Activist Insight

Monthly

HALF-YEAR REVIEW WITH OLSHAN

GATEMORE CAPITAL | PANAHOME | SHORT SELLERS

Volume 6 Issue 6 - July 2017

Activist Insight

In association with

OLSHAN

Editor's letter

Josh Black, Editor-in-Chief at Activist Insight.

Activist Insight Monthly's Half-Year Review is our opportunity for immediate reflections on the busiest part of the year for shareholder activism. With proxy season all but done in the U.S. – excepting standout meetings expected in the later months – those boards likely to bear the biggest brunt of activism will be nursing their wounds.

The ledger shows activists firing on all cylinders. Targeted CEOs at CSX, Buffalo Wild Wings and Arconic are gone or on their way out. Whole Foods Market found a buyer in a matter of months. The good feeling is increasingly going abroad. Activism at non-U.S. looks likely to outperform last year's numbers, but BHP, Ericsson and Nestlé mark activists' biggest overseas targets in some time.

There are some surprises in the data, of course. Large caps have come into favor since the election of Donald Trump as president in November; the subsequent stock market rally has floated a good many boats and made it easier for activists to commit large amounts of capital but also exposed a few stragglers. General Motors faced its second proxy fight in three years, although it saw no need to settle this one.

Funds that let activism dominate their investment strategy have slowed down their activity, despite new launches over recent years (soon to include David Schechter, who along with Carl Icahn's son Brett conceived many of the billionaire's best recent ideas). Meanwhile, active managers have been under pressure to prove their worth. Neuberger Berman is almost becoming regular in its agitations, although given the number of companies it owns its efforts are still highly selective.

> "*Activist Insight Monthly* this month seeks to take stock and bring you a glimpse of activism from all corners of the globe."

The impact of all this non-traditional activism will take some time to divine. As the touting of Whole Foods Market to various activist funds has shown, a certain skillset, not to mention an appetite for attention, is required to dislodge stubborn management teams.

Moreover, activists have become a conduit for executive expertise, thanks to their deep research and partnerships with executive consultants (Third Point Partners' recruitment of Jan Bennink for its engagement with Nestlé being just the latest example).

That is not to say that traditional asset managers do not have expertise or good ideas. Indeed, assuming there is no roll-back of shareholder rights, many more will run simple activist campaigns and even some proxy fights in years ahead. That will deny dedicated activists some opportunities and make them look harder for investible ideas. No wonder activists are buying stakes worth over $1 billion and even over $3 billion in recent times.

Our issue of *Activist Insight Monthly* this month seeks to take stock and bring you a glimpse of activism from all corners of the globe. From Europe: the latest activist investor to terrorize London Stock Exchange-listed companies, Gatemore Capital. From Japan: the anti-squeeze campaign at PanaHome.

We are also lucky to have expertise from advertisers Innisfree M&A and FTI Consulting, which know the business inside-out and help highlight developments with U.S. index funds and campaigns targeting CEOs. Above all, we are delighted to have again partnered with our sponsor, Olshan Frome Wolosky. Their practice continues to guide many new entrants to activism, while they have also been behind slam-dunks at Darden Restaurants and now Arconic. We are grateful for their support.

Finally, June saw the launch of our newly redesigned website. With our significantly enhanced database, our vulnerability screen and this magazine leading the way, what better opportunity to revisit www.activistinsight.com could there be?

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Big is back

A foreword by Andrew Freedman, Co-Chair of Olshan Frome Wolosky's Activist & Equity Investment Group.

The 2017 proxy season saw activism back with a bang at some of America's largest and most storied companies. With the likes of General Electric, General Motors, Procter & Gamble and Nestlé all in the headlines, it is clear activists have regained their appetite for large cap targets. As this report makes clear, those examples are not misleading.

Large targets, more fights

This new interest in large cap activism presents unique challenges. Although it is often said that these companies are better prepared and better advised, it is also true that large companies are often unwilling to settle with activists.

This fact, combined with another of 2017's key trends – the targeting of CEOs who may be standing in the way of more radical strategic shifts – could explain why we have seen so many hard-fought proxy contests this year. There is rarely an acceptable middle ground when the CEO's job is at stake.

Some boards behaving badly

This proxy season also bore witness to some boards reverting back to the governance manipulations of years past in response to an activist campaign, as overly aggressive defense advisors wield outsized influence in the boardroom in the small to mid-cap space. Namely, we saw shareholder-unfriendly bylaw amendments to deter special meetings, attempts to reject activist nominations, record date gamesmanship and other corporate governance manipulations aimed at entrenching management and the board. In fact, we just issued **a client alert** on a trend involving the manipulative use of D&O Questionnaires by boards as part of the shareholder nomination process. At the same time, we continue to see other companies, typically larger cap ones, looking to engage meaningfully behind-the-scenes with prominent activists to avoid a public confrontation.

> "Social media and the internet offer new opportunities for activists to communicate their ideas to more disparate shareholder bases."

Activism gets social

Another feature of the 2017 proxy season has been the emergence of social media as a force in activist campaigns. In a groundbreaking campaign at Arconic, Elliott Management was able to harness various social media platforms in an innovative way to target retail investors and introduce its slate on a more accessible level. Facebook and LinkedIn have also become battlegrounds, building on the increasingly common phenomenon of the campaign website.

While social media and the internet offer new opportunities for activists to communicate their ideas to more disparate shareholder bases, the SEC has been watching these developments closely. Some activist situations can become personal, and it's critically important to keep any aggressive communications within bounds. As a result, activists will need experienced legal counsel to help guide them through the minefield of potential issues that could come up in a proxy fight.

No company is untouchable

Another aspect of the broadening ranks of potential activists is an increased willingness to take fights to founder-led companies, where the founder or founding family have what would once have been considered too dominant a shareholding to make a fight worthwhile. Yet, if shareholders sit back and do nothing, the chance of catalyzing any change is close to zero, but by initiating a public campaign and clearly bringing into focus the problems and governance issues at a company, it can be possible to compel the company into governance and board changes even if the founder owns a considerable portion of the shares. Sometimes you have to remind independent directors their reputations are at stake when they blindly follow the lead of a founder or entrenched CEO.

As we look ahead, activists continue to plan new ways to unlock value for all shareholders. Our clients continue to be as busy as ever, sometimes working with management behind the scenes to find solutions that benefit everyone, but ever-willing to put their value-enhancing ideas to a vote when they think management, perhaps encouraged by their advisers to be aggressively defensive, are entrenched. Our clients are up for the challenge and so are we.

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The definitive resource on activist investing globally.

Activist Insight

The year so far

A boom in large cap situations in 2017 hides a complicated picture for activism as dedicated funds targeted fewer companies. More than ever, activism looks like a tool destined to become commonplace, rather than a strategy for the skilled few.

Unperturbed by rising markets in the first half of 2017, activism continued to be an ever-present danger. The number of companies publicly subjected to economic or governance-related demands hit 485 by the end of June. Projected figures show that 2017's activity looks set to fall behind the record pace set in 2016.

This drop may also be the case for dedicated activist funds. Last year saw the first fall in activity for such funds in the U.S. and with only 89 companies publicly subjected to demands in the first half of 2017, they seem unlikely to achieve last year's total of 203, let alone 2015's peak of 226. Europe and Asia show more sign of catching the activism bug. With assets under management stable after dropping to around $180 billion worldwide between 2015 and 2016, dedicated purveyors have something to prove if activism is to remain a strategy at the same time as becoming a widespread tool.

“Dedicated activists seem to be piling into industrial stocks, almost doubling the relative amount of activity in the sector.”

No comfort

Activists continued to set the tone for management teams, and when executives failed to heed their warnings, they often paid a price. Sally Smith at **Buffalo Wild Wings** and Klaus Kleinfeld of **Arconic** both lost their corner offices in the middle of proxy fights in which activists claimed partial victories, while Jeff Immelt’s near-16 year tenure as CEO of **General Electric** came to an end just months after he struck a deal with Trian Partners to modify his bonus structure amid fears that the industrial conglomerate was well-behind on plans to generate annual profits of $2 per share.

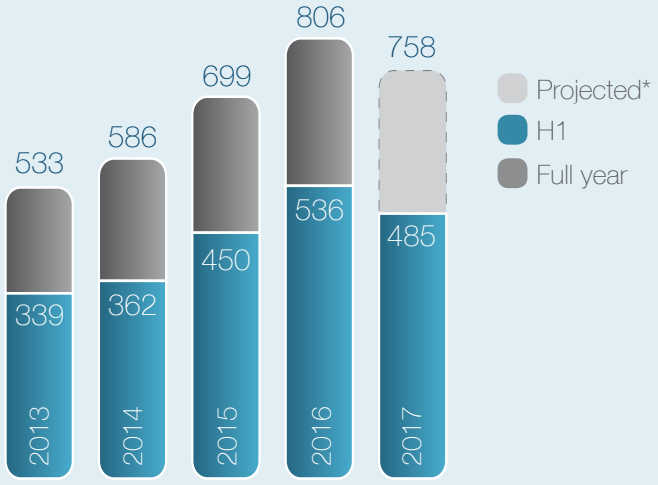
Meanwhile, Hunter Harrison became CEO of his third major railroad as the figurehead of an activist campaign, sending shares of the company, **CSX**, up dramatically. Despite commanding a $300 million price tag, including $84 million in retirement benefits forfeited from his previous employer, **Canadian Pacific Railway**, shareholders ratified Harrison’s compensation package with barely a whisper of discontent.

Not by industry alone

As with the tightening grip of activists on CEO tenure, some trends continued to play out. Still-weak commodity prices meant a less favorable environment for activists in basic materials companies, allowing **Marathon Petroleum** to resist a breakup. Real estate continued to attract attention, including campaigns by Jonathan Litt’s **Land and Buildings** at mall operator **Taubman Centers** and Canada’s **Hudson Bay**, though a collapse in the share prices of other retailers caught some unawares, including at **Macy’s**.

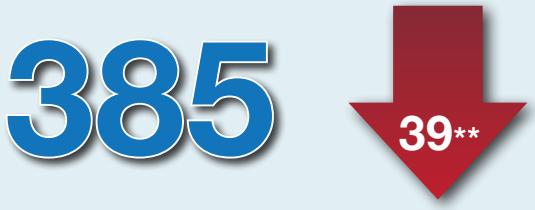
Dedicated activists seem to be piling into industrial stocks, almost doubling the relative amount of activity in the sector against the same period in 2016. In Europe, the number of companies subjected to public demands in the sector has already outstripped last year’s total as American giants General Electric and **PPG** sought cheap growth opportunities overseas, often resisted by shareholders. **M&A** may present opportunities for bumpitrage, but if the aim is operational improvements the path ahead may be hard. Trian Partners has been seeking to double General Electric’s profits for two years, to little avail.

Companies publicly subjected to activist demands



*based on average 2013-2016 half-year to full-year increase %

Investors making public activist demands of companies in H1 2017



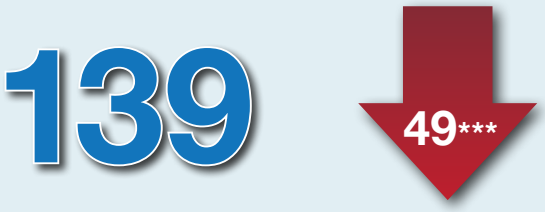
**424 investors made public activist demands of companies in H1 2016

Europe

Activism in Europe has maintained a steady pace, despite signs that the U.K. is less attractive in a year when political uncertainty has increased dramatically. Only six contests went to a vote, down from 17 last year, though activists won a board seat in four. Last year, activists also edged fights nine-to-eight and settled six more. With proxy season over, 24 U.K. companies have been subjected to public demands in 2017 so far, compared to 43 in the whole of last year. Only 5 of those companies were targeted by dedicated activists, however, whereas 2016 saw 17 companies in their crosshairs. Europe-based companies in the industrial sector attracted more attention than in prior years.

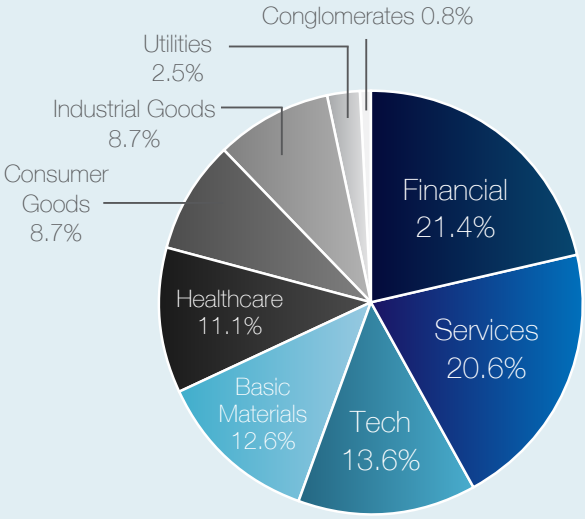
"On average, between 2013 and 2016, large cap stocks accounted for roughly one in every four U.S. companies targeted by activists."

Companies publicly subjected to demands made by primary- and partial-focus activists in H1 2017



***188 companies publicly subjected to demands made by primary- and partial-focus activists in H1 2016

Sector breakdown of companies publicly subjected to activist demands in H1 2017



Rest of the world

A raging battle between Elliott Management and the Australian miner BHP, gave the lie to the relatively stable levels of activity down under, where most activism has been domestically driven. Excluding Australia, 38 companies had been targeted across Asia, suggesting the year-end total would likely come in just under 2016's total of 88. A dearth of large cap targets suggests foreign activists may be less interested in Japan, where stocks underperformed the S&P 500 Index until April. Since their nadir, however, shares are up sharply and an activist won a rare proxy contest at Kuroda Electric.

Big is back

In other respects, however, shifting market conditions led to a breakout of new targets. On average, between 2013 and 2016, large cap stocks accounted for roughly one in every four U.S. companies publicly targeted by activists. In 2017 so far, their number has exceeded past years', accounting for almost one in every three targets.

Driven by bullish markets after the November 2016 presidential election on hopes of corporate tax reform, activists seem to be deserting smaller targets for larger bets with deeper-rooted problems.

Not every case has worked out though. **General Motors**, facing its second activist campaign in three years, destroyed **Greenlight Capital**'s proposal for a dual class stock in a proxy contest as ratings agencies voiced concerns and the board claimed that the proposal would raise governance issues.

Proxy redux

In the U.S., proxy season saw markedly better outcomes for management despite high-profile activist victories. *Activist Insight Online* data show management winning 12 fights, one less than last year, and dissidents winning at least one seat in seven fights - slightly over half last year's total of 12.

Given the new leadership of contested situations at influential proxy advisers Institutional Shareholder Services and Glass Lewis, this proxy season was closely watched. **Proxy Insight** data suggests the overall picture was little changed for ISS with management's slate backed in 44% of fights, down from 48% last year. In close fights, however, shareholders backed change at **Citi Trends** and Buffalo Wild Wings, while index funds were said to have pushed hard for a settlement that gave **Elliott Management** moderated influence at Arconic.

Uncertainty may still have played a role given that the number of settlements was also slightly down for 2017. Only 23% of contests settled this year, down from 30% over last year as a whole.

The activism landscape

An interview with Andrew Freedman, co-head of the Activist & Equity Investment Practice at Olshan Frome Wolosky.

Why are activists going after CEOs more?

Activists are beginning to set their sights on what they perceive to be the root cause of a company's underperformance. The board oversees management, and where you have a board that is blindly supporting an underperforming CEO, sometimes you have to bypass the board and get straight to the issue, and I think that's what we're seeing. It's the path for the quickest change, if you can make that change happen.

Also, we've been at a point now for several years where activists in the top tier are able to attract, recruit, and retain top talent like never before. There's no taboo with being associated with an activist like there was maybe a decade ago. Activists who have the means and wherewithal are able to go out there and find supremely qualified, transformational leaders who are willing to take up the cause. You saw that at CSX with Mantle Ridge and Hunter Harrison, as well as at Arconic with Elliott and Larry Lawson.

Are there any downsides to having a CEO anointed?

There's a monetary side to all of this. Regardless of how talented and how strong the resume may be of that CEO candidate, any time there is perceived alignment with an activist, you are going to see companies defensively argue that the CEO candidate is in the activist's pocket as a tactic. It could disadvantage the activist, but we haven't seen it become an issue so far. It's been mostly just side noise.

What else was different about this proxy season?

An interesting thing we experienced first-hand advising on the Arconic contest was that activists are harnessing social media - LinkedIn, Facebook, Twitter - in getting the message out in a targeted fashion. I think it was also a factor at Buffalo Wild Wings, although we didn't advise on that.

For us, that was a first, because for a long time there was a question mark over how the SEC would perceive and handle those kind of social media communications. We now have a firmer understanding about how you can use that type of messaging. Social media messaging tends to be depicted in a more colorful way, so you have to steer clear of the red flags from the SEC about how you portray a board or management team. Also, there's a lot of legalese built into SEC solicitation disclaimers, so appeasing the SEC's requirement for compliance in a manner that is practical in the context of, say, a 140-character message can be a challenge, but we were able to work through it with the Commission.

Presumably part of the reason for social media becoming more popular is the importance of the retail vote?

That's true. It started with DuPont [in 2015] and has continued to this day. You don't want to leave any shares out there in management's bucket so you go out there and aggressively mail if you have the resources to do so. It's an expensive business.

Retail has traditionally been more pro-company, more pro-status quo. But I think there's been a bit of a shift in that. It's situational - if you have a company that's been reeling where management has been paid exorbitantly while shareholders have been feeling it in their pockets, they're more likely to align with the activist. I think we're going to see what was traditionally a 70:30 split in favor of management get closer to 50:50 where activists have the resources to repeatedly deploy their proxy materials to a broad swath of the shareholder base.

Are non-traditional activists still interested in going public?

As much as ever. A large portion of our practice these days is walking these newcomer activists through their first situation. And those situations can be rewarding on both sides. It's a whole new animal for these investment firms, going through board engagement, 13D filings, public letters and ultimately the proxy process. But I think you are going to continue to see non-activist firms go public on a name and you may even be surprised about some of the firms that do file a 13D in the coming year.

These newcomer, reluctavist-types are not only getting a taste for agitating, but they're realizing there's an avenue for enhancing value rather than sitting back and waiting for the company to do the right thing, which rarely materializes. By

"Retail has traditionally been more pro-company, more pro-status quo. But I think there's been a bit of a shift in that."

following a certain game plan they can either use public pressure to compel the company to make positive changes or can seek to enact those changes themselves through a campaign. Once you see how that can work as a newcomer to the space, you keep turning to it because you realize that in other underperforming portfolio companies there's a pathway to value creation. Take our client Harvest Capital, for example. They went through their first proxy battle last year at Green Dot, and have just inked a settlement with The Meet Group for new directors.

Are companies less likely to settle with first-time activists?

They are because of what's happening on the other side of the table. There's a certain set of defense advisers that are on the lookout for 13D filings, letters and press releases by these new-styled activists, and they're reaching out to the companies right away with entrenchment-minded action plans looking to get retained. These are the type of advisers who peddle themselves as "non-settlers," and they tend to get hired by the small to mid-cap companies where you tend to see the new activists appear. It does create a different dynamic, and we have to explain to our new activist clients how the dynamic differs from situations involving the likes of Starboard or Third Point, where you can have an expectation of a highly constructive dialogue and early-stage settlement in many cases.

And what other strategies might these activists use?

Withhold campaigns were highlighted this year as one of the tools for these newcomer activists. We saw it from Horton Fund, and I think you'll see more of Horton Fund in the future, and Tenzing Global Management, who had one of the most successful withhold outcomes this year at Brightcove. A withhold campaign is attractive to an activist where you can do it in a low-impact manner without a full-blown solicitation and where a 25-30% withhold vote against directors still serves as a referendum and a platform for next year. It lays the groundwork for future engagement.

"Activists in the top tier are able to attract, recruit, and retain top talent like never before."

Wells Fargo was a great spotlight for highlighting the virtue of a withhold campaign, but it is hard to convince the institutions to vote against directors absent egregious circumstances. People still look back to H Partners' seminal withhold campaign against Tempur Sealy in 2015 and we still field calls from people curious about how that worked.

Are traditional activists as busy this year?

They're every bit as busy. They may seem less busy because they are less public in certain circumstances. They're less public because they are able to achieve behind the scenes the kinds of changes that years ago they were having to agitate for. Suffice to say, they are extremely active, you're just not reading about it in the newspaper headlines as often as you used to.

The number of situations that our activist clients are involved with hasn't changed, some of them just don't have to wage proxy contests as often. At the end of the day, activism is a means to an end. It's about finding the causes of a company's underperformance and catalyzing change. If that can be done without a fight, then it may be the ideal way to get things done. On the other hand, if you get the sense there is a board or management that is feigning being open to change, you very well may need a mandate and the way you get a mandate is through the polling of shareholders that you get in a proxy fight. Top-tier activists now have the depth of experience, and the experience of interacting on many a public board, to get a feel for when their involvement needs to be more publicly escalated or where cooperative, behind-the-scenes changes can get the job done.

What was the most egregious entrenchment device you witnessed this proxy season?

Rent-A-Center changed the record date after the preliminary proxy. They filed a preliminary proxy with an April 10 record date on April 11, then filed a revised proxy on April 24 with an April 24 record date. They did the required 20-business day broker search for the first record date, but only a two-business day broker search for the second record date. They said it was because they announced a new business plan and wanted to give shareholders the opportunity to vote on it, but they had announced the business plan before the initial preliminary proxy came out so their reason didn't wash. Needless to say, they didn't get away with it.

New in town

Gatemore Capital, a London- and New York-based investment firm with $1.1 billion of assets under management, launched an activist strategy two years ago, targeting U.K.-based small caps. Now, it is considering raising capital for a separate fund dedicated to activism.

Until August last year, the name **Gatemore Capital** was unknown to the world of activism. When the investment firm started agitating for changes at U.K. fashion retailer **French Connection**, where it had been invested since 2013, it appeared to be a classic case of "reluctavist" – a shareholder forced to act after becoming exasperated by the board and management. Yet the investor's scathing letters to French Connection's board were no one-off. In March this year, a regulatory filing announced that Gatemore was launching a proxy contest at British mail and logistics company **DX Group**.

Liad Meidar, the chief investment officer of Gatemore, said in an interview with *Activist Insight Monthly* that the firm, which he co-founded in 2005, had launched an activist strategy in September 2015 with a mission of pushing for turnarounds at undervalued British small caps.

> "If a downturn affects consumer spending there would be an impact. However, those are the kind of situations that create challenges and therefore opportunities for us."

For the moment, French Connection and DX Group are the firm's only activist positions. "We don't have a separately managed fund," Meidar said, adding that the amount of money deployed in the activist strategy would depend on the opportunities available. "We will be looking to launch a dedicated fund later this year. Family offices from Europe and the U.S. and large pension funds from the U.K. and Canada have shown interest," he said.

A small cap hunter

Speaking with *Activist Insight Monthly*, Meidar argued that there were plenty of potential targets in the British small cap space, which was relatively unexplored. "Many of the activists tend to operate on mid and large caps, and to be international players," he said.

Currently, the investment firm is considering which stocks to target next. "We are looking at a mix of opportunities, without looking at one particular sector. We are constantly watching and waiting for the right moment."

Born in the U.S., where he lived until he moved to the U.K. to open Gatemore's London office in 2009, Meidar is not particularly concerned about the possible impact of the British election on his activist strategy. Small caps tend to be domestically-focused, and not particularly affected by export and currency issues, he said. "If a downturn affects consumer spending there would be an impact. However, those are the kind of situations that create challenges and therefore opportunities for us to cherry-pick… We would focus on companies which have not been active enough to address problems."

Gatemore at a glance

Offices:	London & New York
Founded:	2005
AUM (Dec '16)	$1.1bn
Level of activism focus:	Partial
Companies publicly targeted:	2*

*Since 2016

Turning around

One of the reasons why Gatemore intends to target small caps is that they often have poor corporate governance. The activist will focus on operational turnaround opportunities, with an eye to inefficient capital structures and bad capital allocation, and says governance will be key to the improvement of its targets. As Meidar puts it, "There are no bad companies. There are only bad prices and bad management teams.

"Board and management are in the trenches, and it often takes a fresh set of eyes to shake things up. What

“There are no bad companies. There are only bad prices and bad management teams.”

we do is building a bridge between shareholders and the board. At small caps, this bridge typically doesn’t exist,” he said, and then summarized an Einstein quote to repeat his point: “We cannot solve our problems with the same thinking we used when we created them.”

To build that bridge, however, Meidar expects to be forced to use an aggressive approach often.

First steps

Given Gatemore’s views on governance, it is no surprise that its first public letter as an activist demanded the replacement of French Connection’s two longest-standing independent directors and the separation of the role of chairman and CEO, as well as a series of operational improvements. At DX Group, where Gatemore began agitating in March, the first public communication was the requisition of a special meeting to vote on a dissident slate selected after consulting with fellow shareholders.

Both campaigns are still ongoing. French Connection failed to implement significant operational changes, but in January said that it would seek replacements for the two board members Gatemore singled out. Four months have passed, the company has not provided any update, and Gatemore has given up on a turnaround and instead started demanding a transparent sale process. The campaign at DX Group, by contrast, has faced a series of unexpected twists.

DX drama

Faced with the prospect of a proposed merger of DX Group and John Menzies’ distribution business, Gatemore announced its opposition to the terms of the deal but withdrew its slate, saying that it did not want its board challenge to be perceived as a referendum on the combination. While Gatemore eventually said it would support a revised agreement, announced earlier this month, the activist sees even more upside in a turnaround of the company, whose share price cratered 45% in February and has barely recovered.

Indeed, the deal with John Menzies looked like it could collapse after it emerged DX was being investigated by the police. Yet with the probe dropped in early July and John Menzies re-affirming its support for the “strong strategic logic” of the transaction, ongoing talks may still lead to a deal.

Meidar said DX could do well as a standalone company despite the better risk-reward profile of the merger. He is ready to push for a turnaround of the board. “I think DX is fixable and we have the right team to fix it,” he says.

Either way, it may not be long before a U.K. boardroom has to consider the implications of Gatemore’s new strategy.

“We believe that French Connection should be broken up since the sum of its parts is around two-to-three-times greater than the whole... The company clearly has a number of strategic alternatives available, and we would argue that the board is in breach of their fiduciary duty if they are not pursuing them.”

Gatemore statement on French Connection, March 15, 2017

“As the largest shareholder in DX Group, we continue to see tremendous unrealised value in the business... We are as eager as anyone to see DX succeed and we are confident that there is consensus amongst shareholders about the need for change.”

Gatemore statement on DX Group, March 21, 2017

Growing fat

Stericycle's performance has been disappointing over the last year, and shareholders are showing signs of unrest. The company has scaled down its strategy of growth through acquisitions, but an activist has room to ask for more.

The board of troubled U.S. roll-up **Stericycle** is skating on thin ice, with several directors facing strong opposition at the annual meeting in May, and one of them getting as much as 32.2% of the votes cast against his re-election. John Patience, the most unpopular of the board members, has been on the board too long to be a member of the audit committee, some investors think, while a restatement of the company's 2015 financials that caused a slump in the share price when they were announced last year, was also mentioned by some shareholders as a reason to vote against Patience.

> "John Patience, the most unpopular of the board members, has been on the board too long to be a member of the audit committee, some investors think."

Similar comments were made on fellow audit committee member Thomas Chen, who faced 27.7% opposition, and on Jack Schuler, who was considered too long-tenured to serve as lead independent director, and was opposed by 13.2% of the votes.

According to *Activist Insight Vulnerability*, the average tenure of Stericycle's directors is 13 years, against an eight-year average for S&P 500 companies. Only three of the company's ten directors faced minimal opposition at the annual meeting in May.

Stericycle

Industry	*Waste Management*	
Sector	*Industrial Goods*	
HQ	*Lake Forest, IL*	
Market cap	*$6.51 bn*	** as of June 30, 2017*
Exchange	*NASDAQ*	
Ticker	*SRCL*	

Although directors holding onto their seats for too long represent a serious governance issue, and many institutional investors also point to lack of gender and racial diversity on the board, the huge shareholder discontent is merely a symptom of broader and possibly more substantial issues.

A troubled stock

Stericycle's share price declined 13% in the 12 months to the annual meeting as the company never fully recovered from a big slump caused by the announcement in July 2016 that the past year's financial statements could not be relied on. Since the annual meeting, the stock has declined a further 21%.

To add to shareholders' concerns, Stericycle is also facing a class action lawsuit alleging that, in the past, the company violated contracts and defrauded customers of hundreds of millions of dollars through an automatic price-increasing scheme. The lead attorney says that potential claims could range from $600 million to $1 billion, and in a recent report **Barclays** analyst Jon Windham estimated that the cost could be equal to $7-11 per diluted share, against a June 30 close of $76.32.

In addition, pricing pressures are affecting the company's main waste disposal business and, as noted in a June report by **Raymond James** analyst Lawrence Keusch, pricing headwinds are also an issue at its secure information destruction business.

Rolling slowly

Last year, after a decade of compounded annual revenue growth at 16%, mainly obtained through acquisitions, Stericycle announced that it intended to reduce the pace of its dealmaking, focusing on smaller tuck-in takeovers, reducing revenue growth to 4-6%, and even making some divestments. So

> "Last year, after a decade of compounded annual revenue growth at 16%, mainly obtained through acquisitions, Stericycle announced that it intended to reduce the pace of its dealmaking, focusing on smaller tuck-in takeovers."

far, it has kept its word, and in the first quarter of 2017 it completed 13 small takeovers which Windham estimates will add 1.5% to revenue growth in 2018.

In an April report, the analyst said that he expected management to focus on reducing leverage, in a bid to increase financial flexibility. In May, he said that he believed there was significant upside potential if the company proceeded with faster-than-expected divestments of non-core assets.

Still, it is hard to argue that the company has changed tack. Mainly, it is doing less of the same.

Ups and downs

Stericycle's cost of revenues increased 3.1% year-on-year in the first quarter of 2016, compared to organic revenue growth of 2.1%.

In the three months through March, the organic growth of the secure information destruction business was 8% year-on-year, although the company expects a deceleration in the coming months.

Not all businesses performed equally well. The regulated waste disposal business, where Stericycle has a dominant market position in the U.S. and which represents almost 60% of its revenues, grew organically by 1.5%, with hazardous waste revenues declining 12% and continuing to be a drag on the firm's performance.

Finally, a communication business which provides services such as automated reminders and product returns saw its revenues jumping 10.1% in the quarter. However, to sustain the communication business Stericycle had to invest in its infrastructure, increasing its general and administrative expenses by 6.6%.

The company does not provide margins at its different segments. Overall, as a percentage of revenues, consolidated gross profits decreased to 41.3% in the first quarter of 2017 from 41.9% a year before. In the 12 months through the first quarter of this year, that margin was well below its peer group median of 52.8%, according to calculations by *Activist Insight Vulnerability*. In the same period, its net profit margin was 4.6%, compared to 9.3% of its peers.

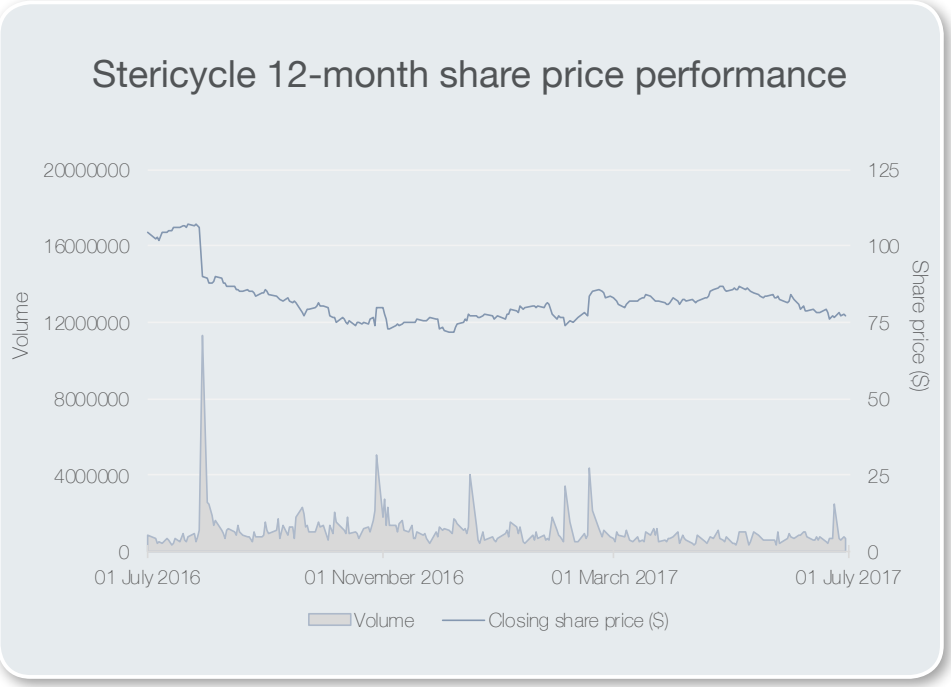
Room for change

An activist with credibility and a good plan would not find it difficult to convince Stericycle's shareholders that the board needs refreshing, with the appointment of new independent directors to increase oversight. The seats of Patience and Chen, both on the board and in the audit committee, clearly cannot be considered safe.

After the collapse of Valeant Pharmaceuticals International, roll-ups have fallen out of fashion, and a dissident shareholder may force the company to definitively end its acquisition spree and commit to more substantial divestments. The hazardous waste business is a candidate for a sale, if a buyer can be found, and Stericycle's international reach could be reduced.

The company claims that the communication business leverages on its already large infrastructure to interact with clients. However, given the impact on costs, Stericycle should be forced to consider whether, in terms of shareholder value creation, the synergies are enough to compensate the downside of a less-focused company.

For Stericycle, it may be time to focus less on size and more on margins.



The index equation

Innisfree®

An interview with Art Crozier, Jennifer Shotwell and Scott Winter of Innisfree M&A Incorporated.

Index funds have been demanding a larger say in the strategy of their portfolio companies for a while. How has that affected activism this year?

Art Crozier: As index funds have grown their assets under management, they have significantly increased their ownership levels at companies – at most of our clients, the three large index funds, Vanguard, BlackRock and State Street, own 15-to-20% of the stock, if not more. They have a longer-term time horizon and are therefore more attuned to and attracted by a credible strategy for long-term value creation.

Scott Winter: As the index funds have grown their ownership position, their voting influence has been amplified, resulting in votes by index funds often being outcome determinative. To the extent companies have previously engaged with index funds, it is largely at the governance level rather than from a strategic perspective. As a result, even companies with index fund relationships have little insight on how the index funds might vote in a proxy contest or other contentious situation.

> "The big-name activists are aware of the tenure and diversity issues raised by index funds and are beginning to target these concerns."

In which new areas are index funds looking to influence companies?

AC: Index funds are establishing areas that they particularly want issuers to focus on. BlackRock and State Street, for example, want issuers to talk about how environmental and social issues play into their long-term strategy. While this can be a benefit to issuers that have a credible long-term strategy, it is necessarily broadening the value creation debate for many issuers, given the necessity to engage with such large investors. Similarly, the view that shorter-tenured, more diverse boards are better at decision-making is also gaining a lot of traction.

SW: The big-name activists are aware of the tenure and diversity issues raised by index funds and are beginning to target these concerns to strengthen their platform in the eyes of the governance community.

Companies have been told to think more carefully about settlements. What should they be thinking about?

Jennifer Shotwell: Some clients faced with an activist have gone out to large shareholders and had what are framed as general conversations about what the investors would like to see in terms of board composition, but that sometimes get fairly granular.

To the extent you've laid some of that groundwork, it can be really helpful. Companies can then seek a resolution that is more or less in-line with what's important to their largest shareholders.

AC: You can have settlements that make nobody happy. Companies think settlements will bring them peace, but the frequency of removal of CEOs within one-to-two years of a settlement, or so-called alpha by decapitation, is significantly higher than when there is not an activism situation.

Also, while some institutions want input in settlements, issuers can't disclose material non-public information to shareholders selectively. That disclosure issue is heightened where there has been limited or no public disclosure regarding the activism situation. If there has been extensive public debate, particularly through proxy disclosures in a contest, issuers have greater ability to learn shareholders' views, but even then, selective disclosure remains a serious issue.

SW: One benefit of a settlement can be the quality of the candidates that get placed on the board. There are a number of candidates that are reluctant to serve on an activist's slate in a proxy fight, but would be eager to join the company's board as part of a settlement. Not losing these high-quality candidates from the talent pool benefits both the dissident and the company.

However, activists often debate whether they should settle or whether they want to have a public referendum. There have been some situations where activists felt they didn't get the change they wanted because the company was able to avoid hearing shareholder views on certain aspects of the platform.

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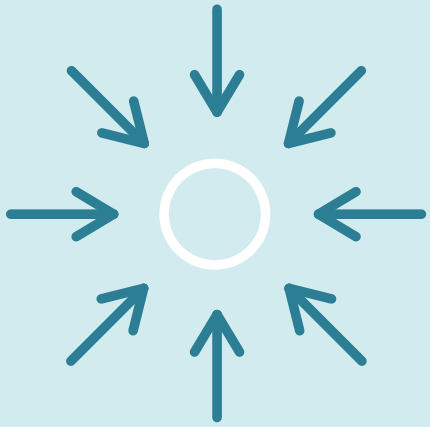

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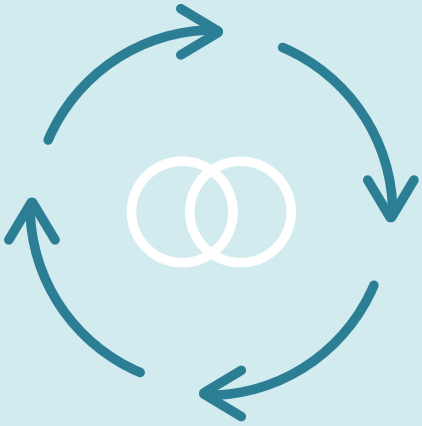

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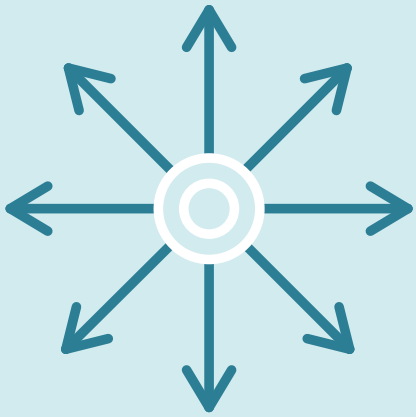

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Activism around the world

Sweden - Ericsson

Cevian Capital, already one of the most influential activists in Europe, bet $1 billion on Swedish telecoms provider Ericsson rediscovering its core strengths. The size of its stake won it a seat on the board nomination committee.

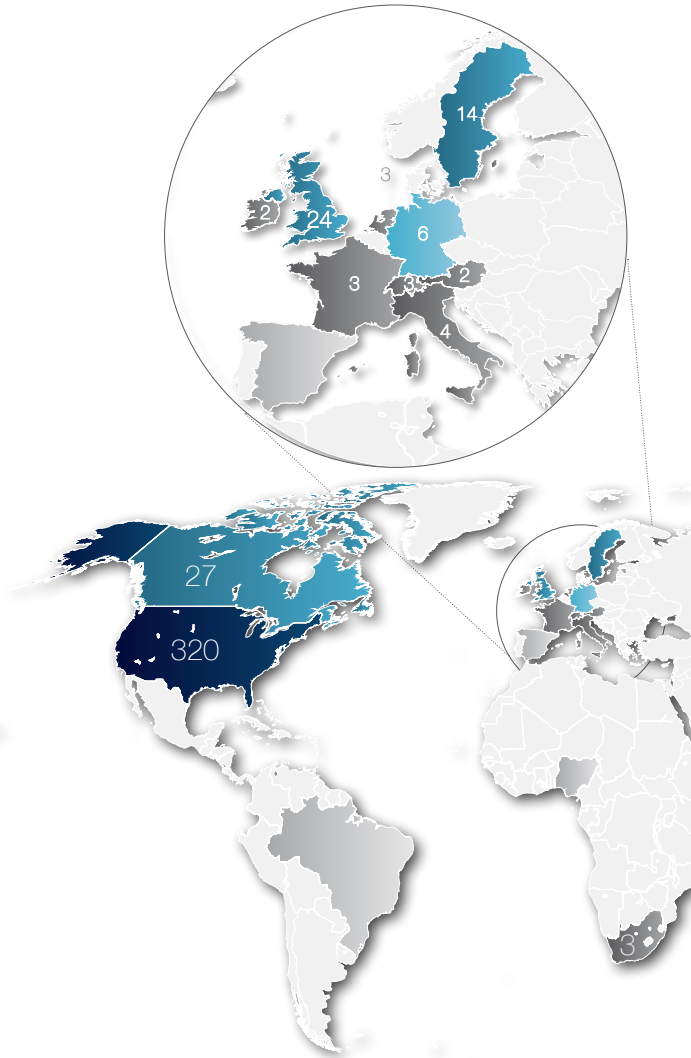
U.K. - Hornby

Activism in the U.K. seemed to eschew fights in the first half of 2017, and toy train maker Hornby proved only a temporary exception. Having requisitioned a meeting, activists then agreed to an indefinite postponement, before Chairman Roger Canham stepped down.

Canada - Granite REIT

FrontFour Capital Group and Sandpiper Group ended up appointing three directors to the board of Granite REIT in an eve-of-meeting settlement. The activists had argued that high expenses and compensation, coupled with poor execution, had left the real estate investment trust trading at a major discount.

Companies publicly subjected to activist demands in H1 2017 by HQ location



U.S. - CSX

Maverick railwayman Hunter Harrison and former Pershing Square Capital Management Partner Paul Hilal – who helped install the executive in his previous job at Canadian Pacific Railway – again teamed up to turn another rail company around. Investors approved, sending the stock way up and ratifying the reimbursement of Harrison's $84 million severance pay by a wide margin. However, with the CEO's long-held ambitions of engineering a cross-country railway merger still unfulfilled, there could be more to come.

Switzerland - Nestlé

Dan Loeb's Third Point Partners invested $3.5 billion in Nestlé and called for the food giant to sell its minority stake in L'Oréal. The Swiss company responded with a $21 billion buyback – something for the activist to snack on but likely just an appetizer on the path to bigger changes under new CEO Ulf Mark Schneider.

Japan - Kuroda Electric

Two years after Yoshiaki Murakami's quest to win board seats at the Tokyo-based electronics firm ended in defeat for the activist in exile, another Japanese investor targeted Kuroda Electric. Reno nominated a visiting professor from a Japanese university and demanded share repurchases and targeted acquisitions.

Hong Kong - Yingde Gases

A six-month spell that began with former executives seeking a return to the board of Yingde Gases ended with a takeover by private equity group PAG, after Air Products and Chemicals ruled out bidding for the Hong Kong-listed firm. The proxy fight was eventually declared void after the dissidents claimed victory.

Australia - BHP

Down under's largest activist campaign to date sees Elliott Management pitched against "The Big Australian." Elliott wants the mining company to consolidate its dual-listing and sell oil and gas assets, provoking widespread debate among the shareholders. Management is still resisting the activist on some issues, with Elliott showing little sign of going away anytime soon.

A hostile turn

An interview with Steven Balet, Head of Corporate Governance and Activist Engagement for FTI Consulting.

Activism took an unexpectedly hostile turn this proxy season. Why was that?

We might see, for the first time in a while, an uptick in actual proxy contests. Markets have been rising, leaving fewer undervalued companies, but good activists will always find targets. The result is that activists in the U.S. aren't targeting companies that are performing as badly as their targets were in the past, so they are often looking for a strategic change or an acceleration the companies are not willing to concede. By virtue of that difference, you're going to get more proxy fights.

And why have CEOs seemingly been more prominent targets for activists?

When you talk about operational activism, those campaigns are mostly – not always – but mostly looking for a change in management. Traditionally, activists would seek that change from within the boardroom after winning a few seats because institutional investors have been wary of the uncertainty of appointing an external replacement CEO. As activists and institutions have grown closer, activists are more confident they can target the CEO at the onset and still receive enough institutional support to win. Activists are also running campaigns with better candidate CEOs.

However, one thing activists fail to take into account is the impact their campaigns can have on a company's business – this disruption can lead to issues with suppliers, employees and customers. Activist campaigns that promote sales, splits, or a change in management can cause an exodus of key employees, customers seeking different terms, contractors looking to revise their long-term agreements. At some companies, that can have an impact on the stock price which may persist long after the activist has exited.

> "Activists are making extensive use of expert networks, really doing deep dives into prior communications and actions by management."

Where else has activism been heading?

We're seeing a great deal of activism in Australia and certain other jurisdictions. The institutional atmosphere has become much more congenial for activism in Australia and Europe. From the company side, we are seeing a lot more active investors – that you wouldn't historically have called activists – being more involved. Traditional money managers want to show that they're actively involved with their portfolio companies and so are speaking out on compensation issues and activist ideas – one way or the other.

You get different kinds of activism in different European markets. Recently, we saw regulation in the Netherlands used as a defense, but the legal regime is pretty permissive in the U.K. There are also structural factors, such as in Germany, promoting activism in certain M&A situations.

What else have you noticed about activism this year?

Research has been a theme. Activists are making extensive use of expert networks, really doing deep dives into prior communications and actions by management. And companies are using those same tactics in defense, looking at past comments, or the performance of stocks after the activist exits. It has worked to a certain extent, in terms of companies beginning to shine a light on an activist's true track record. Some have quite long records, and not every investment worked out, and there have been inconsistencies in their public statements.

Your team also defends companies against activist short sellers.

Over the last few years, instances of very public short attacks have become much more common. Often, they only have an impact on the stock for a day, a week or a month and the stock pops back up.

They can offer very little substantive content, so sometimes the best advice is to not react at all, to avoid giving the story more air. Other times, you're forced into reacting. The effect of the situation is not just on the stock, but on the employees, customers and suppliers, and that's where the real damage is done. There is little recourse against those who spread conspiracy theories.

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The battle of squeezes

Oasis Management is fighting in the name of minority shareholders to squeeze more cash from Panasonic's consolidation efforts.

When the Japanese juggernaut Panasonic altered its bid for PanaHome in April, having offered 1,200 yen per share in cash instead of 1,009 yen in stock before, media outlets labelled the move as a big win for activism in a country so long apathetic to shareholders' interests. Oasis Management, while acknowledging that its forceful media campaign combined with a stalking horse bid led to the superior proposal, remained quiet.

PanaHome Corporation

Industry	*Home Furnishings & Fixtures*	
Sector	*Consumer Goods*	
HQ	*Tokyo, Japan*	
Market cap	$1.8 billion*	** as of June 28, 2017*
Exchange	*Tokyo Stock Exchange*	
Ticker	*TYO: 1924*	

The Hong Kong-based activist had its reasons. It later emerged that Oasis, run by Seth Fischer, had advanced a new offer of 1,300 yen per share, signalling that it was unhappy even with the revised proposal. PanaHome turned it down, citing doubts about the activist's ability to secure financing and its conviction in the superior synergistic potential of the Panasonic deal.

"Expanded abuse"

By the time PanaHome decided to embrace its parent's new bid, Oasis had already built a nearly 10% stake, which would have enabled it to block a tender offer. Indeed, not allowing Panasonic to cross the 50% threshold of minority shares appeared to be the next step in the activist's campaign. That could have caused "potential expanded abuse by Panasonic," the hedge fund's Chief Operating Officer Phillip Meyer told *Activist Insight Monthly* in an interview.

> "Although Panasonic has now secured the tender of 54% of the minority shares... Meyer assures that the battle is far from over."

Yet Meyer says Oasis deliberately tendered more than 5% of its PanaHome shares. It did so "because of a significant risk Panasonic would not have gotten sufficient percentage of the minority shareholders" to move forward with the squeeze-out. "[We] wanted the best result for all shareholders, including those long suffering, small and not active shareholders and so we wanted to ensure they got at least 1,200 yen," Meyer added.

Although Panasonic has now secured the tender of 54% of the minority shares – and 80% of the outstanding, Meyer assures that the battle is far from over. "We will vote against the consolidation of the shares, and pursue all of our rights as shareholders to achieve maximum value for all remaining shareholders," he says.

Stalking horse

Emboldened by Prime Minister Shinzo Abe's quest to revive a flaccid economy through better shareholder accountability, activist hedge funds are employing increasingly complex and aggressive tactics to get their way. The recent history of activism in Japan has been ripe with campaigns in which activists opposed takeovers or pushed for higher prices, hardly shocking given the extensive practice of cross-shareholdings among Japanese issuers. According to, since 2013 there have been five campaigns of the sort, making it one of the top five drivers of activism. Unsurprisingly for a country with cash hoarding problems, dividends and share repurchases top the list.

Yet despite having Abe as their cheerleader, activists still face a tough environment in Japan, proving that a cultural shift cannot happen overnight.

> "We have indeed demonstrated that activism can work in Japan, and our view is that [the nation] is progressing in improving corporate governance and accountability to shareholders."

The stalking horse strategy – perhaps borrowed from **Elliott Management**'s arsenal – is becoming popular in Japan. The Japanese division of **RMB Capital Management** is running a similar campaign to stand in the way of Faith's "unfair" bid to acquire **Nippon Columbia**. RMB submitted a higher cash offer for Nippon, but has so far received no formal response.

No one's priority

The lack of representation in boardrooms may be the biggest issue minority investors have to confront, particularly when parent companies are majority shareholders. Although PanaHome had two outside directors, there was a clear misalignment of interests, according to a recent report by Jefferies. The two directors were relatively new to the board and their stock ownership was equal to just a few months' salary, Jefferies' report notes, concluding that independent directors were not properly incentivized to defend the interests of minority shareholders.

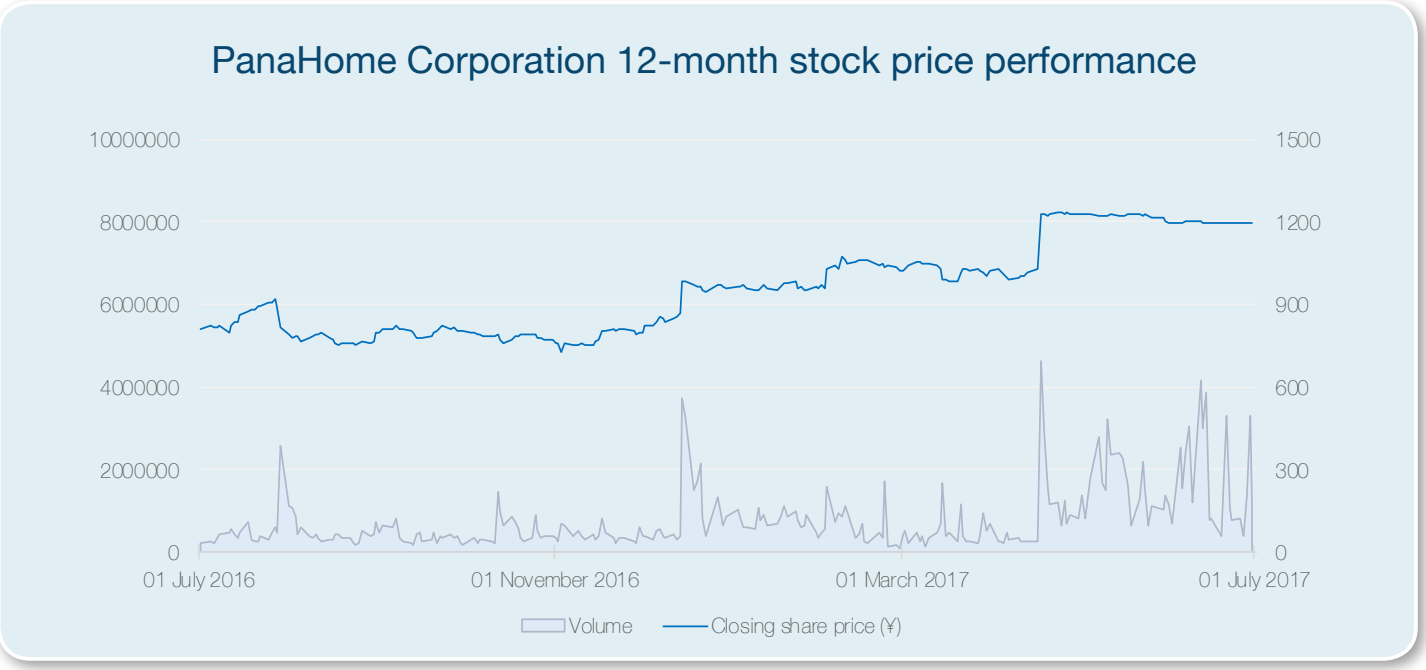
Even so, it can't be said that PanaHome did not follow good corporate governance guidelines in the process of reviewing Panasonic's proposal. The company hired third parties to provide a fairness evaluation and forced four directors out of nine to recuse themselves, but "the conflicts of interest were so extreme as to not make these measures sufficient," Jefferies reckons.

Oasis says it got its hands on an alternative independent report that concluded PanaHome is worth 1,954 yen per share, or a 64% premium to the current offer. The activist argues the company's cash reserves represent nearly half of its market capitalization but that they were excluded from almost all the valuation metrics. Moreover, the company's independent reports avoided using direct competitors and assumed business will dwindle going forward due to demographic issues.

A future in Japan

Oasis' next step is to obtain a court ruling that confirms the flaws in the tender offer process. It is also expected to solicit votes from the remaining minority shareholders against the proposed share consolidation at a meeting to be held between late August and late September.

Both challenges will amount to another test of Japan's progress in implementing corporate governance reforms. Whatever the result of these efforts, Oasis is confident Japan is on the right track. "We have indeed demonstrated that activism can work in Japan, and our view is that [the nation] is progressing in improving corporate governance and accountability to shareholders," Meyer says. "Activism does have a future in Japan."



The short side

Activist short selling got off to a slow start in 2017 as stocks soared, but researchers are relishing the challenge posed by high valuations. *Activist Insight Monthly* takes the market's pulse.

The way things are going, the second half of 2017 will need to see a frenzy of short selling to match prior years. At the end of June, 102 short campaigns had been launched, suggestive of 2014 levels of activity.

In 2015 and 2016, activist short selling soared to 274 and 264 campaigns respectively. Some, but not all, growth came from the U.S., where the number of campaigns increased by 50% between 2013 and 2015 before levelling off. This year, activity in North America is down, while levels in Asia and Europe remain consistent compared to the first six months of 2016.

A higher bar

One, Richard Pearson, told *Activist Insight Monthly* that he was passing on more ideas than usual, as markets cannot be relied on to digest the information properly. At least three times in the past two years, observers had called an end to the bull-market but been proven wrong, he says, citing external shocks such as China, Brexit and the U.S. election. "The problem from the short side is that we could see another 1999 super-surge before the markets correct," he says.

As a result, short sellers are being more cautious in their approach, while also trying to take advantage of the growing interest in their research. Ben Axler of Spruce Point Capital Management says overvalued companies and lower quality public offerings are ideal for short sellers, but adds that "the bar is higher." He is basing his short positions on material omissions and malfeasance, he says, rather than valuation alone. Nonetheless, "The amount of research we've been publishing has accelerated," he adds.

As an added danger, cash-rich, growth hungry companies offer takeover risk, as a bunch of investors in Straight Path Communications found recently. Amazon's acquisition of Whole Foods Market may also have caused some to reconsider the kinds of deals that are possible in 2017.

Ironically, both long-biased activists and short sellers are chasing some of the same stocks. Short campaigns at consumer and industrial goods companies make up a larger proportion of 2017 campaigns than they have done since 2013 - twice as much in the latter case. The healthcare and technology sectors remain the most popular targets, accounting for almost half of all activist short campaigns within the first six months of 2017.

> "In Hong Kong, there is now less of a chance that you will meet with a hostile regulator but rather one that will at least look at both sides of an argument."

Banana Republic

One market gaining a lot of attention recently is Canada. The number of shorts has risen steadily, from 9 in 2014 to 18 in 2015 and 21 last year. Marc Cohodes, who has racked up seven targets there, most recently excavation company Badger Daylighting, says the country's lack of a national regulator allows "shady operators to follow the path of least resistance." He compares the country to a banana republic, and some other short sellers are not far behind.

"I am very interested in Canada," says Pearson, who also notes that the country's markets offer all the advantages found in the U.S., but far less transparency on the part of the companies themselves. Share prices are fragile, he says, noting that in advance of a recent Muddy Waters Research report, three stocks fell as investors speculated on which might be targeted. "In six-to-eight months it will be a free-for-all and I'll be one of them," Pearson adds.

Old stomping grounds

For now, activist short sellers seem to be giving Japan-based companies a period of respite, launching only one short attack in the country in the first half of 2017, compared to ten last year. Hong Kong, however, remains a favorable target with five campaigns in the first six months of this year, compared with nine in the whole of 2016.

Despite fears of stock manipulation and unpredictable regulators, which sanctioned Citron Research for its activities in the country, short sellers are still expecting bumper returns from Hong Kong.

> "The problem from the short side is that we could see another 1999 super-surge before the markets correct."

So far, they've been lumpy – Muddy Waters short target **Man Wah Holdings** recovered strongly after it initial slump, as did Fullshare Holdings. **Hua Han Health** and **China Huishan Dairy Holdings** remain suspended. Against that backdrop, a new report from **Blazing Research** predicting **China Household Holding** will be investigated by regulators and eventually delisted looks bold.

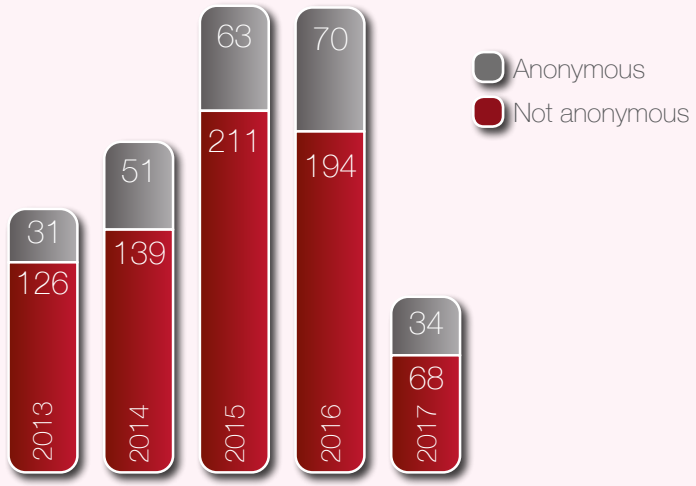
Dan David, Chief Investment Officer for **FG Alpha Management** and co-founder of research outfit **GeoInvesting**, thinks things are getting better, however. As the regulators in [Hong Kong] and elsewhere get serious about becoming competition to the U.S. exchanges they are beginning to understand that they have to take critical opinions seriously," he says. There is now "less of a chance that you will meet with a hostile regulator but rather one that will at least look at both sides of an argument."

Distinct musk

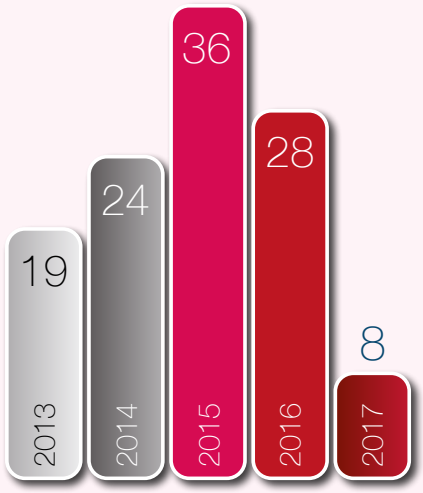
Back in the U.S., the **Nasdaq** remains far and away the most popular exchange for shorts, perhaps reflecting the appeal of technology-driven bubbles. One popular short idea on the exchange has fewer followers among the dedicated short community, however.

"Short and hold on names like **Tesla** has been very difficult," says Pearson, returning to the theme of markets continually looking upward. Cohodes agrees. "I could care less about fucking Tesla. I could care less about who runs the thing," he says. "I would rather focus on Badger Daylighting, where I think things are made up."

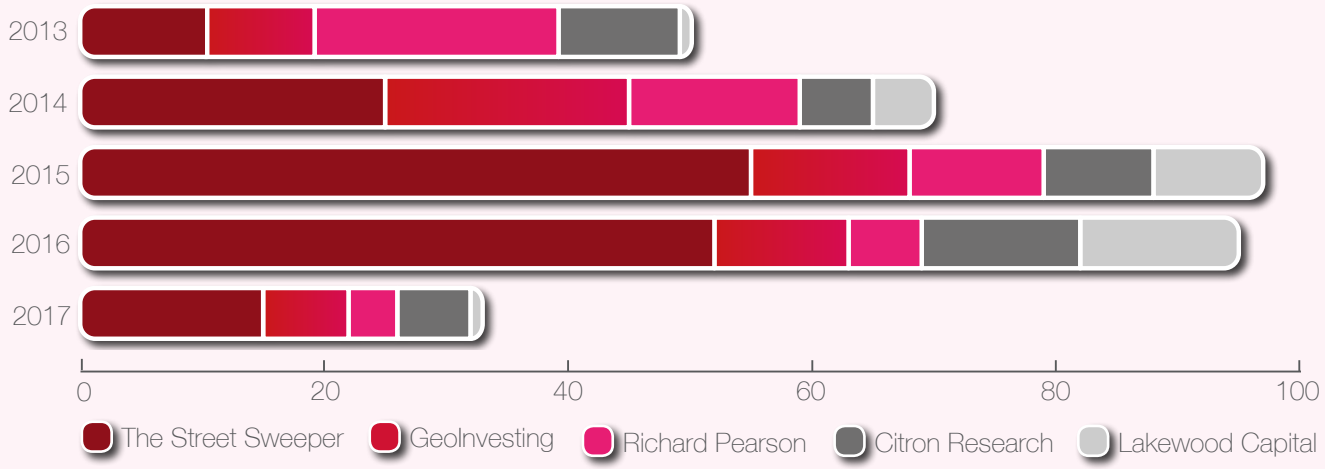
Campaigns launched by activist short sellers



Companies publicly targeted by more than one short seller



Campaigns launched by the most prolific activist short sellers since 2013



Short news in brief

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

Warren Buffett's **Berkshire Hathaway** invested in **Home Capital**, a Canadian subprime lender in the crosshairs of short seller **Marc Cohodes** – and more recently **Bronte Capital** – which appeared likely to collapse after losing more than half of its value in 12 months. Cohodes remains short.

Muddy Waters Capital may face an investigation in Germany after a prosecutor reportedly opened a market manipulation inquiry in relation to its short campaign at advertising company **Ströer.**

Shares in troubled drugmaker **Valeant Pharmaceuticals International** rose more than 30% in June on the news of asset sales and of **Paulson & Co's** John Paulson joining the board.

Tom Farley, the president of the New York Stock Exchange, told U.S. lawmakers that short sellers should be forced to disclose their positions, and added that "it feels kind of icky and un-American, betting against a company." Similar comments on disclosure were previously made by **Nasdaq.**

Shares in Hong Kong-listed **China Household Holding** were suspended after **Blazing Research**, a recently launched research outfit, published a report accusing it of fabricating revenues.

Viceroy Research issued a short report on Israeli stone surfaces manufacturer **Caesarstone** which convinced **Spruce Point Capital Management** to re-open its short on the company.

U.S. lender and tax services firm **World Acceptance** delayed its financials and announced an internal investigation into its handling of certain payments in Mexico. **Cable Car Capital** placed a short bet against the company in 2014.

Pershing Square Capital Management's arch enemy **Herbalife** lowered its sales outlook for the second quarter, saying that the implementation of changes imposed by a settlement with the Federal Trade Commission were impacting on its performance. Pershing Square believes the company is a pyramid scheme, and the changes agreed with the regulator will drive it to collapse.

Shares in data analysis solution company **Cogint** tumbled 12% in one day, before recovering a large part of the losses, after short seller **Unemon** said that its investors, board members and promoters were behind several firms whose stock price had crashed. U.S. drug developer **Omeros** also faced a loss of almost 10% on one day following a short report by **Art Doyle.**

Shares in **SkyTides's** latest short target, medical device company medical device company **Spectranetics**, surged 45% in June after the company reached an agreement to sell itself.

The stock price of U.S. health technology company **PolarityTE** increased by more than 50% after **Cliffside Research** published a report accusing it of being all hype and having a 64% downside.

U.S. senator Elizabeth Warren joined other lawmakers in calling for an investigation of **Citron Research**'s short target **TransDigm**. The short seller had described the aerospace company as the "Valeant of the aerospace industry" due to its pricing strategy.

The Hong Kong Stock Exchange told **China Hongqiao Group** that responding to allegations by short sellers was among the conditions for the stock to resume trading after it was suspended in March. The company is in the crosshairs of **Emerson Analytics**, as well as a second anonymous short seller.

The Street Sweeper joined **White Diamond Research** and **FG Alpha** in their short bet against cashback company **Ominto**, describing it as a "multi-level-marketing sweat shop."

Marc Cohodes said that a lawyer working for **Bofl Holding** had tried to hire him as an adviser in the past to help fight back against activist short sellers. Cohodes refused to assist the company, and eventually joined the short.

The CEO of **ViaSat**, the latest short target of **Kerrisdale Capital**, joined a private dinner for investors and tech industry experts where the activist presented as part of its campaign against the stock.

New short investments

A selection of the latest activist short investments from around the world in June.

Sofa manufacturer Man Wah Holdings was accused by Muddy Waters of covering up undisclosed debt and inconsistencies in its taxes.

Activist	Company	Date Announced	Primary Allegation(s)
Spruce Point Capital	iRobot	Jun 27, 2017	Competitive pressures
Spruce Point reopened its 2015 short position in iRobot, arguing a competitor product launch will put a strain on the firm's profits.			
The Street Sweeper	Cryoport	Jun 21, 2017	Stock promotion
The Sweeper argues Cryoport investors have gotten ahead of themselves by wrongly expecting a collaboration with Kite Pharma and Novartis.			
Blazing Research	China Household Holdings	Jun 21, 2017	Major business fraud
Blazing says China Household has been fabricating revenues while management has engaged in stock promotion schemes.			
Viceroy Research	Caesarstone	Jun 14, 2017	Product ineffective
Viceroy thinks Caesarstone's latest product has no chance of competing with IKEA's similar lower-cost alternative.			
Kerrisdale Capital	ViaSat	Jun 13, 2017	Competitive pressures
Kerrisdale is confident ViaSat will be crushed by competitive pressures from mobile operators and expanding landline internet providers.			
SkyTides	Spectranetics	Jun 13, 2017	Medical effectiveness
Philips bought the company for a 30% premium, quickly turning SkyTides' short campaign into a disaster.			
The Friendly Bear	Nutrisystem	Jun 13, 2017	Other illegal
The Friendly Bear accuses the diet programs maker of using illegitimate marketing tactics to sell more products.			
Spruce Point Capital	Radiant Logistics	Jun 08, 2017	Ineffective roll-up
Spruce Point says Radiant is nothing but a roll-up of failed logistics providers that cannot deliver sufficient operating cash flow.			
The Street Sweeper	Cancer Genetics	Jun 08, 2017	Medical effectiveness
The activist claims the company's test product is "nothing special" and is competing with more resourceful giants.			
GeoInvesting	Dali Foods Group	Jun 07, 2017	Accounting fraud
GeoInvesting accuses Dali Foods of cooking its books, citing unusually low operating expenses and salaries.			
Muddy Waters Capital	Man Wah Holdings	Jun 07, 2017	Accounting fraud
Muddy Waters believes the sofa-maker is hiding undisclosed debt, inconsistencies in its taxes, and dubious growth.			
Cliffside Research	PolarityTE	Jun 07, 2017	Medical effectiveness
Cliffside contends PolarityTE's main product saw disappointing test results, while investors are unaware of dilutive practices.			
The Street Sweeper	New Age Beverages	Jun 06, 2017	Ineffective roll-up
The Street Sweeper says shares in New Age will fall under the burden of poorly-chosen acquisitions.			
Unemon	Cogint	Jun 05, 2017	Stock promotion
Cogint nosedived after Unemon alleged insiders were under investigation for illegal stock promotion schemes.			

News in brief

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

North America

Marcato Capital Management won three seats on the board of Buffalo Wild Wings in a proxy contest, and the fast-casual chain's CEO Sally Smith announced her retirement. Marcato also threatened a proxy contest at Deckers Outdoor.

General Electric announced a successor to CEO Jeff Immelt amid pressure from Trian Partners for margin improvements. The activist said that it supported the appointment of John Flannery.

Shareholders in CSX approved an $84 million reimbursement for CEO Hunter Harrison with an overwhelming majority. Harrison, who was installed as part of a settlement between CSX and Paul Hilal's Mantle Ridge, had said he would resign if the package was not approved.

Paulson & Co's John Paulson joined the board of troubled drugmaker Valeant Pharmaceuticals International, three months after Pershing Square Capital Management sold its shares at a $4 billion loss.

Whole Foods Market agreed to sell itself to Amazon amid pressure from Jana Partners for a turnaround and a strategic review. Neuberger Berman, which was also pressuring Whole Foods, said that Amazon was buying the grocery retailer cheap.

Engaged Capital won a proxy contest at rent-to-buy firm Rent-A-Center. Proxy contests were also won by Cypress Semiconductor's founder and former-CEO Thurman Rodgers in a showdown at the firm he founded, and by investment firm Richmond Brothers at drug manufacturer Rockwell Medical.

Jonathan Litt's Land and Buildings lost a proxy contest at mall operator Taubman Centers, but is requisitioning a second meeting to keep up the pressure. The activist also targeted Toronto-based department store retailer Hudson's Bay, asking it to monetize its real estate or go private.

JCP Investment Management was also defeated in a proxy contest at restaurant company Fiesta Restaurant Group. Bank holding company Wayne Savings Bancshares won a showdown with investor Stilwell Value. A withhold campaign launched by Cannell Capital against three directors of internet domain firm Rightside Group was unsuccessful.

Trian Partners pushed for a seat on the board of Procter & Gamble, amid talks with the consumer goods giant over the future of its brands.

Verizon Communications closed the $4.5 billion acquisition of Yahoo's core business. Yahoo sold itself following an April settlement with Starboard Value.

Honeywell International said that its investors were resisting calls by Dan Loeb's Third Point Partners for a spinoff of the company's aerospace unit.

Glenview Capital Management joined Third Point in demanding that Dow Chemicals and DuPont reconsider the division of their portfolios once they complete the pending merger in August and start splitting into three companies.

The U.S. House of Representatives approved the Financial Choice Act, a bill which includes provisions that would allow only shareholders which have held at least 1% of the stock of a company for at least one year to submit proposals for the general meetings.

Granite REIT, Canada's largest industrial REIT, settled a proxy contest with FrontFour Capital and Sandpiper Group, awarding them three board seats.

Engaged Capital nominated seven directors to the board of Hain Celestial Group, a health foods company once targeted by Carl Icahn. The activist said it thought a sale of the company could more-than double the share price.

Marcato Capital Management's Mick McGuire to the board of Deckers Outdoor, June 27, 2017

Europe

Dan Loeb's Third Point Partners took a $3.5 billion stake in Nestlé – the world's largest food company – demanding a series of changes including an increase in leverage, share repurchases, productivity improvements and the sale of the Swiss company's $27 billion stake in L'Oréal. Shortly afterwards, Nestlé announced a $21 billion share buyback program.

Dissident shareholders in U.K. gold miner Petropavlovsk won proxy contests at the company, electing two slates, one of which included Chelsea Football Club's chairman Bruce Buck. The proxy contests were waged, separately, by Russian billionaire Viktor Vekselberg, and by a group formed by Sothic Capital Management and M&G Debt Opportunities Fund.

A news report suggested that Dan Loeb's Third Point Partners was buying shares in Netherlands-based electronics giant Philips.

Shareholders in French aerospace company Safran approved the acquisition of Zodiac Aerospace, which was opposed by The Children's Investment Fund. However, Safran had previously lowered its bid. Paris-based activist Ciam is invested in Zodiac and supported the deal.

Ciam also filed a legal complaint against French group Altice, claiming that it forced its subsidiary SFR Group to take actions that were detrimental to its minority shareholders.

The CEO of Vincent Bolloré's Vivendi, Arnaud de Puyfontaine was appointed as chairman of Telecom Italia. Vivendi also appealed against a decision by Italy's antitrust regulator to cut its stake either in the telecoms company or in Mediaset, the broadcaster controlled by Silvio Berlusconi. Also in Italy, Amber Capital called on Mediaset to reduce its operating costs.

Third Point's stake in Nestlé is one of the continent's biggest activist plays in years. The activist is betting on fresh-thinking from new CEO Ulf Mark Schneider.

George Soros' Quantum Strategic Partners backed Kennedy Wilson's buyout proposal for its Jersey-based subsidiary Kennedy Wilson Europe Real Estate after the bid was improved.

U.S.-based PPG gave up on its attempt to acquire Dutch paint maker AkzoNobel after continued opposition from the target company, despite pressure from Elliott Management for a sale.

Cevian Capital's Christer Gardell was appointed to the nominating committee of Swedish telecoms giant Ericsson after making a $1 billion investment.

Elliott Management sought the removal of XPO Europe's CEO, submitting several proposals and written questions for the second successive shareholder meeting. The company is controlled by its U.S. parent.

A merger between London-listed DX Group and the distribution division of John Menzies, which had the backing of activist Gatemore Capital Management, was put into question by a police investigation of DX. Menzies' shareholders Lakestreet Capital Partners and Shareholder Value Management had long pushed for a division of the company.

MagicJack VocalTec, an Israeli voice-over-internet firm, faced a new shareholder activist, after settling with dissident Kanen Wealth Management in February, and seeing Carnegie Technologies Holdings giving up on a proxy contest in March. Twinleaf Management urged the conclusion of the company's strategic review.

Israeli generic drug maker Teva Pharmaceutical Industries announced the nomination of four new directors. Three of them have a rich pharmaceutical background, as was requested by dissident shareholder Benny Landa.

As the Japanese proxy season got underway, a flood of shareholder proposals, M&A reactivism and a rare proxy contest victory for an activist took center-stage.

Rest of the world

Anglo-Australian mining giant BHP named insider Ken MacKenzie as its new chairman. Elliott Management, which is pushing for radical changes at the company, said it supported the appointment. Other shareholders joined the debate on Elliott's demands, with Aberdeen Asset Management saying it would back the elimination of BHP's dual-listing structure, AMP Capital suggesting an independent review of the proposal, and Sydney-based Tribeca Investment Partners exceeding Elliott's demands and saying that five of the miner's 11 board members should be replaced.

Ariadne Australia, a shareholder in Sydney-listed Ardent Leisure Group, launched a proxy contest at the company. Australian activist Thorney Investment Group is invested in Ardent, and said it would support Ariadne.

Shareholders in Japan's Kuroda Electric approved a director nominated by Reno, an investment firm allegedly linked to Yoshiaki Murakami, who lost a contest at the company two years ago and had subsequently increased his stake.

Also in Japan, Panasonic's tender offer to acquire full control of its home furniture subsidiary PanaHome fell short of the 90% threshold. The parent company, however, will submit the buyout offer to a shareholder vote. Oasis Management opposes the bid, saying the price is too low.

RMB Capital stepped up a campaign to improve the terms of an all-Japanese deal between Nippon Columbia and Faith by submitting a takeover proposal for Nippon.

Allan Gray succeeded in turning around the board of South Africa-based energy, infrastructure and resources company Group Five after the majority of its directors resigned ahead of a showdown with the activist.

Sydney-listed Molopo Energy won a shareholder vote against Aurora Funds Management and Keybridge Capital after Australian regulator Takeover Panel prohibited the dissidents from voting large part of their shares following accusations that they had failed to disclose that they were operating as a group.

Australian gas company Leigh Creek Energy is declining to call a special meeting requisitioned by a group of shareholders, arguing the request is defective.

In Malaysia, Elite Cosmo Group requisitioned a new special meeting to vote on board change at packaging solution firm Ire-Tex after a court declared votes on a previous showdown invalid. The company responded by suing the dissident.

A group of dissident shareholders in Malaysia-based Wintoni Group won a proxy contest against incumbent directors amid risk that the company could have to liquidate due to its excessive debt.

A director of Hong Kong-based construction company Glory Flame Holdings resigned after dissident shareholder Wu Xiongbin had pushed for his replacement – as well as the replacement of other board members – earlier this year.

Aeso Holdings, a Hong Kong contractor, postponed a showdown with a group of individual shareholders, claiming that biographies of some of the dissident director nominees contained false and misleading information.

New investments

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

Potbelly was targeted by Ancora Advisors in June, the activist demanding the company to pursue a sale.

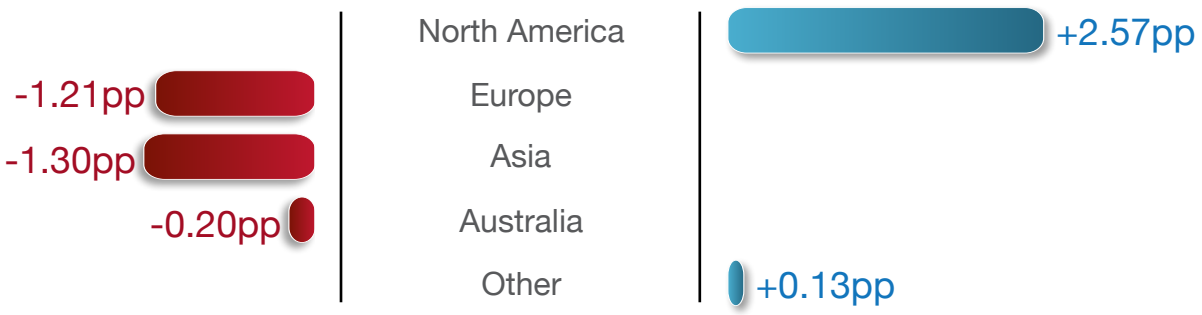
Activist	Company	Date Notified	Stake
SC Fundamental Value	Aviragen Therapeutics	Jun 30, 2017	5.1%
The activist threatened legal battle if the drugmaker did not sell itself, two weeks after East Hill Management recommended a liquidation.			
Engaged Capital	Hain Celestial Group	Jun 29, 2017	9.9%
Engaged could replace seven board members, and push for a sale now the company has recovered from an accounting scandal.			
Glenview Capital	DuPont E I De Nemours	Jun 27, 2017	Unknown
Glenview is reportedly seeking changes to the merger of DuPont and Dow Chemical, like fellow activists Trian and Third Point.			
Third Point Partners	Nestlé	Jun 25, 2017	1.3%
Nestlé announced a $21 billion buyback within days of Third Point's disclosure but items on the activist's hitlist remain unsolved.			
Ancora Advisors	Potbelly	Jun 22, 2017	4.0%
Small cap activist Ancora has called for the sandwich chain operator to put itself up for sale.			
Simplex Asset Management	Ishihara Chemical Co.	Jun 22, 2017	5.1%
The Japanese value hunter appears to be betting on rising interest in specialty chemicals worldwide.			
Huber Capital Management	Teekay Tankers	Jun 20, 2017	10.3%
Huber Capital would prefer share repurchases to the consolidation of related-party assets and plans to oppose an equity issuance.			
Twinleaf Capital Management	magicJack VocalTec	Jun 20, 2017	5.0%
Twinleaf became the latest to threaten board change at Israeli internet calling firm magicJack but would prefer a sale.			
Third Point Partners	Koninklijke Philips NV	Jun 18, 2017	Unknown
Third Point is rumored to be invested in the Dutch healthcare company but has not yet contacted management.			
Land and Buildings	Hudson's Bay Company	Jun 18, 2017	4.3%
Jonathan Litt's fund says the retailer should go private or turn its premium real estate into something more valuable, like a hotel.			
IEG Holdings	OneMain Holdings	Jun 16, 2017	Exited
In the space of a month, IEG purchased shares at a premium in a tender offer, requested a board seat and then exited the investment.			
Sidus Investment Partners	Harte-Hanks	Jun 16, 2017	Unknown
Sidus has nominated two director candidates to be voted on in a staggered board election.			
RGJ Capital	Xplore Technologies	Jun 15, 2017	4.7%
The activist judged Xplore's chairman conflicted and called for new board members and a strategic review.			

Renault was accused by CtW Investment Group and RAIR of not disclosing transfers of power.

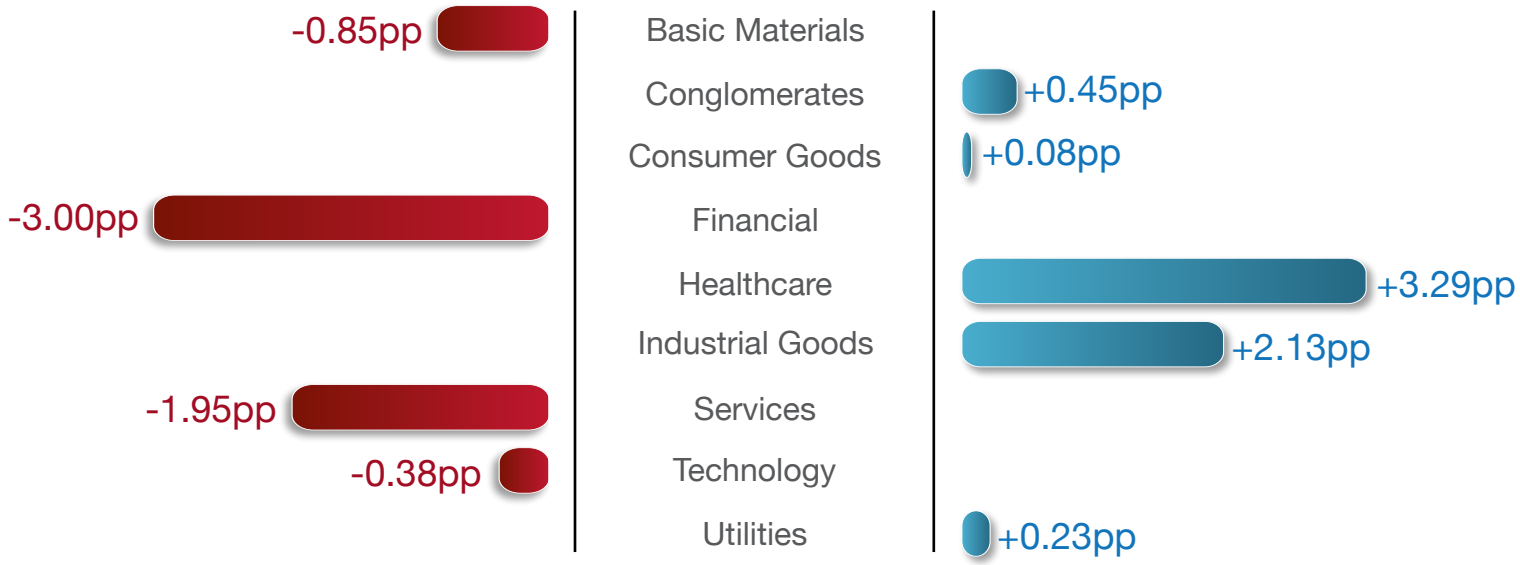
Activist	Company	Date Notified	Stake
Janchor Partners	Vocus Group	Jun 09, 2017	<5.0%
Former Children's Investment Fund analyst John Ho's latest play may be this Melbourne-based telecoms company.			
Concerned Shareholders	Resona Holdings	Jun 07, 2017	Unknown
The concerned shareholders want to elect two directors and make changes to the articles of incorporation.			
Concerned Shareholders	Tokyo Electric Power Company	Jun 06, 2017	Unknown
Shareholders nominated two directors to the board of Tokyo Electric Power Company.			
Crystal Amber	Ocado Group	Jun 05, 2017	0.5%
Crystal Amber wants Ocado to position itself as a technology company, not a grocery business and plans to meet management.			
Freestone Capital Management	Owens Realty Mortgage	Jun 02, 2017	7.6%
Despite surviving a withhold vote led by Freestone Capital, the activist believes confidence in Owens Realty's board is deteriorating.			
Phillip Lewis	First South Bancorp	Jun 02, 2017	6.4%
Private investor Philip Lewis wants the bank to sell up and has filed a shareholder proposal to that effect.			
Crescendo Partners	Aecon Group	Jun 01, 2017	Unknown
Crescendo's Eric Rosenfeld is set to join the board of the Canadian company.			
West Face Capital	FirstGroup	Jun 01, 2017	5.0%
West Face has not publicly commented on its stake in the transport group, which shrugged off Sandell Asset Management in 2014.			
CtW Investment Group	Renault SA	Jun 01, 2017	Unknown
CtW, adviser ProxInvest and pension fund association RAIR have complained to the regulator that Renault has not disclosed transfers of power.			
MÉDAC	Saputo	Jun 01, 2017	Unknown
MÉDAC wants the Montreal-based dairy firm to offer an annual vote on executive compensation.			
RGM Capital	ShoreTel	Jun 01, 2017	6.1%
RGM sees "strategic and operating margin-enhancing opportunities" for value-creation at the tech company.			
Cove Partners	NYC REIT	Jun 01, 2017	Unknown
Cove Street is leading a "vote no" campaign against bylaw changes at the REIT.			
Concerned Shareholders	JFE Holdings	Jun 01, 2017	Unknown
Concerned shareholders seeking the removal of a director from the Japanese steelmaker's board.			

H1 2017 versus H1 2016

Companies publicly subjected to activist demands by HQ location



Companies publicly subjected to activist demands by sector



Companies publicly subjected to activist demands by market cap

N.B. 1. All data exclude activist short positions
N.B. 2. All percentages are given to two decimal places
N.B. 3. All figures are as of the end of June of the given years
Source: Activist Insight Online

Monthly summary

Activist targets by geography

Issuer HQ location	June 2017	2017 YTD	2016 YTD
U.S.	36	320	338
Canada	6	27	33
U.K.	3	24	24
Australia	7	28	32
Europe (excluding U.K.)	5	38	51
Asia	7	38	49
Other	3	10	9
TOTAL	**67**	**485**	**536**

Companies publicly subjected to activist demands by company HQ location

Activist targets by sector

Sector	June 2017	2017 YTD	2016 YTD
Basic Materials	11.9%	12.6%	13.4%
Conglomerates	0.0%	0.8%	0.4%
Consumer Goods	13.4%	8.7%	8.6%
Financial	16.4%	21.4%	24.4%
Healthcare	10.5%	11.1%	7.8%
Industrial Goods	7.5%	8.7%	6.5%
Services	20.9%	20.6%	22.6%
Technology	17.9%	13.6%	14.0%
Utilities	1.5%	2.5%	2.2%

Proportion of companies publicly subjected to activist demands by sector

Activist targets by market capitalization

Market Capitalization	June 2017	2017 YTD	2016 YTD
Nano cap (Less than $50m)	25.4%	16.9%	20.5%
Micro cap ($50m - $250m)	25.4%	15.9%	18.3%
Small cap ($250m - $2b)	20.9%	24.3%	24.1%
Mid cap ($2bn - $10b)	14.9%	16.7%	14.9%
Large cap (More than $10b)	13.4%	26.2%	22.2%

Proportion of companies publicly subjected to activist demands by market capitalization

Activist demands by type

Demand type	June 2017	2017 YTD	2016 YTD
Board-related	52.2%	43.9%	47.5%
Balance Sheet	7.6%	8.1%	9.7%
Business Strategy	15.2%	6.4%	4.3%
M&A	12.0%	11.3%	12.2%
Remuneration	3.3%	5.9%	4.6%
Other Governance	8.7%	21.5%	20.2%
Other	1.1%	2.9%	1.7%

Proportion of public activist demands by demand type

Success of resolved demands

Outcome	June 2017	2017 YTD	2016 YTD
Activist at least partially successful	56.7%	45.1%	48.9%
Activist unsuccessful	36.6%	43.2%	42.3%
Withdrawn demands	6.7%	11.6%	8.8%

Outcomes of resolved activist demands

Number of active activists

	June 2017	2017 YTD	2016 YTD
Active activists	68	385	424

Number of investors making a public demand of a company

Performance

0.78%*

Stock price performance of activist-held U.S.-listed stocks in June 2017 (S&P 500 Index: -0.15%*)

New investments

37

Number of activist investments disclosed in June 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 June of the given year, unless otherwise specified
*Trimmed mean (10%)
Source: Activist Insight Online

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Andy "really understands what his client wants and is creative in figuring out ways to get there"

Our 2017 Proxy Season Highlights So Far Include:

40 Nominations delivered

28 Settlements negotiated

More than 50 new Directors seated

Featured 2016 and 2017 Campaigns:

RAC · ARCONIC · EDGEWATER TECHNOLOGY · Perrigo · YAHOO! · green dot

"The Most Prolific Law Firm in Shareholder Activism" — *Activist Insight Monthly*

"The Go-To Advisers for Activist Investors" — *Reuters*

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