



Activist Insight

Monthly

HALF-YEAR REVIEW

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In association with

OLSHAN

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Editor's letter



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

Half way through the year already, and what a period for activist investors. The first six months of 2016 have advanced at an astonishing rapidity. In case anyone missed some of the big developments, **American International Group** and **Yahoo** entered settlement agreements that give activists significant, and in time perhaps decisive, influence over their future strategic direction, **Valeant Pharmaceuticals International** became, for some weeks, the biggest business story in the world, and **Volkswagen** finally got the activists it deserved.

“The pace of change in the world is incredible. Companies are working in a fast-paced environment.”

The period covered by this Review has been anything but quiet, and the numbers bear out that assertion. More than 460 companies have faced a public demand or governance-related proposal from an activist worldwide thus far in 2016, compared to 637 in the whole of last year.

On top of that, activist short-sellers have released reports on 96 companies. These are a growing force, now extending well beyond the well-known **Jim Chanos** and **Carson Block**. Well they might. Corporate manoeuvring has reached

incredible proportions, given the shenanigans at **Viacom** and inter-group merger proposal between **Tesla** and **SolarCity**.

Add in the legal battle at **Ashford Hospitality Prime** and appraisal decision at **Dell**, and you have the makings of an incredibly complex corporate landscape.

In all of this, activists of all stripes will play a role. Shareholders and management teams will continue to clash over high stakes and contentious issues, but overall there is more to be gained from both sides being fair and flexible where possible. When I asked Paula Loop, Leader of PwC's Governance Insights Center, whether activists were helping to make the focus of management teams too short-term recently, she demurred. “Probably not,” she said. “The pace of change in the world is incredible. Companies are working in a fast-paced environment.”

That strikes me as accurate. Companies need to adapt quickly, and shareholders want them to. Activists may seek to amplify the message of the analyst or institutional investor community, or to explain that of the company, as with **Triant Partners** and **General Electric**.

On to the publication at hand. It's our great pleasure to be partnering with **Olshan** again on this Half-Year Review, and, for the first time, proxy solicitation firm **MacKenzie Partners**. They both contribute their wisdom to these pages.

Our usual features remain. Our activist interview is with **Mario Cibelli**, recounting his proxy contest victory over **Shutterfly** almost a year ago and pointing towards the future path of investors frustrated at remuneration in technology companies. For our campaign in focus, we have **Chico's FAS**, currently planning to spend \$5.9 million to repel **Barington Capital Group's** demand for two board seats.

In keeping with our ambition to highlight the growing influence of shareholders and shareholder rights on corporations, we are pleased to be enhancing our longstanding coverage of short-sellers with the launch of a new and improved, dedicated platform—**Activist Insight Shorts**. Coming shortly after we announced the impending launch of our vulnerability assessment tool, this represents our second major development in as many months. Stay tuned for more information on both products.

Small in comparison is the shift underway with this publication. We've renamed it **Activist Insight Monthly** for greater brand consistency, and expect to introduce some new features later this year. These are exciting times, and we look forward to playing our part in keeping you informed on developments in the world of shareholder activism. 🍷

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Monthly

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Activists counter board inertia

Olshan Frome Wolosky Partners Steve Wolosky and Andrew Freedman share their perspectives on the state of shareholder activism, the 2016 Proxy Season and trends to watch out for.

History has shown that entrenched boards of struggling companies, when left to their own devices, display a remarkable deference to the CEOs whom they are tasked to oversee and an inability to hold poorly performing management accountable. Actively engaged investors are the external counterweight to this inertia, compelling boards to focus on the serious issues that are too often casually dismissed.

We keep hearing that public companies are acting and thinking like activist investors. But thinking like an activist requires more than just adopting the low-hanging fruit of governance changes like proxy access and majority voting. It requires honest self-assessment to tackle the tough issues that are likely to be raised by an activist, such as best-in-class performance, board reconstitution and executive compensation. We've yet to see any company truly be their own activist in this sense.

Indeed, it would be hard to say that **Depomed** was thinking like an activist when it sought to further suppress shareholder rights under the guise of a Delaware reincorporation or that **Ashford Hospitality Prime** was acting like an activist when it disenfranchised shareholders over immaterial nomination technicalities and implemented a massive termination fee "proxy penalty" to entrench itself without any legitimate business reason.

Today's activist investors are undertaking exhaustive research, presenting incredibly well thought out, detailed white papers and assembling world-class teams of advisors and director candidates. While we are seeing some companies and their advisors co-operate with activists upfront to avoid an escalation, there are far too many still that are digging in and pushing back, or engaging in appearance only.

"Being your own activist requires honest self-assessment to tackle the tough issues that are likely to be raised by an activist."

Over the past decade, our practice alone has had a hand in changing out close to 1,000 public company board members (79 so far in 2016). This much-needed board refreshment is resulting in more-engaged fiduciaries unafraid to ask the tough questions or spark the lively, robust debate that has been absent for far too long in many boardrooms.

Some naysayers like Moody's claimed activism would decline in 2016, but that hasn't been the case. The number of campaigns we have advised on has risen more than 20% from our 2015 numbers. While it may not live up to 2014 and 2015 in terms of the big names and huge market-

caps, the 2016 proxy season has certainly been no slouch.

Growth in 2016 was again fueled by first-time activists and 'reluctantists', who escalate their involvement with management when all else fails. **Harvest Capital Strategies** won two of the three seats up for grabs at **Green Dot**, with only eleventh-hour maneuvering protecting CEO Steve Streit. Other successful activists this year include **VIEX Capital**—winner of two proxy contests—and **Engine Capital**, which entered into three settlement agreements. Later in this issue you will read about how the CEO and Chairman of **Shutterfly** were both out within a year of **Marathon Partners'** proxy contest in June 2015.

2016 is also notable as the year when Starboard's direct involvement at **Darden** ceased. Since the **Starboard**-led board takeover in October 2014, the new board has overseen a dramatic operational turnaround, and Darden's share price is up by around 50%. There is perhaps no better example of an activist success story.

Shareholder activism is succeeding for the most part in creating stronger, more sustainable and focused companies, better governance and, ultimately, increased long-term value for shareholders. 📈

The year so far

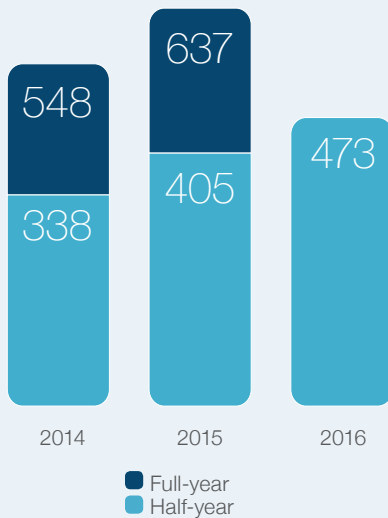


A specter looms over activist investors, as volatile markets, global uncertainty and reduced funding clash with cheap and easy debt, continuing M&A and a secular acceptance of the greater role demanded by shareholders.

Against that backdrop, little has changed outwardly. The number of companies publicly subjected to activist demands rose again in the first half of 2016, climbing 17% worldwide to 473. In the US, growth was slower, from 278 companies in the first half of 2015, to 306 companies year-to-date. In parts of Europe and Asia, the growth was much faster; the UK matching its 2012 peak and Continental Europe surpassing last year's high. Countries such as Japan and Singapore have seen surges of activity, even while the likes of Hong Kong and South Korea fell back slightly. Activism is here to stay.

“Of all activist demands worldwide in the first half of 2016, 13% related to M&A, compared to 19% in the whole of 2015.”

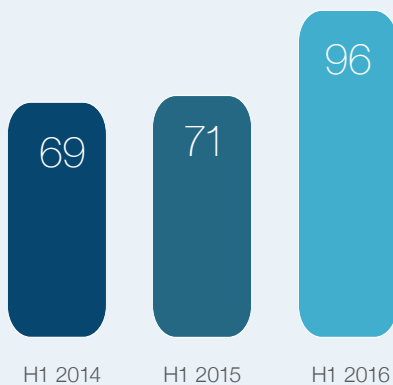
Number of companies publicly subjected to activist demands by half- and full-years



30

Board seats gained by activists at US companies following proxy contests resolved in H1 2016

Number of companies publicly targeted by activist short-sellers



Mixed signals

That is hardly the full story, however. Primary focus activists—those that dedicate almost all of their portfolio to companies in need of shaking-up—were much less busy in the first half of 2016. Worldwide, those funds subjected 75 companies to public demands in the first half of 2016, against 81 in the first half of last year, a decline of 7%. In the US alone, the same category of funds targeted 20% fewer companies.

And yet, the number of such funds making a demand worldwide grew. In first halves of 2013, 2014 and 2015, active primary focus activists averaged 36. This year they numbered 45. Since there is little evidence that the second half of 2015 was busier than usual, the data is suggestive that the problem is not a lack of activists, but a lack of opportunities.

By contrast, the number of active occasional activists, who launch campaigns less than once a year, has more-than doubled since 2014, to 175. Partial focus activists, which may run campaigns yearly but allocate most of their portfolio to other investments, have remained remarkably steady in recent years. Public demands were made by 58 such funds in the first half of 2016.

Uneventful

Many have predicted a decline in activism as opportunities for a quick return dry up, thanks largely to the slowing pace of M&A activity and opposition to soaring levels of share repurchases. Last month, **Starboard**

Value's Head of Research, Peter Feld, told a conference that there would continue to be plenty for activists to do in the years ahead, but that it was common for event-driven activism to peak and then fall away.

That prediction is already starting to play out. Of all activist demands worldwide in the first half of 2016, 13% related to M&A, compared to 19% in the whole of 2015 and 15% in the first six months of last year. David Rosewater, **Morgan Stanley's** activism defense lead, told the same audience that the “junior varsity” of activists risked calling for companies to sell themselves when there were no obvious buyers. “That’s what you call catching a falling knife,” he added.

Not quite no contest

One arena where some claim activism is dropping off is proxy contests. In the US, 20 contests have gone to a vote this year, compared to 23 in the whole of 2015 and 19 in 2014. Results have been mixed, however. Including another 14 situations where proxies were filed but a settlement was eventually reached or the activist withdrew, activists won 30 board seats (out of 98 sought). In resolved contests, activists have been left empty handed 15-times.

In the absence of a contest the size of **Darden Restaurants** or **DuPont**, many contests have gone relatively unnoticed, with the exceptions of first-time activist **Harvest Capital Strategies**, which won two seats at **Green Dot** and narrowly failed to unseat CEO Steve Streit, and **Sessa**

“While plenty of projects remain for activists, a lack of additional funding may handicap their ambitions.”

Partners’ bitterly fought attack on Maryland REIT, **Ashford Hospitality Prime**—a situation that looked hopeless for the activist some weeks ago, but may yet provide a result.

That is not to say activists have forgone large-cap companies. Fully 22% of public activist demands worldwide were at companies with a market-capitalization of more than \$10 billion, the highest since 2010. As a share of the total, companies with a market-cap of less than \$250 million fell from 43% in 2015, to 37% in the first half of 2016.


Outlook

What happens next is unclear, with a major economic shock possible following the UK’s decision to leave the European Union. Shares dropped sharply after the vote, potentially creating new opportunities, but it is unclear what the long-term implications will be. German industrials, such as **Cevian Capital** holdings **ThyssenKrupp** and **Bilfinger Berger**, were hit hard in trading, while UK-based exporter **Rolls-Royce Holdings**—which just months ago welcomed **ValueAct Capital’s** Brad Singer onto its board—is seen to have benefited from a devaluation of the pound.

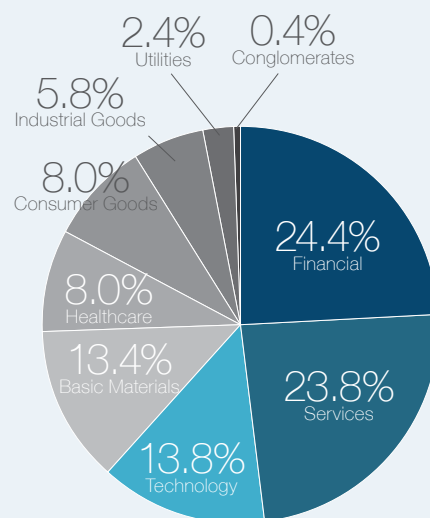
Activism in Asia has boomed in recent years against the background of a buoyant Japanese stockmarket, and continues to grow strongly despite the Nikkei’s year-to-date losses. Activist Insight data show the number of companies to face public demands rose 65% to 33 in the first half of this year. In the whole of 2015, 36 companies were targeted.

Falling commodity prices have had an unmistakable impact on activism, however. Demands made in the basic materials sector accounted for 14% of the total in the first half of 2016, down from 18% in previous years. That affected Canada more than any other country, with the number of companies targeted down 17% (another resource-rich country, Australia, recorded only a small increase in activism on the same measure). One to watch for the second half of the year may be **Performance Sports Group**, however, where **Graeme Rouston** is mounting a campaign against the leadership and advocating a different business strategy.

There seems destined to be less activism in the technology sector, where for some time there has been concern that valuations may be too high. The share of all demands that were leveled at tech firms fell from 18% in 2014 to 15% last year, and again in the first half of 2016 to less than 11%. Thus far, activists have fled uncertain conditions into financials (just shy of a quarter of all demands in 2016 so far), and services (not far behind).

While plenty of projects remain for activists, a lack of additional funding may handicap their ambitions. Primary focus US-based activist funds have seen their assets reduced by around \$10 billion thanks to outflows and depreciation, according to Activist Insight data, bringing the total down to \$146 billion. That is still a sizeable sum—more than 57% higher than the total in 2012. Whether or not there is room to grow, activism will remain a force. 

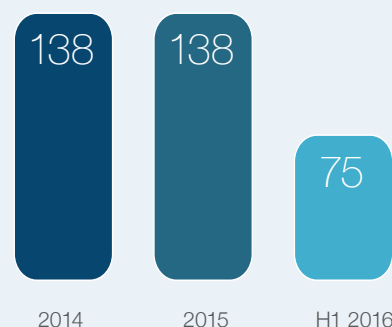
Sector breakdown of companies publicly subjected to activist demands in H1 2016



\$180bn

Global total of assets managed by funds or investors with a primary focus on activist investing

Number of companies publicly subjected to demands by primary focused activists



Dodging takeovers

The M&A frenzy has continued into 2016. Mergers are a short-seller's nightmare, but for activist short-sellers, having a bet wrecked by an acquisition is a rare event. And there are precautions they can take.

When SolarCity revealed that it had received a takeover proposal from **Tesla Motors** at a premium of up to 30%, the last available data showed that more than 40% of the target company's floating shares were sold short. Jim Chanos' **Kynikos Associates** and Andrew Left's **Citron Research** were among the bears bruised by the electric car maker's bid.

For investors betting against stocks, takeovers can reverse gains or inflict major losses. However, data gathered by Activist Insight show that acquisitions of companies facing short attacks from activists are infrequent.

Between the beginning of 2015 and June 30 2016, 221 companies have been the target of short-reports or media campaigns waged by bearish investors, only three of which signed definitive merger agreements in the first half of this year, Activist Insight data reveal.

Going public with a campaign against a company could dissuade some potential buyers, but Maj Soueidan, a co-founder at **GeoInvesting**—a long-biased investment firm which often takes an activist approach to its short positions—warns that publishing a report does not keep the risk of a takeover at bay.

"Actually, it may help it, because it may result in the company becoming cheap," he told Activist Insight,

adding that heavily-shorted stocks were often acquired.

Speaking with Activist Insight Monthly, short-seller **Richard Pearson** commented, "You should keep your position much smaller than you wanted it to be." Equally important, shorts should take security measures such as buying call options—even though these contracts come at a price.

"You might be right about your fraud thesis, but [the company] can still be taken private."

Evan Barnett, an analyst working for pioneer activist short-seller **Manuel Asensio**, said to Activist Insight that they "never had an incident with targets getting acquired." The reason? They focus on companies which they believe have committed fraud.

Soueidan agrees in saying that frauds are unlikely to be acquired, but there are exceptions, especially among US-listed Chinese companies, one of the targets favored by activist short-sellers. "You might be right about your fraud thesis, but they can still be taken private," he said.

Chinese companies are often in the crosshairs of investors convinced that they have misrepresented their data.


However, a misrepresentation does not necessarily mean that a company is worthless, and a potential buyer with access to its books and records might decide to acquire it.

Pearson told Activist Insight that there is not a single red flag that can help understanding if a company is a potential target—but being wary of sectors with strong M&A activity may help.

Being a short-seller often requires a contrarian mindset, but putting oneself into the shoes of potential acquirers may be helpful. Soueidan suggests "ask[ing] yourself whether there is value in the company's assets."

Sometimes, companies seem to have terrible prospects—and even fraudulent managers—but a potential buyer might see intangible value in them that could help it acquire a competitive advantage.

Often, activists decide to fully embrace the risk of a merger, betting against rumoured transactions—and for research outfit The Street Sweeper this is a frequent strategy.

Ultimately, all the research in the world could never help short-sellers completely eliminate the risk of a takeover, for new thinking is often at the mercy of brute force in short-selling. As Soueidan puts it, sometimes "smart money got it wrong." 



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Fighting the good fight

OLSHAN

The co-Heads of Olshan Frome Wolosky's Activist & Equity Investment Group, Steve Wolosky and Andrew Freedman, discuss the current state of activist investing.

[Where is the growth in activism coming from?](#)

AF: It's really a mix of factors. The real growth is coming from new entrants who are fueling the recent wave of small- to mid-cap activism. Previously passive investors continue to show a willingness to flirt with the activist toolkit as a last resort. First-time activist **Harvest Capital** and its campaign at **Green Dot** is such an example.

SW: Traditional long investors are adding the use of activism to their toolbox. Very smart, multi-billion funds who are not short-term but have been very disappointed with a company's performance over time are turning to activist tools in certain situations. They don't want to be perceived as activists, but they also don't want to be taken advantage of and have decided to make a stand.

AF: We've also been approached this year by a number of founding families and ex-CEOs who still have a large stake in a company and an emotional attachment. While activism has traditionally been used by investment firms and hedge funds, there's nothing to stop these sort of shareholder constituents from using an activist strategy to get their foot back in the door. We've been approached by two such types in recent weeks.

[Have the largest activist firms become less busy recently?](#)

SW: It's playing out differently. The **Starboards**, **Elliotts** and **JANAs** of the

world are active in lots of situations, but in most cases are not having to take their situations to a vote. Companies are sitting down with them, having dialogue, engaging and discussing fundamental issues. **Citrix** is a perfect example – [Elliott's portfolio manager] Jesse Cohn was welcomed to the board, the company made a number of improvements and all shareholders have benefitted. The existing directors were obviously open-minded to doing the right thing.

“No doubt we've seen more in the way of 'down and dirty' hostilities from companies this year than in the past few. It never really behoves a company to smear an activist or its slate.”

AF: It's not that the brand-name activists are less busy, it's just that they're able to get more done behind the scenes of late. Small- to mid-cap activism, particularly where there are votes of no-confidence on CEOs or fundamental issues at stake, and first-time activists where companies set out to test their resolve, are more likely to go to a vote these days. From our point of view, we think that it's companies wanting to see whether these new entrants are willing to go to the mat.

[Have the tactics got dirtier this year?](#)

SW: I think there are certain advisers, whether legal, PR, or investment banking, that are more willing to advise their clients to take it to a vote and to be aggressive in terms of attacking the activist, their slate, and track record. You also have others that are more constructive that say let's see if we can work it out, and only take it to a vote if the sides can't agree. Who the company's advisers are makes a huge difference in the process.

AF: No doubt we've seen more in the way of 'down and dirty' hostilities from companies this year than in the past few. It never really behoves a company to smear an activist or its slate. If they're trying to discourage highly qualified candidates from joining activist slates, it's not working. Such tactics backfired this year and incense shareholders.

[Do you think changes to companies' bylaws have made for a more contentious process, given a few activists have been stopped from presenting slates this year?](#)

SW: I don't think there have been a lot of rejections. The **Sessa v Ashford Hospitality** case is an outlier in terms of a slate being ruled out. Bylaws have become more complex, in many cases as an information-gathering exercise. Some nomination letters can be up to 300 or 400 pages when onerous questionnaires are required. That makes it a more expensive process.

“We have severe concerns about the good faith of companies which use their bylaws to add unnecessary levels of disclosure.”

As the cost of actually running a proxy contest has become cheaper in the modern era, one way to make it more expensive is to make the nomination process more onerous. We have severe concerns about the good faith of companies which use their bylaws to add unnecessary levels of disclosure, especially when they're probably twice the size of the questionnaires they ask of their own nominees.

AF: A board that tries to disenfranchise its shareholders based on nomination technicalities is playing with fire. It may buy them some time, but it never ends well for those entrenched directors in the long run.

[What did you make of the Ashford verdict? Is it likely to have widespread ramifications?](#)

SW: It's still on appeal, and we'll see what happens, but my view is that it's really an outlier. It's Maryland, which is probably the most difficult and unfriendly state for activists. Many of the REITs and BDCs with exorbitant management agreements and change of control payments worth hundreds of millions of dollars coincidentally are incorporated in Maryland.

AF: Entrenched boards like Ashford should think long and hard before taking actions that can only be described as disenfranchising their shareholders. That's been played out before, and it's never behaved the company well to shareholders, proxy advisory firms or institutional investors. I just don't think Ashford will have the far-reaching consequences some are suggesting.

[There's been a lot of regulatory pressure on activists this year. How do you expect that to play out?](#)

SW: I think to a certain extent that will depend on who is President of the United States and who controls Congress [come November's election]. Companies and certain advisers will continue to put pressure on reducing the 13D filing window from its current ten days and try to curb the use of certain derivatives to get around HSR filing requirements. But on something as democratic and practical as the universal ballot, I believe you'll hear the hollow sound of companies saying we can't spell the word 'universal'.

[Do activists have the answers to win those political battles?](#)

SW: At the end of the day, I think these are smokescreen issues. Our clients are generally shareholders who have gone into a stock with a commitment to unlock value and their ability to do that won't be affected by a shorter disclosure window.

AF: Anti-activist regulation, as has been proposed, threatens to undermine the vastly important role that activist investors play in ensuring that the checks and balances system so essential to proper corporate governance functions properly. Shareholder activism has had an overwhelmingly positive influence in terms of reinvigorating otherwise complacent, underperforming public company boards and improving corporate governance. We're happy to see a group like Circa highlighting these virtues of engaged investing and serving as a counterweight to the activist naysayers.

[You've been vocal in saying law firms should only advise one side in activism. Why so?](#)

AF: It's always been our view, practically from day one, that the legal advisers in this space have to choose one side or the other. Given all we have learned about how activist investors think and behave, could we launch a highly successful corporate defense practice? Absolutely. But you're never going to see that happen. When you advise on the defense side, you are not just adverse to the activist at-hand. Advising a company to amend bylaws to suppress shareholder rights, adopting "proxy penalty" type provisions, requiring excessively onerous nominee questionnaires, rejecting nominations on account of immaterial technicalities – these types of actions are an affront to all activist investors and shareholders alike. It would be a tremendous disservice to our longstanding clients for us to ever advise any company as such. I just don't see how you can reconcile those positions.

SW: We as a firm add substantial value strategizing or testing how a process might play out. Activists have a lot of proprietary information in their models and strategy – including how they execute from an operational standpoint if they're bottoms-up activists, the qualities they look for in directors, how they feel institutional investors might react – and do you really want to share that with someone who might be working against you or one of the other well-known activists in the field? 🍷

Running man



Marathon Partners sent shivers through Silicon Valley with a proxy fight focused on executive pay. A year on, it says the company has changed.

The venture capitalist-backed CEOs of California's Silicon Valley are better known for creating value for shareholders than listening to them. Dual class share structures, classified boards and exorbitant stock-based compensation are still commonplace, to the extent that few worry greatly about the activist investors shaking up their old, slower predecessors.

That impression changed last year, however, with photo-products company **Shutterstock**. Having flirted with the prospect of losing its annual advisory "Say on Pay" vote, the company found New York hedge fund **Marathon Partners** willing to make the issue central to a proxy fight. In June 2015, Marathon won two of the three board seats it was seeking in its first ever proxy fight.

For a fund called Marathon, change has occurred at a sprinter's pace. Marathon's founder, Mario Cibelli may be off the Shutterstock board and the stock up and down with little overall change, but the company has parted ways with both its CEO and Chairman, implemented a new compensation package and hired former Amazon UK boss Chris North to run the business.

Speaking with *Activist Insight Monthly*, Cibelli says Marathon has accomplished "every single goal" it set out to achieve, making cross-country flights and conference calls superfluous. "Our goal was to get the company to a place where it could begin to prosper again," he says. "That Chris North came over

and took a plain vanilla options package should speak loudly towards the opportunity. It will take hard work, focus and strong execution but we've helped set Shutterstock up for a winning run again and this is very consistent with our long-term investment strategy."

"Our goal was to get the company to a place where it could begin to prosper again... We've helped set Shutterstock up for a winning run again, and this is very consistent with our long-term investment strategy."

Endurance over distance

Prior to the fight, Marathon was barely seen in the bracket of investors who regularly take to the airwaves to shake-up companies. "Activism is a last resort," Cibelli says. "We're not an activist fund, but we can act as one if need be."

That said, the 19-year old fund has the right set-up. It eschews quarterly money for one-, two- and three-year classes, offering lower fees to entice investors who are typically wary of locking up capital.

According to Cibelli, the patience of Marathon's investors allows it to clear one of the many hurdles to taking an activist stance. "We're not shy about

sharing our thoughts and opinions with companies. We've had only a handful of situations over the last ten years where we've had major disagreements with management teams," he says. "Shutterstock is the first one where we had to resort to a proxy contest to resolve the situation."

Although the near-\$300 million fund is a generalist in its sector focus, with a preference for stocks whose market-capitalization is below \$5 billion, some of Marathon's biggest winners have been internet companies such as **Netflix** and **Xoom**, the payments start-up acquired by **PayPal** last year.

The contradiction of backing highly innovative companies, while at the same time considering activist campaigns is a striking one, but Cibelli stresses that many companies have a life-cycle that makes the importance of considering shareholder value greater as growth slows. "It's natural for investors to expect that, as growth slows, maximizing profits and efficiency of capital allocation becomes more of a focus," he argues.

Pay for performance

That was part of the problem with Shutterstock, where profits had actually shrunk in recent years as overheads soared, but then-CEO Jeff Housenbold had been awarded a new compensation package, supposedly to bring him up to the level of peers in the industry. Cibelli says the problem was exacerbated by the compensation policy tying pay to adjusted EBITDA (earnings

“We’re not shy about sharing our thoughts and opinions with companies. We’ve had only a handful of situations over the last ten years where we’ve had major disagreements with management teams.”

“Shutterfly was buying back shares in the open market for cash, and insiders were selling shares, for cash. Is there any doubt that stock-based compensation should be viewed as a real cost by boards?”

before income, tax, depreciation and amortization), which was easily manipulated.

“Public boards can hedge their bets against picking a single metric to incentivize management. They can use multiple metrics including some that might weigh returns on equity and GAAP numbers,” Cibelli explains. “But if they go all-in on a single metric, boy do they have to think hard about that metric to make sure it doesn’t create distortions in incentives and encourage poor decision making.”

After Shutterfly scraped through its 2014 compensation vote with just 50.1% support (it would fall to 22% the following year), Marathon started to ramp up the pressure. It nominated three directors, meaning it went up against Housenbold himself, and rejected a settlement to put Cibelli on the board with another, mutually agreeable candidate. That decision proved worthwhile when the activist picked up two seats for its own choices—Cibelli and venture capitalist Thomas Hughes—although Housenbold survived until the end of the year.

A new incentive compensation plan for Shutterfly employees was approved by

three-quarters of investors in December. While stock-based compensation is still, as Marathon said at the time of that vote, a critical aspect of pay in Silicon Valley, target compensation for the CEO will fall from the \$17 million before the 2015 annual meeting to an average of around \$7 million per year, and stock will be awarded as options, to incentivize a higher stock price, rather than on the controversial adjusted EBITDA formula.

With Marathon’s role in the turnaround all but complete and news of private equity interest leaked to shareholders by an unknown party earlier this year, Shutterfly is still at a crossroads.

Cibelli is confident, however, that the campaign won’t be the last of its kind. “Stock-based compensation may continue to be a touchstone for controversy and proxy fights,” he says. “It’s a real expense that is often ignored by tech-focused companies—as I pointed out repeatedly to some, Shutterfly was buying back shares in the open market for cash, and insiders were selling shares, for cash. Is there any doubt that stock-based compensation should be viewed as a real cost by boards?”

Had the compensation issues not run so deep, Shutterfly might have gone untargeted. Whether the activist has made shareholders better off remains to be proven, but Cibelli is confident Marathon made the right decision getting involved. “Pay was the seminal issue—we believed good things had the potential to start flowing once the right incentive compensation plan was in place. I think the majority of the board came to understand this dynamic after we became involved.”

Marathon Partners at a glance

Headquarters	US
Founded	1997
Level of activism focus	Occasional
Companies subjected to public demands (Jan '10 - Jun '16)	2
Assets under management	\$277mn

Where Marathon is invested

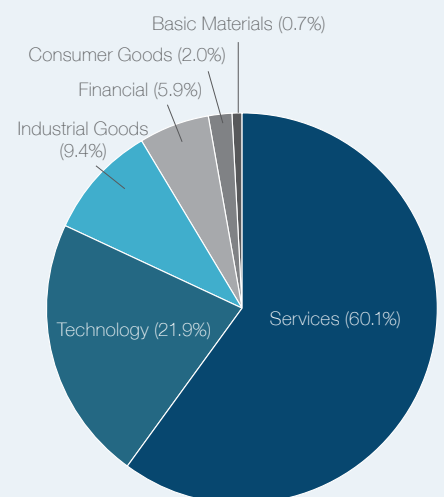
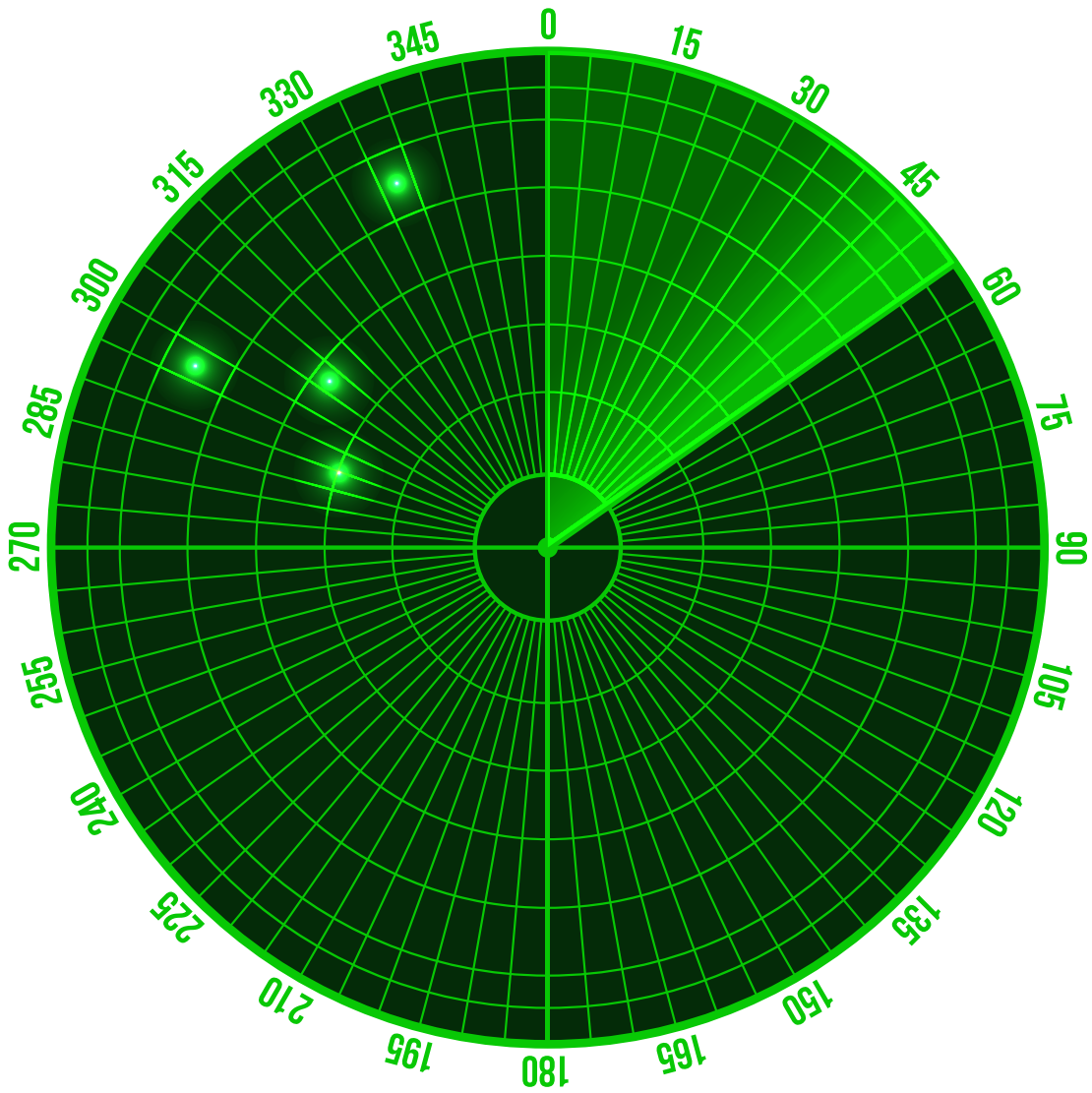


Chart above based on values of investments on Q1, 2016 13F filing

12 month Shutterfly share price



For more information on Marathon Partners and over 1,300 other activists, please visit www.activistsight.com.



Locate the targets

Activist Insight Vulnerability

Coming soon

[Register your interest here](#)



Activist Insight

www.activistinsight.com

2016: the first half in numbers

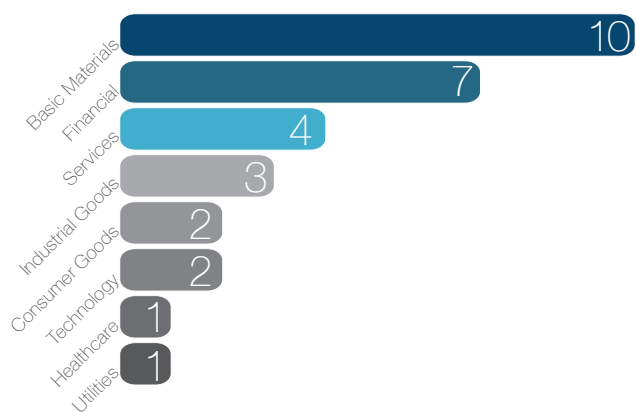
A wider spread

Activism continued to be most frequent in North America, but both Europe and Asia have seen increases in the number of companies targeted. Here, we summarize the number of companies publicly targeted by activists by region, and pick out a few key statistics from this year's action.



Spotlight on Canada

H1 2015: 36
H1 2016: 30



Despite a fall in the total number of Canadian companies targeted in the first half of the year, basic materials companies continue to dominate activism in Canada, with a handful of REITs and investment trusts besides.

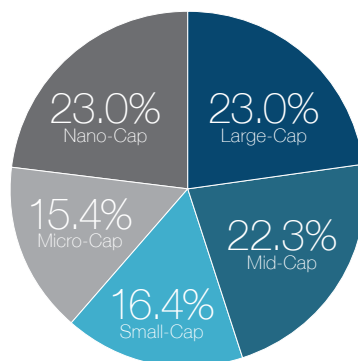
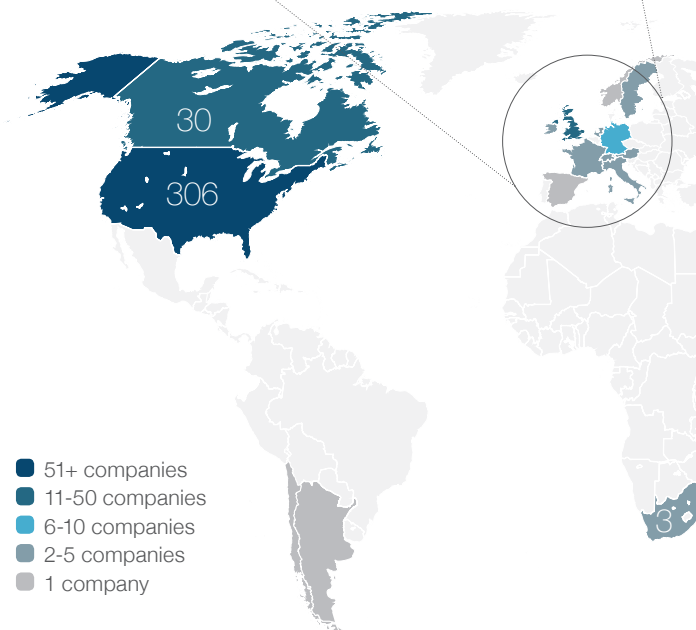


Spotlight on US

H1 2015: 278
H1 2016: 306



Such is the spread of activists in the US that every market-capitalization category is almost equally subjected to public demands.



N.B. 1. All data exclude activist short positions
N.B. 2. All percentages are given to one decimal place, and may cause rounding errors
N.B. 3. YTD figures as of 30/06/2016 unless otherwise specified

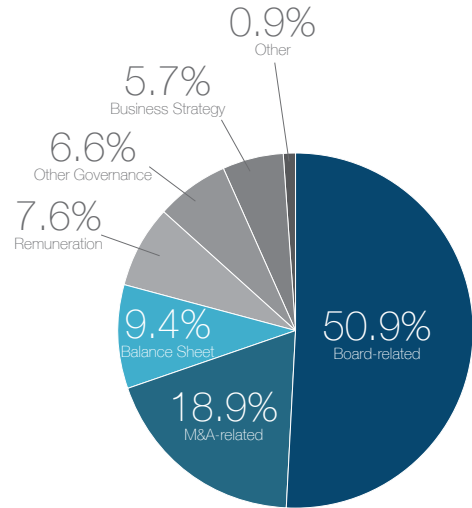


Spotlight on Europe

H1 2015: 37
H1 2016: 56

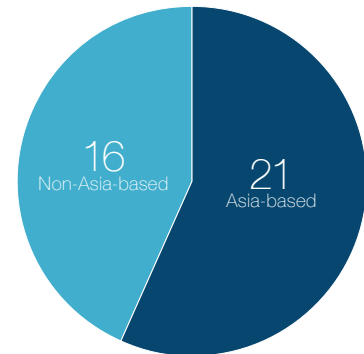


Board-related activism dominates in Europe, with M&A some way behind. The structure of requisition rights—which often require incumbent directors to be removed, may account for the slightly higher level of board-related demands.

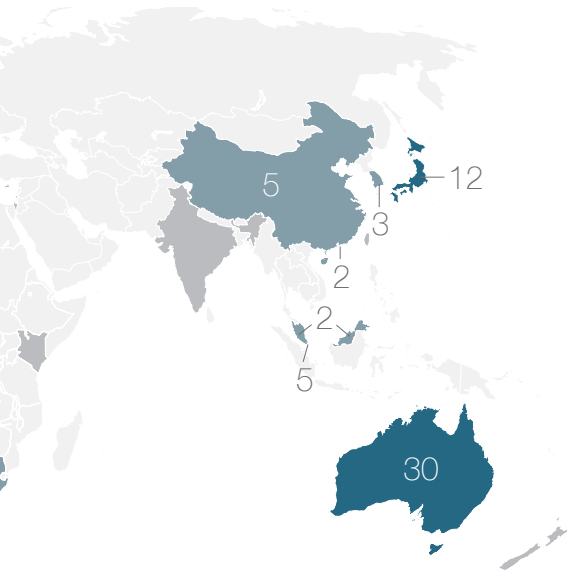


Spotlight on Asia

H1 2015: 20
H1 2016: 33



A little-noticed trend has been the rise of home-grown activism in Asia. Such funds make up more than half of those making public demands of companies so far in 2016.

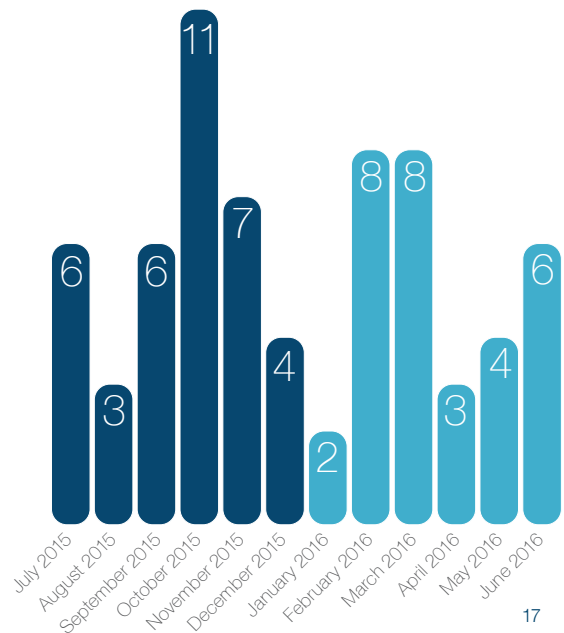


Spotlight on Australia

H1 2015: 27
H1 2016: 30



Given Australia's proxy season starts later in the year, a surge in companies facing public activist demands is hardly surprising. The start of 2016 has been busy, suggesting the summer may see even more activity than usual.



Barington Capital at Chico's FAS

A retailer gets its second activist in quick succession. Will shareholders give a new CEO time to breathe?

When womenswear retailer Chico's FAS hired Shelley Broader to be its next CEO in October last year, she knew she would have to deal with an activist investor. Blue Harbour Group, which eschews proxy fights for more collaborative working practices, had been in the stock since 2013, albeit without challenging management in public. Broader's main concern was getting agreement on a new strategy, after her predecessor David Dyer quit following unsuccessful talks with a private equity firm.

In fact, Broader had an activist problem she didn't know about. Blue Harbour Group sold the last of its shares in the second quarter of 2016, Activist Insight has learned, but Barington Capital Group had started building a position and working on its plan for reforming Chico's. In March this year—just three months after Broader's first day on the job—Barington made contact with management, and less than three months after that came the announcement that it would seek two seats on the board at July's annual meeting.

Since the announcement of Broader's hire at the end of October 2016, the market has been unkind, sending shares down 19%. Yet the former head of Walmart's EMEA group has been busy, and while the stock is still down since Broader's start date, a modest recovery began with the February earnings announcement. Already, the company has announced \$60-85 million of cost reductions and said it will declassify its board, subject to a shareholder vote. Boston Proper, a disastrous 2011 acquisition almost

Chico's FAS

Industry	Apparel Stores
Sector	Services
HQ	Fort Myers, FL, US
Market cap	\$1,420 mn*
Exchange	NYSE
Ticker	CHS

* as of June 30, 2016

entirely written off, was sold in January. Barington supports those moves and believes it prompted some of them, adding that it could save roughly \$75 million more, largely in marketing and headquarter overheads. Both sides agree more share repurchases are in order, given the stock's low multiple.

Barington also wants to expand the company's Soma range of lingerie stores by adding 200-300 new outlets, telling Activist Insight Monthly that the chain is being outperformed by Victoria's Secret, which has almost 50 stores for each Soma one, and that it lacks faith in the current board's ability to assess the opportunity. That plan drew one of management's sharpest attacks, saying investors didn't want a "bricks and mortar" strategy, and that online expansion was the way forward (Chico's plans to close around 150 stores, the company says). Barington has doubled-down on its claim; Jim Mitarotonda, the activist's founder and CEO, even says Soma could be spun-off a few years down the line.

The debate over digital versus bricks and mortar expansion has obscured

Barington's main critique. It argues Chico's is too centralized, leading to bloated overheads and inefficiencies, such as the Merchant Committee, a board-level mechanism for reviewing merchandise strategy. Chico's says the committee, which met twice last year, enables Presidents of the company's three brands to take additional input from industry experts "as needed" but Barington is not satisfied.

Ultimately, given how close the two sides' positions are on the company's strategy, the proxy fight may come down to the quality of the nominees. Barington's slate consists of Mitarotonda and Janet Grove—touted as a merchandise expert—a former Vice-Chair of Macy's who now sits on several boards, including Germany's Karstadt Department Stores, bankrupt teen retailer Aéropostale, and ClubCorp, the golf course operator being shorted by Kerrisdale Capital.

Hoping to take Barington by surprise, the company added two new directors ahead of the vote, namely Walmart US CEO and Darden Restaurants director William Simon and Bonnie Brooks, Vice-Chair of

“Given how close the two sides’ positions are on strategy, the proxy fight may come down to the quality of the nominees.”

Hudson’s Bay. Broader and retired former-McDonalds’ executive Janice Fields make up the slate.

Already, the battle is a fierce one. Barington is accusing its first target, Fields, of lacking retail experience and presiding over growing inefficiencies, and says the other, Brooks, is conflicted. Barington calls the company’s protestations that its customers spend so little at Hudson’s Bay that the department store doesn’t even feature on its competitor analysis, “extremely disingenuous” and says Chico’s own annual report cites domestic and international department stores as rivals.

Neither activist nor management looks ready to settle, raising the stakes and increasing the tempo of the debate. The size of Barington’s stake—1.5%, with much of that in options—and the timing, given Broader’s recent hiring, has made Chico’s determined to fight

its corner. According to Barington, Chico’s Chairman David Walker rejected a settlement, lest changes be interpreted as a lack of support in the new CEO. A company spokesman told Activist Insight Monthly that Chico’s would not comment on individual conversations with shareholders.

Having quickly decided the board would be uncooperative, Barington went on the attack, highlighting health insurance for directors and their dependents as evidence of entrenchment. “Providing health insurance does not facilitate a shareholder-focused mindset in the boardroom,” Mitarotonda says. “Do you think Warren Buffett provides health insurance for directors at Berkshire Hathaway?”

Then there is the \$5.9 million war chest Chico’s has set aside for its defense—a cost Mitarotonda condemns as “outrageous and an irresponsible waste of shareholder resources.” Activist

Insight data indicates the amount is indeed high, putting the median over 2014 and 2015 at \$2.1 million. “That appears to be the mentality of the Chico’s board and something we want to change,” Mitarotonda says.

Barington’s last proxy fight: Eastern Co, 2015

In Barington’s camp
(nominees averaged 63%)

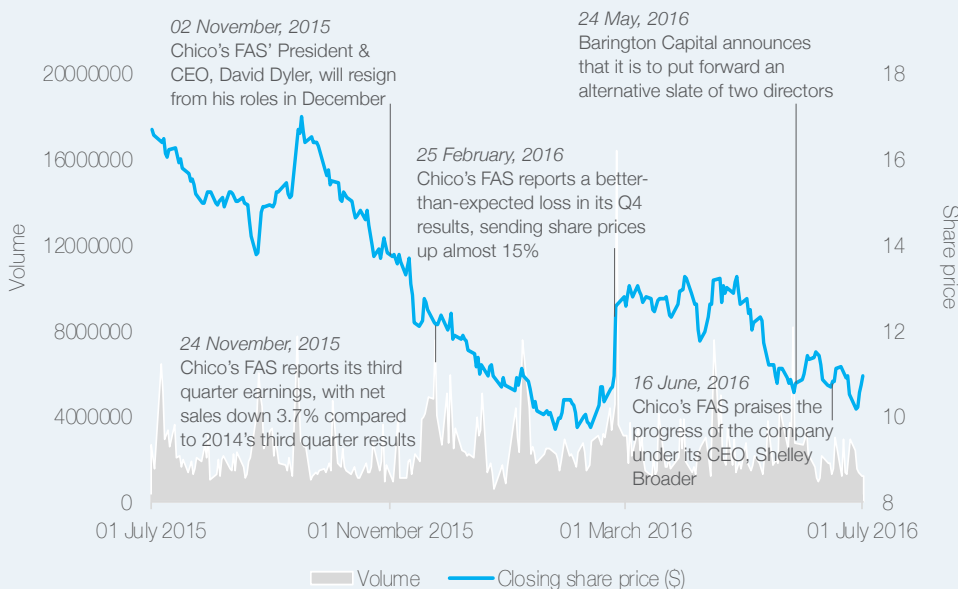
Investor	Times voted dissident card
BlackRock	38%
Vanguard	21%
CalPERS	45%

In management’s camp

Investor	Times voted dissident card
Norges	36%
Lazard	48%
BNY Mellon	31%

Source: Proxy Insight

Chico’s FAS 12 month share price performance



Fundamentals

52 week high	\$17.09 *
52 week low	\$9.61 *
Share price	\$10.71 *
Total Shareholder Return (12 months)	-33.9% *

* accurate as of June 30, 2016

Source: Capital IQ, CSI data.

Activist engagement



A discussion on preparing for an activism situation from an issuer perspective with Dan Burch, Paul Schulman, and Dave Whissel from MacKenzie Partners.

2015 was a record year for settlements, and we are on pace to exceed that record in 2016. What are some of the reasons a company might choose not to settle and instead pursue a proxy contest? What are the advantages of settling early?

Ultimately, a board's responsibility is to do what's best for shareholders, and sometimes a quick resolution is the appropriate path to take. But for companies that have a defensible strategic plan and a path to create value, are well-prepared and have established a strong relationship and credibility with their shareholders through transparency and responsiveness, settlement may not be the best path. Taking a proxy contest to a vote may be the right decision and communicates a strong message to shareholders. We have heard criticism from some shareholders who would rather have the ability to vote on the construction of the board than abdicate that process to a negotiation between the company and one shareholder.

However, proxy contests are expensive and take management's focus away from running the core business. Settling provides certainty to a process that can be very unpredictable, and it is also generally accompanied by a standstill agreement, which, while important, may still not provide comfort that the company won't have to face the same issue again next year or the following year. If the board determines that a dissident's nominees are highly capable and would add value, or that its proposed changes are viable, then it *should* consider settling.

What are some of the steps that you recommend companies take in responding to an activist's involvement?

Shareholder engagement is critical in responding to and defending against an activist. We counsel our clients to have meaningful ongoing dialogue with shareholders, not just during proxy season. Being transparent, candid, and involving independent directors when appropriate will lay the groundwork for support. For the most part, there's no such thing as engaging too early or too often. That engagement should extend to the activist itself as well. In today's world, it is a big mistake to underestimate and dismiss the concerns of activists without at least speaking with them first.

Whether or not there's an activist involved, companies should be prepared as if there will be an activist involved. This requires thoughtful and regular self-assessment, paying particular attention to board composition, refreshment, and ways to improve performance.

We also often advise our clients to consider corporate governance enhancements to the extent that they are consistent with shareholder feedback. In many of these campaigns, there is some "low-hanging fruit" – governance improvements that can be made quickly and easily and at minimal cost. Not only are these improvements important for their own sake, but they can also provide evidence of a company's willingness to listen to shareholders and respond positively. However, assessing and making the changes is better when done on a "clear day" before the activist comes knocking.

What role does corporate governance play in proxy contests? What are some of the key corporate governance issues of recent years?

It depends on the campaign. Some activists genuinely appreciate good governance and see it as a lever to pull to unlock value. For others, it's just a means to an end, and a way to win the support of some index funds and other governance-focused shareholders and advisors. Regardless of the activist, our message to our clients is: if your corporate governance structure goes against the prevailing norm, you need to explain why to your shareholders. Proxy access has obviously been a hot topic recently, but hasn't really been an issue in any of the campaigns we've been involved in. On the other hand, executive compensation is becoming increasingly important, and we've seen many activists raise detailed compensation analysis as an issue in a campaign. That would have been almost unheard of even a few years ago.

How important is shareholder engagement during proxy contests? What is your typical strategy for dealing with shareholders?

Direct shareholder engagement is always important, but becomes even more critical ahead of important meetings. In some cases, effective engagement can mean the difference between winning and losing a campaign. We recognize that every shareholder is different, and we usually advise our clients to adapt the focus of that engagement to each investor. For example, while some shareholders may want to talk about

“Sometimes a little tension on the board is a good thing. Shareholders don’t like it when directors get too comfortable.”

how management’s compensation plan is aligned with long-term strategic goals, another shareholder might want to focus exclusively on the core business. We help our clients understand when and how to engage, which issues matter to which shareholders, and how they are likely to vote.

[What are you advising your clients about the role index funds are expected to play in governance and strategy discussions?](#)

Traditionally, index funds were relatively passive on the issues of strategy and business. That’s certainly changing. More and more, index funds are becoming “active” owners, and are engaging on issues beyond corporate governance and executive compensation. There is a lot of sophisticated financial analysis done at the index funds, and their teams are happy to talk about capital allocation and long-term strategy. We counsel our clients to be mindful of this shift, and to prepare accordingly. Since index funds by definition are the ultimate long-term holders, companies need to be able to communicate their long-term vision to these investors.

[Which arguments tend to resonate most with shareholders? Which arguments fall flat?](#)

The best argument against activism is strong performance. Unfortunately,

that’s not always an option. But even if performance is mediocre or even poor, it can be very persuasive if a company is able to recognize that changes have to be made, creates a compelling strategic plan, and executes against this plan. And regardless of the content of the message, it should be communicated through direct one-on-one engagement with shareholders whenever possible.

On the other hand, the argument that the activist will cause “disruption” is generally not very well received. Sometimes a little tension on the board can be seen as a good thing; shareholders don’t like it when directors get too comfortable.

[How have your strategies evolved as shareholder activism has become more prominent?](#)

Since MacKenzie was founded more than 25 years ago, the paradigm has shifted from “activism defense” to “activism preparedness,” and the strategies have become much more sophisticated. For example, today, you typically can’t just implement a poison pill and rely on a staggered board to keep an activist or hostile bidder at bay. You really need to engage the activist and develop a holistic response strategy. That might involve making certain corporate governance enhancements, beginning an investor outreach campaign, or returning capital to shareholders.

[After surfacing as a shareholder option in campaigns at DuPont and Shutterfly last year, we haven’t seen much mention of universal ballots yet in 2016. Why is that? Is the universal ballot ever likely to become widely adopted?](#)

The universal ballot has clear benefits to shareholders in the sense that it makes it much easier for them to split their votes among different slates than a legal proxy. But it also benefits companies more than many of them realize. By using a universal proxy, what you’re really doing is enabling shareholders to vote for some change without taking the drastic action of voting on the dissident card and potentially depriving management nominees of votes. By empowering shareholders, you give them greater flexibility to vote for at least some of your nominees.

It seemed to be gaining some momentum last year, but calls for its widespread adoption appear to be dying down. One of the primary issues is that, because it’s difficult to predict how a universal ballot will work in practice, no company wants to be a guinea pig. The timing wasn’t right in DuPont and Shutterfly, but they certainly sparked a debate, and we expect to see the universal ballot more widely used within the next few years. [↴](#)

[@Mackenzie_Ptnrs](#)

About MacKenzie Partners

MacKenzie Partners is a full-service proxy solicitation, investor relations and corporate governance consulting firm specializing in contested solicitations and M&A-related transactions.

We focus on serving our clients in their extraordinary transactions, and have been involved in many of the largest and most significant mergers, tender offers, and proxy contests over nearly three decades.

We’re confident that our team approach is the right solution in today’s complex and changing market. Our skill, experience, and dedication to our clients are the reasons that our professionals have become trusted advisors to investors, boards and management teams.

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News in brief

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

North America

Mondelez made a reported \$23 billion offer for Hershey's, a Pennsylvania-based confectioner. The offer was quickly rejected, with Hershey's saying there was "no basis for further discussion."

The Brokaw Act, a bill designed to regulate the activities of activist shareholders, was delayed after a Senate committee opposed efforts to add the provisions to an appropriations process lest they slow down important budget measures. Senator Tammy Baldwin, one of the bill's sponsors, was "shocked" the reforms could be considered controversial.

Elliott Management turned private equity buyer, teaming up with **Francisco Partners** to buy assets from **Dell**, which is restructuring to gain antitrust approval for the acquisition of **EMC** in another deal influenced by Elliott. Elliott's Evergreen private equity division is also run by its head of activism, Jesse Cohn.

Shareholders at **Ashford Hospitality Prime** rebuked directors for fighting a lawsuit against **Sessa Capital**, as more shares were withheld than voted for each director. The entire board tendered their resignations, but continued in post after the offers were rejected.

VIEX Capital sued **YuMe** just weeks after winning board seats in a proxy contest, saying the company had withheld crucial documents and that it could seek a majority of the board next year if the matter was not settled. VIEX also won five seats on the board of **Support.com**.

Boingo Wireless settled a proxy contest with **Ides Capital** after **Legion Partners** suggested two new directors. Boingo also appointed one new board member of its own choosing in the deal, which sees the activists tied into a two-year standstill. Ides has also nominated directors at CSS Industries.

A Delaware judge ruled that a management buyout of Dell in 2013 did not pay fair value, awarding several funds exercising their appraisal rights a 21% premium. T. Rowe Price, which mistakenly voted for the deal when it actually wanted to seek appraisal, announced that it would compensate its investors out of its own pockets.

Sagard Capital replaced CEO Dan Friedberg with a Vice-President of its main investor, **Canada's Power Corp**, for unknown reasons. **Graeme Routstan**, an investor in **Performance Sports Group**, where Friedberg is on the board, had been critical of Sagard's conduct in signing a standstill at the company. He has since offered to buy Sagard's stake in the retailer.

Elliott Management sold out of **Qlik Technologies** after the company agreed a \$3 billion sale to private equity firm Thoma Bravo. Elliott profited from the deal, but the price represented a rare discount to the stock's 52-week high.

TheStreet survived a withhold vote led by **Spear Point** and **Raging Capital Management**, re-electing Chairman Larry Kramer. It also announced the

hire of David Callaway as its new CEO, and corporate governance changes.

Banking activists faced glum news in June. **Financial Institutions** won a proxy fight against banking sector activist **Clover Partners**. **FBR & Co** also defeated **Voce Capital Management**, but **Lawrence Seidman** was granted a board seat at **MSB Financial**.

Epiq Systems was forced to settle with **Villere St Dennis** and pay the dissident \$3.5 million in costs after a bitterly fought proxy battle. The activist won three more seats on the board.

Canada's **Alternative Earth Resources** agreed to repurchase shares owned by **Jaguar Financial**, led by Vic Alboini, in return for cancelling some awards due at the end of a lawsuit between the two parties.

Mittleman Brothers and **Driehaus Capital Management** led opposition to the merger of **Carmike Cinemas** with AMC Theatres, backed by ISS and Glass Lewis. A shareholder meeting was subsequently postponed.

Mitra Energy added representatives of **Livermore Partners** and **Tyrus Capital** to its board of directors, along with a new Executive Chairman. As a result of the changes, and following additional pressure from **West Face Capital** and **Ontario Teachers Pension Plan**, the company will now focus on the acquisition and development of undervalued oil and gas assets.

Artisan Partners disclosed a stake in Deutsche Börse shortly before its planned merger with the London Stock Exchange Group.



Europe

Investors dominated **Volkswagen's** annual meeting but voted conservatively. Discharge of management's liability for actions over the past year was approved by 94% of shareholders, while close to 100% voted in favor of the dividend, which PIRC had opposed, though ISS had recommended in favor. Representatives of the Pötsch family and Qatar Investment Authority were elected to the supervisory board. However, a legal firm backed by **Elliott Management** on behalf of investors including **CalSTRS** launched a class action lawsuit and said it was preparing another over economic losses following last year's emissions scandal.

Guy Wyser-Pratte invested in German drugmaker **Stada**, after the company moved to hire bankers for a strategic review just two weeks after its CEO stepped down due to "a serious, long-term illness." The company, which has also been targeted by **Active Ownership Capital**, will hold its annual meeting in August and plans to overhaul its supervisory board.

Rothschild-founded asset manager RIT Capital Partners dropped plans

to make a bid for **Alliance Trust**, saying that following discussions with representatives of Alliance, acquiring the Scottish publicly listed fund "would not be in the best interests of its shareholders."

Electra Private Equity announced the resignations of three directors from its board, including former interim-Chairman Kate Barker. All of the departing board members had joined the company before November's proxy contest with **Sherborne Investors**, which has since installed Ed Bramson as interim-CEO.

Stock Spirits Group announced a special dividend of 10 pence per share, saying that the move was proof the company did not intend to undertake any mergers or takeovers by the end of the year. The announcement came a month after **Western Gate Private Investments** won a proxy contest with a plan which included stopping Stock Spirits' M&A activity, although a symbolic shareholder proposal on that topic failed.

German engineer **Bilfinger Berger** agreed to sell its most profitable

business to private equity firm EQT for €1.2 billion. Proceeds from the real estate unit are to be reinvested in the remaining industrial services business, with new CEO Axel Salzman saying "We have brought Bilfinger to a point where we can be more flexible and agile."

Investors at listed Swiss hedge fund **Alpine Select** voted in favor of a 24 Swiss Franc per share dividend proposed by activist investor **ALTIN**. In addition, CEO Tony Morrongiello announced he would step down from his position, to be replaced by Alpine's CEO Claudia Habermacher.

DRS Data and Research Services' largest shareholder and former Chairman **Malcolm Brighton** won a proxy contest with 95% of the vote. Gary Brighton, the company's Sales & Marketing Manager, was elected to the company's board. Investors also voted in favor of listing the company on London's AIM market.

Artisan Partners bought a stake in **Deutsche Börse** ahead of a planned merger with the London Stock Exchange Group. ISS and Glass Lewis recommended investors in the latter back the deal.

Caravan manufacturer Fleetwood was targeted by Sandon Capital.



Rest of World

Bank of East Asia said it would close its securities offices in Hong Kong in an effort to cut costs. **Elliott Management** has called for the company to consider selling itself, and opposed share issuances.

Noble Group announced the departure of its CEO and said its Chairman would step down within a year ahead of a rights issuance. The company has been under attack from activist short-sellers **Muddy Waters** and **Iceberg Research**.

China Resources Group opposed a share issuance by Hong Kong-listed real estate developer **China Vanke**. The 15% shareholder was concerned the placement, designed to pay for an acquisition from Shenzhen Metro, would dilute its stake and make the latter the company's largest investor.

Singaporean real estate investment company **Imperium Crown** called a special meeting for June 30 following a requisition by activist investors. The contest was marked by confusion over the beneficial owners of the dissident's stock.

A group of **shareholders** in Singapore's **Oriental Group** withdrew a proposed requisition. The shareholders did not say why they would not be proceeding with an attempt to replace five of the company's eight directors.

AMP Capital said there was shareholder support for its plans to reform its China Growth Fund, as **LIM Asia Multi Strategy Fund** gained backers for a proposal to liquidate the unit. AMP Capital's Chairman Adam Tindall said investors liked the exposure to China given through the fund but Geoff Wilson threw his weight behind the wind-up.

LONSIN Capital increased its stake in **Asia Pacific Wire & Cable** to above 5%, in the hope that management would take its concerns more seriously. The fund said it had enjoyed more contact from the company since launching a campaign, and now hopes for a board seat.

Alex Waislitz's **Thorney Opportunities** called for a A\$100 million buyback at **Fairfax Media** and the sale of non-core assets. However, the activist said his recommendations no longer

included the company's real estate division, which he said was worthy of further investment.

Sandon Capital called for a breakup of **Fleetwood**, arguing that the caravan-maker was worth more as a sum-of-its-parts than as a whole company. In particular, the activist suggested selling Searipple, an accommodation business.

InterOil successfully re-elected all eight of its directors with at least 72% of the vote, in the face of a challenge by former CEO **Phil Mulacek**. The dissident is likely to continue his opposition to a \$2.2 billion merger with Oil Search through to a shareholder vote on the deal currently scheduled for July 28.

A **shareholder** at South African retailer **Lewis Group** has sued for an injunction to hold four directors accountable for the company's business practices. David Woollam denied he was short the stock and said he only wanted to highlight Lewis' impact on poor people. 📉



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New investments

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



VIEX Capital unveiled a stake in touch-screen developer and producer, Immersion. The activist has recently prevailed in proxy contests against YuMe and Support.com.

Activist	Company	Date Notified	Stake
Glendon Hudson	Independent Film Development	Jun 30, 2016	9.6%
Hudson said in a regulatory filing he would oppose any equity issuance that had the effect of diluting his stake.			
VIEX Capital	Immersion	Jun 29, 2016	5.7%
Fresh from two successful proxy contests, VIEX turned on Immersion—previously a target of Starboard Value.			
Wyser-Pratte Management	Stada	Jun 27, 2016	3.0%
France-born/US-based Guy Wyser-Pratte is back in Europe, just as Stada faces a proxy contest with Active Ownership Capital.			
Hudson Executive Capital	Eagle Pharmaceuticals	Jun 27, 2016	6.1%
Hudson's Jim Woolery recently said the activist had received 16 requests for investment from companies since launching.			
Concerned Shareholders	New World Oil and Gas	Jun 23, 2016	10.5%
London AIM-listed New World faces a proxy contest aiming to remove three of its directors.			
Harbert Management Corp	Perceptron	Jun 23, 2016	5.4%
Harbert called for Perceptron to release more information and joined forces with fellow shareholder Moab Capital to force change.			
Almitas Capital	ZAIS Financial	Jun 23, 2016	7.4%
Almitas Managing Principal Ron Mass wants to block a merger and instead force the fund company to liquidate.			
Elliott Management	Imperva	Jun 20, 2016	9.8%
Cyber-security firm Imperva is likely to be the latest target of Elliott's push for consolidation in the IT sector.			
Southeastern Asset Management	Applus Services	Jun 16, 2016	14.7%
Southeastern, together with Egyptian billionaire Nassef Sawiris, has a reputation for backing companies with strong management.			
Elliott Management	LifeLock	Jun 16, 2016	8.8%
Identity theft protection company LifeLock started the year facing a short-seller and now has Elliott on its register.			
William Lambert/Michael Langford	Pilbara Minerals	Jun 14, 2016	0.5%
A group of up to 100 shareholders founded in internet chatrooms seeks to protest against lowball takeover offers.			
Elliott Management	Premier Farnell	Jun 14, 2016	5.7%
The UK's Premier Farnell only found a new CEO in March after a year engaging with GO Investment Partners, and now faces a potential battle with Elliott to pass a £792 million merger with Daetwyler Holdings.			



Elliott Management disclosed a new stake in LifeLock, an identity theft protection company.

Activist	Company	Date notified	Stake
SAIL Capital Partners	Ener-Core	Jun 13, 2016	15.6%
As well as removing a former SAIL employee from the company's board, the activist may remove a majority of the board.			
Thorney Opportunities	Fairfax Media	Jun 10, 2016	Unknown
Alex Waislitz's fund called for a A\$100 million buyback and the divestment of non-core assets at the publishing company.			
Theo Botha	Anchor Group	Jun 09, 2016	Unknown
The South African activist criticized the asset manager for putting aside profits to pay compensation without informing investors.			
Shandong Xiangguang Group	Reservoir Minerals	Jun 09, 2016	6.5%
Shareholders backed a merger with Nevsun Resources after the consideration was increased in the face of shareholder pressure.			
Elliott Management	PulteGroup	Jun 07, 2016	4.0%
A month after shareholders rejected a dissident slate from former CEO William Pulte, the company offered its founder a say on who will lead the organization going forward. Elliott has thus far been a quiet participant in the drama.			
Raging Capital Management	TheStreet	Jun 07, 2016	9.3%
Raging sought to deny TheStreet a quorum at its annual meeting along with Spear Point, but failed badly.			
Lisippo	Banca Popolare di Milano	Jun 06, 2016	Unknown
Opposition to BPM's merger with Banco Popolare will come down to a mass mobilization of shareholders thanks to the cooperative's unusual voting structure, which gives each investor one vote. A two-thirds majority is required.			
Crystal Amber	The Restaurant Group	Jun 06, 2016	1.0%
The UK activist reportedly bought a stake in the restaurant operating company, but has yet to float its demands.			
Local Authority Pension Fund Forum	WPP	Jun 06, 2016	Unknown
Advertising company WPP has long annoyed shareholders with its compensation policies, but passed this year's vote.			
Dialectic Capital Management	Covisint Corporation	Jun 01, 2016	5.5%
Dialectic is the latest shareholder to claim Covisint requires a "different set of eyes," and may run a proxy contest.			
Wynnefield Capital	MVC Capital	Jun 01, 2016	7.0%
Wynnefield overtakes Bulldog Investors and becomes the largest activist in the business development company.			

Monthly summary



Activist Insight

Monthly

Activist targets by geography

Issuer HQ location	June 2016	June 2015	2016 YTD
US	36	33	306
Canada	4	9	30
UK	4	2	24
Australia	6	3	30
Europe (excluding UK)	2	1	32
Asia	4	6	32
Other	2	2	9
TOTAL	58	56	463

Companies publicly subjected to activist demands by company HQ location

Activist targets by sector

Sector	June 2016	June 2015	2016 YTD
Basic Materials	8.6%	19.6%	13.4%
Conglomerates	0%	3.6%	0.4%
Consumer Goods	8.6%	7.1%	8.0%
Financial	25.9%	17.9%	24.4%
Healthcare	5.2%	5.4%	8.0%
Industrial Goods	8.6%	8.9%	5.8%
Services	29.3%	21.4%	23.8%
Technology	13.8%	16.1%	13.8%
Utilities	0%	0%	2.4%

Proportion of companies publicly subjected to activist demands by sector

Activist targets by market capitalization

Market Capitalization	June 2016	June 2015	2016 YTD
Nano-cap (Less than \$50mn)	27.6%	12.5%	17.9%
Micro-cap (\$50mn - \$250mn)	20.7%	33.9%	20.3%
Small-cap (\$250mn - \$2bn)	22.4%	28.6%	25.7%
Mid-cap (\$2bn - \$10bn)	13.8%	16.1%	14.5%
Large-cap (More than \$10bn)	15.5%	8.9%	21.6%

Proportion of companies publicly subjected to activist demands by market capitalization

Activist demands by type

Demand type	June 2016	June 2015	2016 YTD
Board-related	41.2%	39.0%	46.5%
Balance Sheet	11.8%	8.5%	9.9%
Business Strategy	7.1%	14.6%	4.8%
M&A	22.4%	23.2%	12.7%
Remuneration	4.7%	7.3%	3.4%
Other Governance	11.8%	7.3%	21.7%
Other	1.2%	0%	1.0%

Proportion of public activist demands by demand type

Success of resolved demands

Outcome	June 2016	June 2015	2016 YTD
Activist at least partially successful	41.2%	53.4.2%	52.9%
Activist unsuccessful	45.8%	33.0%	37.8%
Withdrawn demands	13.0%	13.6%	9.3%

Outcomes of resolved activist demands

Number of active activists

	June 2016	June 2015	2016 YTD
Active activists	66	54	377

Number of investors making a public demand of a company

Performance

-1.39%*

Stock price performance of activist-held US stocks in May 2016
(S&P 500 Index: -0.02%*)

Value of activist investments

\$266.3bn

Approximate value of global activist investments as of June 30, 2016

N.B. 1. All data exclude activist short positions

N.B. 2. All percentages (excluding performance) are given to one decimal place, and may cause rounding errors

N.B. 3. YTD figures as of 30/06/2016 unless otherwise specified

*Trimmed mean (10%)

Ranked the #1 Legal Advisor
by Activist Insight based upon the number
of campaigns worked on since 2010.

Our 2016 Proxy Season Highlights So Far Include:

54 Nominations
delivered

42 Settlements
negotiated

More than **79** new
Directors
seated

Featured 2016 Campaigns:



AVON

YAHOO!

CHICO'S



Angie's list

BRINKS



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

"The Go-to Legal Adviser for Many of Wall Street's Biggest and Most Successful Activists" – *Business Insider*

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