Group	-	2	2
Global Proxy Solicitation Pty Limited***	-	1	1
Regan and Associates	1	-	1

We welcome submissions for next year's list. To arrange a call with a member of the team, email support@activistinsight.com.

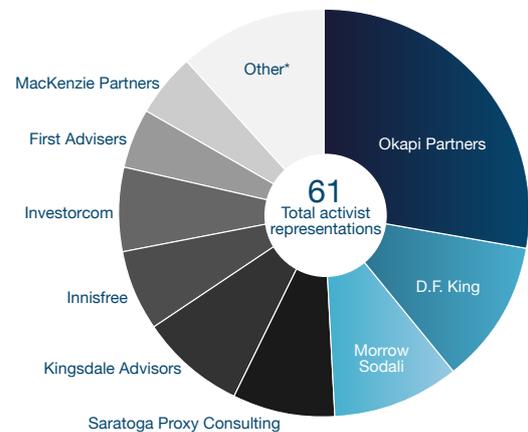
Breakdown of law firm representation of activists in 2017



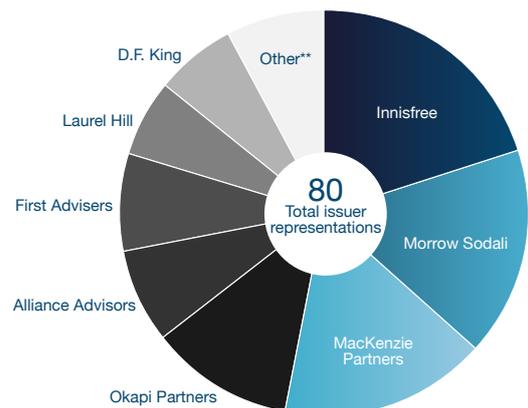
Breakdown of law firm representation of issuers in 2017



Breakdown of proxy firm representation of activists in 2017



Breakdown of proxy firm representation of issuers in 2017



* Firms with 2 representations or fewer.
 ** Firms with 3 representations or fewer.
 *** Later acquired by Morrow Sodali.

Slow activism

A Swedish activist explains to *Activist Insight Monthly* how it takes its time with campaigns and wouldn't want small investors dominating the debate.

Accendo Capital, based in Luxembourg and Stockholm, prefers activism at a less breakneck pace. This activist hedge fund, which began investing in Finland and Sweden in 2008, compared the strategy in its home market to the U.S. during a recent visit to New York with some surprising observations.

Commensurate influence

"The corporate governance models in the Nordic countries are very competitive versus the U.S. – in many aspects, even better," says Henri Österlund, Accendo's founder.

Given the prevalence of two-tier boards, also common in many German-speaking countries in Europe, that may be an unexpected viewpoint for an activist. Management boards can be insulated from shareholders as a result of the two-tier structure, which allows a few large investors to dominate oversight of executives. Activists such as those that challenge U.S. companies with minimal stakes do not get the same hearing.

"In Sweden and Finland, what authority and credibility a shareholder has is clearly connected to their ownership stake. It should be this way here [in the U.S.]," says Mark Shay, Accendo's senior partner. Annual elections and independent board chairs help keep shareholders in control of the company.

"That's why the idea that someone with a 0.5% stake would launch an

activist campaign in a Nordic small cap is unfathomable," Shay says. "It's a perfectly fine system to work within and it doesn't lend itself to public campaigns and proxy battles."

Buy in to buyout

Accendo freely admits that it exists in an uncommon niche and that scale would be difficult to achieve for investors wanting to gather assets. It takes a private equity approach, derived from Österlund's background. Shay's experience as a consultant and equity analyst, and a third team member, Kai Tavakka's roles in investment banking, round out the team.

"Part of our concept in terms of how we act as activists is rooted in the background of private equity," Österlund says. "I think that the best thing that private equity gives to companies is that you have a clear owner that is dedicated to bring[ing] the company from A to B. A lot of listed companies have a very scattered shareholder base – no one takes care of the company, no one loves the company."

"In Sweden and Finland, what authority and credibility a shareholder has is clearly connected to their ownership stake."

Accendo at a glance

Offices:	Luxembourg, Stockholm
Founded:	2007
AUM (Oct 2017):	82M euros
Level of activism focus:	Primary
Companies publicly targeted*:	4

*Since 2010

Meet the team



Henri Österlund
Founding Partner



Kai Tavakka
Partner



Mark Shay
Senior Partner

“Where many companies fail is they look too much at the risks... They focus too much on the downside and don’t then make decisions that maximize the upside.”

“A lot of listed companies have a very scattered shareholder base – no one takes care of the company, no one loves the company.”

That often means lengthy engagements, a process helped by lockups on its investors. Accendo exited its first ever investment, in **Okmetec**, after eight years. It also means a focus on growth. At Okmetec, an early dilemma was whether to support a capital expenditure program. It eventually did and says it encouraged management to pursue bigger clients. Okmetec was sold in 2016 to China’s National Silicon Industry Group.

“Capital allocation decisions should be at the core of all board work... not just if you do capex or you don’t do capex, but more the understanding of what is the upside of the capital resource allocation decisions,” Östlund explains. “Where many companies fail is they look too much at the risks... They focus too much on the downside and don’t then make decisions that maximize the upside.”

Fresh impact

More recently, Accendo has built a position in Impact Coatings, a company Shay says “has never really performed well financially.”

“They are nearing an inflection point where with the right kind of guidance – owner guidance – and the right financing and the right strategy

they can get to profitability and a breakthrough” in their footprint, he adds. What is typical for Accendo, “is that it’s a niche producer with some protected technology and the addressable market for them compared to the size of the company today is enormous.”

As the company begins to address its cash flow, Accendo reckons Impact Coatings will see a higher quality of shareholder replace the retail component of its ownership, and predicts fellow materials firms will look to partner with or acquire it.

Winner takes it all

The largest holding in Accendo’s portfolio, **Hexatronic**, is also a business that needs to look for a broader array of clients. According to Shay, its business, governance, and culture are all deeply focused on Sweden, but the more revenue and profit it can book outside the country, the better its future could be.

Accendo currently has four investments – three that come with board seats – and believes that it could roughly double that number with a fresh inflow of capital. For now, it is the portfolio companies taking on the world, not Accendo. 🇩🇪



Activist Investing in Europe

A special Activist Insight report produced in association with Skadden, Arps, Meagher & Flom.

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You can bet your boots

As Deckers Outdoor faces slow revenue growth, activist investor Marcato Capital Management places its confidence in the company's Ugg boots.

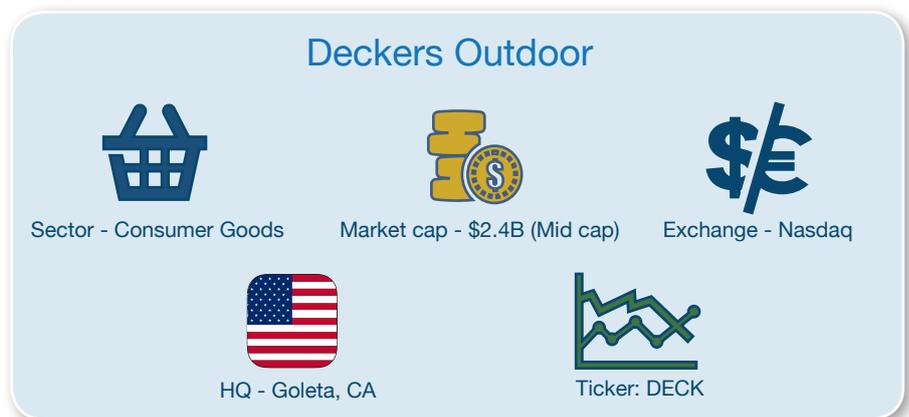
California-based **Deckers Outdoor** is best known for the Ugg leg of its business. So much so that activist investor **Marcato Capital Management** wants the footwear and apparel retailer to solely focus its efforts on the sheepskin boot, and sell or spin off its other brands. Despite the economics, however, Marcato might find Deckers to be a harder company to break than originally expected.

An easy target?

In the midst of its successful proxy contest with **Buffalo Wild Wings**, Marcato went on to pursue what it thought would be another auspicious target. In February, the San Francisco-based hedge fund built a 6.1% stake in Deckers - later increasing its position to 8.4% - after deciding the company had made some "critical missteps," such as missing various margin and earnings targets, and suffering "chronic stock price underperformance" in the form of a 28.8% decline over the last three years.

Along with **Red Mountain Capital**, Marcato pressured Deckers in April to conduct a review and explore strategic alternatives, including a potential

"Deckers' inability to deliver on its short- and long-term financial goals is unacceptable."



sale. The assessment took longer than the activist anticipated and by June, Marcato had become antsy, threatening to seek the removal of Deckers' entire board if the company did not announce a sale before its next shareholder meeting.

The activist also expressed concern over Chairman Angel Martinez's planned run for mayor of Santa Barbara, which Marcato viewed as a distraction. Martinez subsequently resigned the role to John Gibbons and stepped off the board but a few weeks later, Marcato made good on its threat, nominating a full board slate. In October, the retailer concluded its review, ditched the idea of a sale, and instead announced the adaptation of a share repurchasing program accounting for 20% of its market capitalization.

Looking for reassurance

Marcato was not confident Deckers would fight fairly. It sued the company to force it to hold its annual meeting on December 14, saying it feared Deckers might postpone its meeting because

Gibbons expressed concerns about fighting a proxy contest during the winter shopping season. The activist also requested that its nominees be pre-approved as directors to stop a "poison put" and alleviate the change-of-control provisions that could trigger executive and director compensation payouts, describing the issue as "a scorched-earth defense of its position."

When the matter reached the courts - a first on the compensation front - the company caved and defused the potential payouts. "We've taken decisive action to resolve these legal issues so that stockholders can focus on what really matters - choosing the right stewards to lead Deckers forward and continue to execute on its transformation," Gibbons said in November.

An activist's demands

In a shareholder presentation, Marcato detailed why it considered a full board takeover necessary. Deckers failed to meet nearly every strategic priority it set over the last five years and neglected to execute a successful

“They all have some good points, but I don’t think they’re getting to the heart of what can turn this thing around. It’s really about building something, and everyone seems to want to cut their way out instead.”

capital allocation strategy, it argued. “Deckers’ inability to deliver on its short- and long-term financial goals is unacceptable,” Marcato founder Mick McGuire said.

The activist explained that its nominees would implement an “executable plan,” including a reduction of Deckers’ store count from 466 to 80, an optimization of the company’s capital structure by refinancing debt, and the monetization of Deckers’ non-core assets by divesting or discontinuing its smaller and lower margin brands, Hoka One One, Sanuk, and Teva.

Deckers, on the other hand, revealed its own transformation strategy, saying Marcato was “waging a costly and distracting proxy contest” and putting Deckers’ “progress and momentum” at risk. The company said it had already cut significant costs (including some stores) without compromising growth or innovation, predicting that

it will improve its operating profit by \$100 million by the end of fiscal 2020, increase its operating margin by 10.5% in fiscal 2018, and expand its operating margin to at least 13% by the end of fiscal 2020.

Analyst Sam Poser had a different view altogether. He told *Activist Insight Monthly* that he believes both Marcato and Deckers avoided a deeper issue related to the loss of Ugg’s luxury status. “They all have some good points, but I don’t think they’re getting to the heart of what can turn this thing around,” said Poser, who serves as managing director for Susquehanna International Group (SIG). “It’s really about building something, and everyone seems to want to cut their way out instead.” Focusing on rebuilding the brand by appointing footwear and marketing experts to the board, keeping supply below demand, and developing the product would be a better approach, Poser told *Activist Insight Monthly*.

A pass at a settlement

The heated contest could have been avoided had the parties been willing to settle sooner. In a September statement announcing his nominees, McGuire expressed frustration at Deckers’ unwillingness to settle. When the company eventually did offer Marcato a deal in October, it was already too late. The activist rejected Deckers’ offer to help select three new directors because Marcato wanted to remove the company’s entire board instead.

With less than two weeks to go before the vote, Marcato was dealt a blow when both major proxy advisers recommended voting on management’s card. Institutional Shareholder Services suggested withholding on three incumbent directors, however, leading the activist to cut its slate from nine to three nominees in the hopes of boosting its chance of success. 📌

Deckers Outdoor 12-month share price performance



Down the drain

Whirlpool is begging the U.S. government to save it from foreign competition, but an activist could help the washing machine manufacturer more than another bailout by Uncle Sam.

When Whirlpool unveiled its 2020 financial targets at its investor day in May, analysts and investors alike were skeptical. And rightly so – the home appliances firm has continued to disappoint over the subsequent quarters. That was hardly a surprise for the company’s watchers, as the \$12 billion market capitalization company has for years failed to reach its self-imposed goals, each time finding an excuse for its lack of success.

Overpromising, underdelivering

Whirlpool’s reputation is already dire among investors. According to *Activist Insight Vulnerability*, the stock trades at a price-to-earnings multiple of just 15, significantly below its peers’ 24.9. Moreover, the company has underperformed its competitors on a total shareholder return (TSR) basis over most relevant periods. Whirlpool’s TSR over the past five years, for instance, is 85%, versus 143% for its peers.

In May, the company confidently said that it would increase its margins from around 7% to over 10% in 2020 and achieve organic growth of between 3% and 5%. That aim already seems

Whirlpool

Sector - Technology Market cap - \$12.0B (Large cap) Exchange - NYSE

HQ - Benton Harbor, MI Ticker: WHR

optimistic, with the firm revealing in its third-quarter report that it is behind on all margin drivers except marketing costs.

Nor was that the first instance of Whirlpool overpromising and underdelivering woefully. In 2014, management indicated net sales would increase to \$28 billion by 2018. That objective is now completely unattainable. In 2016, the company sold \$20.7 billion worth of goods and is expected to sell a little more in 2017. Unless the firm pulls off a miracle next year and sees revenue growth of 33%, its 2014 goal is far out of sight.

Every time management failed to meet its targets, it typically blamed the poor results on one-off restructuring costs, raw material inflation, and other macro factors. Indeed, in each of the

past nine years, Whirlpool incurred so-called non-recurring charges, frustrating investors.

Uncle Sam to the rescue

In an attempt to reduce competition in the U.S., its largest market by far, Whirlpool recently filed a petition against South Korean rivals **Samsung** and **LG**, seeking 50% tariffs on imports of washing machines. The move drew condemnation from observers who contended that the firm was just taking advantage of a populist White House.

The company made two similar moves during the Obama administration and was successful, although the World Trade Organization sided with South Korea when the decision to punish Samsung and LG was disputed. In

Key vulnerabilities

Valuation

Profitability

Performance

Director support

“Whirlpool could perhaps benefit more over the long term if challenged by an operationally focused activist than if it is saved again by a sympathetic Uncle Sam.”

October, the U.S. International Trade Commission ruled that Whirlpool’s concerns are valid and President Donald Trump is expected to make a final decision by the end of the year.

However, another favorable verdict may not shield Whirlpool from competition as much as it thinks, or for very long. In an October note, **Goldman Sachs** analysts said Whirlpool could benefit from the ruling in the near term “but increased price transparency (via online) and domestic supply could limit long-term gains.”

“Another favorable verdict may not shield Whirlpool from competition as much as it thinks, or for very long.”

Home profitable home

Whirlpool is very protective of its home turf because it is the only bright spot. In 2016, half of its revenue was generated in the U.S. at an impressive operating margin of over 11%. Competition is fiercer in Europe and margins much lower, with Electrolux, Haier, and the South Korean duo capturing a large part of the market.

In a bid to expand its European footprint, Whirlpool acquired Italy’s **Indesit** in 2014, but integration has been poor and questions remain over the logic of the deal. The timing of the Indesit acquisition was also unfortunate, with two of its largest markets, Russia and Britain, experiencing economic stress as both the ruble and pound devalued dramatically in 2015 and 2016, respectively. In October, the company once again blamed Indesit and high costs for raw materials for its weak results, and said it will pass the negative effects onto the final consumer through price increases in

a potentially counterproductive bid to keep margins intact.

Crying out for an activist

Whirlpool could perhaps benefit more over the long term if challenged by an operationally focused activist than if it is saved again by a sympathetic Uncle Sam. A large activist hedge fund could pressure management to face the reality and improve its products, cut costs, and enhance profitability. The likes of **Triam Partners** and **Pershing Square Capital** might find Whirlpool attractive, although both are reeling from exhausting and expensive proxy contests at **Procter & Gamble** and **Automatic Data Processing**, respectively.

Whirlpool has also been a rumored takeover target, with Chinese appliance manufacturer Midea Group reportedly mulling a move. This could prompt the involvement of M&A-focused activists such as **Elliott Management**, **Corvex Management**, or **Engaged Capital**. [👉](#)

Whirlpool 12-month share price performance



Short news in brief

A round-up of November's developments in activist short selling.

Spruce Point Capital Management issued a short report on military drone maker **AeroVironment**, accusing it of "poor capital allocation, questionable governance issues, an undisclosed whistleblower complaint, and technical factors causing temporary overvaluation." In response, the company said it had strong performance and a profitable core business.

Shares in Irish biotechnology company **Prothena** traded down 6.8% on news of short seller **Kerrisdale Capital Management's** short position in the company. In its negative report, the short seller predicted the company's lead drug, NEOD001, will fail its ongoing Phase 2b and Phase 3 trials.

Activist short sellers **The Street Sweeper** and **Xuhua Zhou** targeted online retailer **Overstock**, saying the company's spiking stock price was the result of retail investors that largely misunderstood the nature of Overstock's risky cryptocurrency venture. Short seller **Marc Cohodes** tweeted a barrage of praise of the company.

Japanese multimedia and graphics software company **Aeria** traded blows with **Well Investments Research** after the short seller released a report targeting the company. Well Investments accused Aeria of making poor investments and misleading investors regarding product popularity in order to prop up its stock price.

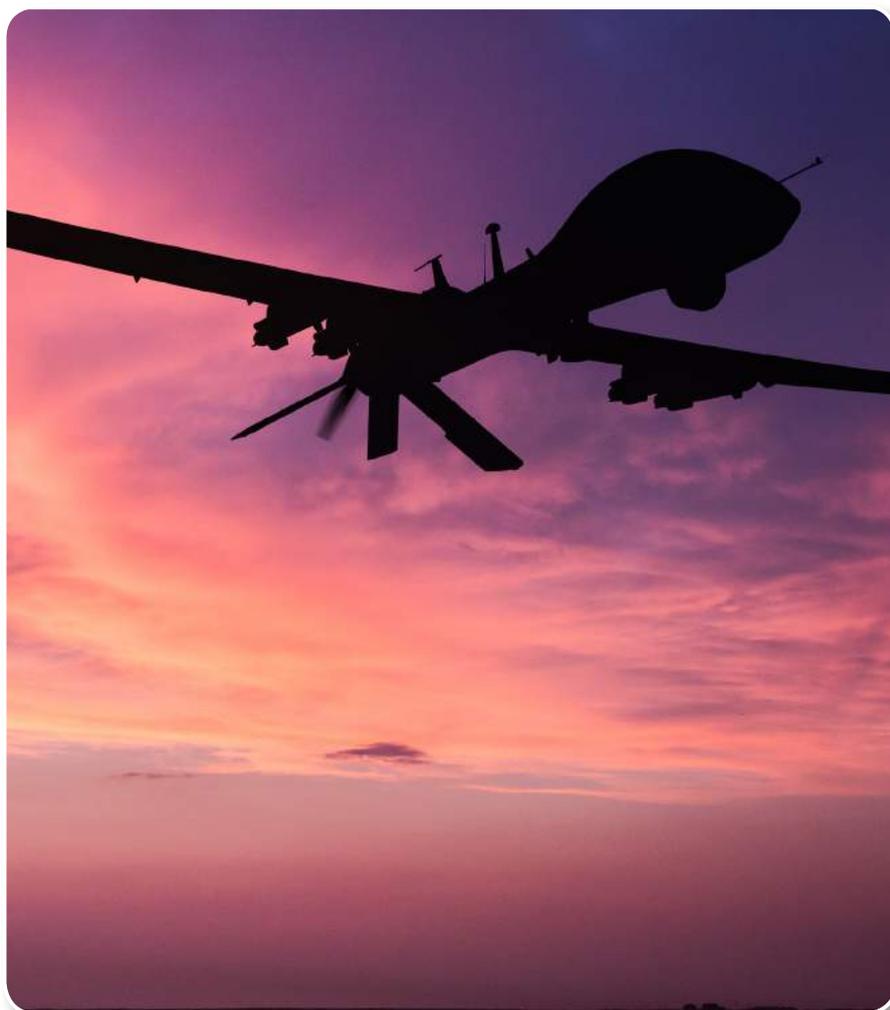
China Hongqiao filed a complaint with a Hong Kong court, seeking to stop

Emerson Analytics from publishing negative reports against the company. Following the lawsuit, the aluminum products manufacturer participated in a series of bouts with the short seller in an attempt to debunk Emerson's accusations.

A day after rising more than 10%, **TransEnterix** stock lost all its gains amid the release of a third short report from **White Diamond Research**. In

November, the short seller published two reports, saying the company's Senhance robot offered no clinical benefit, was unpopular with doctors, and is unlikely to sell in the volumes required to turn a profit.

Famed short seller **Jim Chanos** increased his short position in **Tesla**, predicting the company's stock will fall after **Elon Musk** steps down as CEO by 2020. Chanos said that



Military drone producer AeroVironment was targeted by Spruce Point Capital Management in November.

“Noble is continuing with the same old strategy and management team that led to its downfall.”

“Herbalife reported disappointing third quarter earnings after Bill Ackman capped his losses.”

growing competition in the automotive industry, combined with Musk’s interest in space travel and mass transportation, would accelerate his resignation.

News of the Herbalife’s disappointing third quarter earnings came one day after activist investor Bill Ackman said his firm **Pershing Square** had capped its potential losses in Herbalife by switching its \$1 billion short position in the nutritional supplement company

to derivatives. The stock trended down for the month but has had a good 2017.

Short seller **Muddy Waters Research** filed a petition requesting a New York court force Google to help identify someone who impersonated a Wall Street Journal reporter and tried to uncover the short seller’s strategy toward its target, French supermarket operator **Groupe Casino**.

Also in **Muddy Waters’** book, Hong Kong-listed China Huishan Dairy announced a provisional liquidation of the company 11 months after it was targeted by the short seller. In December 2016, Carson Block’s firm accused the company of overstating its capital expenditures, saying there was a high probability of bankruptcy.

Iceberg Research launched another attack at **Noble Group**, saying the company’s latest debt restructuring move will end in failure. The anonymous short seller, which first targeted the company in 2015, said Noble is continuing with the same old strategy and management team that led to its downfall.

Home Capital Group received a draft lawsuit from occasional short seller **West Face Capital**, which plans to sue the company for \$70 million based on allegations of misrepresentation. The activist said it covered its short position in Home Capital at a time when the company’s shares were inflated due to the company’s lack of public disclosure. [👉](#)



Jim Chanos increased his short bet on Tesla in November, saying the company’s stock price will fall when **Elon Musk** leaves his position of CEO at the company.

Falling drones

Ben Axler of Spruce Point Capital is going against the tide with a short position in drone manufacturer AeroVironment. The negative report was revealed soon after the activist targeted another futuristic company, iRobot, which he says has displayed similar bubble attributes.

After Spruce Point Capital disclosed short positions in AeroVironment and iRobot just four months apart, there was speculation the activist was taking a negative view on the entire robotics industry. Yet in an interview with *Activist Insight Monthly*, Spruce Point's managing partner Ben Axler insists the two shorts are company-specific and not part of a macro view on the automation sector. "In the case of iRobot and AeroVironment, we happen to notice a lot of similarities. They both tend to be highly promotional companies geared toward retail investors and they're both components of the Robo ETF," an exchange-traded fund, Axler told *Activist Insight Monthly*.

Rising unjustifiably

The activist had followed AeroVironment – a manufacturer of military drones and charging systems for electric vehicles – for a few years before deciding to step in with a negative report. The timing was right, Axler says, given the company's stock had surged more than 50% in the past 12 months for no fundamental reason. In the last eight years, revenues

"If someone really liked the technology, why wouldn't they have bought it a year ago, when it was trading at \$20 per share."



have barely budged, rising from \$247 million to \$264 million, representing a compounded annual growth rate of just 0.8%.

The lack of growth is not the company's only problem. "There are governance issues, lots of accounting errors, and product issues," he says. For an understanding of the company's governance, it's enough to look at activist investor **Engaged Capital's** years-long effort to effect change. The hedge fund ultimately failed to de-stagger the board and add new directors, and unceremoniously exited the stock in 2014. Engaged declined to comment claiming it is not familiar with the company anymore.

Low visibility

On the product side, Axler maintains the company's drones are loathed by the military because they are not user-friendly and break too often. At \$250,000 per unit, they are also very expensive. Commercial drones could be as efficient

in military combat and come at a fraction of the price, according to Axler. DJI, the Chinese market leader in commercial drones, sells them for roughly \$1,000.

Another red flag identified by Axler is the company's visibility on revenue growth, a measure of how likely the company is to meet sales guidance. Visibility has trended down to 41%, he says, compared to 80% two years ago.

Thanks to the myriad issues facing AeroVironment, Spruce Point believes the stock has up to 50% downside, acknowledging that the lack of debt and the \$225 million of cash puts a floor under the share price. "They have \$11 of cash [per share]. I wouldn't expect the stock to go below cash value, unless it becomes clear they are going to sustain losses for a long time," Axler says.

ETF buying

Axler reckons that the stock has appreciated thanks to buying by ETFs focused on the automation industry

“In the case of iRobot and AeroVironment, we happen to notice a lot of similarities. They both tend to be highly promotional companies geared towards retail investors and they’re both components of the Robo ETF.”

and retail investors lured by the “drone” hype. At a time when there are growing questions about the impact of such indices on activist investing and short selling, Axler says that, in fact, ETFs may create openings for short sellers. “The inclusion in an index is a trigger to buy the stock at a certain weighting, and there is opportunity for short sellers such as Spruce Point to identify the index buying or the ETF buying,” he maintains.

Analysts seem to agree the stock is overvalued, with many issuing a price target below the current \$42 per share valuation. **Raymond James** experts, who rated the stock “market perform” in August, wrote in a recent report that the company’s tactical missile segment looks attractive and is expected to benefit from a “recent escalation in global instability.” Axler does not entirely disagree with Raymond James’ view, but says competition in the sector has been increasing along with demand,

with multibillion-dollar contractors such as Raytheon and Lockheed Martin joining the drone race.

Whistleblower

Although the AeroVironment short is largely focused on valuation, Axler claims to have found a whistleblower complaint unreported by the firm. The lawsuit, which was made by a former executive and was dropped in 2016 without explanation, claimed AeroVironment charged the government for business expenditures unrelated to the military drone operations. In a public response, AeroVironment did not address the issue, only noting that its business will strengthen in 2018. The company did not reply to a request for comment on Spruce Point’s whistleblower allegations.

Although the financial impact from the accusations is unclear at best and possibly inconsequential, Spruce Point

reckons that the report raises worries about the firm’s integrity and is not an isolated incident. In 2010, the U.S. Department of Justice investigated the company’s billing practices, while in 2015 the firm voluntarily reported export violations to the government, prompting a probe.

Hedge your bets

Axler is not afraid that further buying by ETFs will propel the stock higher, or that AeroVironment will be bought by a larger competitor. He hedged his bet by taking long positions on some automation ETFs and believes there is no takeover interest in the company, particularly at such high prices.

“If someone really liked [AeroVironment’s] technology, why wouldn’t they have bought it a year ago, when it was trading at \$20 per share,” Axler says. 📈

AeroVironment 12-month share price performance



New short investments

The latest activist short investments from around the world in November.



Citron Research targeted Roku towards the end of November, with Andrew Left labeling the company as “a joke.”

Activist	Company	HQ	Date Announced	Primary Allegation(s)
Citron Research	Roku		Nov 28, 2017	Bubble
Citron's Andrew Left said Roku is a “total joke,” arguing that the streaming device maker's share price is highly overvalued.				
Cannell Capital	Avid Technology		Nov 27, 2017	Over-Levered
The occasional short seller said the company is suffering from increased competition and “an unsustainable capital structure.”				
Richard Pearson	ShotSpotter		Nov 21, 2017	Product Ineffective
Pearson said the company hasn't generated profits or meaningful cash in over 20 years because its product doesn't work.				
The Street Sweeper	Dicerna Pharmaceuticals		Nov 20, 2017	Medical effectiveness
The Street Sweeper predicted Dicerna's stock will drop by at least 35% because it doesn't have FDA approval, successful human studies, or a commercial product.				
Xuhua Zhou	Overstock.com		Nov 10, 2017	Bubble
Zhou claimed that Overstock will see a 50% downside after its ICO fails to raise an expected \$500 million.				
Kerrisdale Capital	Prothena Corporation		Nov 08, 2017	Medical Effectiveness
Kerrisdale questioned the efficacy of Prothena's main drug NEOD001, saying it “failed to achieve meaningful clinical response.”				
Spruce Point Capital	AeroVironment		Nov 08, 2017	Stock Promotion
The short seller said stock promoters are raising AeroVironment's stock up 80% despite the company's poor governance and capital allocation.				
The Street Sweeper	Overstock.com		Nov 03 2017	Bubble
The Street Sweeper implied about a 34% downside, saying Overstock is playing a perilous game with its cryptocurrency venture.				
White Diamond Research	TransEnterix		Nov 01, 2017	Medical Effectiveness
The short seller predicted TransEnterix's stock price will plummet since the company struggles with selling its ineffective laparoscopic surgical bot.				

News in brief

A round-up of November's developments in activist investing.

North America

Procter & Gamble refused to say whether it would contest an independent inspector's report on its proxy fight with **Triam Partners**. **IVS Associates** surprised observers by announcing that **Nelson Peltz** had probably won the contest by a tiny margin. Another **Triam** target, **General Electric**, cut its dividend and announced a fresh restructuring plan.

Bill Ackman lost a proxy fight at **Automatic Data Processing**, leading CEO **Carlos Rodriguez** to gloat over the activist's "ass-whipping."

Starboard Value disclosed a new position in Israel's **Mellanox Technologies** and said it would replace the board if the company did not work with the activist to improve operating margins. Another **Starboard** portfolio company, **Marvell Technology**, clinched a \$6 billion acquisition of **Cavium** after previously inquiring whether **Mellanox** was for sale.

Marcato Capital Management and **Deckers Outdoor** accused each other of misleading shareholders. The activist won a legal victory earlier in the month when the retailer agreed to work around poison put provisions in its debt and compensation agreements.

Separately, **Marcato** target **Buffalo Wild Wings** was sold to private equity firm **Roark Capital** for \$157 per share, a little over the average price paid by **Marcato** for its investment.

Jana Partners revealed two new stakes in restaurant companies – **Bloomin'**

Brands and **Jack in the Box** – causing the stocks to jump. The activist cut its stake in **EQT** after abandoning an attempt to stop its merger with **Rice Energy** when proxy advisory firms blessed the deal, saying it had forced management into concessions.

Barnes & Noble said **Sandell Asset Management's** offer to acquire the company using debt and equity from other shareholders was "not bona fide." Chairman **Leonard Riggio** owns an 18% stake and dislikes the structure of the deal.

The Ontario Securities Commission began looking into a private placement by **Hudson's Bay** that effectively ended **Land & Buildings'** hope of requisitioning director elections. The company said the placement was not a defensive maneuver but was important to its strategy, while the activist called foul.

Corvex Management started an appeal against an Alabama court ruling at **Energen** that the activist cannot call a special meeting to expand the board and appoint its own nominees.

Snow Park Capital asked **Cedar Realty** a series of questions about how the company was dealing with allegations of sexual assault levelled at its CEO. The company said the case had been fully investigated and found to be "baseless."

Fir Tree Partners and **Carl Icahn** opposed **SandRidge Energy's** "nonsensical and overpriced" deal for **Bonanza Creek Energy**. The activists reminded **SandRidge** that the previous

management's "empire building" landed the company in bankruptcy.

Cornerstone OnDemand received a "white squire" investment from private equity firm **Silver Lake Capital**, taking the heat off it as **Praesidium Investment Management** and **RGM Capital** pushed for a strategic review.

Hain Celestial was rumored to be up for sale, with **Nestlé** among the likely bidders. **Engaged Capital** won a host of board seats at the nutrition company earlier this year.

Famous Dave's of America appointed **Jeffery Crivello**, the CFO of activist **PW Partners** and a current board member at the restaurant operator, to be its new CEO.

Mill Road Capital asked **School Specialty** to give it a seat on the board of directors, saying it could help the stock "uplist" to a major exchange.

The board of **Twenty-First Century Fox** was re-elected despite a withhold campaign by **CtW Investment Group**.

Gamco Investors suggested that **Viacom** should float a portion of its international assets to increase its flexibility and visibility in the Far East. The activist also proposed collapsing **Lennar's** dual class stock.

MusclePharm CEO and investor **Ryan Drexler** proposed a restructuring of the notes he holds. **Wynnefield Capital**, another shareholder, hinted at a fresh campaign when a standstill expires in December.

Europe

The Children's Investment Fund (TCI) requisitioned a special meeting of the **London Stock Exchange Group (LSE)** after its CEO Xavier Rolet was given his marching orders. Rolet stood down ahead of schedule and Chairman Donald Brydon said he would go in 2019 as TCI raged.

RBR Capital backed down in its campaign at **Credit Suisse**, suggesting a three way breakup was not necessary to create value after meeting CEO Tidjane Thiam.

Cevian Capital expressed disappointment that Swedish network company **Ericsson** had to extend the target date for its cost-reduction plan to beyond 2020.

Amber Capital urged Greek telecoms firm **OTE** to announce a leverage target that would allow it to pay a €1 billion special dividend followed by €400 million in annual dividends. Half the company is owned by Deutsche Telekom and the Greek government, but the latter is considering options for its stake.

Smith & Nephew's CEO appeared to rule out a sale of the company or any assets after activist investor **Elliott Management** was reported to have taken a stake.

The European Union said approval for **Qualcomm's** purchase of Dutch company **NXP Semiconductors** might not come until 2018. **Elliott Management** is reportedly trying to agitate for a better deal for NXP shareholders, while

Qualcomm has become a takeover target for Singapore's **Broadcom**.

Nestlé rearranged its infant nutrition business and appointed a new chief technology officer. The Swiss food company said managing the unit on a regional basis would help deliver growth and efficiency gains. **Third Point** invested in the company in June.

Johnston Press said a requisition notice by Christen Ager Hanssen's **Custos Group** was invalid. The activist wants to appoint media exec Steve Auckland and former Scottish First Minister Alex Salmond to lead a turnaround.

A former chairman of U.K. construction engineering company **Van Elle** requisitioned a meeting to appoint himself and his son-in-law to the company's board.

Crispin Odey reversed his position on **Twenty-First Century Fox's** bid for **Sky**, saying the offer was beginning to look "rather mean." The activist said he would vote against the deal and that **Sky** could survive without its parent company.

Albert Frère increased his stake in **Burberry** by one-third, to 6%. The stock fell in November as a highly anticipated earnings report disappointed.

Peter Gyllenhammar doubled his stake in gold miner **Stratex** to 8% after shareholders rejected the acquisition of Australia's **Crusader Resources** and fired CEO Marcus Engelbrecht from the board.

Finnish specialty alloys producer **Afarak Group** announced that a group of investors had requisitioned an extraordinary meeting seeking an audit into the company's activity, the dismissal of the board, and the election of a new board. Dissidents include more than a dozen of individual investors and **AJ Elite Value Hedge Fund**, collectively owning 10.9% of the shares.



Albert Frère increased his stake in Burberry after the luxury goods company's stock tumbled on weak earnings.



Toshiba sought to raise \$5.4 billion to avoid being delisted, turning to U.S. activists like Third Point Partners, Greenlight Capital and Elliott Management for a private placement.

Rest of the world

Toshiba sought to raise \$5.4 billion to avoid being delisted, turning to U.S. activists like Third Point Partners, Greenlight Capital and Elliott Management for a private placement.

Sina narrowly won a proxy fight against Aristeia Capital, then insulated itself from further contests by issuing enhanced voting shares to its CEO. Aristeia said it was considering its options.

BHP held its annual meeting under pressure from Elliott Management, with Aberdeen Standard Investments falling behind the activist a day before shareholders gathered. The uncontested elections passed easily enough, but CEO Andrew MacKenzie was forced to put a two-year estimate on the sale of its shale assets and hang a “for sale” sign around its nickel division.

Activist investors Oceana Glory and Kwok Hiu Kwan each nominated candidates to the board of Hong Kong-listed Convoy Global Holdings. Oceana Glory is seeking two seats on the board at the December 29 special meeting, while Kwok wants to remove eight directors and appoint five.

The merger of Tabcorp and Tatts Group, a sore spot for activist Sandon Capital, was approved by the Australian Competition Tribunal. The approval could still be appealed, which might delay completion until 2018.

Oasis Management said Pasona Group’s stock price could double, as it recommended a sale or efficiency program to deal with runaway costs and poor capital allocation. The activist also submitted a request for the company’s books and records.

Solomon Lew lost a proxy contest at Myer Holdings after Ownership Matters, ISS and Glass Lewis said shareholders should back the department store operator’s board. Lew has a major stake in rival retailer Premier Investments.

Fairfax Media listed a chunk of its real estate subsidiary Domain on the Australian Securities Exchange, a year after Thorney Opportunities said divesting noncore assets would be better for Fairfax than a sale.

360 Capital took its stake in Asia Pacific Data Centre to over two-thirds of the company, causing the resignation of the board. A takeover bid failed, with rival bidder NextDC owning 29% of the stock.

Oceanic Capital sought to remove two directors of Argent Minerals and appoint three of its own nominees ahead of a December 6 meeting.

Risco Energy Investments became the latest activist to target Tap Oil, a year after the company settled a legal dispute with Chatchai Yenbamroong.

Australia-based technology company BOS Global said it was ready to give away control of the board to activist investor Innovation, if the 9.4% shareholder and primary funder is ready to stump up new funding.

Christine International shareholders rejected proposals by Sino Century Universal and a group made up of Sparkling Light, Focal Luck and Chester Top. However, the company said its chairman, Tien-An Lo, would leave the board.

As *Activist Insight Monthly* went to press, MMA Offshore sought to beat back activist investor Michael Kum with a private placement that Kum asked Australia’s Takeovers Panel to weigh in on. Indonesian tycoon Oei Hong Leong withdrew a bid to remove Chairman and CEO Chew Hua Seng. 

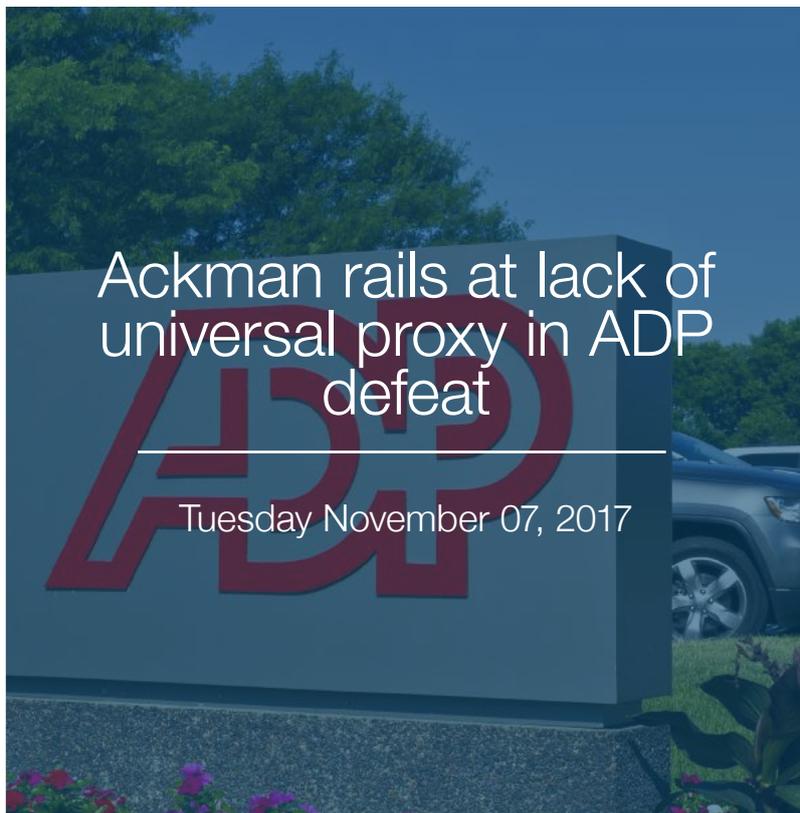
Most read

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Monday November 20, 2017

New investments

A selection of the activist investments disclosed around the world in November.



Outback Steakhouse owner Bloomin' Brands was targeted by Jana Partners in November, with the activist saying it may ask the company to conduct a strategic review.

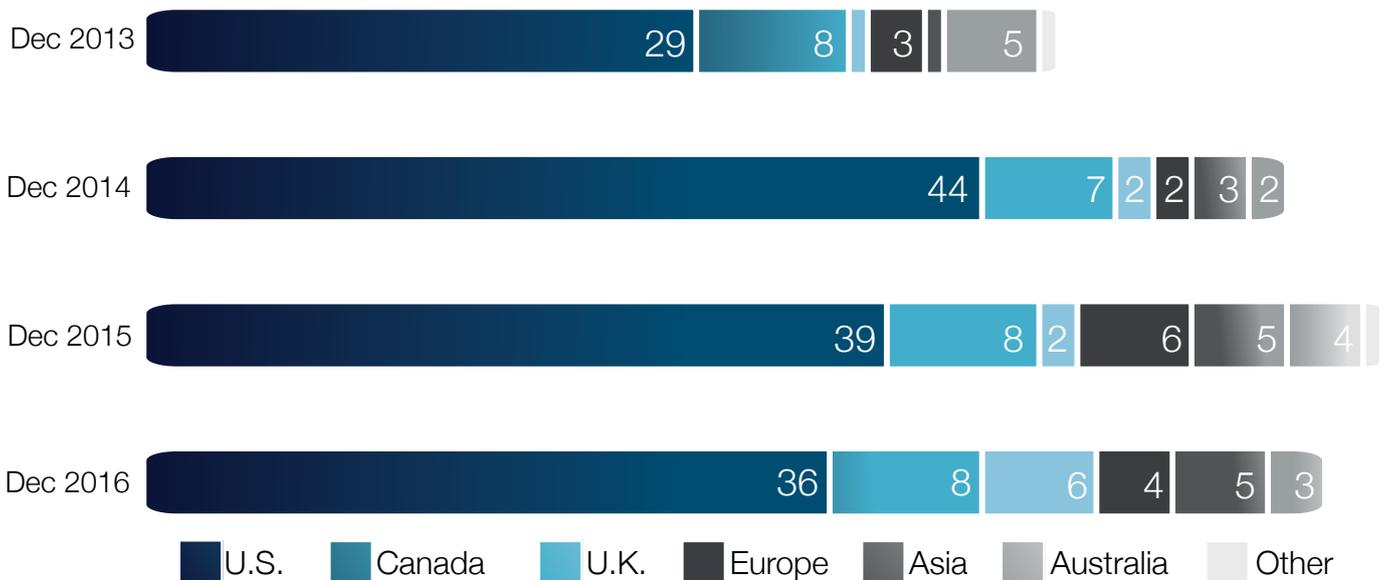
Activist	Company	HQ	Date Notified	Stake
Carl Icahn	SandRidge Energy		Nov 22, 2017	13.5%
Icahn is weighing a proxy fight in opposition to SandRidge's proposed acquisition of Bonanza Creek Energy.				
Jana Partners	Bloomin' Brands		Nov 20, 2017	8.7%
Jana plans to push for a strategic review, including the exploration of a potential sale.				
Starboard Value	Mellanox Technologies		Nov 20, 2017	9.8%
The activist, which is focused on Mellanox's profitability, said it may seek a board replacement.				
FrontFour Capital	Obsidian Energy		Nov 20, 2017	5.6%
FrontFour said it may enter discussions with the Canada-based company's board.				
Strategic Capital	Kyokuto Boeki Kaisha		Nov 20, 2017	8.7%
Strategic Capital is invested in Japan-based Kyokuto Boeki Kaisha but has yet to contact management.				
Strategic Capital	Asanuma		Nov 20, 2017	6.9%
The Tokyo-based activist has yet to make a public demand at Japanese construction company Asanuma.				
Roaring Blue Lion Capital	HomeStreet		Nov 20, 2017	5.6%
The Dallas-based activist intends to influence HomeStreet's policies and assert shareholder rights with the goal of maximizing shareholder value.				
Elliott Management	Mednax		Nov 16, 2017	7.0%
Elliott wants to speak to the healthcare company's management and board about "strategic options and operational opportunities to maximize shareholder value."				

“Oasis is seeking ‘transformational change’ at Japanese recruiting company Pasona.”

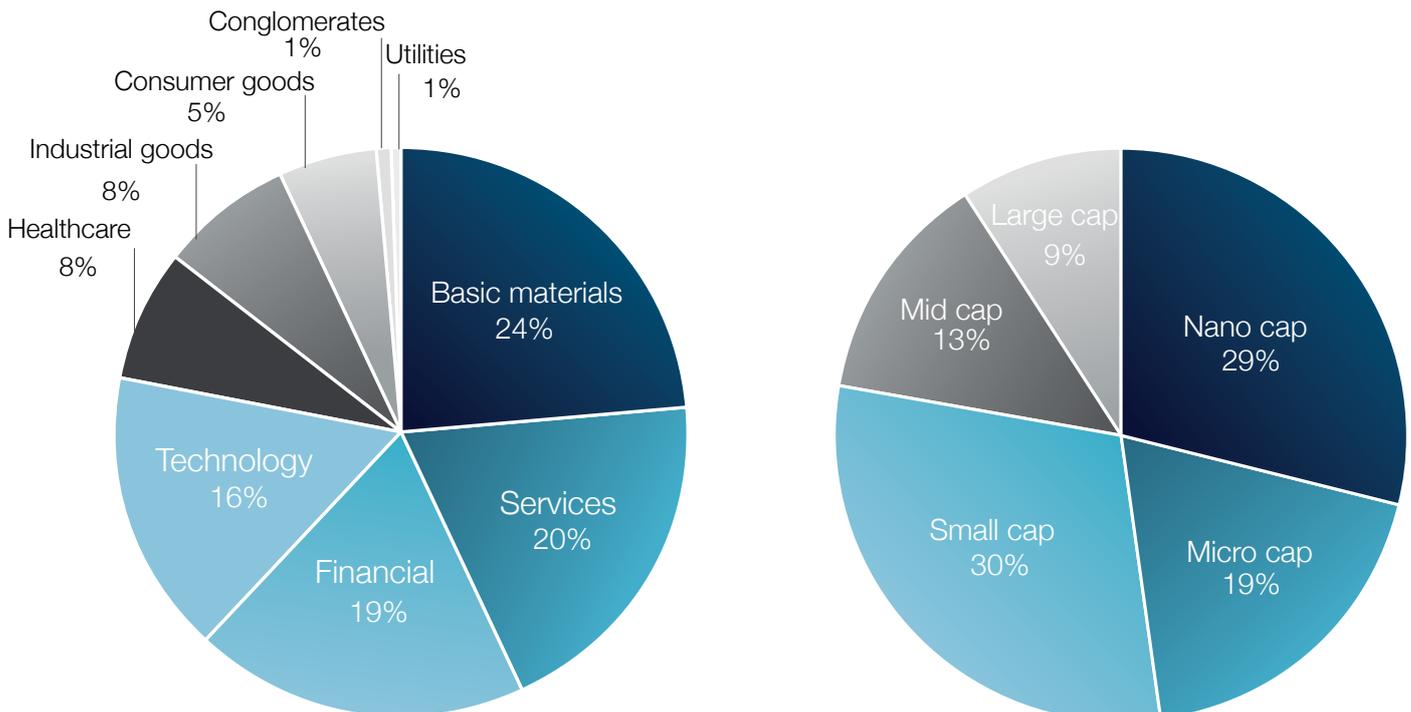
Activist	Company	HQ	Date Notified	Stake
Amber Capital	Axiare Patrimonio		Nov 16, 2016	1.2%
Amber Capital is invested in Spanish company Axiare Patrimonio but has not yet made any public demands.				
Mill Road Capital	School Specialty		Nov 16, 2017	21.3%
Mill Road requested a board seat at School Specialty and pushed for the education company’s “uplisting” to a major exchange.				
Bandera Partners	Rubicon Technology		Nov 16, 2017	9.5%
The occasional activist investor gained a seat on Rubicon’s board after buying a stake from fellow investment firm Cross Atlantic Capital.				
Avenue Capital Management	Midstates Petroleum		Nov 14, 2017	13.9%
Avenue Capital Management intends to push for a strategic review and other options to maximize shareholder value at Midstates Petroleum.				
Elliott Management	Taubman Centers		Nov 13, 2017	Unknown
Elliott joined activist investor Land & Buildings in pressuring Taubman to consider a sale.				
Veraison Capital	Zehnder Group		Nov 09, 2017	3.2%
The activist is invested in Swiss company Zehnder but has yet to make any public demands.				
Oasis Capital	Pasona Group		Nov 08, 2017	4.8%
Oasis is seeking “transformational change” at Japanese recruiting company Pasona, criticizing the company’s corporate governance, capital allocation decisions, and runaway costs.				
Simplex Asset Management	Hokushin		Nov 08, 2017	5.5%
Simplex, which typically prefers to engage with its targets behind the scenes, has yet to make any public demands at Hokushin.				
Simplex Asset Management	Ubiteq		Nov 08, 2017	6.2%
The Japan-based activist is invested in Japanese electronic equipment company Ubiteq but has not yet made any public demands.				
Concerned Shareholders	Afarak Group		Nov 08, 2017	Unknown
Concerned shareholders requisitioned an extraordinary meeting, seeking an audit into the Finnish company’s activity, dismissal of the board, and election of a new board.				
Nokomis Capital	Sequans Communications		Nov 07, 2017	9.9%
Nokomis discussed Sequans’ board and management composition, as well as ways to unlock shareholder value, including “capital allocation, operational improvements, and strategic alternatives.”				
Engine Capital	Hill International		Nov 06, 2017	7.4%
Engine announced plans to have discussions with the company’s board about opportunities to maximize shareholder value.				
Cannell Capital	Health Insurance Innovations		Nov 03, 2017	8.1%
Cannell changed its passive position to an active one, urging HIIQ to add an independent board member.				
Elliott Management	ASM International		Nov 01, 2017	3.6%
Marking its second stake in a Dutch company this year, Elliott is invested in ASM International but has yet to contact management.				

Activism in numbers

Companies subjected to a public activist demand in December of each year by region.



Proportions of companies publicly subjected to activist demands in the month of December since 2013 by company sector (left) and market cap (right).



N.B. 1. All figures are global unless otherwise specified.
 N.B. 2. All data since 2013 unless otherwise specified.
 N.B. 3. All figures in pie charts rounded to the nearest whole figure, and may cause summation errors.
 * 2017 YTD figure as of November 30, 2017.

Monthly summary

Activist targets by geography.

Issuer HQ location	Nov 2017	2017 YTD	2016 YTD
U.S.	36	439	453
Canada	3	42	45
U.K.	4	36	39
Australia	6	56	59
Europe (excluding U.K.)	7	91	95
Asia	6	80	86
Other	0	14	20
TOTAL	62	758	797

Companies publicly subjected to activist demands by company HQ location.

Activist targets by sector.

Sector	Nov 2017	2017 YTD	2016 YTD
Basic materials	17.7%	14.0%	14.8%
Conglomerates	0.0%	0.7%	0.5%
Consumer goods	3.2%	8.4%	8.7%
Financial	22.6%	21.1%	22.2%
Healthcare	6.5%	10.3%	7.4%
Industrial goods	9.7%	7.8%	7.7%
Services	24.2%	21.6%	22.0%
Technology	16.1%	13.5%	14.9%
Utilities	0.0%	2.6%	1.9%

Proportion of companies publicly subjected to activist demands by sector.

Activist targets by market capitalization.

Market Capitalization	Nov 2017	2017 YTD	2016 YTD
Nano cap (Less than \$50M)	32.3%	19.0%	21.7%
Micro cap (\$50M - \$250M)	24.2%	19.2%	20.7%
Small cap (\$250M - \$2B)	25.8%	25.8%	24.8%
Mid cap (\$2B - \$10B)	8.1%	14.7%	13.9%
Large cap (More than \$10B)	9.7%	21.4%	18.8%

Proportion of companies publicly subjected to activist demands by market capitalization.

Activist demands by type.

Demand type	Nov 2017	2017 YTD	2016 YTD
Board-related	56.4%	44.2%	48.3%
Balance Sheet	9.6%	9.1%	10.2%
Business Strategy	7.4%	7.2%	5.0%
M&A	14.9%	13.0%	14.1%
Remuneration	1.1%	6.1%	4.9%
Other Governance	7.4%	17.9%	15.6%
Other	3.2%	2.5%	1.9%

Proportion of public activist demands by demand type.

Success of resolved demands.

Outcome	Nov 2017	2017 YTD	2016 YTD
Activist at least partially successful	41.5%	43.6%	49.5%
Activist unsuccessful	41.5%	42.0%	41.0%
Withdrawn demands	17.0%	14.4%	9.5%

Outcomes of resolved activist demands

Number of active activists.

	Nov 2017	2017 YTD	2016 YTD
Active activists	69	596	633

Number of investors making a public demand of a company

Performance

1.12%*

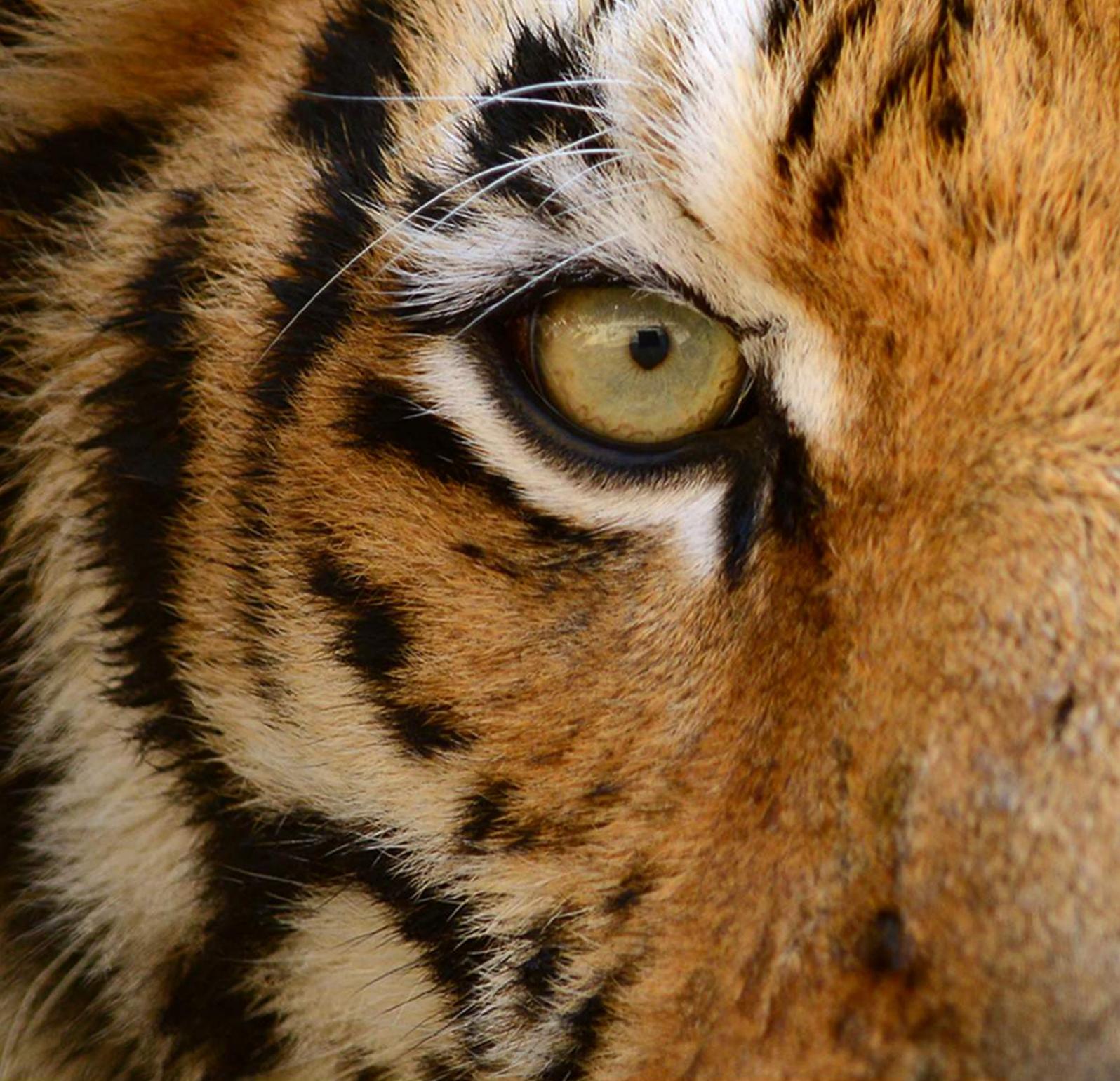
Stock price performance of activist-held U.S.-listed stocks in November 2017 (S&P 500 Index: 2.90%*)

New investments

30

Number of new activist investments disclosed in November 2017

N.B. 1. All data exclude activist short positions
 N.B. 2. All percentages (excluding performance) are given to one decimal place, and may cause rounding errors
 N.B. 3. YTD figures are as of the end of November of the given year, unless otherwise specified
 N.B. 4. Market capitalization figures are as of November 30, 2017
 *Trimmed mean (10%)
 Source: Activist Insight Online



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