

2014

ACTIVIST INVESTING

An annual review of trends in shareholder activism



Activist Insight

In association with

Schulte Roth&Zabel

Credits

The Activist Insight Activist Investing Review 2014
in association with Schulte Roth & Zabel LLP

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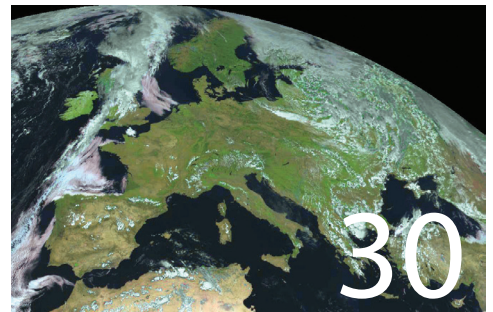


Activist Insight

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Foreword

A foreword by Josh Black, Managing Editor

Was 2013 the year that activism became mainstream? Activist investors still make up a small minority of shareholders, owning an estimated 1% of equities in the US, where they are arguably most prominent. However, mainstream or not, 2013 saw a number of developments that suggest activism is an increasingly acceptable and interesting asset class.

In December, the Chair of the US Securities and Exchange Commission, Mary Jo White, declared that the view of activists as 1980s-style 'corporate raiders' had been well and truly buried. When White went on to say, "there is widespread acceptance of many of the policy changes that so-called 'activists' are seeking to effect," activism effectively received government sanction. That is something that very few people in the industry would have expected at the beginning of the year.

Much hard evidence suggests that activism has grown in importance and will continue to grow. The number of companies targeted has risen significantly since last year, and activism continues to spread to diverse jurisdictions. As we highlight in this report, activists believe that there is fertile ground for their craft in Canada, Europe, Japan and in Australia.

With confidence in the universe of potential targets comes confidence in the activists themselves. So-called

passive investors have flocked to activist funds as an uncorrelated, market-beating strategy, and are also seeking to learn about how they can create value themselves in stocks that have failed to deliver the returns that issuers once promised. Investor relations departments will have to become two-way streets in 2014, as companies start to take on board the concerns of activists. Anecdotal evidence suggests that many boards are already trying to put themselves in the place of shareholders to understand what motivates activists, and despite the best efforts of those who continue to argue that activists are essentially destructive, this greater sympathy can only lead to a better-informed debate.

“Much hard evidence suggests that activism has grown in importance”

Needless to say, however, activism will continue to be controversial in 2014. In the last year, it seems everyone has had an opinion as to the reasons for Bill Ackman's very public failure at JC Penney, or the merits of Carl Icahn's argument for a larger buyback at Apple, one of America's best-loved and most successful companies.

A shareholder vote on this latter proposal, due in February, may make

headlines, but is unlikely to create much of a ripple beyond the boardroom of Icahn Enterprises. Icahn may be our activist of the year for 2013, but there are more than 100 activists who will be active in 2014.

As for the types of activism that we will see in 2014, that depends on broader economic trends. A slow M&A environment in 2013 and record levels of corporate cash helped buybacks and dividends become a popular strategy. Next year could see shareholders more bullish about obtaining a premium from a third party takeover, while increasing confidence in the mood of institutional investors could lead to more majority slates in proxy contests, but the broad contours of activist objectives, which we discuss in this review, are likely to remain consistent.

Activist Insight went from strength to strength in 2013, adding new features like our 'Follower Returns' performance indicator and our database of intermediaries. Our client base and team both grew significantly, reflecting increasing interest in shareholder activism and the additional services we offered. This year, we will continue to bring you news and insights direct from activists, as well as the only comprehensive global data on activism.

It only remains to say thank you for all the support we received in 2013, and to wish you a prosperous and active 2014!

Shareholder activism: 2013 and beyond

Schulte Roth & Zabel partners Marc Weingarten and David E. Rosewater, co-heads of the firm's Shareholder Activism practice, on what they expect for 2014

Schulte Roth & Zabel's Shareholder Activism practice was at the forefront of the industry in 2013, advising our clients in a number of proxy contests. These are our observations from a busy year.

Rapid growth with many new entrants

By almost any measure, shareholder activism became more popular in 2013 than ever. With assets under management quickly growing and returns consistently outperforming the average hedge fund, the activist sector has seen an influx of new activist-oriented funds. As activist investors have appeared on the cover of *Time* magazine and filled the pages of *Vanity Fair* throughout the year, it is clear that investors and boards are not the only ones interested in learning more about shareholder activism.

Size is no longer a deterrent

A shareholder activist targeting a large-cap company with deep pockets used to be a one-off event that would dominate headlines for months. A few years ago, almost no one would have predicted that giants such as Apple, Procter & Gamble and Hess would become attractive targets for activists. Over the past year, however, such activist activity has become the norm rather than the exception. Today, almost one-third of shareholder activism

takes place in companies with market capitalizations of more than \$2 billion. While activists have long recognized that a greater variety of strategic alternatives are likely available for large companies, the persistent targeting of such companies has only been made possible by the influx of capital into activist funds over the past few years and the ever-increasing willingness of passive investors and institutional shareholders to side with the concerns of activists.

“By almost any measure, shareholder activism has become more popular this year than ever”

More majority slates

Activist campaigns seeking a majority of seats on a board have historically been, and continue to be, difficult to win. Incumbent boards have long argued that such campaigns are ploys by activists to gain control of the company without paying shareholders a control premium. This argument, however, appears to be losing ground with shareholders, as majority board campaigns in 2013 have garnered significant shareholder support in contests such as the ones between TPG-Axon and SandRidge Energy, or Clinton Group and Stillwater Mining Company.

Activists incentivize nominees

In proxy contests involving Hess and Agrium in 2013, activist shareholders offered their nominee slates compensation arrangements with payouts tied to the targeted company's performance, launching an intense debate over the propriety of such arrangements. A number of boards have since adopted bylaws that purport to prohibit nominee compensation. In November, ISS entered the fray and recommended that shareholders withhold votes from directors at Provident Financial Holdings after the company adopted a bylaw prohibiting such arrangements.

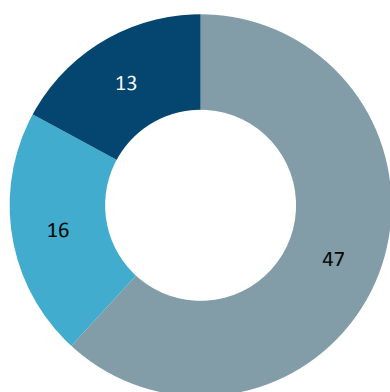
What lies ahead in 2014

Given the consistently high returns for the activist sector, one could expect the flow of capital into activist funds to continue to grow. More asset managers are likely to dip their toes into activism as portfolio managers who are value investors can unlock additional shareholder value—and increase returns—by serving as catalysts for their investment theses. Ultimately, it seems likely that 2013 will prove to be more akin to ‘the end of the beginning’ of the first phase of an invigorated age of shareholder activism rather than just the peak of a brief trend.



The year in review

While much activism is practiced out of the public eye, Activist Insight has observed an increase in public actions, whereby activists play a clear role in changing the strategy or governance of companies they have invested in. Public actions were launched at 237 companies in 2013, compared to 218 in 2012. As well as this measure of growth, there are also signs that activist campaigns are becoming more forensic, with an average of two actions per campaign in 2013, compared to 1.6 in 2012.



Routes to achieving board representation by number

- Proxy access (62%)
- Proxy contest (21%)
- Settlement (17%)

Activists maintained a relatively high level of success in 2013, achieving their objectives in 59% of resolved cases—a figure that rises to 78% when partially satisfied objectives are included. With 36% of campaigns ongoing—some 83 decisions waiting to be made at companies around the world—2014 is already looking busy.

The year of the proxy battle

Increasing numbers of activists set out to prove themselves by winning proxy battles in 2013, with 67 activists seeking board representation, compared to 58 last year. In contrast to 2012, when only a third of efforts to gain board representation saw activists threaten a proxy contest, 46%

of campaigns saw activists threaten or fight a proxy contest in 2013.

Asking companies politely may be the safer approach for activists, however, with negotiated board seats accounting for around 86% of all successful outcomes. ValueAct, which notably gained a board seat at Microsoft in the past year, is said to request references from companies it has targeted. Activists regularly say that expensive and time-consuming proxy battles are a 'last resort,' and the evidence suggests this might be true. Of the campaigns tracked by Activist Insight, only 11 proxy fights went to a vote and saw the activist win, but 21 proxy contests were called off with a settlement—often one favorable to the activist.

“EXPENSIVE AND TIME-CONSUMING PROXY BATTLES ARE A ‘LAST RESORT’”

237

Number of companies publicly targeted by activists worldwide in 2013

9%

Increase in number of companies publicly targeted by activists worldwide since 2012

Larger and better established activists mostly had less need for proxy contests in 2013, with Bulldog Investor’s Phil Goldstein telling Activist Insight it had become easier to gain board representation without a fight. Meanwhile, Carl Icahn added directors to the boards of six companies this year without a proxy fight. JANA Partners surprised observers by going all the way to a vote for the first time in its history, and though it failed to gain board seats at Canadian fertilizer giant, Agrium, sources said it was satisfied with the changes the company was forced to make to win over institutional shareholders.

Regional splits

US companies continued to account for 71% of all companies publicly targeted by activists in 2013, while European companies rose from 14% of the total to 19%. Canada, described as a ‘promised land’ for activism, was consistent at around 6%. While the much anticipated growth in Japan has yet to be

statistically significant, the optimism for activism outside of the US is growing.

Two high-profile campaigns

How-to and how-not-to-be an activist became the question every columnist sought to answer when referencing Bill Ackman’s abortive campaign at JC Penney. The Pershing Square CEO left the board after differences emerged over pricing strategies, and long-time foe Carl Icahn wasted no time in saying that Ackman had got too involved in the company’s day-to-day business. Ackman himself said the disastrous choice of Ron Johnson as CEO of the retailer was more of a collective decision by the board than he got credit for, but the sense that activists are more suited to discussing questions of capital allocation and governance than strategy will be hard to shake off.

Carl Icahn’s campaign to prevent Michael Dell from taking the technology company he founded in the 1980s private felt like it might never end. Indeed, we might be on the 150th rescheduled special meeting by now, had Dell not changed its by-laws to allow insider owners the right to vote on the leveraged buyout. Icahn wanted his alternative proposal voted on at the same time to reduce risk for shareholders, but the Delaware Chancery Court ruled that Dell’s voting standards were permissible. Despite saying he would seek appraisal, Icahn sold out shortly afterwards, leaving a group of shareholders including T. Rowe Price wondering whether the \$13.75 per share deal was good value.

Popular tactics - a cash-rich climate

Winning board seats remained the most visible objective voiced by

activists in 2013, with just under 30% of all publicly disclosed activist objectives concerned with gaining access to the inner sanctum. Traditional sources of value, such as spinning off subsidiaries—the kinds of campaigns seen at Timken, Ashland and most recently at Darden Restaurants—are also consistent features of the activist playbook. However, it is in cash-exploitation that activism has surged this year, with 13% of all activist campaigns seeking larger dividends or share repurchase programs, compared to 8% last year. It is a trend Carl Icahn exemplifies especially well, with his repeated assertion that ‘Apple is not a bank’ and his precatory proposal for a non-binding shareholder vote on a buyback worth around \$50 billion.

Indications that the current M&A climate might be unfavorable are reflected in the drop in number of companies activists say should be sold, an objective seen publicly only 26 times in 2013, compared to 47 times in 2012. In December, Clinton Group announced that it was exploring financing options for a takeover of Wet Seal, as the company’s results continued to drag. Most experts are expecting M&A to pick up in 2014, so this change could be short-lived. Given that 20 unique activists publicly called for the sale of a company in 2013, it remains a feature of activist investing.

The kinds of activism used in 2014 will likely be influenced by economic conditions, and particularly by a flight from bonds to equities. As a result, share buybacks, and M&A could be pushed further up the agenda. However, as we make clear elsewhere in this review, governance changes will also be a staple of activist objectives.



Building credibility for activists

An interview with Gregg Feinstein of Houlihan Lokey

Houlihan Lokey was recently approached by activist investor Barington Capital Group to prepare an independent review of its plan for Darden Restaurants. Is this part of a growing trend of activists commissioning independent reviews?

Independent analysis is coming to be seen as increasingly important. It adds credibility, almost in and of itself. It increases an activist's chances of successfully persuading shareholders and it also shows an activist is very serious about a proposal. We're relatively unusual in representing both activists and companies under pressure from activists. Initially we only represented companies. As part of that process we went out to talk to activists so we could better advise companies what the top players were thinking when they researched an investment. To our surprise, a number of activists turned around and said 'We'd like to hire you.' I always joke that if you play for one football team against another, you're not going to be against having the other team's coach join you before the game.

What kind of services can Houlihan Lokey offer an activist as a financial advisor?

I think the best place to start would be the white paper we produced for P. Schoenfeld Asset Management. That related to a merger between MetroPCS and T-Mobile where there

were objections to the equity split and the amount of indebtedness that the company would have. The company tried a bet to scare shareholders into the deal by arguing that it would have to seek Chapter 11 protection if the deal didn't go through, but using our industry and restructuring input, we were able to argue that the company's assets would be worth more at auction in a liquidation. I think that, as a result, Schoenfeld Asset Management was able to convince ISS to recommend against a competitive merger for the first time in about 300 incidences.

What kinds of activism have been used recently and how has this been influenced by the general economic climate?

Activism seems to have a different theme every year, and in 2013 it was very much driven by the effect of artificially low interest rates and the demand for high-yield investment products. Companies with lots of excess cash have been targeted—that's why Apple, of all companies, has been called on to distribute cash and repurchase shares. Real estate is another asset attracting activists—one of our recommendations to Darden is that it spin off its property in a REIT, while I believe Sandell Asset Management has recommended Bob Evans Farms execute a sale-leaseback. This dates back seven or eight years to a campaign Bill Ackman ran at McDonalds, regarding spinning

off its real estate into a REIT. The third area of activity is in the energy sector, where there have been calls for a lot of companies to become master limited partnerships (MLPs).

How do you see activism developing?

Well, institutional investors and state pension funds have been increasing their exposure to activist funds, so assets under management are probably twice what they were two years ago. That's partly because it's practiced more elegantly than it was generally a few years ago, but also because it works. Without a major market correction, I think M&A should be as strong in 2014 as it was in 2013. Every year further away from 2008 we get, people are less worried. That's natural, but it's also a good thing. Activism has been undervalued by the market in general. It has been proven to increase shareholder value, and when companies prepare for an activist scenario like they used to review their takeover defenses, they often address the sorts of things that might increase value for their existing shareholders anyway.

Houlihan Lokey acts as a financial adviser to both activists and issuers, predominantly in the sub-\$2 billion market cap arena. Gregg Feinstein is a Managing Director and Head of Houlihan Lokey's M&A Group.



HOULIHAN LOKEY

ACTIVIST SHAREHOLDER SERVICES

As a leading independent financial advisory firm, Houlihan Lokey is uniquely positioned to advise activist investors in their campaigns to unlock shareholder value in underperforming companies and defeat proposed transactions that might be suboptimal for shareholders. Once activists obtain board representation, we advise boards in reviewing alternatives and engaging in sale processes.

Our team of experienced professionals assists activist investors in effectively executing their campaigns by providing valuation support, communication support and overall strategic advice. We are highly sensitive not only to creating shareholder value and our clients' objectives, but to the intangible and perception factors that invariably arise in highly public activist campaigns.

*No. 1 M&A Advisor for U.S. Transactions Under \$3 Billion**

Selected Transactions

Transaction Pending

BARINGTON
BARINGTON CAPITAL GROUP

is conducting a campaign seeking to enhance long-term shareholder value at Darden Restaurants

Financial Advisor

Transaction Pending

orange capital

is conducting a campaign seeking to enhance shareholder value at Strategic Hotels

Financial Advisor

|PSAM|[®]

has successfully completed a campaign to amend the terms of MetroPCS Communications combination with T-Mobile USA

Financial Advisor

orange capital

has successfully completed an activist campaign resulting in Charter Hall Office REIT agreeing to sell its U.S. property portfolio

Financial Advisor

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Activist Insight

Defense techniques

A review of the defense tactics used by companies in the face of activism

Accompanying the rise in activism over the past three years has been a growing defense industry in the US and experimentation with new bylaws designed to frustrate activists. How long-lasting these will be remains to be seen.

One of the biggest bones of contention in 2013 related to 'golden leash' payments, whereby activists independently incentivize their own board nominees, with payouts based on performance. The issue came to the fore in proxy contests run by JANA Partners at Agrium, and Elliott Management at Hess, although neither went all the way to a shareholder vote. In the wake of these contests, one notable defense lawyer recommended shareholders disqualifies board nominees who are party to a financial agreement with an activist, although ISS came out against a board which recommended that even compensation for standing as a director disqualify candidates associated with an activist. That company (Provident Financial Holdings), which did not face a proxy contest, saw its nominees re-elected despite a sizeable shareholder rebellion. Given that ISS has not adopted a blanket policy with regard to third-party compensation of directors, the debate is likely to continue into 2014.

Last year also saw a number of new poison pill provisions. Indeed, shareholder rights plans remained a common response to activist investments, although their numbers are

down from their 1980s peak, as hostile takeovers have become rarer. One of the most contentious developments has seen companies distinguish between passive and activist investors when it comes to ownership thresholds. By way of example, when Bill Ackman showed up at Air Product & Chemicals, the company said shareholders filing a Schedule 13G could own up to 20% of the company's shares, while those filing a Schedule 13D could only own up to 10% of shares. Filing a Schedule 13G restricts a shareholder's ability to discuss operations with management and other shareholders.

“ Shareholder rights plans remained a common response to activists”

Greg Taxin, President of Clinton Group, says these new '13D pills' are an "outrage" and would consider taking a case to the Delaware Chancery Court, where he thinks they would be struck down. "The original justification for poison pills was to prevent a low-ball offer coming in and the buyer pressuring the company to sell before it felt the time was right," says Taxin. "These new pills are nothing less than pure entrenchment."

David E. Rosewater, a partner and co-head of Schulte Roth & Zabel's Shareholder Activism practice, agreed

with Taxin's assessment, adding, "An activist isn't seeking to create a coercive takeover or a low-priced take out of shareholders—no one is giving up their shares and whatever value is being created is shared with other shareholders. If you think about it that way, where's the threat? It's certainly not a threat to the shareholders." So far, two uses of the '13D pill' have resulted in settlements (Air Products and Safeway), and one in a cold war (Sotheby's). The practice is unlikely to end here.

A slightly more obscure use of poison pills takes advantage of tax regulations and may help companies keep activist ownership below 5%. So-called 'tax pills' trigger increased burdens for shareholders at this level, rather than the more traditional 10%, because a change of ownership means tax-beneficial net operating losses are abandoned. Using Federal Securities definitions of (beneficial) ownership, rather than IRS regulations, these pills become active when activists hold more than 5% across several funds, and not just per account. Although this practice has not yet become widespread, one activist, who declined to be named, said he had come up against these and intended to continue challenging them. Given the generally increasing interest in shareholder activism, any new defensive techniques are likely to continue to encounter a vigorous reaction. The lure of greater returns is likely to prevent activists from being deterred for too long.



The Lipton-Bebchuck debate

A defense lawyer and pro-activist academic slug it out

Perhaps even more significant than the techniques used by issuers to fight off activists is the clamor for regulatory change. Since these changes are mostly designed to constrain the activities of activist investors, including the shortening of the deadline for reporting changes in ownership and by regulating proxy advisers more stringently, the academic debate about the consequences of activism has become more important than ever.

In July, three academics fueled this debate by publishing their paper, “The Long-Term Effects of Hedge Fund Activism.” Billed as the “first systematic evidence on the long-term effects of hedge fund activism,” Lucian Bebchuk, Alon Brav and Wei Jiang, of Harvard Law School, Duke University and Columbia Business School respectively, suggested that the hackneyed put-down ‘myopic’ used by many opponents of activism was misplaced. In particular, they found “no evidence that the initial positive stock price spike accompanying activist interventions fails to appreciate the long-term costs to issuers” nor of “pump-and-dump patterns in which the exit of an activist is followed by abnormal long-term negative returns.”

In short, activists should not be accused of adding to the burdens faced by companies today. On the contrary, Bebchuk, Brav and Jiang found that both

share price and operating performance continued to improve in the three years after an activist intervention—and that the years after an activist exited a stock also saw a sustained improvement in the average company’s prospects.

Even so, the report did little to assuage the chief critic of activist investing, Martin Lipton. The Watchtell, Lipton, Rosen & Katz partner responded in two posts, arguing that the studies on which the Bebchuk, Brav and Jiang article was based were flawed.

“Activists should not be accused of adding to the burdens faced by companies today”

Arguing that extreme cases and the general trend of the economy during the surveyed years (1994-2007) had boosted the results, Lipton wrote that his experience advising companies suggested that short-termism was an endemic effect of activism. Lipton also argued that, since only 47% of activist targets continued to exist as independent companies by 2007, shareholders must inevitably have been cheated out of their sale premiums.

The significance of the debate, which continues primarily between Lipton and Lucian Bebchuk, is that it will feed

into debates about the state of the US regulatory regime in 2014. Lipton has already called for an end to “corporate governance that facilitates activist hedge fund attacks on companies”—increased scrutiny of proxy firms and measures making it more difficult to include shareholder proposals on annual ballots.

Speaking to Activist Insight, Schulte Roth & Zabel’s Marc Weingarten—a lawyer who has represented activists since the 1980s—says Lipton’s response has been “astounding.” “You would think Lipton had never seen a board he didn’t like,” says Weingarten. “And yet, we keep coming up, time after time, against boards that have poor governance.”

With the SEC keen to promote shareholder engagement to prevent a repeat of the mistakes made in the run-up to the financial crisis, the stakes are high enough to ensure that this debate will continue into 2014. As a result, there will be continued scrutiny of activist proposals and empirical data to determine whether activists are really the myopic investors of caricature, or the market-beating experts that they claim to be.



The activist top ten

For the first time in this Review, Activist Insight looks at which activists created the biggest splash in 2013. Using our bespoke data, we have given each of these well-known activists a ranking for categories such as the number of new investments in 2013, the average size of these investments, and the changes sought at companies during the year.

Finally, using our unique 'Follower Returns' feature, designed to enable investors to coattail activist plays, we track the performance of activist-targeted stocks in 2013, providing an aggregated annualized return for each activist. These returns should be treated as a guide only—actual performance figures are likely to cover slightly different periods and include fees, while calculations of individual stock performance do not take dividends into consideration.

CARL ICAHN

Public Campaigns	14
New Investments	8
Average Size of New Investment	\$1.2 bn
Annualized Follower Return	40.8%

1 Few can doubt that 2013 was the year of septuagenarian investor, Carl Icahn. Whether in his prolonged battle to prevent the takeover of Dell, or an enviable investment in Netflix that more than quadrupled in value, Icahn has hit all the high notes in the past year. Most notable, perhaps, was a run of campaigns that saw Icahn's nominees added to the boards of six companies. "There are lots of good CEOs in this country," Icahn told Activist Insight, "but the management in many companies leaves a lot to be desired. What we do is bring accountability to these underperforming CEOs when we get

elected to the boards." As well as the usual run of TV-interviews, 2013 also saw the launch of The Shareholder's Square Table website, something that may continue to be a platform in 2014.

Icahn's ability to make multi-billion dollar investments from his own personal fortune contributed to a trend of activism at large-cap companies in 2013, with Apple and Transocean among those feeling the heat. According to Icahn, "The model we have works so well because there's a need for it." With Icahn insistent that activism is anything but a fad, there is little doubt that 2014 will be an equally busy year.

“CLINTON GROUP WAS DEEPLY INVOLVED IN ONE OF THE YEAR’S MOST DIFFICULT PROXY CONTESTS”

VALUEACT CAPITAL

Public Campaigns	3
New Investments	12
Average Size of New Investment	\$386 mn
Annualized Follower Return	73.5%

2 ValueAct Capital, led by Jeff Ubben, Mason Morfit and George Hamel Jr, was relatively quiet in 2013, but surprised many when it emerged with a board seat at Microsoft. The activist owns less than 1% of the outstanding common shares, but is believed to be influencing the choice of a new CEO. Microsoft’s strong stock performance may justify this campaign, while Allison Transmission Holdings and Valero Energy have also performed strongly since ValueAct disclosed its investments in each

company. Elsewhere, the activist received a sale premium from its investment in Gardner Denver.

Despite its \$2.6 billion investment in Microsoft, ValueAct amassed a portfolio of mostly small investments, typically below the 5% threshold for filing a Schedule 13D Form. These might form the basis for its portfolio in 2014, and lead to a number of new campaigns.

3 Dan Loeb’s Third Point nearly didn’t survive the financial crisis, but has since roared back to health. Taking activism to Japan with his investment in Sony was a bold step, and perhaps required more courtesy than Loeb showed in October’s public letter to Sotheby’s CEO, Bill Ruprecht. Both campaigns are pending, with Sony opting to cut costs in its Entertainments Division rather than spin off the movie-making arm, and Sotheby’s yet to announce the

personnel changes requested by Loeb.

Elsewhere, healthy performance in Nokia and Yahoo! stocks boosted Third Point’s ‘Follower Returns’, making up for its relatively quiet season pushing for major changes.

THIRD POINT PARTNERS

Public Campaigns	5
New Investments	9
Average Size of New Investment	\$376 mn
Annualized Follower Return	73.4%

CLINTON GROUP

Public Campaigns	13
New Investments	9
Average Size of New Investment	\$16.2 mn
Annualized Follower Return	67.4%

4 Greg Taxin’s Clinton Group doesn’t often make the headlines, owing to its preference for the small-cap space. However, the Group’s \$1.5 billion in assets under management is widely spread, allowing it to disclose nine new investments and clock up the second highest number of active campaigns, where it publicly pushed for change, in 2013. Indeed, Clinton Group was deeply involved in one of the year’s most difficult proxy contests, eventually winning a majority

of seats on the board of Stillwater Mining. In general, the activist is known for its mastery of company by-laws and intense focus on growth strategies. As the year ended, Clinton Group was fighting for change at Violin Memory, Xenoport and ValueVision Media, as well as considering taking Wet Seal private. After seeing investments in Inteliquent and Digital Generation soar earlier in the year, it will be hoping to carry its good form into 2014.

5 Starboard Value LP busied itself during 2013 with campaigns at OfficeDepot, where it successfully oversaw a merger with Office Max and won board representation, and at Smithfield Foods, where it failed to prevent a takeover bid from Chinese pork-producer, Shanghai. A busy year apparently made for healthy profits, with Starboard Value's 'Follower Returns' showing healthy growth across a number of the stocks the activist invested in.

Starboard Value also won board representation at DSP Group and Wausau Paper during 2013, while disclosing ten new investments. A particularly busy final quarter saw Jeff Smith's fund launch campaigns to overhaul Compuware, Calgon Carbon and Darden Restaurants, as well as plans for a proxy contest at TriQuint Semiconductor, so 2014 is likely to be equally eventful.

STARBOARD VALUE

Public Campaigns	11
New Investments	10
Average Size of New Investment	\$139 mn
Annualized Follower Return	43.4%

ELLIOTT MANAGEMENT

Public Campaigns	10
New Investments	6
Average Size of New Investment	\$726 mn
Annualized Follower Return	23.6%

6 Paul Singer's Elliott Management has become one of the world's global activists, taking advantage of protections for minority shareholders in takeover situations with several campaigns in Germany during 2013. In the US, Elliott was also busy at Emulex, striking a deal that won board seats and secured a share repurchase program, in return for giving up its campaign to force a sale of the company, and at Hess, where controversy over the activist's plans to pay its board nominees kick-

started an industry-wide debate about anti-activist company bylaws.

The activist's extensive assets under management allowed it to make three bets worth more than \$1 billion in 2013, but its relatively concentrated activities and preference for privacy contributed to a slightly lower-than-expected ranking in our top ten.

7 JANA Partners, the hedge fund led by Barry Rosenstein, had a successful year despite a number of tough boardroom battles, with a source telling Activist Insight that the fund was happy when companies took credit for the activist's suggestions. That was the pattern in a number of cases, including Ashland, QEP Resources and Safeway, which all sold or hived-off business divisions. A proxy contest at Agrium marked the first time that JANA had ever gone all the way to a shareholder vote,

where its nominees were defeated (though the activist can point to a number of changes announced by the issuer that JANA called for initially).

One issue that forced JANA to take a public stand was criticism of activists remunerating board nominees. The activist says that company bylaws preventing activists from paying their nominees makes it harder to find good candidates and has made clear its intention to oppose the new changes.

JANA PARTNERS

Public Campaigns	6
New Investments	5
Average Size of New Investment	\$445 mn
Annualized Follower Return	33.3%

“STARBOARD BUSIED ITSELF DURING 2013 WITH CAMPAIGNS AT OFFICE DEPOT AND SMITHFIELD”

GAMCO ASSET MGMT

Public Campaigns	13
New Investments	3
Average Size of New Investment	\$68.1 mn
Annualized Follower Return	54.6%

8 There was little new action for Mario Gabelli’s GAMCO Asset Management in 2013, with relatively few new investments above the reporting threshold. However, the activist investor scored high for the number of changes it sought and achieved in 2013 and for the successful track record of those stocks. GAMCO is known for its focus on corporate governance and has tried to remove several poison pills in the past year, albeit with limited success to date.

The run-up to 2014’s proxy season suggests next year will be equally busy, with proxy contests likely at Sevcon and Telephone & Data Systems, and public letters recently sent to the boards of Griffin Land & Nurseries and Superior Industries International.

9 Very little seemed to go right for Bill Ackman’s Pershing Square Capital Management in 2013, although stock price increases from several successful engagements the year before were perhaps the activist’s saving grace. Ackman’s disastrous effort to turn around JC Penney along with his public disagreement with everyone from Carl Icahn and Dan Loeb to George Soros over his Herbalife short caused the activist’s ‘Follower Returns’ to be significantly lower than in previous years.

Even so, Ackman hasn’t been hiding away. Following a \$2.2 billion investment in Air Products and Chemicals, Ackman promised, “to go to the ends of the earth” to prove his detractors wrong on Herbalife. Pershing Square has also bet \$435 million on the recovery of Freddie Mac and Fannie Mae, for reasons yet to be fully explained, and can still cash in its winnings from what was a successful campaign at Canadian Pacific Railway last year.

PERSHING SQUARE

Public Campaigns	5
New Investments	4
Average Size of New Investment	\$961 mn
Annualized Follower Return	13.8%

BULLDOG INVESTORS

Public Campaigns	5
New Investments	11
Average Size of New Investment	\$10.5 mn
Annualized Follower Return	15.6%

10 Led by Phil Goldstein and Steven Samuels, Bulldog Investors has long specialized in antagonizing closed-end funds. In a conversation with Activist Insight, Goldstein admitted that despite it becoming easier for the firm to secure the changes it wants because it has gained in credibility and bargaining skills, 2013 was a good time to launch proxy contests at Firsthand Technology Value Fund and Javelin Mortgage Investment. At the year’s end,

Bulldog had already settled the latter fight, accepting an enhanced share repurchase program as a compromise. Despite its investments being mostly on the small side, the breadth of Bulldog’s portfolio and frequent successes earn the activist a place in our Top Ten.


Riding a rising tide

An interview with Marc Weingarten and David E. Rosewater of Schulte Roth & Zabel LLP

Schulte Roth & Zabel has built one of the busiest and most high-profile shareholder activism practices in the legal world. Activist Insight interviews partners Marc Weingarten and David E. Rosewater on their experience of activism.

One of the themes of this review has been that, while activist investing has gathered pace over a number of years, the services industry supporting activists has, at times, lagged behind the growth in defense services. In some industries, including the legal profession, representing activists has been a stigma to be avoided, especially as it was likely to cost firms corporate clients. A couple of law firms have bucked that trend, however, with Schulte Roth & Zabel perhaps the most prominent. The firm's Shareholder Activism practice, started by Marc Weingarten in the mid-2000s, was a natural extension of its hedge fund practice and a raft of personal contacts. Weingarten says he learned the craft working for Asher Adelman in the 1980s. "One of Adelman's right-hand guys at the time was Barry Rosenstein [who went on to found activist hedge fund JANA Partners], and we'd worked with Icahn on occasions," says Weingarten. "So when shareholder activism came to the fore just before the crash, I knew a lot of people and it made sense to get into this area."

David E. Rosewater, who made partner at Schulte Roth & Zabel in 2004, started working with Weingarten around this time. Having worked on big campaigns such as CNET, CSX, Sandridge Energy and Stillwater Mining Company, he is now regularly referred to as a rising star in the activism field. However, the first few years of the practice did not see a consistent growth in activism. Says Rosewater, "Activism started to grow in 2006/7, and hasn't necessarily grown year-on-year straight through. As with many other strategies, it was set back a bit by the crisis because it's an illiquid strategy and when there were redemption issues it caused issues for funds that did activism. The illiquidity of it created redemption issues during the 2008 financial crisis."

 The result has been a sea-change in the perception of shareholder activism"

A sea-change

A couple of years later, activist activity began to increase, and money began to flow into activist funds in search of uncorrelated returns. Absent an economic rebound, activism has been attracting a growing amount of attention. As Weingarten says, "Institutional investors have so much

under management they basically own the market. Activism is another avenue to create value—they already own all the stocks, so instead of shifting their money between stocks, they are now happy to support activists to create value in a stock."

Another important change was the crackdown on insider trading. Before Regulation FD was introduced in 2000 to address selective disclosure, institutional shareholders had an advantage to be gained from currying favor with management. Now, all shareholders have the same information, and the likes of Blackrock and Vanguard are no longer tied to company boards.

The result has been a sea-change in the perception of shareholder activism. Rosewater says, "Institutional, or passive shareholders as you've called them, are increasingly willing to support shareholders and in some cases not-so-passively. There are cases in which institutions are willing to provide capital to an activist and there are examples of institutions seeking out an activist to act on a particular situation where the institution isn't capable or prepared to act itself." Does that mean institutional shareholders might approach Schulte Roth & Zabel's Shareholder Activism practice in search of an activist with management-busting expertise? "That could happen."

“THE LAWS [IN EUROPE] ARE NOT AS FAVOURABLE IN MANY WAYS SO IT’S GOING TO BE DIFFICULT”



Marc Weingarten, partner, co-head of Schulte Roth & Zabel's Shareholder Activism practice



David E. Rosewater, partner, co-head of Schulte Roth & Zabel's Shareholder Activism practice

A bigger tide

Since 2010, activism has grown in volume and in the size and notoriety of its targets. Schulte Roth & Zabel's clients range from massive, global investors like JANA Partners, Elliott Management and The Children's Investment Fund (TCI), to smaller US-players like Clinton Group and Sandell Asset Management. Weingarten and Rosewater have taken on the likes of McDonalds, Time Warner

and CNET on behalf of Pershing Square Capital Management, SAC Capital and JANA Partners, respectively. This year, they have been involved in campaigns at SandRidge Energy, with its constant to-and-fro of litigation threats, and Stillwater Mining Company, where Clinton Group won four board seats and replaced both CEO and Chairman.

“The increasing size of activist targets presents its own problems”

The increasing size of activist targets presents its own problems. Proxy circulars need to be mailed to a larger shareholder base, boards tend to have more experience and larger treasuries with which to defend themselves. It is a trend that requires greater support from institutional shareholders, and wouldn't be possible without the increasing sums they are willing to put behind activists. Defense teams have spent much of the year coming up with new tactics to fight off activists. The result is that activists increasingly engage legal counsel before even buying a stake in a company. Weingarten says that some company bylaws make it difficult to achieve anything except at an annual meeting, while companies with dual class equity splits and large insider ownership are “pretty impregnable.”

The proxy fight remains the most important weapon in an activist's arsenal, with board seats representing the most common single demand of activist investors. In 2013, a number of consent solicitations suggested that activists might not have to wait for annual meeting season to achieve change,

with Glenview Asset Management, Corvex Management and Sandell Asset Management all seeking to oust boards by petition. Rosewater says these are unlikely to be replacements for the traditional proxy fight, noting that they are occasionally useful tools but can be removed from company charters—and frequently are. “Secondly, when you're voting at a meeting, abstentions don't count. Someone who doesn't show up at a meeting is irrelevant. Someone who doesn't show up at a consent solicitation is voting against, for all practical purposes.”

In 2014, Schulte Roth & Zabel plans to expand its Shareholder Activism practice into Europe through its London office. Weingarten says the firm is looking forward to a boom in activism, noting that, “Many people have been predicting it is going to move into Europe in a more significant way than it has.” He adds that this will be a challenge, but not an entirely new departure. “The laws are not as favorable [to activists] in many ways, so it's going to be difficult. However, as Europe comes out of recession, there's going to be lots of value that activists can seek out. TCI, Cevian Capital, and some US activists such as Sandell Asset Management are now branching out there.”

Well known for its investment management practice, Schulte Roth & Zabel LLP is a full service law firm with offices in New York, Washington, DC and London. Its Shareholder Activism practice is the preeminent provider of legal services to the activist investment community and is led by Marc Weingarten and David E. Rosewater.



Activist performance

Activist hedge funds once again enjoyed a strong year in 2013, beating the MSCI World Index by more than five percentage points in a period of bullish growth. Activist Insight's unique Activist Index, made up of 30 activist funds, returned an average 21.7% over the first three quarters of the year, which compared favorably to the MSCI's 16.3% increase and the S&P 500 Index's 17.9%. With investors watching the performance of activists closely, there is plenty of evidence to suggest that money will continue to flow into activist funds in 2014.

22%

Activist Index net return over the first three quarters of 2013

With UK stocks enjoying their best start to the year since the 1980s, the S&P 500 Index rising faster than it has done since 1997 and the eurozone finally emerging from recession, 2013 was a year in which a measure of enthusiasm returned to US equities. Much of the increase in equities indices came from improving output and employment statistics, but toward the end of the year, the potential tapering of the US Federal Reserve's monetary support for the economy began to drive investors away from bonds and towards equities.

Activist Index outperforms

Against this backdrop, activists set

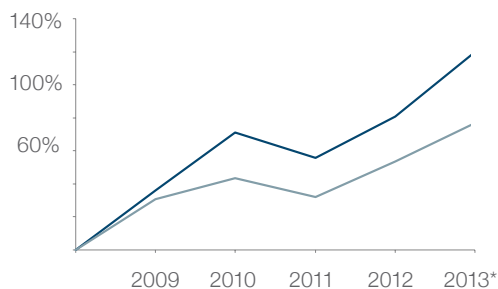
out to overhaul companies that had sat out years of sluggish growth, pushing them to explore strategic alternatives or governance changes. The results were generally impressive, with the best activist fund in the index returning nearly 80% in quarters one to three. However, the uncorrelated nature of activism also revealed itself in some outlandish returns—three of the indexed funds were flat or negative for the first three quarters of 2013.

Hedge fund performance figures were not available for the fourth quarter at the time of going to press but a review of Activist Insight's 'Follower Returns' feature suggests US activist-targeted stocks outperformed over the year,

16%

MSCI World Index net return over the first three quarters of 2013

“BY OCTOBER THE ACTIVIST INDEX WAS LEADING THE S&P 500 BY FOUR PERCENTAGE POINTS”



Activist Index vs MSCI World Index:
Compounded returns since 2008

— Activist Index (net)
— MSCI World Index

* as of 30.09.2013

having appreciated by an average 36.5% against 24.9% for the MSCI World Index and 29.6% for the S&P 500 Index.

Small and nimble beat the giants

Interestingly, much of the growth in US activist stocks in 2013 was in the small-cap sector, despite the rush of activists into large-cap companies. Stocks in the \$250 million to \$2 billion category gave an average annualized return of 52.7% (excluding dividends), perhaps driven in part by the livelier M&A climate at that level. The sale of companies ranging from Given Imaging to Obagi Medical Products delivered handsome premiums for some firms. Ligand Pharmaceuticals and WebMD Health were other examples of small-cap healthcare stocks enjoying steep climbs in 2013. Investments in US companies with a market cap of more than \$10 billion nonetheless performed strongly, increasing in value by an annualized 35.6%. As with all things activist, Apple was a key talking point, its share price increasing by 14.6% between Icahn disclosing his stake in mid-August and

the end of the year, against an S&P average of 9.1% over the same period. The year was a tough one for the smallest companies, however, especially in the sub-\$50 million category, which significantly underperformed the S&P 500 Index return.

Attractive industries

The technology sector was the best-performing of 2013, with US stocks appreciating by an average annualized 57.2%, followed by services and consumer goods on 48.7% and 45% respectively. One crossover between the services and technology industries was undoubtedly the stock of the year—Netflix doubled in value within the first six weeks of 2013 and was at nearly three times its original value by year-end. Triun Fund Management made consumer goods its own, with strong positive returns on PepsiCo, Mondelez and Heinz. Financial stocks, comprising around one-fifth of US activist holdings

“The technology sector was the best performing of 2013”

in 2013, were one of two categories to underperform the S&P, suggesting a tough time following the credit crunch. Many activists in this sphere will likely be hoping for an increase in interest rates in 2014 to increase profits (for more information—see our industry feature).

Activists to watch out for

As expected, a number of the big name activist funds saw their stock choices work well for them in 2013. In particular, Third Point, Clinton Group and ValueAct all saw their stock picks increase by an average annualized 75%

or more. In pole position, however, was Discovery Group, navigating the tricky world of healthcare M&A with aplomb, and achieving an average annualized US stock appreciation of 123%. Constructivists Blue Harbour Group and Relational Investors stood out with average annualized returns of over 60%, while GAMCO and Mill Road Capital performed notably in the 50-60% range.

Tactics to trust

Activists are often criticized for believing their insight is better than management's, but those who set out to remove a CEO or board member on average outperformed (with an average annualized stock price increase of 83.6%) those pushing for a sale of the target company (on 71.6%). Companies where activists had sought or gained board representation saw their stock prices appreciate by an average annualized 47% in 2013—impressive, but behind other governance reforms such as the removal of a poison pill or the declassifying of a board.

Forecasts

Forecasts for 2014 suggest strong growth in the US, but a continuing weakness in eurozone and Japanese equity markets. Activists are already testing these markets with a certain amount of optimism—as our feature on activism around the world suggests. Were these regions to enjoy an upswing in growth, the activists may be the first to enjoy the fruits. In the US, a potential increase in interest rates is unlikely to impact the ability of companies to borrow cheaply any time soon, but could boost share buybacks as the gap between equities and bonds narrows.



Reaching out to shareholders

An interview with Cas Sydorowitz of Georgeson

Georgeson has been in the UK since 1990. What kinds of activism have you been seeing recently?

Although US activists are starting to move into Europe, historically much of the activism here has been carried out by European activists. That means more emphasis on boardroom battles, often involving company founders, rather than activists moving in and seeking a major reorganization. Another level of activism that we've seen in Europe includes large stakeholders seeking to get their voice heard, such as Rothschild with Bumi (now Asia Resource Minerals). Colony Capital at Accor is one recent campaign in Europe, but Colony is a long-standing investor, so that's more of a concerned shareholder situation.

Is it as common for European companies to review their vulnerability to activism as it seems to be for US firms?

Absolutely. We're certainly seeing more of this, and it is worth doing. While we're not seeing the same surge in activism in terms of number of campaigns or interest in the mega-caps that we're seeing in the US, it is common to prepare for an activist, and we've often helped companies prepare response strategies in case they receive a public letter or a hostile takeover offer. Both activists and companies need to understand the voting universe, based on the share registers and likely turnout, and identify the top stakeholders (for instance, whether shareholders will

take their cue from a domestic proxy adviser or one of the global firms). We also review governance concerns that shareholders, both passive and activist, might have, and look at who voted against management in previous votes on a resolution-by-resolution basis.

Is activism practiced differently in Europe?

European activism tends to be less confrontational with much happening behind the scenes. A public display of activism using the media is really the result of a failed communications strategy over an extended period of time. Outside of the US, shareholders often have more rights, including the ability to nominate directors, so while you start from a position of conflict in the US, you start with consideration and consultation in Europe.

How early on do you get involved in an activist campaign and what kinds of services do you offer?

We're often brought in very early, before a shareholder meeting is even called. We're not lawyers or a PR firm, but we do have a wealth of experience with the mechanics and procedures activists should look at when they try to requisition a meeting, as well as how to communicate with other stakeholders – shareholders, proxy advisers, unions, the retail investor community – and not be portrayed as the evil American hedge fund, but as a value-creating

agent for all shareholders.

How does an activist campaign differ from a small-cap to a large-cap company?

It depends who owns the shares. There's a presumption that in a large-cap company with a large free float, you have many institutional investors and a much smaller community of retail investors. Where there is a large institutional shareholder base, proxy advisers are very important, and we can help by identifying the most important firms and the relevant analyst, and to reach the company's shareholder base. At a small-cap, you might have to activate retail shareholders. It would be impractical to hold thousands of face-to-face meetings, so you can communicate using direct mail, the internet and micro-sites. But the same can be true of a large-cap—look at Carl Icahn's campaign at Apple. The timing of his tweet was entirely at his own discretion, and that gave him an advantage over the company, which can only communicate in certain ways to the market.

Georgeson has offered proxy solicitation services in Europe since 1990. It represents both activists and issuers through its five European offices. Cas Sydorowitz is CEO of Georgeson's Northern European Corporate Advisory practice.

There for you.

With unparalleled experience providing services to both companies and activist groups in Europe since 1990, you can trust in Georgeson's experience.

Our experts can help to mitigate risk during the voting process, removing the element of surprise and ensuring your meetings run smoothly.

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Industry focus

Activists are no longer confined to a few niche sectors. Increasingly, they are breaking away from traditional targets and investing in household names, in sectors that include restaurants, consumer goods and technology companies. The graph overleaf displays a breakdown of the sectors activists are targeting, and suggests that activism is spread across areas that affect much of our daily lives. This section highlights a selection of these sectors and explores what value activists see in each of them.

Restaurants

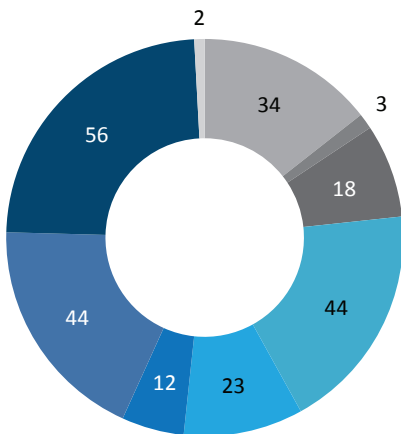
The last year saw a number of activists crowding into restaurant stocks, particularly in the US 'family dining' class. Indeed, 2013 has seen big activist campaigns at Bob Evans Farms and Darden Restaurants, but the number of investments is also up. Activist Insight tracked eight public campaigns in restaurant stocks around the world in the last year, up from three in 2012 and the highest number since the five activist investments in 2010. Clues from the more high-profile campaigns suggest a number of common themes. Restaurant groups often contain a diverse mixture of property and operating businesses, which can hide value. This was the case at Darden Restaurants, which

Barington Capital Group says should follow the example of McDonalds and hive off its young, fast-growing brands, and Starboard Value LP has called for efficiency savings and the spinning off of the company's property portfolio.

Elsewhere, Bob Evans Farms was targeted by its second activist investor, two years after Capstone Equities failed to convince management to sell the company's real estate. This year, Sandell Asset Management has called for the company to leaseback or franchise its branches—a massive shift from its current 85% centrally owned structure. Sandell also suggested the company sell BEF Foods, a packaged foods subsidiary. In December, it launched a

consent solicitation designed to unseat the board. The company retained Lazard as its strategic advisor and said its current structure allowed it to borrow cheaply and exploit synergies. Meanwhile, Sadar Biglari continued his futile crusade against Cracker Barrel Old Country Stores, losing his third proxy battle in a year and failing to convince shareholders to back his plan for a special dividend. Two activists piled into Bravo Brio Restaurant Group without publicly presenting strategic alternatives and activism continued its growth north of the US-Canadian border, with Scout Capital Management and Highfields Capital Management securing the return of more cash to shareholders.

“CLUES FROM THE MORE HIGH-PROFILE CAMPAIGNS SUGGEST A NUMBER OF COMMON THEMES.”



Industrial distribution of activism in 2013 by companies targeted publicly

- Technology (24%)
- Financial Services (19%)
- Services (19%)
- Basic Materials (14%)
- Healthcare (10%)
- Consumer Goods (7%)
- Industrial Goods (5%)
- Conglomerates (1%)
- Utilities (1%)

Healthcare

There were some big policy fights over healthcare in the US during 2013, but Activist Insight data shows that firms in the sector were also an attractive proposition for activists. A total of 23 companies globally saw activists publicly agitate for change in the past 12 months, with Health Management Associates, Vivus and Hologic the most high-profile. In contrast, the 13 companies where activists went public with their demands in 2012, and the nine companies in 2011 suggests a sector where investors think there is scope to make a decent return.

Florian Schönharting, CIO of Danish activist firm, NB Capital, explains that activists target healthcare companies because R&D occupies such a large chunk of expenditure and profit margins

Financial Services

Activism in the financial services sector has fallen sharply since 2010, reflecting straitened times and the need for expertise. On the other hand, increasing access to capital has allowed some companies to be more creative.

Knight Vinke, a European-based activist, created a sizeable public debate in Switzerland with its call for UBS to separate its wealth management division from its investment bank. A source at the firm said other banks had similar issues, but that UBS offered the greatest appeal as its wealth management division was the best in the world.

Bulldog Investors launched two proxy contests late in 2013, when the investment managers started to fall behind the market norm. Rising property prices also saw Real Estate Investment Trusts targeted in a variety of locations, including Prime Office REIT

in Germany and Commonwealth REIT in the US.

One consistent area of activist expertise is in US community banking, despite regulatory challenges (as laid out in our December report). Rich Lashley and John Palmer from PL Capital have been using activism at banks for 17 years. They see the current climate as perfect for activism, noting that the window for M&A activity is “wide open.” With banks under pressure to raise their capital levels and costs rising, the only way to increase profit margins is through consolidation. The cost savings allow even marginally profitable banks to obtain premium bids for their franchises. This strategy has not yet translated into activism at large banks, but a more relaxed regulatory environment could see the general trend of activism increasingly targeting mid-cap and large-cap companies translate into the banking sector.

are so wide, increasing the likelihood of wastefulness. The short answer, Schönharting says, “is that the biotech sector has 1,800 companies and corporate governance is at a historical low-point.” NB says its average annualized return on investment was 36% (net of fees) as of June 2013.

NB Capital has adopted several strategies over the years, fighting a proxy contest at QLT and defending Facet Biotech from a hostile takeover. In the end, the latter saw Abbott Laboratories sweep in to trump Biogen’s offer of \$17.50 per share in a \$27.00 per share deal.

This year, activists did particularly well out of pushing for their targets to be sold, with the averages driven by

Discovery Group’s intervention at Given Imaging and Voce Capital Management at Obagi Medical Products. Small-cap healthcare firms were the most successful with an annualized stock price increase of 113% over 18 US investments, followed by mid-cap with 57% annualized stock price increases as nano- and micro-cap investments struggled to keep pace.

Proxy battles in the healthcare sector were high on media coverage in 2013, with success for activists at Health Management Associates and Vivus. However, both companies have struggled with personnel and legal issues since control passed into the hands of the activists.



Activists target bigger stocks

Growing resources lead to more ambitious campaigns

The number of companies worth more than \$10 billion that were targeted by activist investors was almost twice as high in 2013 as it was in the previous year. A total of 42 such investments were made in 2013 compared to 23 a year ago, increasing the perception that no company is too big for activism.

Activist hedge funds have often held positions in large companies, usually below the 5% threshold for mandatory disclosure (in the US). However, now an investment like that of Dan Loeb's Third Point in Disney can cause a frisson of excitement.

In 2010, only 19% of new activist investments were in companies with market capitalisations over \$2 billion. By 2013, more than a third of new investments by activists targeted these mid- and large-cap companies. Activists tend to take large, concentrated stakes in a few companies at a time, and the growing size of activist targets is indicative of money flowing into activist coffers.

Schulte Roth & Zabel partner, David E. Rosewater, says that activism at larger companies is both a cause and effect of activists tapping institutional shareholders for increasing amounts of capital. "The success of a strategy attracts more capital, particularly in a non-correlated strategy such as activism, and the more capital that flows

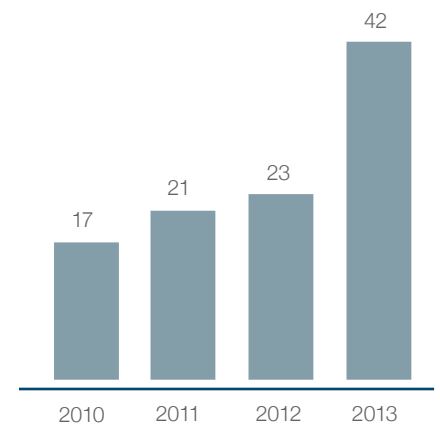
in, the easier it is to take positions in a large company, or companies," he told Activist Insight in an interview for this report. Pension fund CalPERS invests at least \$4.7 billion in activist funds.

JANA Partners, a notably successful activist, has seen its assets under management swell by \$3 billion in the last year alone. Charles Penner, a partner at the firm, told Activist Insight that having more capital can certainly make things easier, but added, "a more significant factor has been that shareholders of even the biggest companies have come to embrace the benefits of active shareholder engagement."

“These examples point to an as-yet untapped opportunity”

Knight Vinke, a Swiss-based activist, is a long-only fund that opts not to hedge. As a result, it has to choose its targets carefully. In 2013, it turned a long-standing position in UBS into an activist one, arguing that the lender's investment bank was a drag on its wealth-management business—the best in its class and the jewel in the UBS crown. Elsewhere in Europe, it has supported significant turnaround operations at Darty and Carrefour.

In 2013, even historically successful companies are facing activist campaigns



Large-cap activist investments

Apple has become a victim of its own success, by collecting more cash than it knows what to do with. Restaurant chains that grow quickly attract activists with clever schemes to spin off real estate. In Germany, Elliott Management has taken large positions in takeover targets like Celesio and Kabel Deutschland, where stringent takeover laws allow it to push for a better price.

These examples point to an as-yet untapped opportunity. Knight Vinke says returns for its longest-running investment series are 29.2% for the year to November 30, 2013. Activist Insight's own 'Follower Returns' features suggests that US companies worth more than \$10 billion have delivered average annualized stock price increases of 32% over the last four years. With plentiful capital and healthy returns, this trend is likely to continue.



Activism goes mainstream

An article by Nick Dawson, co-founder of Proxy Insight

Shareholder activism, once the preserve of a small number of boutique firms, is now increasingly commonplace. Now, the financial crisis, strong performance of activists and global adoption of shareholder codes have the potential to make shareholder votes ever more meaningful.

The current landscape is a serious challenge for issuers, who must now account to their investors according to a set of principles around which the company must be run. In turn, investors who wish to engineer change may now evaluate the likelihood of their peers supporting or perhaps collaborating with them, based on their published policies and previous voting records on similar resolutions. Indeed, the UK Stewardship Code (point 5) requires detail of how investors act collectively with others, which may lead to more investors acting in concert and discovering shared grievances.

This was the primary rationale for setting up Proxy Insight, capturing the voting policies and actual voting behaviour of the top global asset managers. With over 10 million votes covering in excess of 10,000 issuers globally and profiles on around 150 asset managers, there are a number of interesting observations:

Proxy Voting Agencies

Proxy voting agencies (PVAs) have

long been perceived as wielding considerable influence over so-called passive investors. However, most managers either simply use the PVA research to help them form an opinion or pay the PVA to produce a recommendation on the basis of their own policies (not those of the PVA). In any case, any vote against management or shareholder proposal will go to the manager themselves to make the final decision. Very few managers follow these recommendations systematically, indicating that while PVA's perform a vital support role, their influence should not be exaggerated.

Contentious Issues

There were significant rebellions by investors in 2013. Over the course of the year, 8.5% of shareholders tracked by Proxy Insight opposed management proposals on director remuneration, (golden parachutes and severance payments were the most controversial—receiving votes against of 23% and 28% respectively). Similarly, 43% of shareholders opposed proposals to adopt or amend shareholder rights plans (poison pills), which are almost universally discouraged by proxy voting guidelines.

Share issuance without pre-emptive rights remains an issue, with 16.4% of shareholders tracked by Proxy Insight voting against such resolutions in 2013, and while auditors were commonly re-

elected last year, with shareholders voting against management recommendations just 4.3% of the time, feedback from corporate governance teams suggest that auditor rotation, remuneration and non-audit work are increasingly becoming issues as shareholders seek to ensure the independence of this key role.

Policy vs Principle

While there is still a variety of opinion on corporate governance best practice, there can be a much greater variation between policy and actual voting behaviour. The best example of this is the separation of Chairman and CEO. Only one asset manager surveyed by Proxy Insight supported the combination of these roles, however many choose not to vote against a combined role in practice.

Corporate governance teams explain this by saying they may support the principle of the split of roles, but are not always prepared to take the 'nuclear option' of voting against management. In an era of greater transparency, this divergence is likely to become more apparent—something we will continue to monitor closely.

Proxy Insight was founded in 2013 to provide the most comprehensive global proxy voting information to issuers, their advisors and asset owners.



A new source of value

The hostile M&A climate of the 1980s gave rise to the stereotype of the ‘corporate raider’—an investor only interested in engineering a short-term spike in stock prices, or other financial engineering schemes. Today’s activist investors are almost equally focused on corporate governance, however, with 47% of all requests involving board or bylaw reforms. Here, Activist Insight explores what activists look for in a company’s corporate governance profile, and what they might seek to change.

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Instances of activists attempting to remove staggered boards in 2013

Carl Icahn has long championed the interests of shareholders. Yet even many who had watched him for years were surprised by the vehemence of his Wall Street Journal Op-ed after withdrawing from the shareholder vote on Dell’s leveraged buyout.

his offer to share his musings on shareholder rights with them via Twitter. On October 24, Icahn launched a new website, The Shareholder’s Square Table, hosting articles about the evils of poison pills and golden parachutes.

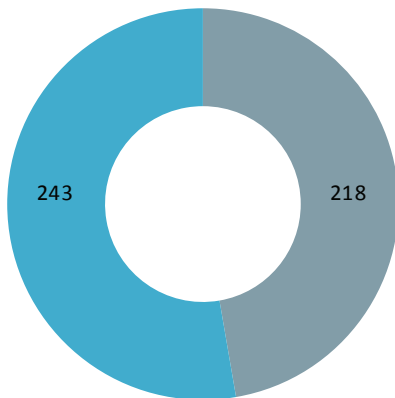
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Instances of activists attempting to remove poison pills in 2013

“Is it fair that CEOs make 700 times what the average worker makes, even if the chief executive is doing a terrible job and thousands of workers are laid off?” Icahn asked. “Why do CEOs get awarded huge bonuses by friendly boards when the share prices are down by double digits and then get their options reset to lower levels as an ‘incentive’?” Icahn undoubtedly struck a chord. The phrase ‘divine right of boards’ was on quite a few people’s lips after that editorial, and nearly a hundred thousand people took Icahn up on

Whatever your opinion of Icahn, today’s activists are clearly not the corporate raiders of 1980’s legend. For a start, they tend to leave companies in good shape, even after exiting their investments. Moreover, some, although not all activists, now see corporate governance as a key part of their investment process. For a start, more institutional shareholders and pension funds like Change to Win Investment Trust, CalPERS, CALSTRS are turning to activism. These investors often target companies with pre-planned campaigns or objectives. Change to Win targets companies with poor

“REMOVING A POISON PILL CAN FOCUS THE MIND WONDERFULLY”



Activist objectives in 2013 by number

- Capital-related (53%)
- Governance-related (47%)

47%

Governance-related objectives as a proportion of total in 2013

Say on Pay results, for instance, while CalSTRS successfully prevailed on 77 companies to adopt majority voting rules during its busy 2013 proxy season.

The more traditional activist, who is essentially a value investor and is therefore more likely to focus on share buybacks or arbitrage, could perhaps learn something from these reformist funds. Indeed, Relational Investors and CalSTRS recently put their heads together and came up with a full plan for Timken, which involved the company spinning off its steel business. In a public letter, the two noted that “the family-dominated board chooses to perpetuate a business structure that apparently only serves their interests.”

Ask an activist of this second type what he thinks of corporate governance, and you tend to find him reflective. Engaged Capital’s Glenn Welling says that every one of his investments begins with a deep look at the company’s corporate governance profile. This includes how individual directors performed in re-election votes and how the company as a whole performed in ‘Say on Pay’ votes—the non-binding shareholder referenda on executive remuneration.

Activist Insight research suggests around 40% of activist objectives involve board personnel changes. If even half the activists who set about removing directors and gaining board representation have a corporate governance angle to their campaigns, the correlation between poor governance standards and activism may indeed be significant.

Governance for Owners CEO Stephen Cohen says that bad corporate governance can often be the root of bad capital allocation policies, but

that best practice doesn’t always lead to boards making good decisions. That requires frank discussions. Describing his thorough investment and research process, Cohen says, “All kinds of things can add value. Sometimes, creating new incentives by changing remuneration can change the dynamic. Removing a poison pill can focus the mind wonderfully.”

However, there is a paradox in that issues such as poison pills, remuneration and classified boards appear neither to take up a great deal of activists’ time, nor be part of a fixed formula. For instance, Jason Ader, Co-CEO of the new activist fund, Owl Spring Asset Management, says that he approaches the issue of whether to separate Chairman and CEO roles on a case-by-case basis.

Nonetheless, just because corporate governance is understood in many different ways, activists should not necessarily be written off. More time needs to be spent understanding how they operate and explaining that modus operandi. A greater focus on shareholder best practice would further rehabilitate activists and give them a means of gaining influence with company secretaries and proxy advisors.

More importantly, it could add value without hostile proxy fights. Activist Insight data shows that when activists lobby for the removal of plurality voting or poison pills, the results are impressive, with average annualized returns of 81% and 62% respectively since 2010 (ex. dividends). As activism becomes more widespread, we may not get closer to the definition of perfect governance, but there will certainly be a healthier debate.



Engaging strategic investors

An interview with Steven Abernathy and Brian Luster of APB Financial Group

Despite having been around for nearly two decades, APB Financial Group has made a point of remaining out of the spotlight. That's because their customers—primarily shareholder activists and event-driven investors—prefer it that way. As a special situations independent research provider and broker-dealer, APB Financial helps activists and top-notch buy-side investors discretely build and unwind their positions. In particular, they have specialized in putting these activists directly in touch with current shareholders and like-minded investors, a group the industry commonly refers to as 'strategic investors.'

On a cold and stormy December day in New York, *Activist Insight* interviewed the firm's principals Steven Abernathy and Brian Luster. They had a lot to say.

Activist Insight:

Why do you think you have had so much success capturing the business of activist investors?

Brian Luster:

Discretion is the number one priority of an activist investor when building their position. As soon as the world gets wind of their intentions, their investments tend to rally, often before their case is clearly articulated. We are a boutique on purpose. All of our clients have their own dedicated sales trader who knows how to source a position confidentially and cost-effectively using the buyer/seller's

specific instructions. There are no 'hoot and holler' boxes, and given the size and frequency of an activist's order, you can understand why our traders are experts at keeping things quiet.

But perhaps more importantly, we help activists win. In 2013 alone, our activists were successful in achieving their objectives in over 75% of the cases we worked on with them. And in several of those situations, the activists owned as little as 1% of the company they were targeting. That's because of our platform. We reach out to current and former shareholders, as well as hundreds of billions of dollars of like-minded strategic investors, who have opted-in to hearing from these activists directly. Providing this kind of podium for the activists means they can turn quite a large proportion of the stock over to the hands of 'friendly' investors, with little time or energy of their own.

Activist Insight:

You mentioned this term "strategic investors." Can you elaborate?

Brian Luster:

Strategic investors are buy-side investors that understand the value of investing alongside an activist. They are mostly hedge funds and mutual funds with a mandate to invest their capital in the event-driven and special situations space. A large portion of our business comes from this contingent, as they are always looking for good ideas, and can

be quite nimble, as it relates to building a position before a record date.

Activist Insight:

What have you found to be the best campaigns to bring to your buy-side investors?

Steven Abernathy:

Our clients are looking for undervalued companies where an activist is acting as the catalyst for change in order to unlock value for shareholders. To really pique their interest, and get them to buy 10% or even 20% of the company, it's important that prior to the record date, activists make themselves available via conference calls or one-on-ones to speak to these investors. The activists must be available to lay out a very clear pathway towards value creation. However, you would be amazed how often activists are unwilling to engage the buy-side. Some less successful activists take the attitude that these firms should do their own research. You can tell these guys are great investors yet were never class president. It's really Communication 101. How do you expect investors to see the future of the target company through your eyes and elect your nominees for leadership, if you aren't willing to share your vision with your constituents?

“DISCRETION IS THE NUMBER ONE PRIORITY OF AN ACTIVIST INVESTOR WHEN BUILDING A POSITION”

Activist Insight:

What makes for a good activist investment?

Brian Luster:

There are four characteristics our research analysts look for before writing on a specific activist campaign. The first two are identifying an undervalued company with a clear pathway toward value creation. Dealing largely in the distressed space, this is generally a given. Many of our clients think like distressed credit analysts and understand the importance of a strong balance sheet, not only in mitigating downside investment risk, but in its role in achieving a successful restructuring or M&A situation. We like to see that as well. Finally, we prefer situations where the relationship between the incumbent management team and the activist is a constructive one. No one wants these campaigns to drag on for years, at the expense of the shareholder base. Unfortunately, this is not often the case, and we will settle for a short timeline until proxy season, with a high probability of the dissenting slate achieving control.

Activist Insight:

Are there any characteristics you see in common amongst the best activists?

Steven Abernathy:

Shareholder activism is a lot like running for class president. It's really a popularity contest. You must be a great

communicator, and you must make yourself available to your shareholders. If you are likeable, with a clear value proposition, the chances are a lot higher that you will gain investor support.

This doesn't mean the activist is always right. So having a great track record certainly helps. If you can't get things done on a regular basis, the buy-side will lose faith in you pretty quickly.

Activist Insight:

Do non-activists ever engage you for your services?

Brian Luster:

It's funny that you mention this. In the past two years we have seen more and more mutual funds and other 'accidental' activists approach us about finding an established activist investor to lead a campaign on their behalf. In many instances these firms have a mandate that prohibits them from being seen as a dissenting shareholder. Other times, they just don't want the reputational risk. Most often, these firms own positions where management's poor decisions leave them no choice but to become more aggressive. They realize there are plenty of good activists out there that are always looking for good ideas, and would love to have the support of a top holder.

Activist Insight:

You have a research product as well. Can you tell us about that?

Steven Abernathy:

Each year we try to cull through the 250 or so activist filings, and identify the 40-50 we think are most likely to generate alpha for investors. We are the antithesis of the sell-side. Instead of taking management on non-deal road-shows and parroting their canned remarks, we take the position of an agnostic investor. We publish detailed research on targets each week and offer clients the ability to hear directly from the activists—although I will admit our natural bias is often in favor of the dissenting shareholder. But that's because we are champions of the shareholder and believe that management has a fiduciary duty to spend, invest, or distribute shareholder capital according to the best interests of the investor, not the best interest of an encumbered board or management team. Activists strive to maximize a company's strengths, divest weaknesses, and increase the corporation's value. In most cases their work allows all shareholders to benefit in a meaningful way.

Founded in 1996, APB Financial Group offers trade execution services at competitive commissions. Steven Abernathy and Brian Luster are principals and respectively, Chairman and CEO of the group.

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Activism goes global

While the US continues to account for the bulk of activist investing, other parts of the globe are starting to see increasing numbers of firms dedicated to the art. Countries like Japan and Germany have recently seen outsiders moving in to look for value, while Australia, Canada and the UK have their own native activist communities. If economic growth continues to highlight underperforming companies, these are the areas that are likely to see the biggest increase in activism.

United Kingdom

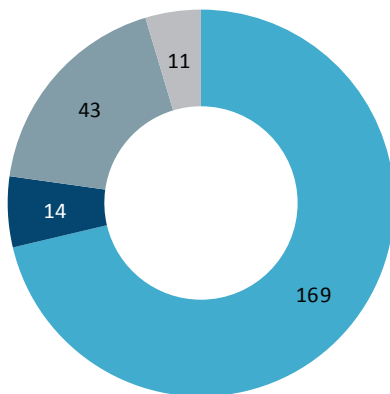
Activism maintained a steady pace in the UK in 2013, with 25 companies targeted for public campaigns, compared to 24 in 2012. While the shareholder spring of 2012 saw mutual funds flexing their muscles, 2013 was notable for big-name activists taking positions in UK firms. Cevian Capital's investment in G4S, Sandell Asset Management's call for the break-up of FirstGroup and Worldview Capital Management at Exillon Energy added to the sense of a sustainable culture of activist investing in the British Isles.

Meanwhile, Sherborne Investors reportedly made a 38% return on its investment in 3i, and ended the year looking at new opportunities after Edward Bramson stepped down as Chairman of F&C Asset Management.

This year saw another notable boardroom coup at Bglobal, where Hawkwood Capital's John Grant was elected Chairman after a bust-up with the company's founder, Peter Kennedy. Elsewhere, Laxey Partners backed an attempt to unseat the entire board of directors at Rangers FC, but later accepted a number of changes. Crystal

Amber ran a typical activist campaign at chocolatier Thorntons, pressuring the company to make efficiency savings and returning to a passive stake once the company was on surer footing. The past year saw the launch of several new firms, including GVO Investment Managers—rebranded after being bought out of the Aberdeen Asset Management-owned SVG Group by Hansa AG. Two former members of Guinness Peat Group launched Worsley Associates late in the year, with seed funding provided by Harwood Capital, one of the UK's leading activists.

“THERE ARE SIGNS OF AN INCREASINGLY ACTIVE CULTURE AMONG INVESTORS DOWN UNDER”



Regional distribution of activism in 2013 by number of companies targeted publicly

- US (71%)
- Europe (18%)
- Canada (6%)
- ROW (5%)

Japan

Governance for Owners CEO Stephen Cohen says Japan is “a land where activism is in its infancy,” despite having practiced constructive engagement in the company for nearly five years. Together with Tokio Marine Asset Management, Governance for Owners was behind the Japan Engagement Consortium (JEC), which launched in 2009, just as activists were starting to look for opportunities in a market long recognized as stagnant.

Yet while the likes of Steel Partners and TCI were rebuffed when they brought their brand of activism to the Land of the Rising Sun, the JEC stayed the course and launched a new engagement fund in 2012.

If you’re going to practice activism in Japan, says Cohen, you have to do it the Japanese way. “I’ve seen letters from New York or London received and politely filed away,” he says. “You

need to gain credibility, convince the management that you are there for the long term, not a quick buck. You also need to be Japanese.” Governance for Owners employs local staff, saying familiarity with the local culture is good, but not enough.

While Third Point’s Dan Loeb appears to have been brushed aside by Sony CEO Kazuo Hirai earlier this year, Cohen believes that the climate is changing in a way that favors shareholders. “Activism is still a dirty word in Japan, but constructive engagement is becoming more widely accepted,” he says.

Shinzo Abe’s ‘third arrow,’ which promotes governance reforms and foreign investments, has led to a new Stewardship Code, higher levels of voting and a greater number of independent directors. Investor input on capital allocation and cash-rich balance sheets seems likely to grow in 2014.

Australia

Australia doesn’t have a long history of shareholder activism, but there are signs of an increasingly active culture among investors Down Under. Goldman Sachs’ local head of investment banking, Christian Johnson, recently wrote of shareholder activism, “It’s in its early stages and we don’t know how it will evolve, but we definitely anticipate it will impact Australia; the only question is what form it takes... As such, we are recommending that our clients prepare to respond to potential activism.”

Australian Stock Exchange regulations provide a number of mechanisms by which shareholders can lobby for change, including the ability to requisition meetings, subject directors to a vote of approval by shareholders and oppose directors’ compensation packages.

Under the two-strike rule, introduced in July 2011, shareholders have an opportunity on whether to force the entire board to stand for re-election if their compensation report receives less

than 75% backing on two consecutive occasions.

A number of small activist practices have set up in Australia, including Co-Investor and Advocate Partners. Others, such as Coastal Investment Management, target Australia from the US. Indeed, the latter is currently making big waves by using a stake in Billabong International to push a refinancing proposal.

“WESTERN EUROPE HAS LONG BEEN HOME TO A FEW DEDICATED ACTIVIST INVESTORS”

India

Anecdotal evidence suggests that shareholder activism by foreign and domestic investors may be on the rise in India, a year after The Children’s Investment Fund ran a high profile campaign to end subsidized energy prices at Coal India. Since then, TCI has had to fight against large government interests in the company and India’s slow and onerous legal system—two factors which have historically hindered activism in India.

Umakanth Varottil, a Law Professor at the National University of Singapore who has written a paper on shareholder activism in India, says that activism takes

a unique form in India. “So far, there has not been the kind of activism you would see in UK and US markets. Instead, we have mostly seen shareholders showing up to vote in larger numbers against management proposals. Protest votes are far more common than direct engagement.”

However, Professor Varottil also thinks that this could change. Earlier this year, the securities regulator announced that insiders would be barred from voting on a number of different corporate events, including transactions with related parties and amalgamations. In addition, a new Companies Law was

implemented that will allow shareholders to bring class actions with the support of a minimum of 100 shareholders or 10% of the company’s share capital. “When the stakes are high, this shouldn’t be too difficult,” says Professor Varottil.

“I think that the law is still new, and parts may not come into effect for a few months, so it could be anything from 1-2 years before the changes crystallize,” says Varottil of the new law.

Western Continental Europe

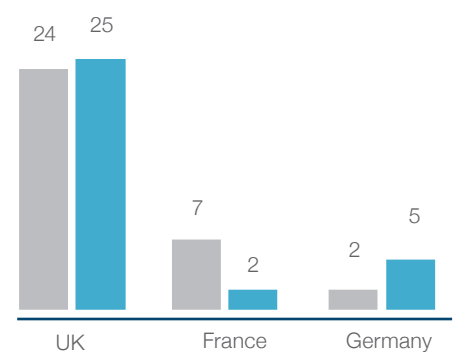
Western Europe has long been home to a few dedicated activist investors, of which Cevian is arguably the largest. However, in general, levels of activism are well below those seen in North America or the UK. Activists have tended to be hindered by insider ownership, but have forced change with concentrated stakes and hands-on engagement. Indeed, media conglomerate Vivendi SA recently said it would make its largest shareholder, Vincent Bolloré, its Chairman after its restructuring completes. With a net worth of over \$4.4 billion and a reputation for taking aggressive bets on public companies, Bolloré is perhaps the closest European equivalent to the highly personalized US model of an activist investor.

Germany saw a notable increase in activist activity in 2013, with activists targeting five companies, including Celesio, Kabel Deutschland and ThyssenKrupp. Meanwhile, Knight Vinke says it contributed to a growing

public debate about the structure of banks in Switzerland in 2013 after going public with its campaign at UBS. Knight Vinke is also an investor in French retailer Carrefour, where it says the new management has responded positively to its detailed research and analysis.

Governance for Owners’ CEO Stephen Cohen is an enthusiast for Spain, which he says has seen significant changes in the climate of shareholder rights in the last five to ten years. “The eurozone crisis has made companies more vulnerable and more willing to have a dialogue [with shareholders],” Cohen told Activist Insight. “But companies are also more willing to join the European mainstream than they are in Italy, for example.”

Some Spanish regulations still make life difficult, with shareholders having just a few days to file resolutions after annual meeting dates are announced and restrictions on the information activists



Number of companies targeted publicly

■ 2012
■ 2013

can publish during proxy fights. Nonetheless, there is a culture of consulting shareholders. Cohen says that owning more than 5% of the shares usually gets you invited onto the board—a nuance that brings advantages and disadvantages alike.



Why do activists like Canada so much?

An article by Stephen Griggs of Smoothwater Capital

Activist investing has been in the news in Canada in the last few years, with companies of all sizes being targeted by Canadian and US-based firms, which have asked management and shareholders to back their alternative visions for the companies.

Canada has been described as “one of the most activist-friendly jurisdictions in the world” because of its shareholder-friendly regulatory regime, particularly in contrast to the US system, where it is often almost impossible for the voices of shareholders to have any meaning.

There are some important legal differences between the markets that make it easier for a shareholder to effect change in Canada than the US:

- US securities rules require an activist shareholder to publicly declare its ownership once it reaches a 5% position and for every additional 1% (a ‘13D’ filing). In Canada, a shareholder must file under our ‘early warning’ system when its shareholdings hit 10% and for every 2% thereafter (note: there are Canadian regulatory proposals to mimic the US system).
- It may take a number of months and a court application but Canadian investors can force a

vote in Canada—a shareholder can generally requisition a shareholder meeting to elect directors if it holds 5% or more of the shares—a practice virtually unheard of in the US.

- ‘Majority voting’ policies are common in Canada and may even be mandated by the TSX soon, ensuring that each director has the support of a majority of shareholders.
- In the US, staggered board terms and cumulative voting are common, entrenching the board by making it impossible to make major changes at a shareholders meeting—an extinct practice in Canada.
- A dissident shareholder in Canada can more easily and cheaply conduct a proxy fight without filing and mailing a proxy circular using our ‘broadcast’ exemption or by soliciting up to 15 shareholders.
- Many US boards adopt complex ‘poison pills,’ making it impossible for a shareholder to acquire more than a specified percentage of the stock or to undertake a takeover bid without board consent. In Canada, pills are generally struck down by our securities regulators after the board has had a reasonable period

of time to conduct an auction, rendering them simply a delaying tactic (note: there are proposals to move Canada closer to the US board-friendly pill regime).

- Many US boards have adopted defensive ‘advance notice’ bylaws, requiring a shareholder to advise the board of its intention to propose a director and to provide extensive nominee disclosure. These bylaws are being adopted by smaller companies in Canada, but are not widespread and can usually be easily complied with.

Time will tell if Canadian regulators move the ‘shareholder-friendly’ regime closer to the ‘unfriendly’ US approach, with institutional shareholders objecting to these initiatives and director groups and executives actively supporting them.

Stephen J. Griggs is the CEO of Smoothwater Capital Corporation, a Toronto-based leading Canadian ‘activist’ investment firm. He is one of Canada’s leading corporate governance experts, has been an executive in the investment management industry for almost 20 years and is a corporate/securities lawyer.



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