

ACTIVIST INVESTING IN THE TECH SECTOR

MANTLE RIDGE

SONY

BURFORD CAPITAL



Activist Insight

ACTIVIST INSIGHT MONTHLY
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EDITOR'S LETTER



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With the ever-evolving nature and high-speed progression of the tech industry, it's no wonder activists are attracted to the space. As Stu Goldstein, a managing director at Moelis & Co., put it: "With greater innovation, you get disruption."

This month's feature explores the trends in the sector, noting that technology companies have been a constant focus for activists. Indeed, the start of the 2020 proxy season has already seen a handful of tech campaigns, like those at cloud content manager Box and telecommunications giant AT&T, launched by Starboard Value and Elliott Management, respectively. Other big-name campaigns of the past include those at Dell and Yahoo.

The sector provides ample opportunities for activists to pounce and has witnessed every kind of activism over the years, including bumpitrag and CEO changes. Oftentimes, firms will even be targeted more than once. The only question remaining is which firm will be targeted next?

"THIS MONTH'S FEATURE EXPLORES THE TRENDS IN THE SECTOR, NOTING THAT TECHNOLOGY COMPANIES HAVE BEEN A CONSTANT FOCUS FOR ACTIVISTS."

Elsewhere in the magazine, we examine Third Point Partners' campaign at Japanese tech giant Sony. Dan Loeb's hedge fund urged Sony to divest its stakes in non-core assets, like Sony Financial, and focus on its entertainment business instead. The activist also wanted clarification on how Sony's semiconductor and insurance divisions fit with the rest of the company. Sony later agreed to sell its stake in peer Olympus, but in September decided to retain its image sensor unit and majority stake in Sony Financial, dealing a blow to Third Point. The ball is now in the activist's court: will it push harder or walk?

In addition, the October issue of the magazine looks at the short interest in litigation financier Burford Capital and the

vulnerability of automotive classifieds company TrueCar. It also profiles Paul Hilal's Mantle Ridge as it settles with latest target Aramark. Plus, read an op-ed about initial public offerings written by our *Activist Insight Monthly* sponsor Sidley Austin. If your firm would like to sponsor an issue of *Activist Insight Monthly*, please email us.

There are also opportunities for your organization to publish a special report with Activist Insight. Last month, we published a report on **M&A activism** in association with Skadden and MacKenzie Partners. One-third of targeted companies were publicly subjected to M&A-related demands by investors with an activist strategy in the first half of 2019, marking a recent high. In North America, activists typically advocated deals more than they opposed them.

Plus, we will soon publish our third special report of the year on shareholder activism in Europe with Skadden, Georgeson, Greenbrook Communications, and Citi.

Also in October, we will release an episode of *The Activist Insight Podcast* about M&A activism to coincide with the recent report. I will be speaking to MacKenzie's Paul Schulman and Dave Whissel about bumpitrag, private equity, and more. And if you missed them, please check out our other episodes on **activism in Australia**, **short selling**, and **small caps**.

Members of our Activist Insight team will be traveling throughout October. Editor-in-Chief Josh Black visited London during the second week of the month while Senior Financial Reporter Iuri Struta will be heading to Paris for the **Corporate governance and shareholders engagement: the new normal** conference. Please do say hello. 🙋

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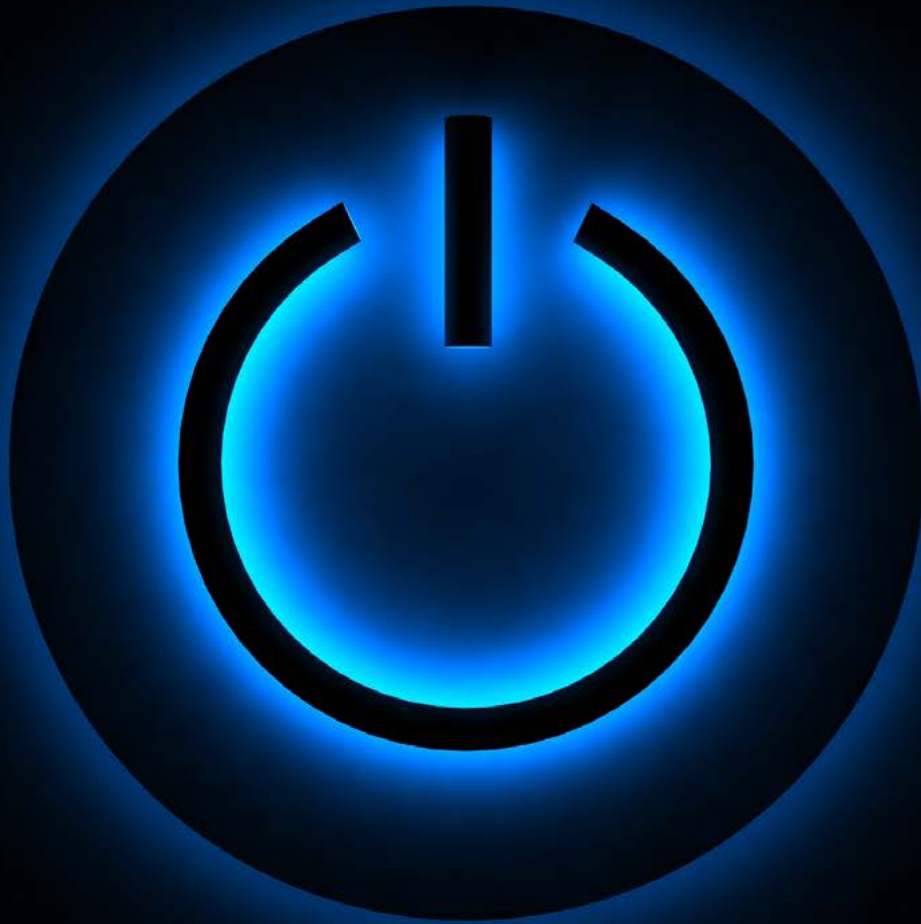
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REBOOT

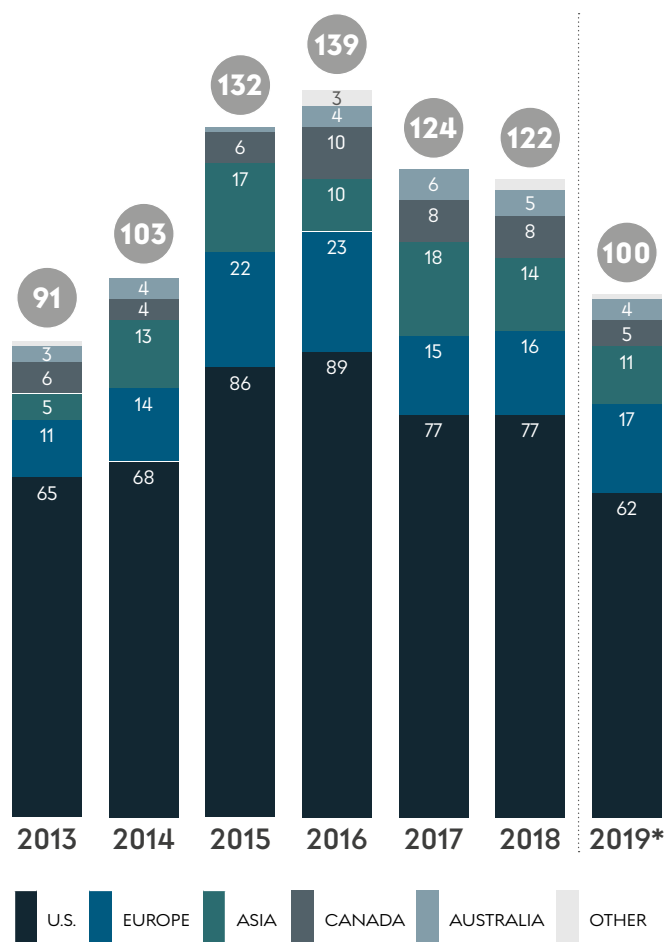


IN A WORLD WHERE DISRUPTION IS A CONSTANT AND CLEAN CASH FLOW COMES EASILY, ACTIVIST INVESTORS ARE UNLIKELY TO STAY ON THE SIDELINES FOR LONG, WRITES JOSH BLACK.

IF THE FIRST HALF OF 2019 WAS DOMINATED BY ENERGY AND HEALTHCARE, THE START OF THE 2020 PROXY SEASON IS LEANING HEAVILY ON TECH. WITHIN A WEEK OF EACH OTHER, THE SECTOR'S PREEMINENT ACTIVISTS, ELLIOTT MANAGEMENT AND STARBOARD VALUE, DISCLOSED STAKES IN AT&T AND BOX. BOTH HAVE ALREADY BEEN PART OF A SETTLEMENT FOR BOARD SEATS AT EBAY THIS YEAR AND AWAIT THE OUTCOME OF A STRATEGIC REVIEW. AFTER A BRIEF RESPITE AS ACTIVISM TICKED DOWN, THREATS MAY BE MULTIPLYING.

“HIGH MARGINS, PLENTIFUL M&A, AND CULTURAL FACTORS MAKE TECHNOLOGY A HAPPY HUNTING GROUND FOR EXPERIENCED ACTIVISTS.”

ACTIVIST TARGETS IN THE TECHNOLOGY SECTOR



NUMBER OF COMPANIES IN THE TECH SECTOR PUBLICLY SUBJECTED TO ACTIVIST DEMANDS BY YEAR AND COMPANY HQ. *2019 AS OF SEPTEMBER 30. SOURCE: ACTIVIST INSIGHT ONLINE

MOST ACTIVE ACTIVISTS IN THE TECHNOLOGY SECTOR

ACTIVIST	TARGETS
ELLIOTT MANAGEMENT	30
VIEX CAPITAL	15
STARBOARD VALUE	14
ANCORA ADVISORS	8
AMBER CAPITAL	7
VOCE CAPITAL MANAGEMENT	7
CARL ICAHN	7
CANNELL CAPITAL	7
GAMCO INVESTORS	7

TOP ACTIVISTS BY THE NUMBER OF COMPANIES IN THE TECH SECTOR EACH HAS PUBLICLY SUBJECTED TO ACTIVIST DEMANDS SINCE 2013. SOURCE: ACTIVIST INSIGHT ONLINE

ENDURING APPEAL

Technology companies have been a constant focus for activists, with over 100 targeted worldwide each year since 2014, and between 65 and 89 in the U.S. alone. Experts interviewed by *Activist Insight Monthly* concurred that disruption – an endemic feature of the sector – provided plentiful catalysts for change. “A very important part of strategy is anticipating and navigating disruption,” says Jody Foldes, leader of Boston Consulting Group’s activism practice. “The place that happens more than any other is in tech. It creates a catalyst for change.”

Indeed, companies in the sector have witnessed every kind of activism, often twice: bumpitrague at Dell in 2013 and 2018; CEO change at Yahoo (15 activists have been invested in the stock since 2010, according to *Activist Insight Online*); portfolio management at eBay (it is evaluating significant divestments for the second time in four years); and first a capital allocation campaign from Carl Icahn beginning in 2013, then Jana Partners’ first-ever socially-geared campaign in 2018 at Apple. Only Microsoft, whose extraordinary operational turnaround began in 2015 after a settlement with ValueAct Capital Partners and is, at the time of writing, once again the most valuable company in the world, has not been targeted a second time.

And while the dynamism of the sector invites investors to attempt to reshape priorities at alarmingly short intervals, the sector also possesses an appeal that welcomes repeat visits; 40 activists have publicly targeted more than two technology companies since 2013. The three most prolific – semiconductor scourge Starboard, software specialist Elliott, and small cap connoisseur Viex Capital – have publicly targeted as many companies (59) in that time as the next nine.

SOFTWARE DOES IT

High margins, plentiful M&A, and cultural factors make technology a happy hunting ground for experienced activists. Indeed, one adviser compares Silicon Valley to Japan, where a cash-rich, deferential market has come under assault by shareholders looking for optimal returns.

Legion Partners Asset Management, an activist that has made public demands at four tech companies and invested in more since 2010, according to *Activist Insight Online*, eschews stocks built on big losses in the hope of one day

“NETWORKING COMPANIES AND HARDWARE COMPANIES ARE MIGRATING TO INCLUDE GREATER SOFTWARE CONTENT IN THEIR OFFERINGS. WITH GREATER INNOVATION, YOU GET DISRUPTION.”

reaching market domination. Thankfully, the sector also throws up businesses with non-technical moats and the ability to grow cheaply, Chris Kiper and Sagar Gupta told *Activist Insight Monthly*. Subscription-based software as a service (SaaS) firms enjoy utility-like recurring revenues, while other sectors are increasingly relying on their products to improve efficiency. Attractive targets might be “at least at break-even, with potential to generate a lot more revenue and ultimately a lot of profits,” Kiper says.

The sector is likely to remain a favorite of activists, says Stu Goldstein, a managing director at Moelis & Co., who advises tech companies. “Software is as clean as you can get from an operating perspective,” he told *Activist Insight Monthly*. “Networking companies and hardware companies are migrating to include greater software content in their offerings. With greater innovation, you get disruption.”

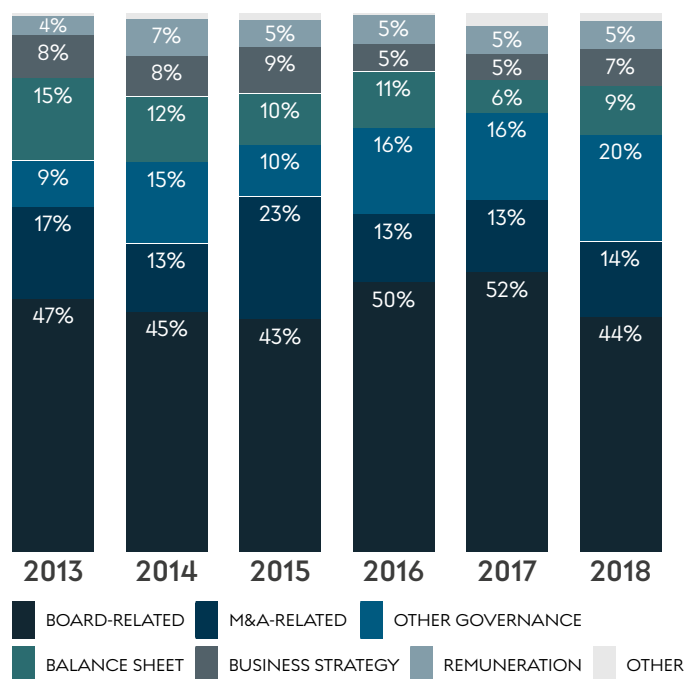
Indeed, as companies become more established, activists argue for costs to follow growth levels downward. “Starboard loves companies that struggle as they mature,” Starboard CEO Jeff Smith told the 13D Monitor Active-Passive Summit earlier this year before pitching health information business Cerner, which falls under the technology sector. “We often find companies can bloat as they get more comfortable.”

VIRTUAL FIGHTS ONLY

Then there are deals. Almost one in every 10 public demands in the sector is for a company to sell itself, compared to one in every 14 for all companies. Semiconductor manufacturers, a sector favored by Starboard, tend to buy each other. Software companies are more often targets of private equity for the same reasons they attract activists. Indeed, Elliott has partnered with buyout shops to buy Gigamon and Athenahealth in recent years after earlier failing to take Riverbed Technology private. Of all dedicated activist investments exited through M&A since 2014, 23% were tech companies. 38% of M&A exits involving a financial sponsor were in the tech sector, according to *Activist Insight Online*.

Perhaps because buyers are abundant and stocks re-rate quickly following reforms, it has been a while since the last real dust up between an activist and a tech company. Fewer proxy fights in the sector went to a vote in the U.S. in 2018, and none have so far in 2019 (the number of contested votes in Europe and Asia has compensated for some of that decline).

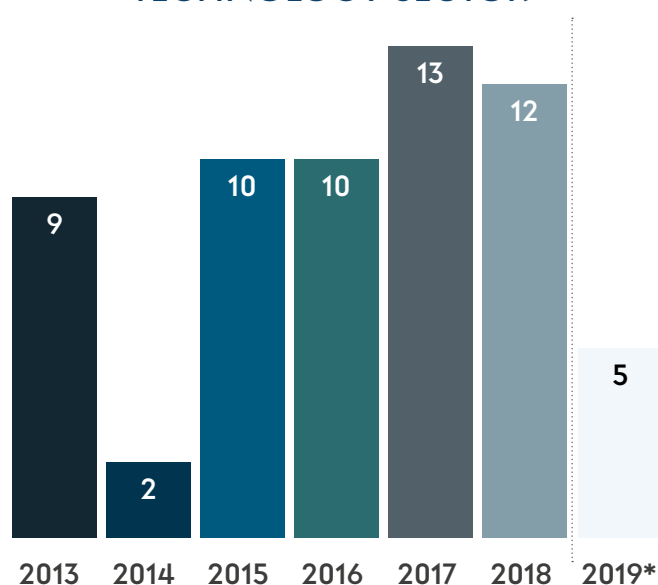
ACTIVIST DEMANDS IN THE TECHNOLOGY SECTOR



BREAKDOWN OF PUBLIC ACTIVIST DEMANDS MADE AT TECHNOLOGY COMPANIES BY YEAR AND DEMAND TYPE.

SOURCE: ACTIVIST INSIGHT ONLINE

PROXY CONTESTS IN THE TECHNOLOGY SECTOR



NUMBER OF PUBLIC DEMANDS FOR BOARD REPRESENTATION THAT RESULTED IN A CONTESTED VOTE AT COMPANIES IN THE TECHNOLOGY SECTOR, WORLDWIDE.

*2019 AS OF SEPTEMBER 30, 2019

SOURCE: ACTIVIST INSIGHT ONLINE

“BY SETTLING, INVESTORS GAIN ACCESS TO MANAGEMENT’S INSIGHTS AND ROAD MAP WITHOUT BEING TOO DISRUPTIVE.”

Waheed Hassan, a managing director at the Blueshirt Group, says that settlements hold advantages to both sides in an industry where even three months spent on a fight can be a fatal distraction. “For tech companies, unless you’re a dedicated tech investor, it’s hard to keep track of evolving technology and product competitiveness,” he told *Activist Insight Monthly*. “By settling, investors gain access to management’s insights and road map without being too disruptive.”

DUAL IT OUT

The absence of fights may change if activists go after the rarest subset of tech companies – those with dual-class share structures that consolidate a majority or all their voting rights in the hands of management or founders. Box, which converted its supervoting shares to common stock in June 2018, endured what the tech press called “every founder’s nightmare,” when it was targeted less than a year later. CEO Aaron Levie hasn’t yet screamed himself awake, saying he’s being “super collaborative” with Starboard.

“There have been some attempts to influence dual-class companies, both publicly and behind-the-scenes,” Hassan said. “Directors care about reputation risk. Any director who wants to sit on the next ‘unicorn’ board wouldn’t like to have a legacy of high withholds because of performance issues.”

Such companies have only occasionally seen fights break into the open – last year’s four was a near-term record. Nonetheless, many advisers to tech companies watched last year’s fight at packaged foods company Campbell Soup closely to see how things would spill out. It settled with Third Point Partners just before a vote, despite having 41% of the votes committed to defending the board.

The likes of Facebook and Alphabet have been fortunate to boast premium valuations in addition to more formal protections and no shareholder has yet made a concerted effort to change their course.

They may not be in this position forever. NorthStar Asset Management, a socially responsible investment firm based in Boston, has been filing proposals at both Alphabet and Facebook for years. According to CEO Julie Goodridge, the yearly experience of defeat has not been without consolation, especially at Facebook after a string of embarrassing data

privacy scandals. “Every news story around the proposal mentioned the majority voting problem,” she told *Activist Insight Monthly*. “Four years ago, people weren’t even talking about this. We’ve gained a lot of traction, almost as a service to other shareholders and hopefully, at some point, legislators, to help them understand why people are concerned.”

“I would expect an inexorable trend toward activists getting more aggressive and more creative over time,” Foldes added.

EVERYTHING ENDS UP DISRUPTED

The sheer variety of activist demands in the technology sector likely guarantees that it will remain relevant for years to come. Craig Wadler, managing director at Moelis & Co. and head of the bank’s activism defense practice, points out that the kind of capital allocation or M&A decisions activists try to influence occur frequently in the tech sector. “It would be naïve for companies to think that because they haven’t been targeted, they won’t be,” Wadler told *Activist Insight Monthly*. “Lots of second time attacks are happening; it really becomes just a valuation question for activists.”

No less notable than the influence activists have had on tech is what activists have taken from the sector. “Because we’re a generalist, we take what we learn in tech to other industries,” says Legion’s Gupta. He points to food company Nutrisystem, where Legion suggested redirecting marketing efforts from television to digital channels before the company was acquired, and Papa John’s International, another Legion target. The pizza maker had a fractious relationship with its founder, then a roughly 30% shareholder. After seeking a direct cash infusion from Starboard, it solved its governance problems. Now the focus is on operations: it has added web specialist Jocelyn Mangan to its board and plans to improve its mobile ordering platform.

Much-envied tech companies have plenty of reasons to resist activism focused on slashing costs and breaking up businesses, not least the appeal of scale, network effects, and market dominance. Those conditions tend not to persevere indefinitely. By marrying growth and value investing strategies, activists and tech companies may be uniquely placed to educate each other. 📌



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THE PERFECTIONIST

THE FIRST CAMPAIGN FROM PAUL HILAL'S SOLO ACT MANTLE RIDGE EXCEEDED EXPECTATIONS. THEY ARE HIGHER FOR HIS SECOND, WRITES JOSH BLACK.

MANTLE RIDGE	
FOUNDED	2016
HQ LOCATION	NEW YORK, NY, U.S.
KEY PEOPLE	PAUL HILAL
ACTIVISM FOCUS	PRIMARY
AUM	\$2.74B (AUGUST 2019)

Ask people about Paul Hilal's campaigns and there is an instant division of thought. Are they works of art or of science?

One defense adviser, who worked for Hilal's target CSX and couldn't be named because of his involvement in the campaign, described the activist's rollout as "note perfect" in an interview with *Activist Insight Monthly*. Patricia Olasker, a partner at Canadian law firm Davies Ward Phillips & Vineberg who has advised Hilal on campaigns from Canadian Pacific Railway onward, said of his record, "It's a small body of work but everything is a masterpiece." Through a spokesperson, Hilal declined to be interviewed for this article.

Almost everyone interviewed by *Activist Insight Monthly* for this report described a punishing schedule of research, intellectual honesty rather than vision, and openness to new perspectives. "When you spend time with him, you come away with a sense of confidence that he really did his homework," said an allocator who has committed to one of Hilal's campaigns and asked not to be quoted by name.

'A SMALL BODY OF WORK'

Hilal is unlikely to appear in any list of the most prolific activists, having been behind just three campaigns in his decade at Pershing Square Capital Management, the firm run by his college roommate Bill Ackman. He joined the board of Ceridian in September 2007, following a messy campaign not helped by the impending financial crisis. The company sold itself before a contest could take place, then added four Pershing Square nominees to the board

to ensure a safe closing as credit markets dampened the likelihood of a superior bid.

His other campaigns were among Pershing Square's best performers, however. Canadian Pacific Railway netted over \$2 billion in profits, while Air Products & Chemicals produced a total follower return of 55% from the day after Pershing Square's first Schedule 13D filing in 2013 until its exit in 2017, according to *Activist Insight Online*. In 2016, an annus horribilis for the fund, Air Products was the only significant investment in Pershing Square's portfolio to produce a positive return.

"HE PAYS A LOT OF ATTENTION TO THE HUMAN DYNAMIC. HE'S SENSITIVE TO OTHER PEOPLES' REPUTATION[S]."

Hilal left Pershing Square in 2016 and again teamed up with Hunter Harrison, the railroad executive who had led Canadian Pacific's turnaround, to repeat the play at CSX in January 2017. The strength of Harrison's previous successes and a 22% boost to the share price on the day the campaign became public knowledge gave CSX's board little to no room for maneuver, although it farmed the question of Harrison's staggering indemnities for his Canadian Pacific pension out to a shareholder vote.

Harrison, already unwell at the time of his appointment, died less than a year later. Yet the transformation set in motion by **Mantle Ridge's** campaign was no longer dependent on him. Even since Harrison's death in December 2017, shares have risen another 30%, leaving Hilal on course to collect a healthy payout when the five-year lockup on his capital expires either in late 2021 or early 2022.

PERSUASION

If Hilal had to fight for control of Canadian Pacific, he subsequently persuaded boards to replace CEOs at both Air Products and CSX without a brouhaha. In both cases, the market signaled enthusiasm for a change, though

“WHEN YOU SPEND TIME WITH HIM, YOU COME AWAY WITH A SENSE OF CONFIDENCE THAT HE REALLY DID HIS HOMEWORK.”

people who know Hilal also say he comes across as “passionate” and “singularly focused.”

“There’s times when you work with an activist and it’s almost like, are they going to be able to convince shareholders?” said Wes Hall, whose Kingsdale Advisors was the proxy solicitor on Canadian Pacific. “When Paul was laying the groundwork with CP, it was very systematic. For me, knowing how shareholders think, I felt shareholders were going to be won over by that argument.”

Indeed, Hall said Hilal spent just as much time with Canadian Pacific shareholders asking for their views about the firm as pitching his. He is an “exceptional” listener, said Josh Pekarsky, founder of Canadian communications firm Longview, who did not work on Canadian Pacific but has worked with him since. “He pays a lot of attention to the human dynamic. He’s sensitive to other peoples’ reputation[s],” Pekarsky adds. “That’s one of the things that makes him appealing to work with.”

DELIVERY

The urgency that marked Mantle Ridge’s campaign at CSX has been less in evidence at its latest target, Aramark. Shares rose 10% on May 30, the day that Reuters reported Mantle Ridge was exploring a bid to take the company private and another 11% on the first day of trading after it disclosed a 20% stake back in August.

The Philadelphia-based company is already highly leveraged but has experienced weakening operating margins in its

international business – down from 5.7% in 2016 to 3.3% in the current fiscal year – and uniforms – down from 12.5% to 7.5% over the same period thanks to acquisitions.

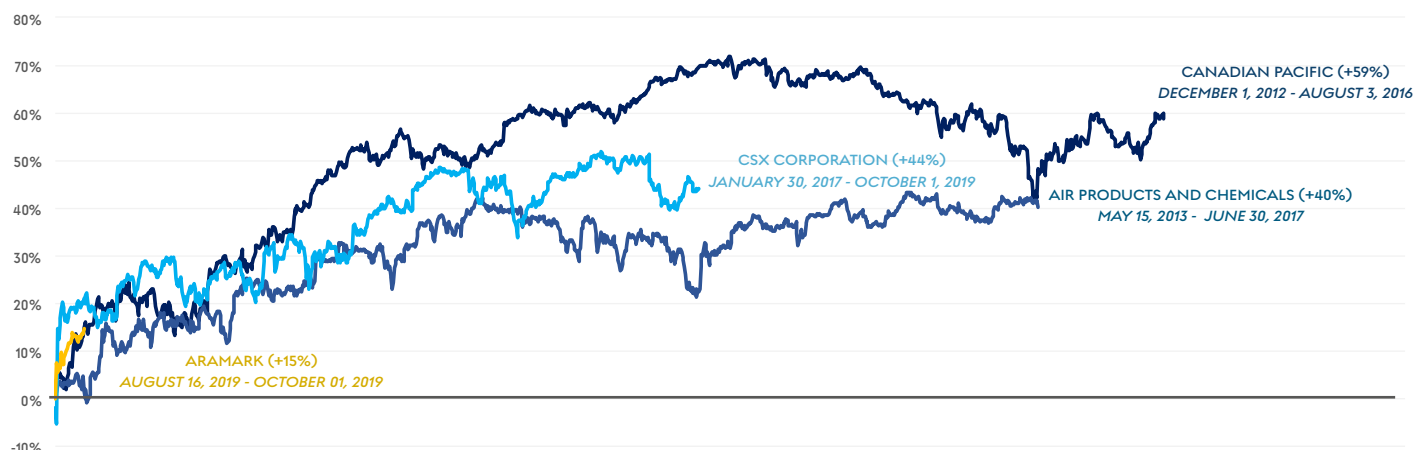
Aramark CEO Eric Foss has since announced his retirement and the company later agreed to a board revamp. Under the terms of the settlement, Aramark will immediately appoint five new directors, including Hilal, with a sixth to be nominated for election at the firm’s 2020 annual meeting. The company also named John Zillmer, an Aramark veteran, as its new chief executive and Hilal as vice-chairman of the board.

“HE HAS RESERVATIONS ABOUT PROXY FIGHTS 100% OF THE TIME... BUT HE’S NOT AFRAID TO GO THERE IF HE HAS TO.”

Activist Insight Monthly understands that the activist’s stake is locked up for five years in a single purpose vehicle like its investment in CSX.

While Hilal would not willingly leave a campaign up to anything as potentially random as a shareholder vote, all of *Activist Insight Monthly*’s sources agreed that he would if met with resistance. “He has reservations about proxy fights 100% of the time,” Olasker said. “He sees them as costly and potentially harmful, but he’s not afraid to go there if he has to.” Luckily, he hasn’t had to go there yet. 📈

SHARE PRICE PERFORMANCE DURING PAUL HILAL’S KEY CAMPAIGNS

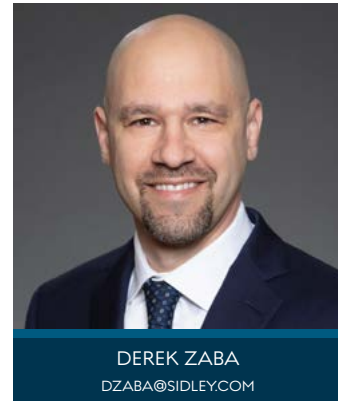


AVOIDING THE VALLEY OF DESPAIR

AN INTERVIEW WITH KAI LIEKEFETT AND DEREK ZABA, CO-HEADS OF SIDLEY AUSTIN'S SHAREHOLDER ACTIVISM PRACTICE.



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ARE THERE ANY PARTICULAR TRENDS YOU SAW THIS PAST PROXY SEASON?

Derek Zaba: One trend jumps as different than in years past: boards were overwhelmingly supported by shareholders in proxy contests that went to a vote by a factor of almost three to one. This strong support for companies is unprecedented. It demonstrates that if a board has the right plan and can articulate it effectively in a campaign, investors are willing to give it the benefit of the doubt despite any performance hiccups in the past.

“IF A BOARD HAS THE RIGHT PLAN AND CAN ARTICULATE IT EFFECTIVELY IN A CAMPAIGN, INVESTORS ARE WILLING TO SUPPORT THE COMPANY DESPITE SOME PERFORMANCE HICCUPS IN THE PAST.”

Kai Liekefett: Additionally, we continue to see activism campaigns grow more and more complex. For instance, we're seeing greater use of multi-channel communications strategies by both activists and companies, particularly for larger companies with a more significant retail component in their shareholder bases. Another example – within our firm, we've seen a rise in demand for expertise that spans multiple practice areas, such as SEC, regulatory, or antitrust expertise.

IS THERE A TREND TOWARD INDUSTRY-SPECIFIC ACTIVISM? ARE THERE COMMONALITIES FOR ACTIVISM WITHIN A PARTICULAR INDUSTRY?

KL: Most activists are largely industry agnostic, or at least are willing to be active in more than a few different industries. However, in recent years we have seen activist theses migrate from balance sheet and sale of the company demands to demands for operational change, which tend to require more experience in a particular industry. In addition, the increase in the number of activists means that the low-hanging fruit is nearly picked over. As a result, some activists are taking a closer look at industries that have traditionally been more difficult for many activists to pursue, such as insurance and utilities. Recent regulatory changes at the Federal Reserve will increase activism against banks.

WHAT ABOUT HIGH GROWTH INDUSTRIES LIKE TECHNOLOGY? ARE ACTIVISTS TARGETING THESE AREAS? DO ACTIVISTS HINDER INNOVATION HERE?

DZ: Activism in the technology industry continues to be strong. Generally, for high growth companies, which are accompanied by high valuation multiples, there are many more decisions that need to be made by management that can have a material impact on the company's financial trajectory and valuation. And, relative to other industries, information relevant to making the decision is more imperfect. Inevitably, in these circumstances, some of these decisions won't bear fruit, which provides an opening for an activist.

“TECHNOLOGY IS GENERALLY THE ONLY INDUSTRY WHERE YOU CAN RAISE THE IDEA OF DUAL-CLASS STOCK WITHOUT TOTALLY ALIENATING INVESTORS.”

But this doesn't necessarily mean that all of these decisions were misguided at the time it was made, and it certainly doesn't mean that an activist campaign is warranted and board change is necessary. Even minor missteps can result in an activist demanding the exploration of “strategic alternatives,” which occurs frequently in the technology sector.

KL: Activists have the ability to create their narratives with the benefit of 20/20 hindsight. Facing the prospect of Tuesday morning quarterbacking by an activist might impact a company's decision-making process. As a result, I fear that some high-risk but potentially high-reward opportunities are not being undertaken because seasoned executives worry about becoming activism targets if their decisions won't result in near-term share price performance.

“SOME ACTIVISTS ARE TAKING A CLOSER LOOK AT INDUSTRIES THAT HAVE TRADITIONALLY BEEN MORE DIFFICULT FOR ACTIVISTS TO PURSUE, SUCH AS INSURANCE AND UTILITIES.”

IS DUAL-CLASS STOCK A SOLUTION?

KL: Multiple solutions have been proposed to deal with this issue. Dual-class structures and tenure-based voting are two that have garnered the most attention. Generally, the tech industry is the only arena where you can raise the idea of dual-class stock without totally alienating investors. We've seen some tweaks to these mechanisms in the recent IPO wave, particularly relating to the time and structure of a “sunsetting” provision. But regardless of the exact mechanism being employed, as long as the public markets continue to hinder innovation, there will be a demand for these types of features.

ARE THERE KEY POINTS IN THE LIFECYCLE OF A TECHNOLOGY COMPANY WHERE THE POTENTIAL FOR ACTIVISM IS PARTICULARLY INCREASED?

DZ: There are key points in every company's evolution where the risk of activism is greater, it just so happens

that companies whose core business is “technology” – defined broadly – evolve at a much faster pace. These key points follow the evolution of the investor base. The initial focus on growth in operating metrics (e.g. number of users) then transitions to revenue growth. And later the focus broadens to profitability metrics and then finally, as the company matures, to returns on capital. Each of these transitions results in a changeover of the shareholder base, carrying with it the risk of missed expectations and potential retrenchment in the stock price.

KL: And at some point, it may make sense for a company to invest in adjacencies, either organically or inorganically. Activists tend to have a cynical view toward investments outside of the core business, notwithstanding spectacular success stories such as Apple's venture from computers into the cell phone business. In many cases, companies aren't afforded the time to allow these transformations to play out. This goes back to our discussion about how activism disincentivizes innovation.

DO TECHNOLOGY COMPANIES HAVE UNIQUE ACTIVIST VULNERABILITIES AROUND NONECONOMIC ISSUES SUCH AS GOVERNANCE, COMPENSATION, AND ENVIRONMENTAL/SOCIAL?

DZ: In many cases, the needs of technology companies are different than those in other industries. For example, in certain regions the compensation peer group needs to include not just other public companies but also private companies that offer significant equity. This impacts the amount and mix of compensation necessary to attract and keep talent.

On the ESG front, perhaps the biggest difference is that the employee base for many of the technology companies tends to skew toward a population that cares more about ESG issues. Thus, these companies are facing pressure on ESG issues on an additional front, with some employees going so far as to sponsor formal shareholder proposals. This will push technology companies to be more out front on these issues, which may become a bigger part of future activist campaigns. 📢

THE FLEETING POST-IPO GRACE PERIOD

NEWLY IPO'D COMPANIES ARE BECOMING TARGETS OF ACTIVIST CAMPAIGNS EARLY IN THEIR PUBLIC TENURE, WRITE SIDLEY'S KAI LIEKEFETT, MARTIN WELLINGTON, AND DEREK ZABA.

The first half of 2019 introduced a wave of high-profile companies to the public markets – Uber, Lyft, Slack, Pinterest, Chewy, and others. According to DealPoint data, 111 initial public offerings (IPOs) on the NYSE and Nasdaq raised \$40.4 billion in proceeds, with a median deal size of \$131 million. The majority of these new listings this year were technology or biotechnology companies. A robust pipeline of technology IPOs is reportedly lined up for the remainder of the year.

While “going public” subjects companies to heightened scrutiny on certain measures, newly minted public companies are typically held to more forgiving standards than their more seasoned peers. For example, companies that qualify as emerging growth companies under the JOBS Act are subject to reduced executive compensation disclosure requirements and are exempt from “say on pay” votes for up to their first five years post-IPO.

Similarly, some structural governance provisions disfavored by proxy voting advisers and some in the investor community are more tolerated within the first few years after an IPO. For example, the Council of Institutional Investors has supported dual-class structures if there is a sunset provision that eliminates the structure within seven years.

Shareholder activism is another area where recently launched public companies typically enjoy a brief de facto

grace period. Concentrated shareholder ownership through insiders and other pre-IPO investors, who also often maintain board representation, provides another layer of protection. In addition, public institutional investors will have only recently and consciously chosen to purchase the stock because they support the company's current path. And from a tactical perspective, there is little public record and no historical returns for an activist to criticize.

The activism grace period fades more quickly, however, than those relating to the disclosure and governance items discussed above. In fact, based on the number of publicly announced campaigns compiled by Activist Insight, the risk of activism at a newly public company increases to approximately two-thirds that of a longer tenured company within 18-24 months after the IPO. By year five, the risk of activism is nearly equivalent to the average public company – the grace period has all but disappeared. Furthermore, this historical data likely presents an overly rosy scenario for companies that have recently gone public: the activism campaign dataset exists entirely within a 10-year stock market expansion. Any material downturn in the economy and the stock market, which is apt to overly impact newly IPO'd companies, may cut short any then-existing grace period.

Alas, as in life, a company's “clean slate” does not stay clean for too long.

SIDLEY

THERE'S NO TIME FOR TRAINING ON THE JOB IN ACTIVISM

SIDLEY REPRESENTED THE DEFENSE SIDE IN EACH OF ACTIVIST INSIGHT'S “WILDEST CAMPAIGNS” IN 2018 & 2019.

SIDLEY'S SHAREHOLDER ACTIVISM DEFENSE TEAM

IT'S A SEQUEL

THIRD POINT PARTNERS IS HAVING A SECOND GO AT BREAKING UP JAPANESE CONGLOMERATE SONY AFTER ITS 2013 CAMPAIGN WAS LARGELY UNSUCCESSFUL. IURI STRUTA EXPLORES IF THIS TIME WILL BE DIFFERENT.

SONY CORPORATION



"There is good activism and there is bad activism," **Third Point Partners'** Dan Loeb said in 2013 during his groundbreaking campaign at **Sony**. With Loeb now reigniting his breakup offensive, Japan is assessing the kind of activism Third Point is engaging in.

Unlike in 2013, Third Point believes Sony should keep its entertainment assets consisting of gaming, movies, and music, and position itself as a "leading global entertainment company." To achieve that, the activist thinks Sony should spin off its image and sensing solutions unit (known as I&SS, and formerly as semiconductors) and sell its majority stake in Sony Financial Holdings and a bouquet of publicly listed companies. Third Point estimated these moves would allow Sony to plug a valuation discount of around 50%.

Few doubt Third Point's thesis makes sense. Sony has faced pressure to justify the rationale behind keeping non-synergistic businesses under the same corporate roof. Sony should "consider spinning off" its financial services business and "capex-heavy semiconductor business," Goldman Sachs analysts wrote in a report on May 21.

"The difference between now and 2013 is that Sony is in an excellent position to do something about its conglomerate discount," Third Point wrote in a June letter to the company.

BACK TO EARTH

Yet although the company says it conducted "an extensive analysis" of Third Point's proposals, it ultimately decided to keep the unit. "We expect it to not only further expand its current global number one position in imaging applications, but also continue to grow in new and rapidly developing markets such as the Internet of Things ("IoT") and

autonomous driving," Sony CEO Kenichiro Yoshida wrote in a September 17 open letter. "Our analysis, which was carried out in collaboration with outside financial advisors, also identified multiple meaningful sources of dis-synergy if the I&SS business was to separate from Sony and operate as a publicly listed independent company."

Yoshida showed no more enthusiasm for ditching Sony Financial, although he agreed it was undervalued and that increased shareholder returns, better governance, and more transparency could help.

Thus far, Third Point has had to content itself with Sony selling a 5% stake in Olympus back to its neighbor, while Yoshida pointedly noted Sony's 207% return on the shares. "We will continue to strategically review each of our shareholdings and the composition of our overall portfolio going forward," a Sony spokesperson told *Activist Insight Monthly*.

MORE ASSERTIVE

Third Point's relatively swift exit from Sony in 2014 (it held the stock for 18 months) has not helped the activist's reputation in Japan, with some domestic investors still viewing Loeb as an uncommunicative greenmailer, an adviser to hedge funds investing in Japan told *Activist Insight Monthly* on condition of anonymity. Its 102-page presentation and eight-page letter to investors are not available in Japanese, although Loeb did speak to some local press and *Activist Insight Monthly* understands members of his team visited the country nearly every month this year.

Not focusing the message on domestic shareholders might be a mistake, according to Stephen Givens, a corporate lawyer based in Tokyo who advises on cross-border

“IT FEELS LIKE THIS IS A WEAKER VERSION OF WHAT [THIRD POINT] DOES OUTSIDE OF JAPAN AND THEY FEEL THE ENVIRONMENT IS SUCH THAT YOU CANNOT BE MORE ASSERTIVE.”

transactions. “Third Point has not made a very concerted effort to try to persuade the Japanese shareholder base,” Givens told *Activist Insight Monthly*. “It feels like this is a weaker version of what [Third Point] does outside of Japan and they feel the environment is such that you cannot be more assertive.”

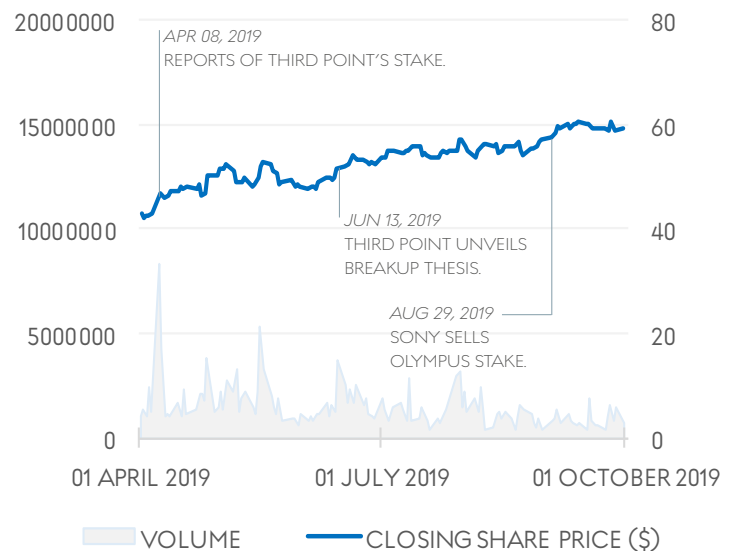
TO STAY, TO FIGHT, TO GO?

Sitting on a healthy return – the stock is up 25% since rumors of Third Point’s involvement surfaced in April – the activist might be waiting to see how the company performs before deciding whether to push its thesis. It has done as much in its ongoing campaign at Nestlé, which Loeb has referenced as a lodestar for the Sony campaign, since 2017.

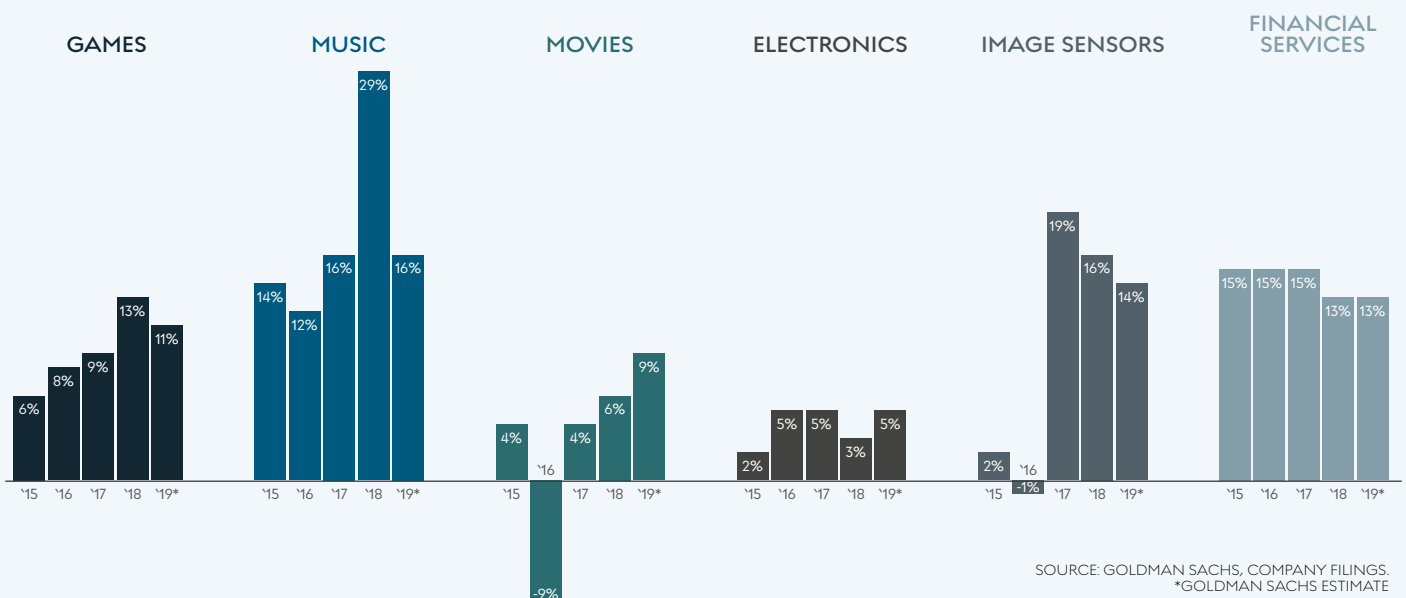
Indeed, Loeb compared the potential for value creation at Sony with his investment in the Switzerland-based food conglomerate, where the stock appreciated by a third despite the company following only some of his suggestions.

The activist has already hinted that it is flexible as long as it makes a return, saying in its letter to the company that there “are many paths to unlock Sony’s value.” In a first-quarter letter to his own investors published in April, Loeb said “sometimes, we can agree to disagree on a few points if we feel the company is moving in the right direction.” 🏡

SONY’S 6-MONTH SHARE PRICE PERFORMANCE



SONY’S BUSINESSES BY MARGINS



PRICE REPORT

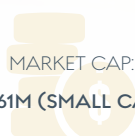
WITH PERFORMANCE LAGGING PEERS AND THE COMPANY AWAITING THE APPOINTMENT OF ITS NEXT CEO, AN ACTIVIST COULD BE INTERESTED IN PUSHING FOR CHANGE AT STRICKEN AUTOMOTIVE DEALERSHIP TRUECAR, WRITES ROB CRIBB.

TRUECAR



SECTOR:

TECHNOLOGY



MARKET CAP:

\$361M (SMALL CAP)



EXCHANGE:

NASDAQ



TICKER:

TRUE



HQ:

SANTA MONICA, CA

Automotive dealerships are already crowded with activists, including a recent push for Cars.com to sell itself that ended in the company being unable to attract a buyer. Yet with operating losses year-on-year since TrueCar's initial public offering in May 2014, a falling share price, and a vacant CEO role, an activist could deem this Santa Monica-based firm to be in deep discount territory. *Activist Insight Vulnerability* ranks the firm in the 98th percentile of companies most likely to be targeted by an activist in the next nine months.

In a 12-strong custom-selected peer group, which includes companies such as America's Car-Mart, Cars.com, and Cargurus, TrueCar's recent poor performance is clear: its total shareholder returns over the last 12 months are the poorest among its peers at negative 75% as of September 30 – underperforming a peer median of negative 17%, according to *Activist Insight Vulnerability*.

“ITS TOTAL SHAREHOLDER RETURNS OVER THE LAST 12 MONTHS ARE THE POOREST AMONG ITS PEERS AT NEGATIVE 75%.”

The digital automotive marketplace has a network of over 16,000 certified dealers, earning a fee on each sale. Despite an increase in revenues year-on-year since 2014 from over \$200 million to more than \$350 million, shareholder value has diminished and profitability still eludes the company. Although that is a daunting record to improve on, an activist might feel there is opportunity to extract value, especially

through a sales process – Chief Financial Officer Noel Watson stated on August's earnings call that the company is debt free, and the wider industry has seen healthy returns for its shareholders.

Despite TrueCar's existing operational investments not generating profits, the company is expected to continue to make further significant investments to support the development of the business. Either its strategy is wrong, or the application of the strategy is wrong – either way, a review of management performance could be forthcoming.

The current strategy is to continue with existing investments – with selling, general, and administrative (SG&A) costs rising from \$187 million in 2014 to \$268 million in 2018 – to ensure TrueCar becomes a market leader. TrueCar's total costs-to-revenue ratio of 115% is higher than any of the firms in its custom peer group, so cost-cutting could be at the centre of an activist's campaign should it not opt to push for a sale.

Another part of TrueCar's recent strategy has been to make external investments: it acquired DealerScience, an advanced digital retailing software firm, in December for \$27 million, and made a 20% investment in Accu-Trade's outstanding equity interests in February for more than \$20 million. While it is early days, the investments have not yet been able to arrest the continued slide of TrueCar's share price, and interim CEO Mike Darrow stated on August's earnings call that new business revenues fell short of expectations. The company's troubles are likely concerning shareholders.

One of TrueCar's rivals highlights both the most obvious playbook and the likely pitfall for a campaign. Activist Starboard Value built a stake of just under 10% at peer

“EITHER ITS STRATEGY IS WRONG, OR THE APPLICATION OF THE STRATEGY IS WRONG – EITHER WAY, A REVIEW OF MANAGEMENT PERFORMANCE COULD BE FORTHCOMING.”

Cars.com in February 2018, making a litany of demands. As well as gaining three seats on its board, Starboard pushed Cars.com for governance changes, operational efficiencies, and a sale of the company to a third party – although it was not able to find a buyer and shares tanked on the outcome of the strategic review. A precedent has been set for an activist at TrueCar, although with its price-to-sales ratio of 1.98 similar to the price-to-sales ratio of 1.92 at Cars.com, according to *Activist Insight Vulnerability* data, it may have to get cheaper first.

In order to generate traction with a campaign, an activist would be wise to seek representation on the board. A search for a new CEO is currently taking place, with Chip Perry retiring earlier this year. Of the eight board members, four have served for at least five years and only Philip McKoy has been appointed in the last two years.

Activist Insight Governance shows that a poison pill has not been adopted and there is no dual-class stock. The company has no controlling shareholder, although it is worth noting that Caledonia Investments owns around 18% of the stock, while the 13-strong group of executive officers and directors own a combined stake of 7%.

Should an activist wish to nominate directors ahead of 2020's annual meeting, proposals must be received no later than February 18. There will be three spots available on the staggered board. 🏳️

TRUECAR'S VULNERABILITIES

PROFITABILITY



STAGGERED BOARD



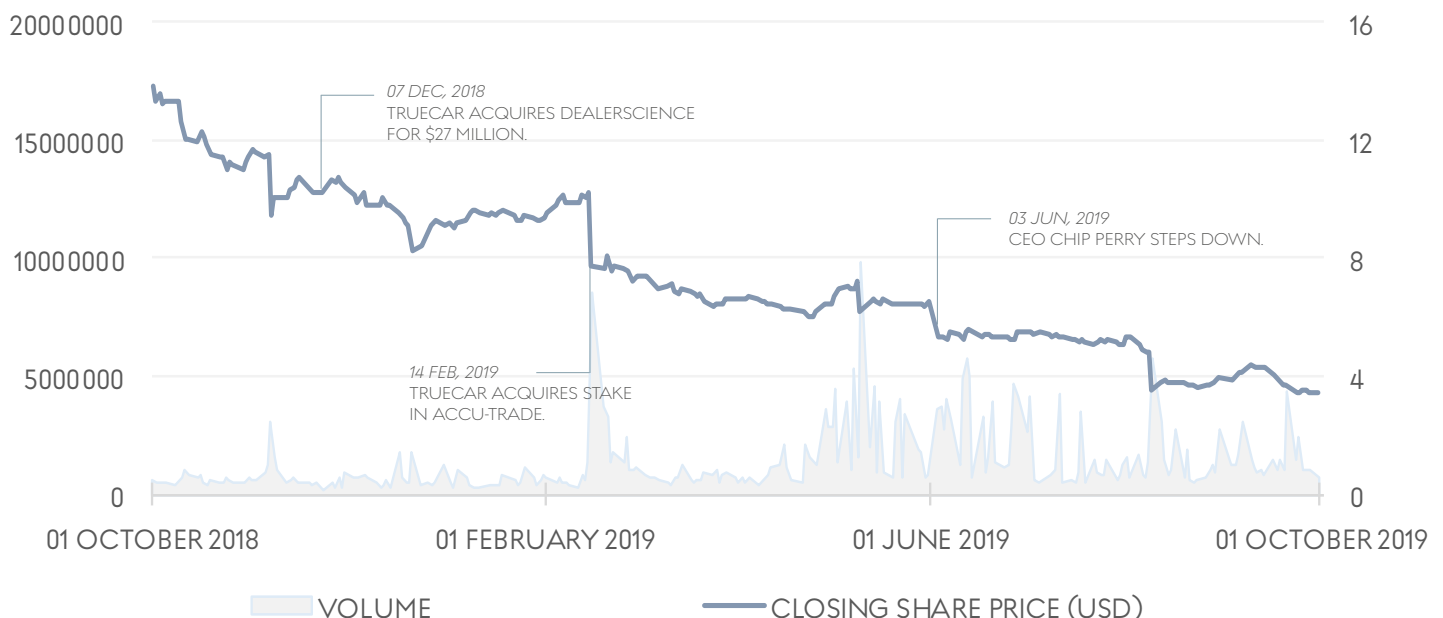
PERFORMANCE



VALUATION



TRUECAR'S 12-MONTH SHARE PRICE PERFORMANCE



AIM LOWER

A BET AGAINST BURFORD CAPITAL HAS PROMPTED THE LITIGATION FINANCER TO CRY MARKET MANIPULATION, WRITES ELANA DURÉ.

BURFORD CAPITAL



SECTOR:
FINANCIAL



MARKET CAP:
£1.7B (MID CAP)



EXCHANGE:
LONDON STOCK EXCHANGE



TICKER:
LON: BUR



HQ:
NEW YORK, NY

Muddy Waters Research was aware of Burford Capital's "suspicious accounting" for nearly two years before it published its 25-page report on August 7, bringing the stock down 46% that day, founder Carson Block told *Activist Insight Monthly*. In the time since the short seller disclosed its bet against the U.K.-based company, which provides capital to corporations involved with litigation or arbitration, the stock has recovered some losses but remains down nearly 26.5%, closing at 8.24 pounds on September 30.

In its initial report, Block's firm listed seven methods it believes Burford used to manipulate its performance ratios to "egregiously misrepresent" the "state of its overall business." The short seller concluded that the firm is "arguably insolvent," raising the specter of Enron as it said so.

Hours later, Burford responded that its cash position and access to liquidity were "strong" and its returns "robust." Another company release stated that the short report was "false and misleading," with "many factual inaccuracies, simple analytical errors, and selective use of information." A third statement, issued on August 12, alleged that the trading of Burford's shares in the past week "shows evidence consistent with illegal market manipulation." Burford declined a request for comment from *Activist Insight Monthly*.

A SHADOW OF DOUBT

Muddy Waters was not the first short seller to criticize Burford. ShadowFall Capital & Research, a U.K.-based short seller, tweeted on July 25 that Burford was short on cash. Shares in Burford closed down nearly 8% following ShadowFall's announcement of its short position. "We look for companies where there's aggressive accounting, so it certainly ticks that box," ShadowFall managing partner Matthew Earl told *Activist Insight Monthly*. "The valuation looked kind of stretched."

Gotham City Research's Daniel Yu also said he thinks Burford is "inappropriately financed," although his firm does not have a short position in the firm. "Public scrutiny of Burford Capital was long overdue," Yu wrote on August 12.

'SMOKING GUN'

Block told *Activist Insight Monthly* that his firm only decided to publish a report after Burford released a more granular Concluded Investment Table about its cases in the first half of this year. "That's what changed the game for us," he said, noting that the firm released information that the short seller used to identify cases it thought have been "abusively marked or classified." Block said this encouraged the short seller to scrutinize Burford's previous reports, which eventually led Muddy Waters to its "smoking gun," Burford's support for litigation by Napo Pharmaceuticals.

"WE LOOK FOR COMPANIES
WHERE THERE'S AGGRESSIVE
ACCOUNTING, SO IT CERTAINLY
TICKS THAT BOX."

Muddy Waters alleged that Burford disclosed Napo as a "concluded investment" in its 2013 annual report, and claimed a total recovered of \$15.8 million on a \$7.4 million investment, even though the case had not actually concluded. What's worse, when the jury reached verdict in 2014, Napo actually lost the trial against Salix Pharmaceuticals. The result allegedly prompted Burford's largest shareholder, Invesco, to lead a bailout of the investment, allowing Burford to preserve – and then actually increase – its "illusory" return. Muddy Waters called the situation "a stranger-than-fiction example of manipulating performance and profit metrics."

“COMPANIES ARE OWNED BY THEIR SHAREHOLDERS, AND WHEN THE SHAREHOLDERS SPEAK, IT IS THE ROLE OF BOARDS AND MANAGEMENT TO LISTEN.”

Burford denied the allegation, stating “the claim is simply false,” and that the recovery included proceeds from another case. However, Muddy Waters said in a follow-up report that the situation Burford referenced, a case between Napo and Glenmark Pharmaceuticals, also resulted in a loss for Napo.

MARKET MANIPULATION

Burford believes Muddy Waters is not playing a fair game. Indeed, the company’s shares were volatile even before the report was published. Burford blamed a Muddy Waters tweet on August 6 that previewed a new short position predicated on an “accounting fiasco.” Shares in Burford closed down almost 19% that day.

Days later, the company alleged that a large amount of sell orders were created and canceled in the minutes before Muddy Waters tweeted about its short report on August 6 and 7. Burford also suggested the tweets may have been worded in a way that created an algorithmic selloff in the stock.

Muddy Waters rejected the insinuation. “Spoofing and layering are issues that have arisen in the high frequency and computer-driven trading world and Muddy Waters has neither the capability nor the incentive to engage in these practices. They have nothing to do with us,” the short seller told *Activist Insight Monthly* at the time.

Nonetheless, the situation prompted an investigation by the U.K.’s Federal Conduct Authority (FCA). Burford also later published an academic study into the alleged market manipulation and applied to the London Stock Exchange for trade data, including the identity of the individuals behind the canceled orders. “If the regulator takes an interest, it will likely look at both sides,” Block said. “I don’t think, to the extent the FCA gets involved, that it will turn out positively for the company.”

APPEASING THE MASSES

Burford has since attempted to pacify its investors with governance changes, including addressing the biggest concern highlighted by Muddy Waters, that the company’s chief financial officer, Elizabeth O’Connell, was the wife of founder and CEO Christopher Bogart. “In a situation so ripe for abuse, the very least the company could do is to have an independent CFO,” the short seller said. Burford said it believed the concern was “unjustified” but nevertheless

announced a host of changes, including a new finance boss and board refreshment. Chairman Peter Middleton and another director will be replaced with new independent members.

“SPOOFING AND LAYERING ARE ISSUES THAT HAVE ARISEN IN THE HIGH FREQUENCY AND COMPUTER-DRIVEN TRADING WORLD AND MUDDY WATERS HAS NEITHER THE CAPABILITY NOR THE INCENTIVE TO ENGAGE IN THESE PRACTICES.”

“Companies are owned by their shareholders, and when the shareholders speak, it is the role of boards and management to listen,” Middleton said on August 15. “While we may take a different view on some of these points, shareholders have clearly spoken and we have listened, just as Burford has throughout its existence.” 🙌

BURFORD CAPITAL’S 6-MONTH SHARE PRICE PERFORMANCE



SHORT NEWS IN BRIEF

A ROUNDUP OF DEVELOPMENTS IN ACTIVIST SHORT SELLING IN SEPTEMBER.

Bonitas Research unveiled further details on Rural Funds' "accounting gimmickry" that the short seller said enabled the firm to artificially inflate its value. The company denied the allegations of fraud and sued the short seller for "its deliberate and malicious" report after Ernst & Young found its statements were "not substantiated." However, Bonitas claimed the auditor's report failed to address "the whole saga." [DETAIL](#)

BeiGene's management rebutted J Capital Research's accusations that it inflated its sales, questioning the China-focused short seller's use of sources and confirming the veracity of its reported numbers. J Capital accused the pharmaceutical company of faking sales to shell companies to inflate its revenues, estimating that 57% of sales were bogus. [DETAIL](#)

White Diamond Research estimated that shares in Accelerate Diagnostics are bound to fall by 70% once investors realize that the firm fully relies on a niche product plagued by "design flaws and a questionable value proposition." The short seller said the company has repeatedly missed earnings and other significant financial metrics over the past year and that its recent cash burn rate is not sustainable. White Diamond also targeted the firm's management for being secretive about revenues. [DETAIL](#)


Director Luis Aguilar resigned from MiMedx's board, though the company did not reveal a reason for his departure. In 2017, several short sellers targeted MiMedx and Aurelius Value even pressured Aguilar to immediately stop the ongoing fraud at the medical equipment company. "After a difficult period, I believe the company is well situated to refocus itself on industry leadership through product and pipeline innovation," Aguilar said as he resigned. [DETAIL](#)

The Friendly Bear alleged that insurer Triple-S Management is "uninvestable" due to the high prospect of increased liabilities and "unprecedented public corruption headline risk." The short seller said Triple-S "massively understated" liabilities from Hurricane Maria, noting that the company's strategy backfired and threatens to pose an even greater risk to the firm as a host of specialized investors and lawyers have disclosed plans to sue it. [DETAIL](#)

Hindenburg Investment Management placed a bet against Bloom Energy, contending that the firm's technology is "not sustainable, clean, green, or remotely profitable." Bloom claimed the short report contained "factual inaccuracies, misleading allegations, and drew erroneous conclusions, including about the future viability of Bloom." [DETAIL](#)

Citron Research bet that the shares of Enphase Energy and SolarEdge Technologies will fall as competition from new market entrant Generac starts to bite. Last year, Prescience Point Capital Management also bet against Enphase, accusing the company of using manipulative accounting practices to inflate its financial performance. [DETAIL](#) / [DETAIL](#)

Culper Research bashed surgical devices manufacturer AtriCure for relying on off-label procedures to proliferate "unnecessary and unsafe" surgeries administered by "highly conflicted physicians." AtriCure is under investigation and is also involved in a lawsuit against its Chinese distributor for theft of intellectual property, Culper said. [DETAIL](#)

Noster Capital placed a bet against Sunrun, claiming the provider of residential solar electricity is hiding problems behind obscure financial metrics. Noster noted that Sunrun had a negative cash flow and high cash burn despite the firm's statements of being cash flow positive. [DETAIL](#) 













HINDENBURG SAID BLOOM IS NOT THE "HOLY GRAIL OF CLEAN ENERGY" LIKE INVESTORS THOUGHT.

NEW SHORT INVESTMENTS

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

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

ACTIVIST	COMPANY	HQ	DATE ANNOUNCED	DETAIL
SPRUCE POINT CAPITAL MANAGEMENT	PREMIER		SEPTEMBER 25, 2019	DETAIL
The activist short seller placed a bet against the group purchasing organization, predicting that its member owner hospitals will opt-out of their contract renewals.				
WOLFPACK RESEARCH	SMART GLOBAL HOLDINGS		SEPTEMBER 25, 2019	DETAIL
Wolfpack argued that the company's profitability will fall sharply on tax changes in one of its key markets.				
KYNIKOS ASSOCIATES	DAVITA		SEPTEMBER 19, 2019	DETAIL
Kynikos' Jim Chanos revealed at the Delivering Alpha conference that he has been short DaVita for years, alleging that the company has been trying to push patients into more expensive insurance contracts.				
KYNIKOS ASSOCIATES	GRUBHUB		SEPTEMBER 19, 2019	DETAIL
Chanos also said at the conference that GrubHub makes hardly anything per order and predicted the firm's fees will decrease, while employee costs will rise.				
HINDENBURG INVESTMENT RESEARCH	BLOOM ENERGY		SEPTEMBER 17, 2019	DETAIL
Hindenburg contended that Bloom's technology is "not sustainable, clean, green, or remotely profitable."				
SOAPBOX RESEARCH	WHIRLPOOL		SEPTEMBER 10, 2019	DETAIL
Sopabox accused the dishwasher manufacturer of using "made up metrics" to mislead investors.				
CITRON RESEARCH	GRAND CANYON EDUCATION		SEPTEMBER 09, 2019	DETAIL
Citron claimed mainstream colleges are increasingly providing online courses that cut into Grand Canyon's market, arguing the stock will fall more than 70% to as little as \$30 per share.				
J CAPITAL RESEARCH	BEIGENE		SEPTEMBER 05, 2019	DETAIL
The China-focused short seller said BeiGene may be faking up to 57% of its sales.				
MAKO RESEARCH	MOTORCAR PARTS OF AMERICA		SEPTEMBER 05, 2019	DETAIL
Mako published a 33-page report arguing that delayed filings, overvalued inventory, and insider selling could presage a collapse.				
SPRUCE POINT CAPITAL MANAGEMENT	CHURCH & DWIGHT COMPANY		SEPTEMBER 05, 2019	DETAIL
The short seller claimed that the consumer products company is poised to shed as much as half of its current market capitalization due to financial and operational mismanagement.				

DISCRIMINATION OR DIVERSIFICATION?

FORMER CALIFORNIA GOVERNOR JERRY BROWN'S DECISION TO PASS A GENDER QUOTA MANDATE BILL MAY HAVE BEEN AN ACHIEVEMENT FOR "PROGRESSIVES" BUT HAS NOT LEFT EVERYONE SATISFIED, WRITES ELEANOR O'DONNELL.

At the end of September last year, California became the first state to require publicly-traded companies to include women on their board of directors. The measure states that every California-based public corporation must have at least one female director on the board by December 31, 2019. By the end of 2021, at least two women must sit on boards with five members and companies with six-member boards will need three female directors.

Yet not everyone is happy with the new legislation. Judicial Watch filed a lawsuit in Los Angeles County Superior Court on behalf of three California taxpayers to prevent the state from implementing the bill. The lawsuit contends that the mandate is illegal under the California Constitution as it employs gender classifications.

Despite the backlash the state faces, the bill appears to have had the desired impact with only 5% of California-headquartered companies in the Russell 3000 being non-compliant as of September 12, according to *Activist Insight Governance*. The data also show that as of this year, 52% of appointments made at California-headquartered companies in the Russell 3000 as of September 12 were female, compared to a mere 41% across the whole index.

"CALIFORNIA'S GENDER QUOTA LAW IS BRAZENLY UNCONSTITUTIONAL. EVEN GOV. BROWN, IN SIGNING THE LAW, WORRIED THAT IT IS UNCONSTITUTIONAL."

Brown previously said he was aware of the potential backlash he would receive when signing the bill into law, but decided to proceed anyway. "I don't minimize the potential flaws that indeed may prove fatal to its ultimate implementation," he wrote in a signing statement. "Nevertheless, recent events in Washington, D.C. – and beyond – make it crystal clear that many are not getting the message."

At the time, Brown also approved legislation requiring smaller employers to provide sexual harassment training and banned secret settlements related to sexual assault and harassment. Sen. Hannah-Beth Jackson, author of the California law, highlighted her belief that more women in power could help reduce sexual assault and harassment in the workplace.

"WOMEN TEND TO BE MORE COLLABORATIVE, ARE BETTER AT MULTI-TASKING, AND WILL MAKE COMPANIES MORE SUCCESSFUL BY BEING IN THE BOARDROOM."

The Santa Barbara Democrat also noted that women tend to be more collaborative, are better at multi-tasking, and will make companies more successful by being in the boardroom. However, there seems to be a way to go with the 2021 mandate. The only board in the state with four or less directors does not have the required minimum of one female director, *Activist Insight Governance* data show. In addition, only 11% of boards with five directors have appointed a minimum of two female directors, and 27% of boards with six or more directors have a minimum of three female directors.

Despite the potential positives of the bill being passed, Judicial Watch is adamant that it is against California law. "California's gender quota law is brazenly unconstitutional," stated Judicial Watch President Tom Fitton. "Even Gov. Brown, in signing the law, worried that it is unconstitutional. Judicial Watch's California taxpayer clients are stepping up to make sure that California's Constitution, which prohibits sex discrimination, is upheld."

UPCOMING EVENTS

Saturday
Samedi
Sabado



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

DATE	COMPANY	EVENT TYPE
14 OCTOBER	STANMORE COAL	EGM
The Australia-listed company will hold an extraordinary general meeting following a request by activist investor Golden Investments, which is seeking to remove two directors from the board.		
16 OCTOBER	PPG INDUSTRIES	EARNINGS RELEASE
The specialty chemicals company will report its third-quarter earnings, months after it decided to remain a unified entity despite pressure from Trian Partners.		
17 OCTOBER	MERRIMACK	AGM
The biopharmaceutical company is urging shareholders to support its three nominees, bashing JFL Capital Management for attempting to gain control of its board without paying a control premium.		
21 OCTOBER	UNITED TECHNOLOGIES	EARNINGS RELEASE
United Technologies will report its third-quarter earnings after Pershing Square Capital Management exited the company and Third Point Partners cut its stake.		
22 OCTOBER	TSR INC.	AGM
The software company reached an agreement with Zeff Capital, pledging to repurchase \$6 million worth of shares owned by the activist investor before the annual meeting; in exchange, Zeff dropped all pending lawsuits against the firm.		
24 OCTOBER	SKYTOP STRATEGIES: SUSTAINABILITY & RISK MANAGEMENT	CONFERENCE
Skytop will host a program to address environmental, social, and governance (ESG) and sustainability-related risks affecting corporate performance.		
24 OCTOBER	COMMAND FINANCIAL ROUNDTABLE	CONFERENCE
Activist Insight will moderate several panels on topics such as ESG, activism, and regulatory reform.		
30 OCTOBER	CAESARS ENTERTAINMENT	EARNINGS RELEASE
The U.S. casino operator's earnings release comes months after it announced a merger with Eldorado Resorts, satisfying Carl Icahn's request for change.		
30 OCTOBER	GENERAL ELECTRIC	EARNINGS RELEASE
An opportunity for the U.S. industrial company to prove Harry Markopolos' forecast wrong in its third-quarter earnings release.		
30 OCTOBER	MEYER BURGER TECHNOLOGY	EGM
Switzerland-based Meyer Burger will hold a shareholder vote on the addition of Sentis Capital's representative Mark Kerekes to its board of directors.		



In a Changing Landscape

Ultimate Shareholder Voting Intelligence



Proxy Insight

NEWS IN BRIEF

A ROUNDUP OF DEVELOPMENTS IN ACTIVIST INVESTING IN SEPTEMBER.

NORTH AMERICA

Legion Partners Asset Management called on Primo Water to refresh its board, contending that a new independent chairman and the replacement of long-tenured directors will help eliminate the firm's conflicts of interest and improve accountability of both management and the board. Legion said it suspects the company will undertake "half-measures," but Primo's lead independent director Susan Cates said the firm is well-positioned to create long-term shareholder value. [DETAIL](#)

Third Point Partners reduced its stake in Campbell Soup to below 6%, a few days after the company agreed to divest its European chips business. The move is "a result of portfolio management determinations" as shares in the packaged foods company rose more than 11% since the activist's involvement, Third Point said. [DETAIL](#)

Starbucks appointed three new directors, adding executives from Nike, Domino's Pizza, and Apple. Pershing Square Capital Management bet \$900 million on the company in October 2018 but has since reduced its stake by nearly 40% as the stock has appreciated. [DETAIL](#)

Information management company Commvault Systems will buy storage startup Hedvig for \$225 million in cash and stock after Elliott Management exited the former's stock. Earlier this year, the investor gained two board seats and nominated four directors for election to the board but withdrew the proxy contest. The acquisition aims to bolster Commvault's capabilities in the competitive data storage market. [DETAIL](#)

Private equity firms are reportedly interested in buying internet security firm Symantec while preserving the sale of its enterprise business to Broadcom. Activist investor Starboard Value increased its stake in the company after Broadcom agreed to buy the software firm's enterprise security business in a \$10.7 billion all-cash deal. Earlier, Starboard won board seats and installed Rick Hill as interim CEO. [DETAIL](#)

Occidental Petroleum plans to relax its bylaw requirements regarding special meetings and shareholder requests. The

news comes as the company is engaged in a board fight with Carl Icahn, who is seeking to replace four incumbent directors with his own four-person slate. The investor had previously urged the firm to change its bylaws to make it easier for investors to run proxy solicitations. [DETAIL](#)

Telecom giant AT&T is exploring several options for DirecTV, including breaking off the unit into its own company or combining it with satellite-TV rival Dish Network, after Elliott Management pressured the company to improve performance. The activist disclosed a \$3.2 billion stake and pushed the firm to divest non-core assets, institute capital discipline, and "aggressively" de-lever. [DETAIL](#)

Elliott Management built a stake in Hilton Grand Vacations and reportedly wants it to find a buyer. The timeshare company traded up 26% since its 2017 initial public offering but is down 24% from its peak in February 2018. The business was spun off from hotel company Hilton Worldwide. [DETAIL](#)

Land and Buildings withdrew from the race for two board seats at Brookdale Senior Living, first reducing its slate to one before dropping out of the contest. The activist expressed confidence in management nominee Guy Sansone becoming chairman. [DETAIL](#)

Gamco Investors announced that it might push National Fuel Gas to declassify its board. The move came two years after the company recommended that its shareholders vote against a proposal by Gamco to issue tracker stock for its distribution infrastructure unit; subsequently, the investor slightly cut its stake in the company. [DETAIL](#)

Shareholders backed a takeover of auction house Sotheby's by Patrick Drahi at a special meeting, despite opposition from RWC Partners. U.K.-based fund manager RWC Partners came out against the sale suggesting that the transaction price is not fair to shareholders. However, Sotheby rejected the criticism and the deal is expected to close in the fourth quarter of 2019. [DETAIL](#)

EUROPE

Plumbing merchant Ferguson will spin off its underperforming U.K. operations to focus on its North American market, amid pressure from activist investor Trian Partners to improve its valuation. The investor acquired a stake in June and said it was looking to work with the management team “to explore and implement initiatives that it believes can create long-term shareholder value.” [DETAIL](#)

Activist investor ValueAct Capital Partners sold its entire stake in U.K.-based Merlin Entertainments after shareholders voted in favor of the 6-billion-pound take-private deal proposed by a Canadian pension fund and the family that owns the Lego brand. ValueAct previously urged Merlin to go private, saying the company could fetch a premium of over 30% to the unaffected stock price. [DETAIL](#)

German industrial conglomerate ThyssenKrupp is considering a partial sale of its elevator unit in addition to an initial public offering. The move came after the company saw interest from competitors and private equity firms to take over the division. Activist investors Cevian Capital and Elliott Management have been pressuring ThyssenKrupp to improve performance and criticized the firm’s complicated structure. [DETAIL](#) / [DETAIL](#)

Elliott Management is banking on striking up a good working relationship with the controlling Agnelli family as part of a new investment in truckmaker CNH Industrial. CNH is breaking up its agricultural and commercial segments and Elliott is thought to see value in the split. [DETAIL](#)

Mediaset reached an agreement with Luxembourg-based fund manager Peninsula Holding in an attempt to shield its recently approved merger plan from hostile shareholder Vivendi. In June, Mediaset announced that it planned to

merge its Italian and Spanish units into a Netherlands-based holding company, dubbed MediaforEurope. Despite Vivendi’s opposition and legal actions, Mediaset garnered sufficient shareholder support for its pan-European plan. Vivendi then had the opportunity to sell its stake but the French firm decided not to exercise its withdrawal right.

[DETAIL](#)

Activist investor Cevian Capital called on Nordea Bank to conduct “a thorough review” of its wholesale banking activities, citing the unit’s persistent underperformance. The activist added that it was “very satisfied” with the appointment of Frank Vang-Jensen as CEO, which was announced earlier this month. Cevian estimated that a fix of the bank’s inefficiencies would lead to a doubling of shareholder return. [DETAIL](#)

Third Point Partners will push for governance changes at EssilorLuxottica in a bid to end a crisis stemming from the merger of equals between the French and Italian eyewear companies. The activist also wants the two warring factions to set their differences aside to start realizing the 600 million euros in synergies promised by the two companies. [DETAIL](#)

Veraison Capital requisitioned a special meeting at Swiss construction company Implenia after it urged the firm to spin off its development business and float it separately on the stock exchange. The Zurich-based activist believes the company should separate its construction and development units in order to secure the full value of the latter segment. [DETAIL](#)

Telecom Italia Chairman Fulvio Conti has resigned, potentially ending an ongoing battle between Elliott Management and Vivendi. The activist investors have been feuding since 2018 when Elliott gained control of the Italian company’s board following a proxy contest against Vivendi. [DETAIL](#)



CEVIAN WANTS NORDEA TO REVIEW ITS WHOLESALE BANKING ACTIVITIES.

REST OF THE WORLD

Japanese conglomerate Sony rejected a proposal from activist investor Third Point Partners to spin off its image sensor subsidiary, defending its decision by deeming the division a “crucial growth driver” for the company. Third Point had previously called on Sony to divest its stakes in non-core assets and focus on its entertainment business. [DETAIL](#)

Japanese real estate investment trust Sakura Sogo lost a proxy contest against Star Asia and its affiliate Lion Partners, paving the way for a hostile takeover of the REIT. The company attempted to fight off the hostile bidder, but shareholders voted in favor of Lion Partners’ proposal to change the REIT’s external management to Star Asia. [DETAIL](#)

Invitrocue CEO and fellow director Boon Sing Fang survived an attempt by a group of fellow directors to remove him from the board. In response, Fang teamed up with Gary Pace and Andreas Lindner to remove two of the three dissident directors. Shareholders will vote on the ousting of Hanry Yu and Kit Wei Lui on October 18. [DETAIL](#)

Shah Capital Management and Hong Liang Lu sold over 9 million shares in telecommunications infrastructure provider UTStarcom to Tongding Interconnection Information (TDI). As a result, the fund’s nominees, Himanshu Shah and Hong Liang Lu, resigned from their positions as chairman and director, respectively. Before selling its shares, Shah made a takeover offer to the company but withdrew it twice, both in 2014 and 2017. [DETAIL](#)

Two Havilah Resources directors targeted by former chairman Bob Johnson have stepped down while activist

nominee Victor Previn and company secretary Simon Gray joined the firm’s board. The dissident’s campaign gained traction after a failed deal that saw Havilah’s top shareholder and technical director Chris Giles oppose the actions of his fellow board members. Johnson previously lambasted the outgoing directors for supporting a transaction that undervalued the Australian miner. [DETAIL](#)

A shareholder group proposed that Brait should raise 3 billion rand (\$204 million) in a share sale and sell all its assets except gym chain Virgin Active. The strategic plan would enable businessman Christo Wiese, new investment vehicle Arbiter, and money manager Mergence Investment Managers to control a combined 49.9% of the company. The shareholder group would then remove the firm’s current management and propose new directors. [DETAIL](#)

GoldenTree Asset Management again called for the removal of CEO Eurico Teles at Oi, but the board failed to respond to its concerns. The investor said the telecommunications company needs to immediately replace Teles with someone with the skills and experience to run a major turnaround. The board needs to protect the interests of creditors and shareholders, who negotiated the reorganization, recapitalized the company, and invested into it, GoldenTree said. [DETAIL](#)

South Korea’s financial regulator announced plans to soften corporate disclosure rules. The Financial Services Commission (FSC) will modify a two-decade rule on stock ownership to allow an investor to extend the disclosure deadline and provide fewer details in its reporting. The updated rule will also apply if an investor buys into a firm to address illegal activities of the company or its executives. 📌



SOUTH KOREA’S SOFTENED CORPORATE DISCLOSURE RULES ALLOW ACTIVIST SHAREHOLDERS MORE ROOM TO MANEUVER.

NEW INVESTMENTS

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

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

ACTIVIST	COMPANY	HQ	DATE NOTIFIED	DETAIL
TELEIOS CAPITAL PARTNERS	AAREAL BANK		SEPTEMBER 27, 2019	DETAIL
The activist wants the bank to sell its software solutions business Aareon.				
PETER GYLLENHAMMAR	LOW & BONAR		SEPTEMBER 24, 2019	DETAIL
Gyllenhammar took a stake in the company months after Philip de Klerk resigned as CEO.				
CONCERNED SHAREHOLDERS	ACRUX		SEPTEMBER 23, 2019	DETAIL
The group advanced a proposal to appoint Norman Gray as a director at the company's November 28 annual meeting.				
WAYNE SCHOLTZ	FE INVESTMENTS GROUP		SEPTEMBER 20, 2019	DETAIL
Scholtz and John Philpott led a group of shareholders to requisition a meeting to oust three of the company's directors and increase the annual non-executive director fees to a maximum of \$300,000.				
BLUE WOLF CAPITAL PARTNERS	VERSO		SEPTEMBER 20, 2019	DETAIL
Blue Wolf teamed up with Atlas Holdings in an effort to install a four-person slate onto Verso's board.				
CONCERNED SHAREHOLDERS	BRAIT		SEPTEMBER 19, 2019	DETAIL
A shareholder group called on Brait to raise 3 billion rand (\$204 million) in a share sale and sell all assets except its gym chain Virgin Active.				
ELLIOTT MANAGEMENT	HILTON GRAND VACATIONS		SEPTEMBER 18, 2019	DETAIL
Elliott reportedly asked Hilton to find a buyer.				
VERAISON CAPITAL	IMPLENIA		SEPTEMBER 17, 2019	DETAIL
Veraison requisitioned a special meeting and urged the construction company to spin off its development business and float it separately on the stock exchange.				
ELLIOTT MANAGEMENT	CNH INDUSTRIAL		SEPTEMBER 16, 2019	DETAIL
Elliott reportedly held talks with CNH's management amid the breakup of its agricultural and commercial segments.				
THE DONERAIL GROUP	MOBILE MINI		SEPTEMBER 11, 2019	DETAIL
The first-time activist investor is pushing the world's largest provider of portable storage solutions to explore a sale.				
ACTIVE OWNERSHIP CAPITAL	SUNRISE COMMUNICATIONS GROUP		SEPTEMBER 10, 2019	DETAIL
The German activist investor reportedly opposes the company's 6.3 billion Swiss francs acquisition of cable operator UPC.				



ACTIVIST	COMPANY	HQ	DATE NOTIFIED	DETAIL
AXXION	SUNRISE COMMUNICATIONS GROUP		SEPTEMBER 10, 2019	DETAIL
The activist investor advanced two resolutions for a vote at the next shareholder meeting to remove chairman Peter Kurer and director Jesper Ovesen.				
KRUPA GLOBAL INVESTMENTS	GROUPON		SEPTEMBER 10, 2019	DETAIL
The online marketplace announced it is considering a large acquisition in an effort to appease shareholders but Krupa argued the plan is ill-advised due to the prospect of a market correction and management's M&A track record.				
CONCERNED SHAREHOLDERS	LIVING CELL TECHNOLOGIES		SEPTEMBER 10, 2019	DETAIL
A group of concerned shareholders requisitioned a meeting, seeking to remove three directors and install two of its own candidates.				
ELLIOTT MANAGEMENT	AT&T		SEPTEMBER 09, 2019	DETAIL
Elliott pushed the firm to divest non-core assets, institute capital discipline, and "aggressively" de-lever.				
PAULSON & CO.	CALLON PETROLEUM		SEPTEMBER 09, 2019	DETAIL
The activist investor pledged to vote its stake against Callon's "ill-advised" acquisition of Texas driller Carrizo Oil & Gas.				
IMPACTIVE CAPITAL	AVID TECHNOLOGY		SEPTEMBER 06, 2019	DETAIL
Impactive did not reveal much of its thesis for the company but said it had entered into a non-disclosure agreement with Avid, as part of which the company will provide certain confidential information to facilitate discussions about its business and operations.				
EE TING NG	INVITROCUE		SEPTEMBER 06, 2019	DETAIL
Ee Ting Ng, director of Invitrocue, joined forces with co-founder Hanry Yu and Kit Wei Lui to lambast co-founding CEO and Chairman Boon Sing Fang for corporate governance missteps and called a meeting for October 11 to remove him from the board.				
GARY PACE	INVITROCUE		SEPTEMBER 06, 2010	DETAIL
In response to Ng, Pace, as part of a group of directors led by Fang, requisitioned a meeting to oust Yu and Lui from the board.				
STARBOARD VALUE	BOX		SEPTEMBER 03, 2019	DETAIL
Starboard did not reveal its intentions at the digital storage firm but CEO Aaron Levie told CNBC that he will work collaboratively with the activist investor.				
GROUP G CAPITAL PARTNERS	EASTSIDE DRILLING		SEPTEMBER 03, 2019	DETAIL
Group G managing member Geoffrey Gwin was appointed to Eastside's board as an independent director. Gwin is also a member of Quad Capital Management Advisors and the two firms own a combined stake of 7.2% in Eastside.				

MOST READ

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



AT&T SURGES AFTER ELLIOTT ADVANCES OPERATIONAL PLAN

THURSDAY, SEPTEMBER 10, 2019



ELLIOTT INVESTS IN CNH INDUSTRIAL

WEDNESDAY, SEPTEMBER 16, 2019



MARATHON RESPONDS TO ELLIOTT'S PROPOSAL

THURSDAY, SEPTEMBER 26, 2019



ELLIOTT REPORTEDLY EYES STAKE IN METRO BANK

MONDAY, SEPTEMBER 30, 2019

MONTHLY SUMMARY

ACTIVIST TARGETS BY GEOGRAPHY

COMPANY HQ LOCATION	SEP 2019	2019 YTD	2018 YTD	YOY % CHANGE
U.S.	31	407	426	↓ 4.5%
CANADA	2	43	68	↓ 36.8%
U.K.	5	47	41	↑ 14.6%
AUSTRALIA	7	57	56	↑ 1.8%
EUROPE (EXCLUDING U.K.)	5	70	93	↓ 24.7%
ASIA	3	85	105	↓ 19.0%
OTHER	0	3	15	↓ 80.0%
TOTAL	53	712	804	↓ 11.4%

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

ACTIVIST TARGETS BY SECTOR

SECTOR	SEP 2019	2019 YTD	2018 YTD	YOY pp CHANGE
BASIC MATERIALS	13.2%	13.8%	14.3%	↓ 0.5pp
CONGLOMERATES	0.0%	0.4%	0.5%	↓ 0.1pp
CONSUMER GOODS	11.3%	9.4%	9.0%	↑ 0.5pp
FINANCIAL	15.1%	19.4%	18.9%	↑ 0.5pp
HEALTHCARE	15.1%	9.8%	10.0%	↓ 0.1pp
INDUSTRIAL GOODS	7.5%	7.6%	9.5%	↓ 1.9pp
SERVICES	15.1%	22.5%	21.5%	↑ 1.0pp
TECHNOLOGY	20.8%	14.0%	12.9%	↑ 1.1pp
UTILITIES	1.9%	3.1%	3.5%	↓ 0.4pp

PROPORTION OF COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS BY SECTOR.

ACTIVIST TARGETS BY MARKET CAPITALIZATION

MARKET CAPITALIZATION	SEP 2019	2019 YTD	2018 YTD	YOY pp CHANGE
NANO CAP (< \$50M)	34.6%	20.7%	21.8%	↓ 1.0pp
MICRO CAP (\$50M - \$250M)	19.2%	17.0%	15.3%	↑ 1.8pp
SMALL CAP (\$250M - \$2B)	26.9%	23.5%	24.8%	↓ 1.2pp
MID CAP (\$2B - \$10B)	9.6%	16.6%	15.6%	↑ 1.0pp
LARGE CAP (> \$10B)	9.6%	22.1%	22.6%	↓ 0.5pp

PROPORTION OF COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS BY MARKET CAPITALIZATION.

ACTIVIST DEMANDS BY TYPE

DEMAND TYPE	SEP 2019	2019 YTD	2018 YTD	YOY pp CHANGE
BOARD-RELATED	56.0%	48.3%	43.1%	↑ 5.2pp
BALANCE SHEET	13.0%	10.4%	10.8%	↓ 0.4pp
BUSINESS STRATEGY	2.0%	3.7%	6.7%	↓ 3.0pp
M&A & BREAKUP	15.0%	12.6%	12.7%	↓ 0.2pp
REMUNERATION	3.0%	5.2%	4.4%	↑ 0.9pp
OTHER GOVERNANCE	11.0%	18.8%	20.8%	↓ 2.0pp
OTHER	0.0%	1.0%	1.5%	↓ 0.4pp

PROPORTION OF PUBLIC ACTIVIST DEMANDS BY DEMAND TYPE.

SUCCESS RATES OF RESOLVED DEMANDS

OUTCOME	SEP 2019	2019 YTD	2018 YTD	YOY pp CHANGE
ACTIVIST AT LEAST PARTIALLY SUCCESSFUL	23.5%	36.7%	42.1%	↓ 5.4pp
ACTIVIST UNSUCCESSFUL	54.9%	53.4%	46.0%	↑ 7.4pp
WITHDRAWN DEMANDS	21.6%	10.0%	11.9%	↓ 1.9pp

OUTCOMES OF RESOLVED ACTIVIST DEMANDS.

NUMBER OF ACTIVE ACTIVISTS

	SEP 2019	2019 YTD	2018 YTD	YOY % CHANGE
ACTIVE ACTIVISTS	70	610	713	↓ 14.4%

NUMBER OF INVESTORS MAKING A PUBLIC DEMAND OF A COMPANY.

ACTIVIST BOARD SEATS GAINED BY GEOGRAPHY

COMPANY HQ LOCATION	SEP 2019	2019 YTD	2018 YTD	YOY % CHANGE
U.S.	4	172	240	↓ 28.3%
CANADA	0	26	47	↓ 44.7%
U.K.	0	23	20	↑ 15.0%
AUSTRALIA	0	36	41	↓ 12.2%
EUROPE (EXCLUDING U.K.)	0	29	72	↓ 59.7%
ASIA	7	64	66	↓ 3.0%
OTHER	0	0	15	↓ 100.0%
TOTAL	11	350	501	↓ 30.1%

NUMBER OF BOARD SEATS GAINED BY ACTIVISTS BY COMPANY HQ LOCATION.

N.B. 1. ALL DATA EXCLUDE ACTIVIST SHORT POSITIONS.

N.B. 2. ALL PERCENTAGES ARE GIVEN TO ONE DECIMAL PLACE, AND MAY CAUSE ROUNDING ERRORS.

N.B. 3. YTD FIGURES ARE AS OF THE END OF SEPTEMBER OF THE GIVEN YEAR, UNLESS OTHERWISE SPECIFIED.

N.B. 4. MARKET CAPITALIZATION FIGURES ARE AS OF SEPTEMBER 30, 2019.

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