



# Shareholder Activism Review 2012



***A detailed review of shareholder activism  
throughout 2012***

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## Section 1: Level of Activity in 2012

**Activist Insight has observed another busy year for shareholder activism in 2012 which saw a number of high profile activist situations, some new players emerge in the world of activism and the winding down of two activist funds.**

The overall number of new activist investments made by the top 130 activists worldwide in 2012 was 143, down slightly on the 156 new investments made in 2011. 2012 also saw a continuation of North American dominance, with 120 of these 143 investments taking place there. Of these 120 situations, 110 took place in the USA, supporting the fact that the USA remained the main stage for shareholder activism in 2012.

The top activists tracked by Activist Insight took significant stakes of over 5% in 109 US stocks during 2012, a figure greater than the 2011 figure by just one. The average holding taken by the activists rose slightly from 8.65% to 9.01%.

Significantly, though there was an increase in the amount of money spent by the activists on acquiring these stakes. In 2011 activists invested slightly under \$9 billion to obtain disclosable positions whereas in 2012 this figure rose to just over \$12 billion, an increase of 34%. This equates to an average initial investment of around \$110mn compared to just over \$80mn in 2011. Given this increase was not matched by a similar increase in either the percentage stakes held or the number of new investments made, we can see that activists have been targeting larger companies in 2012.

2012 saw activists taking action at a number of companies of over \$10bn market cap including Yahoo!, Canadian Pacific, Agrium, Adobe Systems, Forest Labs and Procter & Gamble. We expect success in high profile campaigns like these to continue to embolden activists to select larger target companies in 2013.

### Most active activists in 2012

The busiest activist investor in 2012 in terms of new investments was Bulldog Investors, which made 12 new investments during the year (see Figure 1). The value-oriented hedge fund invests primarily in closed-end funds and will use activist techniques to unlock the intrinsic value of its investments. One notable example of Bulldog's activist strategy in 2012 is its investment in New Ireland Fund, where it successfully initiated a share buyback of 15% of the fund's outstanding shares. Other prominent activist investors in 2012 included Discovery Group, which invested in 10

new companies and exited 6 companies including Texas-based business software & services provider Convio Inc, which was acquired by Blackbaud in January.

New York-based Starboard Value was the most active manager in terms of activist actions taken in 2012, having taken activist actions in 4 new companies, including successfully gaining board representation at Integrated Device Technology Inc. Carl Icahn was another prominent activist investor in 2012, becoming a dissident shareholder in 3 new companies over the course of the year including the campaign at Greenbrier Companies Inc., where he pushed for the merger of the company with a third party.

### New Activists

2012 also saw two new entrants in to the world of activism in Engaged Capital and Tensile Capital Management. Engaged Capital was founded at the beginning of 2012 by former Relational Investors employee Glenn Welling. The firm uses a 'constructive activism' approach and has already secured an \$85 million seed investment from Grosvenor Capital. Tensile was formed in July last year by two former Blum Capital employees, Douglas Dossey and Arthur Young.

The two firms continue the trend of employees of large activist firms leaving to form their own companies. This trend has also been observed at Coppersmith Capital which is in the process of being set up by Jerome Lande and Craig Rosenblum who previously worked together at MMI Investments. Similarly, Scott Ferguson seems to be following the footsteps of Mick McGuire in leaving Bill Ackman's Pershing Square to set up his own fund.

We have also seen two activists leave the market this year with MMI Investments winding down and returning to managing the family wealth of John Dyson. Octavian Advisors has also announced that it will be ceasing its operations and returning money to its investors after poor performance.

Ultimately, 2012 looks to have provided the foundation for what could be another interesting year for shareholder activism with the top 130 activists tracked by Activist Insight currently holding stakes in over 750 companies worldwide, stakes which have the potential to bear dissident campaigns within the next 12 months.

**Fig 1: Most Active Activists in 2012**

Rank	Activist	Headquarters	New Investments	Exited
1	Bulldog Investors	Saddle Brook, US	12	1
2	Stilwell Value LLC	New York, US	10	0
3	Discovery Group	Chicago, US	8	6
4	Starboard Value	New York, US	7	5
5	Laxey Partners	Isle of Man, UK	5	4

## Section 2: Campaigns in 2012

The prominence of activist investors has certainly been significant throughout 2012 as they have sought to improve corporate governance and shareholder value at the companies in which they invest.

### Activist strategy

The most common way for an activist to exert control on a company's direction was by seeking board representation with activists putting forward candidates in 58 of the 135 high profile activist campaigns that were tracked by Activist Insight in 2012 (see Figure 2). On 45 of these occasions activists succeeded in getting a nominee(s) elected onto the board, giving them close to an 80% success rate. This was achieved through access to the issuer's proxy in the majority of cases although there were also 18 contested situations in which an alternative slate of directors was submitted by the activists. Activists won representation in 8 of these cases and were defeated in 7; there were also two withdrawals once a contested situation had been initiated and a contested situation between Jana Partners and Canadian chemicals company Agrium remains ongoing.

The highest profile proxy contest of the year took place in Canada with Bill Ackman's Pershing Square winning control at Canadian Pacific Rail-

way. This investment by Ackman is thought to have made in the region of \$1 billion. In the US, AOL held off a strong challenge from New York-based hedge fund Starboard Value. Starboard did, however, gain proxy access at four other companies during the year.

Urging a company to sell itself was the next most popular activist objective with activists advocating a sale on 28 occasions throughout 2012. Carl Icahn and Relational Investors had notable successes as Par Pharmaceuticals and Amylin Pharmaceuticals were both acquired in multi-billion dollar deals. Figure 3 displays the other popular campaign objectives for the top activist investors in 2012. Pushing for the spin-off of a business division was something activists did in 26 companies in 2012, while activists were keen to remove a CEO or board member in 23 companies.

**Fig 2: Gaining board representation as an activist objective**

Gain Board Representation	Number of Activist Investments	Pushed For Board Representation	Successful	Ongoing	
	135	58	45	1	
Proxy Contests	Number of Activist Investments	Number of Proxy Battles	Successful	Ongoing	Withdrew
	135	18	8	1	2

**Fig 3: Most popular activist strategies in 2012**

Activist Action	Number of Companies Subject to this Action in 2012	Number of Activists Using this Strategy in 2012
Gain Board Representation	58	40
Push for Sale of Company to Third party	28	23
Spin-off/sale of Business Division	26	21
Removal of CEO or other Board Member	23	20
Share Repurchase	16	13
Redemption/Amendment of Poison Pill	11	7
Business Restructuring	10	10
Compensation Issues	9	7
Takeover Company	8	6

## Section 2: Campaigns in 2012 Continued...

### Popular industries among activists

The most popular industry targeted by activist investors in 2012 was financial services, with over a quarter of activist situations occurring in this type of company (Figure 4). Notable activist campaigns in this industry included Bulldog Investor's involvement at Imperial Holdings, the Florida-based provider of Life Insurance, which prompted the resignation of two directors and company chairman Anthony Mitchell. The activist won three seats on the board of directors, while Bulldog chief Philip Goldstein was appointed Chairman. Companies in the technology and services industries were also popular among activists, who targeted them 21% and 18% of the time respectively.

### High profile campaigns

Figure 5 summarises some further high profile activist campaigns from 2012, including Carl Icahn's successful takeover of CVR Energy following a proxy contest in May, Clinton Group having four nominees join the board of Apparel retailer Wet Seal, and Trian Fund Management pressuring Mark Fetting, the CEO of investment management company Legg Mason, to step down. Restaurant chain Cracker Barrel Old Country Store resisted a second attempt from Sardar Biglari to gain a position on its board while Pershing Square was unable to remove Procter and Gamble's CEO Robert McDonald. Canadian telecommunications company Telus won a proxy contest against US activist Mason Capital Management to merge its share classes.

Looking forward to this year there are already some potentially big campaigns underway. Canada is set to continue to be a hotbed for activism with the Jana Partners Agrium Proxy Contest needing to be resolved. Carl Icahn is sitting just below the poison pill threshold at Netflix with a 9.98% stake and Clinton Group has nominated its own slate of directors ahead of the Annual Shareholder Meeting at Moduslink Global Solutions.

Fig 4: Activist targets in 2012 by industry

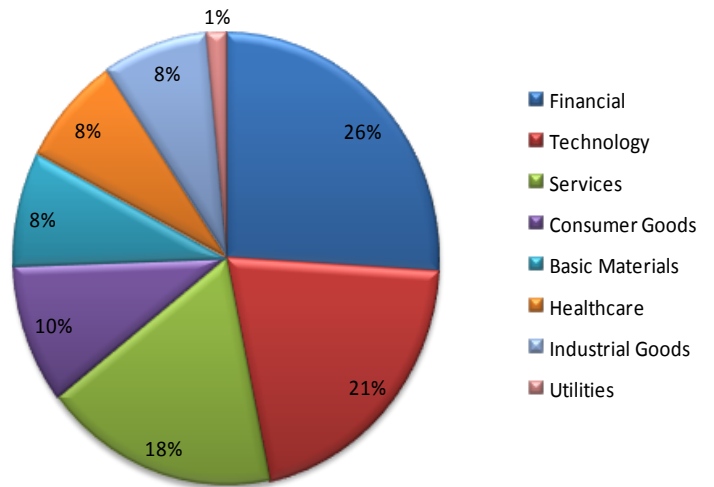


Fig 5: Notable activist campaigns in 2012

Activist	Company	Objective	Company Response	Outcome
Biglari Holdings	Cracker Barrel Old Country Store	Gain Board Representation	Proxy Contest	Activist's Objective Unsuccessful
Carl Icahn	CVR Energy	Takeover Company	Public Disagreement	Activist's Objective Successful
Clinton Group	Wet Seal	Gain Board Representation	Proxy Contest	Activist's Objective Successful
Pershing Square	Procter and Gamble	Removal of CEO	Went to Shareholder Vote	Activist's Objective Unsuccessful
Mason Capital Management	Telus	Oppose Merging of Share Class	Went to Shareholder Vote	Activist's Objective Unsuccessful
Trian Fund Management	Legg Mason	Removal of CEO	Met with Activist's Demands	Activist's Objective Successful

## Section 3: A Review of Activist Fund Performance

### Activist funds outperform

Activist funds have been outperforming the MSCI world index since 2008, according to data compiled by Activist Insight. The 'Activist Insight Index' (AI Index) has been created by compiling monthly performance data since 2006 from over 40 activist-focused hedge funds from around the globe.

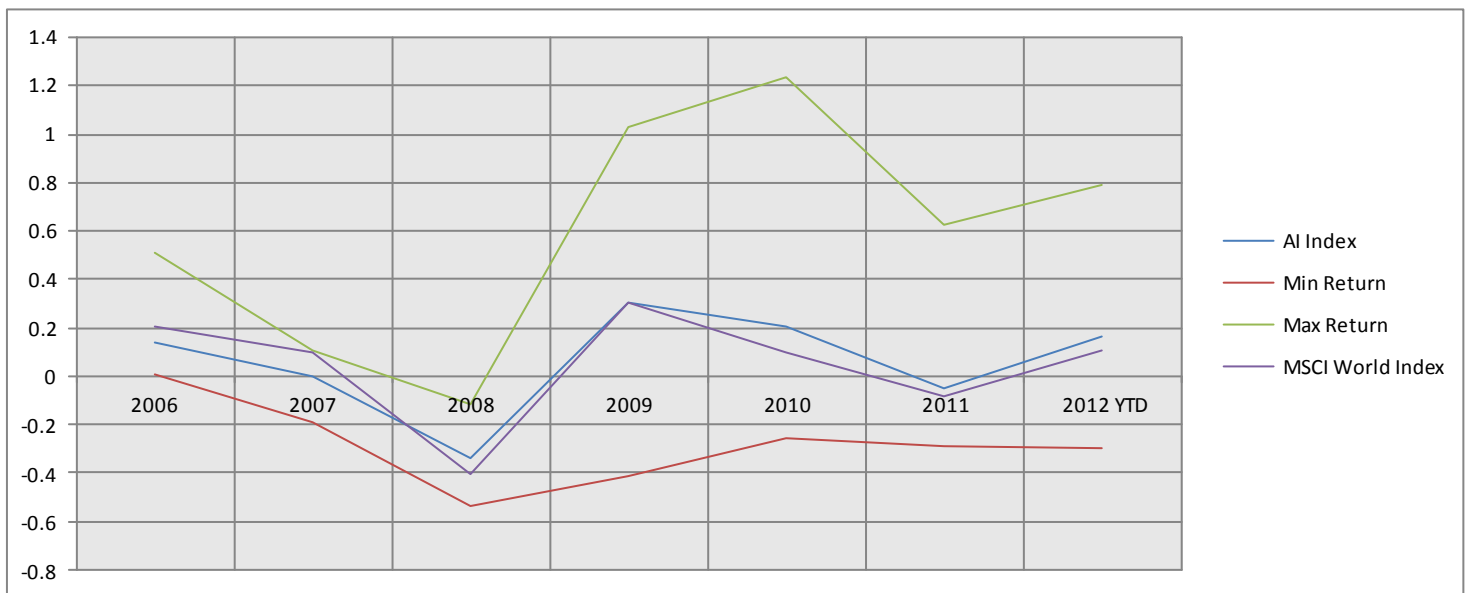
The index is represented in Figure 6 below, which displays the mean annual net return for the hedge funds, together with the best performing and worst performing funds in each year since 2006.

Barring a period of almost equal performance in 2009, the AI index has consistently outperformed the MSCI world index in the years following the global financial crisis in 2008. This trend is most notable in 2010 when the average activist-focused fund returned 20.54%, outperforming the MSCI world index by 10.99 percentage points. It is also worth

### Annualized returns since the financial crisis

Since the start of 2008, activist funds have generated an annualized net return of 3.08% through September 2012, comparing favourably with the annualized gross return of -2.69% generated by the MSCI World Index and the 0.29% annualized gross return generated by the S&P 500 over the same period. The outperformance equates to approximately 5.77 percentage points per year against the MSCI World and around 2.79 percentage points per year against the S&P 500, although the true outperformance would in actual fact be greater due to the fees which would likely be incurred by a strategy tracking the MSCI World Index.

**Fig 6: Activist Returns vs MSCI World Index—2006 to 30-Sep-2013**



noting that an investment strategy tracking the MSCI world index would incur fees not represented by the index, making the outperformance of the AI Index all the more pronounced.

Perhaps the most striking feature of the graphic is the outperformance of the MSCI World Index by the top performing activist-focused funds, which together produced an average return 53.04 percentage points greater than that of the MSCI World Index between 2006 and 2011.

It is also clear that whilst the typical activist-focused fund can offer a return in excess of the MSCI World Index, one could achieve a far greater outperformance through the careful selection of the best performing activist-focused funds.

### Activist Fund Performance in 2012

Activist funds have already performed considerably better in 2012 than in 2011, returning an average of 16.43% as of the end of September, compared with an average loss of 5.19% over the course of the preceding calendar year. As of 30th September 2012, the AI Index has outperformed the MSCI World Index by 5.54 percentage points since the start of the year, mostly owing to the resilience of activist funds in the third quarter, which lost just 0.02% against the loss of 5.82% experienced by the MSCI World Index during the same period.

## Section 3: A Review of Activist Performance Continued...

Barring a disastrous performance in Q4 2012, the results of which have yet to be released, activist fund performance looks set to have returned to 2010 levels after a tough, but still outperforming, 2011.

### *Returns for investors at high profile activist campaigns in 2012*

So how might you have fared if you'd followed the lead of an activist by making an investment the day after an activist holding was made public?

Those who purchased shares in CVR Energy, the Texas-based Petroleum refiner, the day after activist investor Carl Icahn filed a 13D with the US Securities & Exchange Commission disclosing his initial 14.5% stake would now be sitting on a return of 109% (as of 9th January 2013).

Those who invested in Canadian Pacific Railway on the back of Bill Ackman's January 2012 investment would today be able to cash in on a 77% return after the share price rose from \$61.88 to \$109.72 (as of 9th January 2013) in less than a year owing to his dissident involvement at the firm which saw his Pershing Square Capital Management gain control of the board.

Daniel Loeb's successful gaining of board representation at Yahoo! has seen the California-based digital media company's share price rise from \$14.48 on the day after Loeb's investment in the company was made public in September 2011 to \$19.32 (as of 9th January 2013), representing a return of approximately 33%. The activist was involved in the removal of CEO Scott Thompson and the decision to bring in top Google executive Marissa Mayer as CEO to replace him.

Interestingly, despite Starboard losing a proxy battle for board control against AOL, Inc. and subsequently reducing its stake to just over 3%, an investment in the internet giant on the day after Starboard's investment was publicly disclosed would have so far generated a return of 58% (as of 9th January 2013).

These examples and those additionally included in the table below illustrate that significant returns may be generated through the careful selection of stocks subjected to activist investment. In the majority of cases, these returns will be driven by changes implemented by the activists themselves but it is possible that equally impressive returns can be generated by the public presence and criticism of an activist alone, as in the case of Starboard's investment in AOL. In these cases, perhaps the activist serves to keep the company on its toes and highlight that changes can be made in order to improve shareholder value.

Of course not all campaigns have been successful during the year and there are plenty of examples where the price has gone down following the investment of an activist but they've certainly demonstrated success in many of the most high profile campaigns.

The returns generated by the activists themselves in each of these cases will inevitably differ from those shown below. The stake will often be built up over a period of time before the holding reaches a level at which it has to be publicly disclosed and therefore the average price paid per share may be higher or lower than the price at the date of the public disclosure.

**Fig 7: Notable activist investment returns in 2012**

Activist	Company	Date Holding Became Public	Closing Price Day After Going Public (\$)	Closing Price 9-Jan-13 (\$) on NYSE / NASDAQ	Return
Carl Icahn	CVR Energy	13-Jan-12	23.49	49.13	109%
Pershing Square Capital Management	Canadian Pacific Railway	28-Oct-11	61.88	109.72	77%
Starboard Value	AOL	16-Feb-12	18.8	29.66	58%
Biglari Holdings	Cracker Barrel Old Country Store	13-Jun-11	47.01	65.24	39%
Third Point Partners	Yahoo!	8-Sep-11	14.48	19.32	33%
Carl Icahn	Netflix Inc	31-Oct-12	77.69	95.91	23%
Mason Capital Management	Telus	31-Mar-12	57.62	64.64	12%

## Section 4: Predictions for 2013

**2012 proved to be another year of positive development for activism. Whilst the number of campaigns during the year remained steady compared to 2011, the amount of investment being made by activists grew as they targeted larger companies.**

We predict that 2013 is set to be another solid year for activism. On the back of many notable success stories in 2012 activists are clearly able to demonstrate that their strategy works. This will have two significant effects:

1) More money will flow into activist funds as the high profile success stories continue to catch the eye of institutional investors as well as activism becoming more acceptable as it moves further away from its hostile roots. New commitments can be expected from both investors who have experienced positive returns from their existing investments and from investors looking to invest in this strategy for the first time.

2) More managers will adopt this strategy, partly through existing managers being more pro-active but also through new dedicated activist manager funds being formed.

Alongside this investors continue to become more active in the companies in which they invest so companies will certainly be kept on their toes and need to pay careful attention to their investor base.

Additionally, there is talk of changes to the filing time-line on 13d's in the US. There is a good chance that this will be reduced from the existing 10 day window. If this is the case we may well see more followers of activist investments.

So 2013 should prove to be an exciting year for all those involved in shareholder activism. If you would like to receive our free monthly newsletter to keep updated throughout the year or find out more about how our premium service can help you then you can register at [www.activistinsight.com/freetrial.aspx](http://www.activistinsight.com/freetrial.aspx). We look forward to keeping you informed on how the market develops over the coming year.



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## About Activist Insight

Activist Insight aims to provide the most comprehensive global information source on activist investment including news, profiles of activist firms, performance benchmarks and more. This helps you to:

- Stay Informed with all the latest news on shareholder activism around the globe
- Be the first to know about new activist situations with email alerts
- Find out about clients, potential clients or competitors with detailed profiles for over 130 key activists
- Understand different activist strategies so you know what to expect when they invest
- Analyze the performance of activist investments
- And much more ...

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