Activist Insight

Monthly

OLSHAN

2018 HALF-YEAR REVIEW WITH OLSHAN

RESTAURANT BRANDS | DESTINATION MATERNITY | THYSSENKRUPP

ACTIVIST INSIGHT MONTHLY

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Editor’s letter

Josh Black, editor-in-chief at Activist Insight.

The first six months of 2018 have been an exciting time for Activist Insight, and for activism itself.

With the launch of our latest product, *Activist Insight Governance*, we now offer a more complete suite of data covering everything that could be important to activists and the companies they target. These data range from our new tool’s focus on bylaws and directors, to *Activist Insight Vulnerability’s* fundamentals, ownership and voting data.

For good measure, there is also our coverage of activist investors and activists shorts on, respectively, *Activist Insight Online* and *Activist Insight Shorts*, and this redesigned magazine’s perspective on the broader trends. Just like the activists, we haven’t stopped innovating or run out of things to do and I am grateful to the team here at Activist Insight for their hard work. For this publication, my fellow reporters Iuri Struta and Elana Duré, Husein Bektic and Dan Davis on our data team, and James Martin and Lauren Clements deserve special mention.

Appropriately, the ground we stand on has been shifting. Companies have increasingly adopted activist tactics for hostile takeovers. Activists have adopted the mantle of environmental, social, and governance investing, albeit sometimes with less obvious intent than they approach value-creation.

Meanwhile, settlements drift in and out of fashion and proxy fights come loaded with a greater variety of pitfalls. The first half of 2018 saw contests centered on dual class share structures, M&A decisions, and gender diversity – on which our activist interviewees, Peter O’Malley and Nathan Miller, have plenty to say. The first ever use of the universal ballot at a U.S.-incorporated company took place, albeit with some initial confusion about the results.

In Europe, the historical involvement of the state and other interest groups proved to be an advantage for Elliott Management at Telecom Italia, while at ThyssenKrupp a once-straightforward transaction now looks to be on the ropes. In the U.S., a judge blew a hole in advanced notice bylaws with a striking ruling halting a transaction between Xerox and Fujifilm, and a boardroom battle at CBS raised questions about the distinction between a board and a controlling shareholder.

After the excitement of Procter & Gamble’s descent into the snake pit last year, 2018 has proven every bit as wild.

If the content of activism has changed quite suddenly, so have some of the relationships. Starboard Value and Carl Icahn briefly found their interests diverging at Newell Brands, before both were brought into a settlement. First time activists are proliferating; T. Rowe Price and AllianceBernstein are talking up the potential influence of active equity institutions, as a counterpoint to both activists and passive shareholders. Index funds, meanwhile, are adopting steadily more exacting expectations of boards.

In the spirit of these increasingly complex relationships, Activist Insight has been setting the agenda through the upcoming events sections of our website, magazine, and newsletters, and hosting more networking events under the banner of *Activist Insight Live*. Contact us for more information.

Finally, I want to thank our sponsors for this half-year review; FTI Consulting, Morrow Sodali, and, in particular, Olshan Frome Wolosky. We have benefited from their insights over the years, as I hope you will.

“After the excitement of Procter & Gamble’s descent into the snake pit last year, 2018 has proven every bit as wild.”

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Galvanizing good governance

The market is increasingly recognizing that activists have important things to say and are catalyzing positive changes at companies that benefit all stakeholders, say Steve Wolosky and Andrew Freedman, co-chairs of Olshan Frome Wolosky's Shareholder Activism & Engagement Practice Group.

Proxy season 2018 has been a good one for shareholder activists with numerous success stories and significant legal and procedural developments in the space. Recognizing that the unreceptive and defensive approach taken by target companies that led to so many large proxy fights in 2017 was unproductive and in many cases antagonistic to investors, companies this year have been settling with activists in far greater numbers.

Separately, at Taubman Centers, our client Land and Buildings overcame a 30% insider share of the vote to win election to the board in its second go-round there. Two companies facing contested elections unilaterally adopted universal proxy cards – a development we certainly have not seen the last of and will continue to monitor closely. In New York, a court resurrected a 25-year old Delaware decision forcing Xerox to reopen its nomination window as a result of material changes in circumstances following the original nomination deadline.

Developments

The unilateral use of universal ballots in proxy contests this year raises questions about how manipulation of the voting process can be avoided under a one-card regime and could rekindle deliberations at the Securities and Exchange Commission (SEC) around adopting a rule that would level the playing field. Allowing companies, and to some extent shareholders, to dictate the design of each of their universal proxy cards makes universal cards a misnomer.

Separately, the New York State Supreme Court decision enjoining Xerox from enforcing its original nomination deadline because of a "series of very significant decisions and disclosures" by the company thereafter represents a monumental victory for shareholder activists. While the verdict was highly case-specific, it may provide an opportunity for shareholders to pursue avenues to reopen nomination periods at companies incorporated in other parts of the country. Notably, New York has become the first state outside of Delaware to apply the Hubbard standard on this issue.

What to expect

In connection with increasingly sophisticated approaches to board composition, activists now have an opportunity to make the most of the high-quality nominees they have been able to attract to their slates. As many institutional investors adopt explicit expectations for the kinds of diversity they expect to see on a board, including skill-based, ethnic and gender diversity, activists can improve the quality of a board's composition by suggesting diverse candidates using networks that extend beyond narrow sectors where companies struggle to identify the right talent.

Withhold campaigns could continue to flourish, spurred largely by "reluctavists" and newcomer activists. Ever since our client H Partners' seminal withhold campaign at Tempur Sealy in 2015, investors have made good use of "vote against" campaigns to unseat directors and register protests against boards, and these campaigns were again prominent in proxy season 2018. While there are different types of withhold campaigns, involving different levels of company engagement, shareholder outreach and expense, we continue to view these campaigns as a highly-effective strategy in certain situations.

No companies – regardless of jurisdiction, size or ownership structure – are beyond an activist campaign. Since many undervalued opportunities lie with companies that have either remained under the radar or are so entrenched that activists have steered clear, investors now realize putting a spotlight directly on a company and its numerous shortcomings, governance or otherwise can compel the company to action. Even if the results are not the full extent of what the activist is seeking, they can be enough to catalyze improved performance and accountability.

BACK IN THE GROOVE

Merger madness, flush balance sheets and the integration of environmental, social, and governance (ESG) issues into mainstream activism in the first half of the year mean 2018 should be set for record levels of activism.

Note: All data as of June 30.

Activism looks poised for another record year in 2018. By the end of June, 610 companies worldwide had been publicly subjected to activist demands year-to-date, driven by record activity in North America. Indeed, the U.S. may be on course for over 500 companies to face financial or governance demands from shareholders by the end of 2018, while Canadian basic materials activism has returned with a vengeance.

"A surprise trend in 2018 has been the flurry of withhold campaigns by activists."

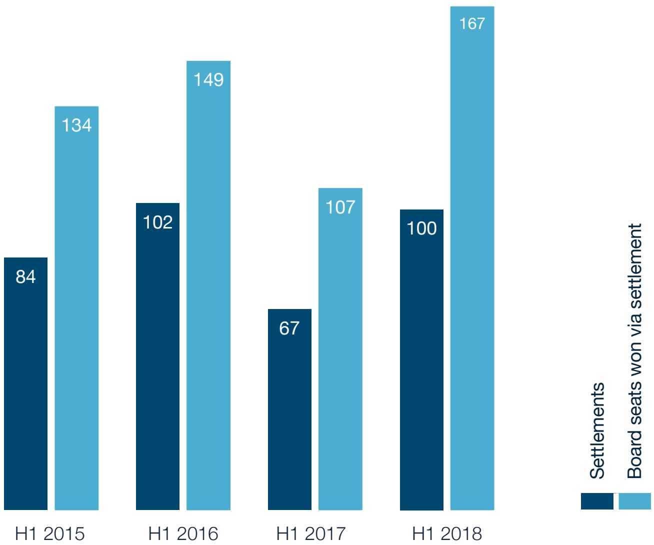
Asia has also experienced a bout of shareholder restlessness in the first six months of 2018, with a 25% increase in companies targeted compared to the first half of 2017. Three proxy contests in Japan for Oasis Management, ValueAct Capital Partners' engagement with Olympus, and Elliott Management's campaign against the restructuring plan put forward by South Korea's Hyundai Motors signal that the region remains popular with hedge funds.

Outside of the U.K., Europe has seen a slight lull in the first half of 2018 despite a high-profile proxy contest at Telecom Italia, where Elliott emerged with a reputation-burnishing victory that saw it win over domestic investors and the Italian government, both of which had tired of French interloper Vivendi.

Yet with the first quarter of 2018 seeing the largest amount invested by U.S. activists in European companies since at least 2013, European corporations are starting to take notice. Now that global bank Barclays is in the spotlight and Whitbread has been prevailed on to spin off cafe chain Costa Coffee, both excitement and concern are growing.

Elliott Management's victory at Telecom Italia was a seminal event in Italy.

Board seats won via settlement



Number of settlements and board seats awarded as part of settlements at U.S.-headquartered companies between January 1 and June 30.

A few firsts and a finale

In a sign that activists have developed a less syncopated rhythm, some funds have laid low during the past six months while others picked up the slack. After a quiet 2017, Carl Icahn has made new demands at four companies, while Starboard Value has matched its haul of eight companies publicly subjected to demands from H1 2014. The game-changer, however, has been Elliott Management. The New York-based fund has more than tripled its number of year-to-date targets over the past four years to 16 companies, extending beyond merger arbitrage and the technology sector to utilities and corporate restructurings, including three members of the Hyundai Group.

Moreover, with 524 activists making public demands worldwide so far this year, including first-timers Mudrick Capital Management, Nathan Miller and Peter O'Malley -– who joined late-2017 newcomers Blackwells Capital and Roaring Blue Lion – there is no longer a guarantee that the next campaign will be from a dedicated activist hedge fund.

To prove the point, Appaloosa Management and Senator Investment Group dialed up the heat on Allergan between April and June, while T. Rowe Price said it would no longer issue a "request for activist" if frustrated with a company, preferring to make its views heard more plainly.

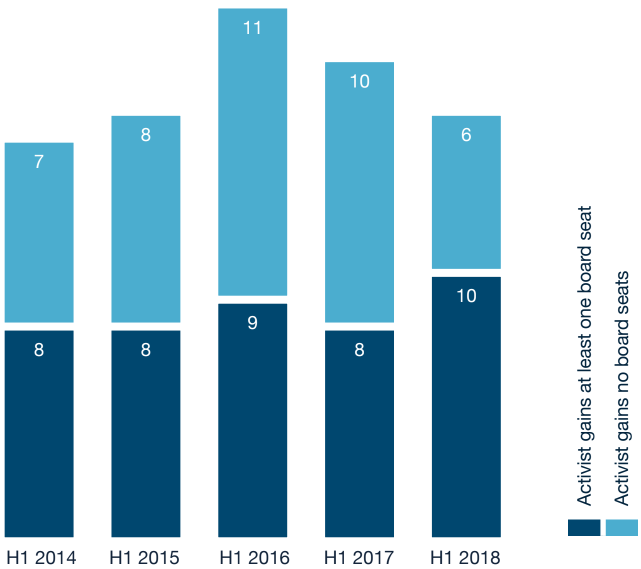
Quick and not dirty?

With traditional value-focused activists Jana Partners and ValueAct Capital Partners launching side funds emphasizing the contribution of environmental and social goals for companies, the tools utilized by activists continue to broaden. Jana has so far been the more vocal of the two, partnering with the California State Teachers' Retirement System (CalSTRS) under retiring corporate governance chief Anne Sheehan to ask Apple to implement more stringent parental controls on its iPhones. ValueAct appears to be focused on investing in companies with an advantage over peers in their sustainability, likely a less confrontational approach.

> "Notable amid the surge in campaigns is a series of quick-fire settlements."

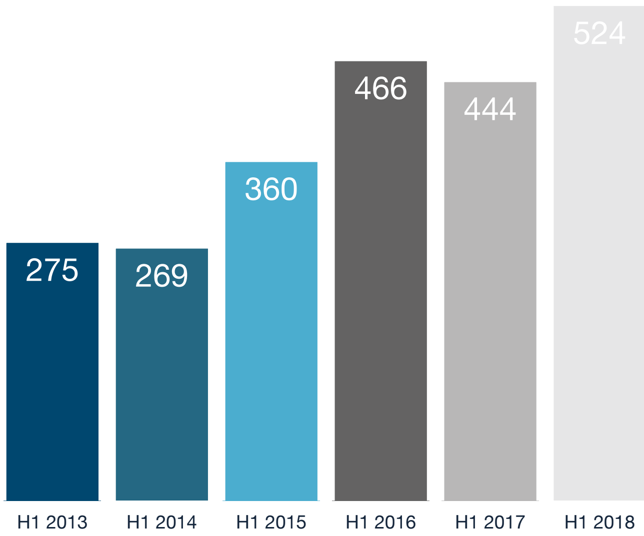
Among more traditional activist approaches, balance sheet activism n the first half of 2018 remained lower than its historical average (2013-17) in the U.S. despite December's tax reform, which should have made more cash available to return to shareholders, while surging in Asia and Europe. Perhaps accounting for the uncharacteristic subtlety, U.S. companies announced share repurchases worth a "truly unprecedented" $679 billion in the first half of 2018, according to data provider Trimtabs.

Proxy contest success rates



Number of activist and management wins at proxy contests that went vote at U.S.-headquartered companies, where activist win is defined as the activist gaining at least one seat at the vote.

Active activists



Number of investors making public demands worldwide between January 1 and June 30.

M&A activism, by contrast, is at elevated levels in both the U.S. and U.K., reflecting higher deal volumes and valuations. All but one of Carl Icahn's new campaigns have involved disrupting previously-announced transactions. With Icahn at one point considering a bid for SandRidge and Broadcom waging a proxy fight almost to the death at Qualcomm – halted only by the Committee on Foreign Investment in the U.S. (CFIUS) – the lines between hostile M&A and activism look increasingly blurred. Even mulling an acquisition, as Allergan did with Shire, was enough to generate the ire of investors.

Notable amid the surge in campaigns is a series of quick-fire settlements. In the U.S., nearly 80% of resolved requests for board representation have settled so far this year, compared to almost 60% last year when activists waged proxy contests at a surfeit of large-cap companies. In 2018's peak proxy season, almost two-thirds of activists were at least partially successful at the ballot box after two years in which companies dominated.

> "The U.S. may be on course for over 500 companies to face financial or governance demands from shareholders by the end of 2018."

Holding back

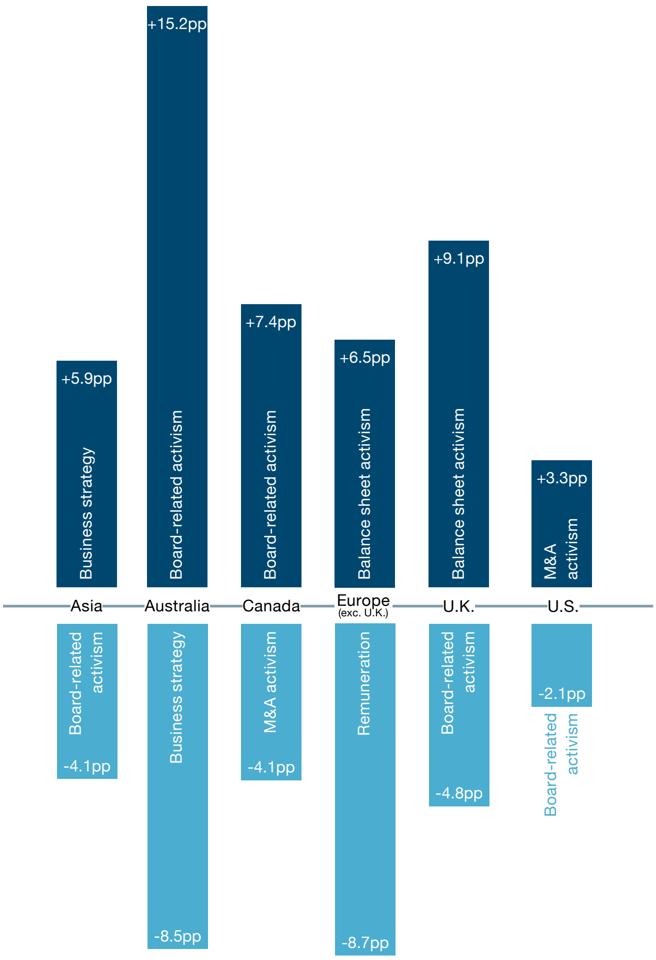
A surprise trend in the first half of 2018 has been the flurry of withhold campaigns by activists, either after being denied the option of embarking on a full proxy contest by deficient nominations (HomeStreet) or advance notice bylaws (Wynn Resorts, QTS Realty), or as part of a hostile takeover. At least six notable U.S. companies saw activists campaign for investors to vote against directors, including at least two with their own proxy card. At Wynn and USG, dissidents even won majorities.

> "T. Rowe Price said it would no longer issue a 'request for activist' if frustrated with a company, preferring to make its views heard more plainly."

The second half of 2018 could be equally dynamic, with media companies such as CBS and Twenty-First Century Fox in play and liable to create a chain reaction of takeover activity, and several activists watching United Technologies' review of alternatives. Moreover, turnaround campaigns at Procter & Gamble and General Electric could yet see major reorganizations.

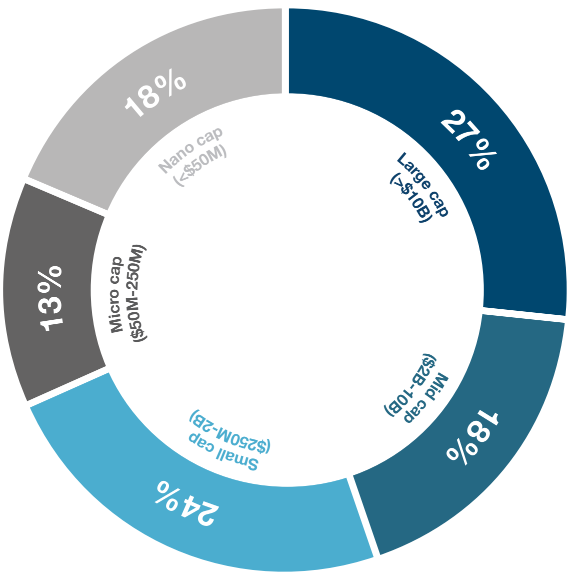
With a record number of activists making public demands and a record number of companies targeted in Asia, Australia, Canada, and the U.S. in the first half of 2018, part two can hardly disappoint.

Changes in global activist strategies



Largest relative changes (pp: percentage points) in public activist demands by region from H1 2017 to H1 2018. For a breakdown of demand types, see *Activist Insight Online*.

Global activist targets by market cap



Proportion of companies publicly subjected to activist demands between January 1, 2018, and June 30, 2018, by market capitalization.

New activist investments in Europe

$5.4B

Q1 2018 saw the largest aggregate investment by dedicated* U.S. activists in Europe-headquartered companies (incl. U.K.)**.

$3.7B

The second largest total was in Q2 2016.

*Dedicated activists defined as investors with a primary or partial focus on activism, as categorised by *Activist Insight Online*.
**With a market cap of at least $200 million.

Further H1 2018 statistics are available on page 35


AiOnline
Third Point Partners
AiVulnerability
Buffalo Wild Wings Inc.
Company Summary

Global activism

Charlie Koons (l), Michael Verrechia (r).

Charlie Koons and Michael Verrechia, co-heads of Morrow Sodali's Activism & Contested Situations Advisory Group, discuss the global nature of shareholder activism.

As a global firm, what are the main changes you've witnessed in activism this year?

While activism in the U.S. continues at a strong pace, the number and variety of activist situations in other regions of the world grows each year. Sophisticated activist investors are undeterred by the varying rules and customs of other countries and have not been afraid to seek change at the boards of underperforming companies or to oppose transactions that they view as not being in shareholders' best interest. The international nature of most large companies' institutional shareholder bases has brought about a more Western view of corporate governance even in regions that were previously considered slow to change.

Are there countries where activism is about to take off?

The Asian market, particularly Japan, seems noticeably ripe for activist initiatives. While there has been talk for many years of a coming change in the way that companies and shareholders there interact, the advocacy by Prime Minister Shinzō Abe for stronger corporate governance standards has signaled a meaningful cultural shift. Activists are increasingly looking at targets in this region and companies are looking for better counsel on how to assess themselves through the eyes of an activist.

There haven't been many big fights so far in 2018. Is this a hangover from 2017, or is there more pressure to settle?

We have been involved in a number of significant fights so far this year but have not yet seen quite as many headline-grabbing situations as we saw in 2017. Settlements continue to occur at a high rate. We saw many contests settle early on, and one of our contests even settled twice. On the other hand, a number of larger institutional shareholders have expressed a desire to be able to vote on any changes to board composition and to avoid settlements. We may see additional fights related to hostile M&A activity. It will be interesting to see what the second half of this year will bring.

Six months on from Larry Fink's letter to CEOs, what is new about the way index funds are approaching their stewardship roles?

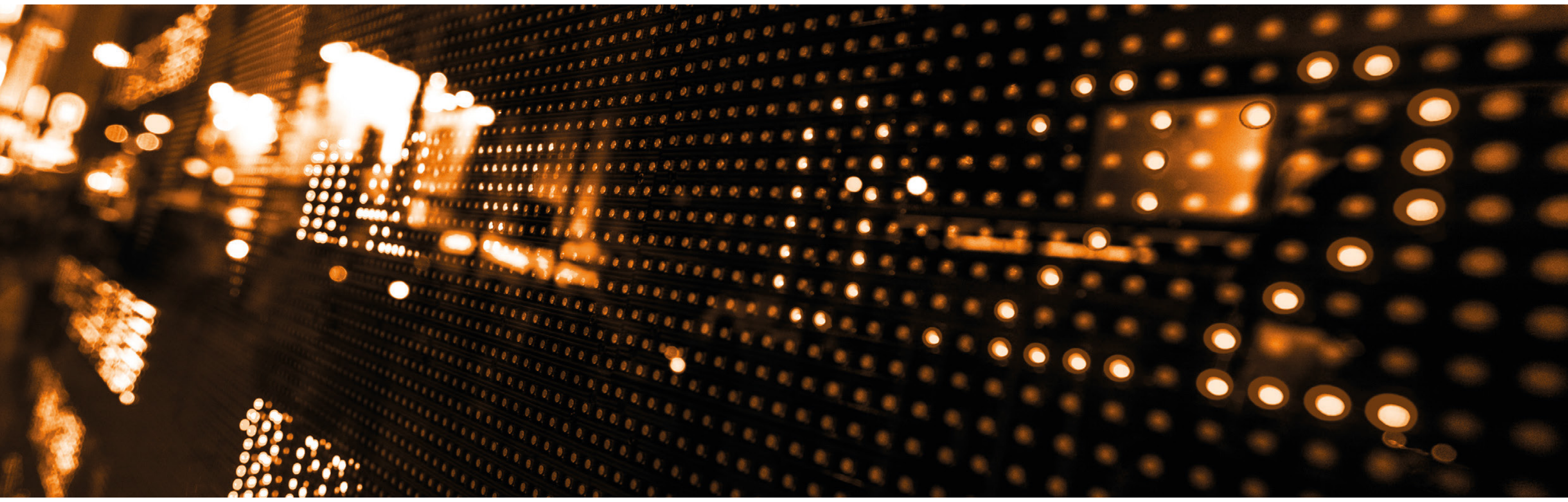
The letters from Larry Fink of BlackRock this past January and Bill McNabb of Vanguard last fall were both very important landmarks in the evolving governance landscape. They both articulated how they define governance and sustainability from a long-term shareholder's perspective and what they seek in terms of engagement from the companies in which they invest. They recognize the very significant leverage they have with their portfolio companies at the ballot box and both firms have noticeably upped their level of engagement throughout the year and not just when a shareholder vote is pending.

"We saw many contests settle early on, and one of our contests even settled twice."

Are we going to see more withhold campaigns in the future after 2018's bumper haul?

While numbers of campaigns are always difficult to predict year over year, withhold campaigns continue to be an effective way for shareholders to send a message to the board. While withhold campaigns do not have the same impact as soliciting a competing slate of nominees, we would expect that their implementation will continue to be an important point of leverage for activists.

MORROW SODALI



Destination transformation

When all else failed, first-time activists Nathan Miller and Peter O'Malley launched and won a proxy contest at Destination Maternity. The duo shared their thoughts on the experience and whether they would do it again with Activist Insight Monthly.

Peter O' Malley does not consider himself an activist. As the managing partner of merchant bank Kenosis Capital, O'Malley identifies as a long-term shareholder who advises the management teams of the companies it invests in. "We're just a little consulting business that works with companies and tries to make them better," he told *Activist Insight Monthly*.

> "It was only after repeatedly being rebuffed – while trying to help – that we realized the only way to effect change was to get actively involved and replace the entire board."
>
> **- Nathan Miller**

When like-minded investor and longtime friend Nathan Miller introduced O'Malley to Destination Maternity in 2016, the latter figured the maternity apparel retailer would be like any other company in his portfolio.

Miller – a "good stock picker," according to O'Malley – spent 20 years as an institutional investor at the likes of Goldman Sachs and SAC Capital before launching NGM Asset Management as a registered investment adviser in 2012 and transforming it into a family office two years later.

Entering the stock, which had fallen from a peak of $32 to under $3 in four years, Miller and O'Malley had one goal: to work with management. The duo recognized Destination Maternity's potential and hoped to turn the company around.

'You're forcing us to become an activist'

About a year after the two built stakes, French retailer Orchestra-Prémaman launched a withhold campaign against Destination Maternity's incumbent board, calling for more transparency and accountability. Because the dissident did not present an alternative slate, Miller and O'Malley voted for the status quo.

"Congratulations, you helped management," O'Malley recalls Orchestra Chairman Pierre-André Mestre telling him at the time. "But you'll find these old fellows have the seat and the soup. They will smile and not do anything."

It took Miller and O'Malley a few months to realize the truth in that statement. Following Orchestra's defeat, the pair offered Destination Maternity's management a cost consultant and approximately $10 million to help improve the retailer's liquidity. In exchange, Miller and O'Malley requested a handful of governance enhancements, new board nominees, and female CEO candidates. Destination Maternity refused to refresh its leadership, contending it had the right team in place.

"All you're doing is forcing us to do something we don't want to do," O'Malley says he told Chairman Barry Erdos.

"You're forcing us to become an activist."

Destination Maternity's share price performance

“It seems obvious that activism, at least in unique situations or circumstances, can undoubtedly unlock value.”

‘Stale, pale, and male’

Sure enough, Miller and O’Malley informed the company in March of their intention to nominate a dissident slate for election to the company’s board at its annual meeting in late May. Ironically, a couple of weeks after the nomination was announced, Orchestra entered a standstill agreement with the company, taking its 13% stake out of the equation.

“Quite frankly, we felt all of our efforts had been ignored by the company and all of [our] other options had been exhausted,” Miller told *Activist Insight Monthly*. “It was only after repeatedly being rebuffed – while trying to help – that we realized the only way to effect change was to get actively involved and replace the entire board.”

Miller and O’Malley believed the company’s underperformance was directly tied to the board’s lack of understanding of its customer base and that “stale, pale, and male” directors did not know the needs, wants, or desires of Destination Maternity’s clientele. “You should make Destination, pun intended, a destination,” O’Malley said. “You need to make Destination a warm welcoming place.”

Key to the activists’ success was highlighting the board’s lack of diversity – the only female director was interim CEO Melissa Payner-Gregor, the company’s second temporary boss – by including three female candidates on their four-person slate. “In this particular case, there was a consensus amongst Destination Maternity’s own investors that, given the customer base, it made intuitive sense to have a more representative board, as they are more likely to understand style [and] fashion, as well as shopping behavior,” Miller said.

“I mean, we’ve put over a million dollars of our own money into these fees just to win this thing. We’re not going to spend a million plus bucks and lose.”

- Peter O’Malley

Losing is not an option

From the beginning, Miller and O’Malley were confident they would win the fight, even when proxy adviser Glass Lewis recommended against their slate. For them, failure was not an option.

“I mean, we’ve put over a million dollars of our own money into these fees just to win this thing,” O’Malley said. “We’re not going to spend a million plus bucks and lose. That’s not in the cards.”

Despite several obstacles, shareholders rallied to the cause of board diversity.

Ultimately, all four dissident nominees were elected to the board at the annual meeting on May 23 and one nominee, former Lands’ End executive Marla Ryan, was appointed CEO. The stock has since more than doubled.

As for future activist campaigns, Miller and O’Malley don’t have any concrete plans but consider it a possibility. “It seems obvious that activism, at least in unique situations or circumstances, can undoubtedly unlock value,” Miller said.

O’Malley agreed with his colleague’s sentiment, noting that activism generally works because activists target companies with “low hanging fruit” or “problems that most people can see from the outside,” as was the case with Destination Maternity.

“It’s not a broken company,” he said. “It’s got iconic brands.”

Steeling for change

Cevian Capital has for years been pushing for more radical reforms at German industrial conglomerate ThyssenKrupp. Elliott Management's recent involvement has raised expectations, but whether the U.S. activist will speed up the process remains an open question.

ThyssenKrupp

Sector - Basic Materials | Market cap - $13.2B (mid cap) | Exchange - Deutsche Börse | Ticker: TKA.DE | HQ - Essen, Germany

By targeting centuries-old German industrial powerhouse ThyssenKrupp, Paul Singer's Elliott Management could change the face of European activism and with it the general perception of activist investors on the Continent. Fresh from burnishing its credit in Italy after diminishing the influence of widely disliked Vivendi on Telecom Italia, Elliott stumbled months earlier when attempting to push Netherlands-based AkzoNobel to sell itself to U.S. peer PPG Industries.

> "It is not enough to take one step at a time if your competitors take many steps at the same time."

ThyssenKrupp is a considerably more complicated case since German workers and managers generally align to protect conglomerates. Swedish activist investor Cevian Capital, an 18% shareholder, has been invested since 2013 and joined the supervisory board two years later but has yet to convince management to give ThyssenKrupp's four disparate divisions more independence. Yet the resignation on July 6 of CEO Heinrich Hiesinger, ostensibly to allow the supervisory board to debate a new strategy, may increase the chance of a radical departure.

Activist Insight Monthly understands that Cevian and Elliott have not spoken yet, but together they may stand a better chance of producing change, as a bulwark against the largest shareholder, the enigmatic Krupp Foundation. The support of workers, who have half the seats on the supervisory board, is important for any radical reorganization but not crucial because they can be overruled by shareholders and the chairman, the only member with two votes. Never in the history of ThyssenKrupp has there been an open rift between shareholders and employees on strategy.

Strategic Way Forward

Whether due to the complexity of the business, Germany's stakeholder approach to corporate governance, or Hiesinger's unhurriedness, ThyssenKrupp's restructuring has been painfully slow. It has taken nearly two years to divest its steel unit through a new joint venture with Tata Steel, and the renegotiated terms – needed because the companies have performed disparately since the deal was initially clinched – failed to please both Elliott and Cevian, whose boardroom representative voted against it.

More broadly, Hiesinger, a former Siemens executive who took over in 2011, insisted on a step-by-step approach to the restructuring, dubbed the Strategic Way Forward. He promised to deliver an update to the company's strategy in May but postponed it until after the divestment of the steel unit. A person familiar with the matter told *Activist Insight Monthly* that ThyssenKrupp will present a "refinement" of the existing strategy rather than a far-reaching portfolio optimization.

Cevian had been gradually losing confidence in the CEO, although it had not publicly called for his ouster. It had, however, criticized Hiesinger for his unwillingness to work

> “The support of workers, who have half the seats on the supervisory board, is important for any radical reorganization but not crucial because they can be overruled by shareholders and the chairman.”

on multiple fronts simultaneously. “It is not enough to take one step at a time if your competitors take many steps at the same time,” Cevian said in a March interview with German newspaper Handelsblatt. “The fundamental problem with conglomerates is that management cannot concentrate on all divisions at the same time.”

Elliott meanwhile sees “significant scope for operational improvement,” an indication its strategy may not diverge much from Cevian’s, although its demands may be more radical, judging by its previous campaigns and leaked bits about its intentions. The U.S. investor, which runs many European campaigns from its office in London, has reportedly urged the board to sack Hiesinger, equating his tenure to Germany’s national soccer team keeping the same coach despite consistent losses.

Break away

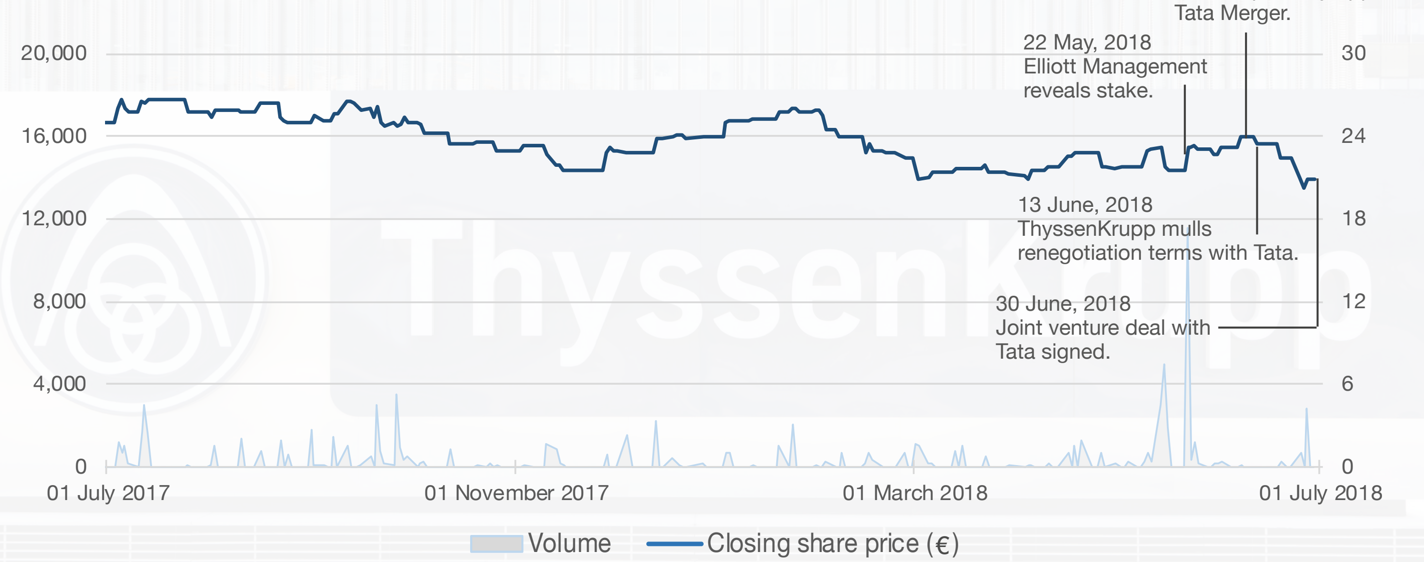
This discontent is not without merits. According to a mid-June report by **Morgan Stanley**, ThyssenKrupp’s margins have lagged peers by 250 basis points over the past 24 months. None of its four divisions - which include elevator technology, industrial solutions, material services and components technology - have beaten peers or their own long-term targets. Margins at the most profitable elevators division are 12%, three percentage points below what the company promised in 2013. Industrial solutions sports margins of just 2%, well below peers’ 6.9% and its own long-term target of 6.5%.

Meeting those targets could add 700 million euro to EBITDA and improve free cash flow, which has disappointed since 2007, the Morgan Stanley analysts said. **Barclays** is more pessimistic, arguing that the restructuring is costly and the separation of the steel unit will have a dilutive effect on cash flows and valuation, although it indicated that portfolio optimization may alter its opinion.

Cevian has a simple solution to improving margins. Each of the four divisions should be independent from headquarters and have latitude deciding their own future, including whether to merge with peers and buy or sell assets , according to the activist. It also maintains that a more radical approach is not out of the ordinary in Germany; Bayer, Daimler and Siemens are all mulling dramatic reorganizations. Siemens plans to trim its industrial divisions from five to three, while Daimler is on track to split into three separate entities with a holding company structure to increase shareholder value.

ThyssenKrupp has countered that Cevian’s thesis may be a precursor to a breakup, which is viewed negatively in Germany and will not be supported by employee representatives. A compromise may be difficult to achieve, but a successful resolution would be another step forward for European activism.

ThyssenKrupp’s share price performance



Resolution roundup

While governance proposals were among the most popular shareholder resolutions this proxy season, environmental and social suggestions received more stockholder support than in the past.

Shareholders of U.S.-based companies were more concerned with general governance enhancements this proxy season than in the past, according to data provider Proxy Insight, with a quarter of demands focused on improving shareholder rights.

Yet even with the increased focus on governance proposals, environmental and social resolutions have seen a wider reception among shareholders than in previous years.

Roughly 30% of shareholder proposals in the first half of 2018 demanded general governance improvements, up from 22% the same period the prior year. Specifically, 152 U.S.-based companies were subjected to general governance shareholder proposals year-to-date, representing more than half the total number of U.S. companies subjected to shareholder resolutions so far this year.

"General governance proposals have always been among the most popular because the rules of corporate governance are fundamental to how corporations operate and how power is shared," James McRitchie, a frequent filer of proposals, told *Activist Insight Monthly*.

By contrast, the percentage of environmental and social requests declined to 27% in the first half of 2018, down from 33% the same period last year. Only 114 companies were subjected to environmental and social resolutions this season, the fewest in that category over the past five years.

Regardless, environmental and social proposals saw greater support this proxy season, with 7% of proposals passed year-to-date compared to 3% in 2017. At gunmaker Sturm, Ruger & Company, nearly 69% of votes cast supported a report detailing efforts to mitigate harm associated with its products. Similarly, 53% of Ameren shareholders backed a proposal requesting an environmental report from the electrical company.

"I expect to see an increase in the future," McRitchie noted of successful environmental and social. "There's more to life than short-term returns. Reputation and social responsibility are factors that come into play."

Unlike with environmental and social resolutions, shareholders approved a smaller percentage of general governance proposals than in previous seasons – only 18%, down from 37% in the same period the previous year.

At Nuance Communications, 94% of shareholders backed a proposal to amend shareholders' right to call a special meeting, absent a management recommendation. Meanwhile, a proposal requesting permission to act by written consent won narrow support at Newell Brands. McRitchie said he thinks companies should consider resolutions whether they pass or not.

"These proxy proposals are early warnings," he said. "If companies listen, they may actually learn from these proponents."

"General governance proposals have always been among the most popular because the rules of corporate governance are fundamental to how corporations operate and how power is shared."

Upcoming events

Activist Insight Monthly highlights what to watch out for during July.

Date	Company/Event	Event type
10 July	Skytop Strategies: The Future of Corporate Reporting	Conference
Attendees will discover strategies to incorporate non-financial data like ESG into traditional reporting standards.		
16 July	Owens Realty Mortgage	AGM
Investors will vote to elect either a two-person slate nominated by Hovde Capital Advisors or Owens' CEO and another director.		
16 July	CSX	Earnings release
A chance for the railroad company to update investors on its long-term plan to increase profitability and streamline operations.		
17 July	LaSalle Hotel Properties	Earnings release
An opportunity for LaSalle to discuss its acceptance of Blackstone Group's bid over Pebblebrook Hotel Trust's offer.		
18 July	athenahealth	Earnings release
The first earnings release since CEO Jonathan Bush resigned might be an occasion for an update on athenahealth's strategic review.		
18 July	Mellanox Technologies	Earnings release
The Israeli chipmaker's first earning report since it settled a board fight with Starboard Value could help it to put the contest behind it.		
18 July	CNBC/Institutional Investor Delivering Alpha	Conference
Jim Chanos, Alex Roepers, and Alex Denner will pitch new investments.		
20 July	Rockwell Medical	AGM
Will shareholders support Richmond Brothers' call for declassifying the board after a court temporarily barred Rockwell's CEO from the company?		
24 July	Alexandria Minerals	AGM
Shareholders will vote on the election of three directors advanced by Alexandria's founder and former chief executive, Eric Owens.		
25 July	Kratos Defense & Security	Earnings release
This earnings release could see short seller Spruce Point Capital Management confirmed in its thesis that Kratos is overvalued.		

For more information on forthcoming conferences where Activist Insight may be present or speaking, visit a dedicated page on our website, available to subscribers and nonsubscribers alike: activistinsight.com/resources/events.

To have your event considered for listing, email press@activistinsight.com.

Activism ascendant

Steve Wolosky and Andrew Freedman, co-chairs of Olshan Frome Wolosky's Shareholder Activism & Engagement Practice Group, discuss withhold campaigns, entrenchment and the universal ballot with Activist Insight Monthly.

Let's start with Xerox. How impactful was the court's decision?

Andrew Freedman: We believe it's a very important decision, but time will tell whether it's going to be as impactful on shareholder activism as some may be thinking. Due to the complex, fact-specific nature of the case, it may be difficult for shareholders to convince other courts to reopen a nomination window based on the Xerox holding. Nevertheless, the Xerox case and its adoption of the Hubbard standard in Delaware represents a great win for activists and, under the right set of circumstances, could give an activist a second bite at the apple to nominate directors if a nomination deadline has already passed.

Steve Wolosky: Yes, it's a very important decision that every shareholder activist should study. But in addition to having the right set of circumstances you have to look at the applicable state. It would be foolish for someone to look at a court decision in New York or Delaware and assume Maryland or Washington is going to apply that logic. You just can't lose sight of the fact that some states are a lot less sympathetic to activists than others.

Were there any trends that surprised you this proxy season, compared to last year?

AF: Probably the most discussed trend last year was the targeting of CEOs and there's no single reason you can point to, but there just wasn't quite as much CEO-targeting this year. That explains in part why another trend emerged, which was more settlements and fewer contested votes because when you put a CEO's head on the chopping block there's not much middle ground.

SW: If you looked at the fall of last year – when you had proxy contests at ADP, Procter & Gamble and Deckers – and extrapolated for a full season, you would have expected there to be more high-profile contests going to a vote. But I think behind the scenes both companies and activists have realized what they should be doing and listened to what institutions were saying, "Hey, we don't really want you guys spending a hundred million dollars on a proxy contest." In some ways, watching those contests being fought out and going to a vote made it easier for other companies and activists to come to the bargaining table.

What have we learned about the universal ballot from this proxy season?

SW: I've always believed that the universal ballot will eventually play a larger role in deciding contested elections. But without standards it's ripe for manipulation by both sides. It's my belief that some of the advisors on the company's side have realized that having a universal ballot will allow them to potentially win more seats than they would win under a conventional two-card regime simply by how they position the contest.

AF: Everyone understands the virtues of a universal ballot and the ability it gives shareholders to mix and match their votes among all candidates. That being said, I don't think the current way advisory firms approach contests for control should necessarily apply when a universal ballot is used. Since you're not looking at a card to facilitate a block vote but rather individualized voting, I think there needs to be a different set of criteria for how to review recommendations on the candidates.

> Without being specific, we believe a number of companies have gone too far in their advance notice bylaws and it is a matter of time before the legality of the especially burdensome informational and questionnaire requirements are tested in court.

Was there anything linking the clearly more numerous withhold campaigns this year?

AF: I think withholds have surfaced as a tool primarily for that class of investors who don't necessarily hold themselves out as activists but who are becoming more willing to engage openly and actively at their portfolio companies. I don't think it's necessarily a fluke that we saw so many of them this year but in many respects the withhold campaign is a fallback. It doesn't have the teeth that an election contest has, yet can still serve as a very powerful referendum on shareholder dissatisfaction.

SW: It can also be a highly focused campaign because the quality of the activist's candidates does not become the issue – it's the incumbent you're targeting that's the issue. It can be a more tailored message, as Andy said, for those we call "reluctavists" who really don't want to run a campaign but want a serious issue addressed by the board.

What's the most egregious entrenchment device you've seen this season?

AF: One that comes to mind is the frivolous rejection of nominations. I'm not just talking about HomeStreet, but rather the idea of companies holding hyper-technical nomination deficiencies over the heads of nominating shareholders strictly for strategic defensive purposes. We are beginning to see a particular subset of company advisors trying to use the threat of invalidating a nomination on technical grounds as a leverage play, including by making it as burdensome and expensive as possible for shareholders to nominate and creating openings for a company to try to allege that certain of the information requirements went unfulfilled. Playing games with the shareholder nomination process is an affront to corporate democracy, and boards should think twice before following the advice of overly-aggressive defense counsel.

SW: The ability to nominate directors is a fundamental right of all shareholders. Boards requesting reasonable information is fine. But I think some people have tried to push that envelope because it's a way for a company to make it more expensive for an activist to run a contest. In the early days of activism, a nomination letter would be around 10 pages long – now, especially with the advent of onerous nominee questionnaires, a nomination package could be hundreds of pages long. Without being specific, we believe a number of companies have gone too far in their advance notice bylaws and it is a matter of time before the legality of the especially burdensome informational and questionnaire requirements are tested in court. We look forward to testing their validity in the right circumstances.

Do you expect to see more activism on environmental, social, and governance topics?

AF: I do. Specific investments or even specific funds formed for the purpose of pursuing ESG – I think you'll see more of it. A company's culture is part of a holistic overview of whether it is properly functioning and performing at a high level. It all goes together. We're seeing more focus on ESG because people understand how some of these other less-tangible components fit into the bigger picture of a company's structure and how they impact performance.

Short news in brief

A roundup of developments in activist short selling in June.

Ramesh Tainwala resigned as the CEO of Samsonite, days after Blue Orca Capital called for his departure. Soren Aandahl's short selling vehicle accused the executive of lying about his education and alleged that the luggage maker used aggressive accounting practices to artificially increase its margins.

Spruce Point Capital Management accused Momo of acquiring Tinder-like app Tantan to disguise slowing revenue, of selectively disclosing operating businesses and enforcement actions, and of misleading investors about its financing plans. The activist said the stock had a 30-50% downside.

Ryan Selhorn stepped down from his position as MediciNova's chief financial officer, four months after Art Doyle targeted the biopharmaceutical company. In February, the short seller accused MediciNova of hiding important data that showed its multiple sclerosis treatment was ineffective.

Shares in MiMedx tumbled 30% on news that the medical equipment company must restate its financial results for the last six years. The update came four months after MiMedx launched an internal accounting probe, prompted by short seller accusations of channel-stuffing. The company's CEO and COO subsequently resigned, sending the stock to six-year lows.

Batman Research accused Care.com of facilitating at least five deaths and dozens of child abuse crimes by failing to screen caregivers on its online babysitter marketplace. In addition, the short seller said the site consistently bills users for unused services, even after they cancel their accounts.

Shares in Blue Sky Alternative Investments dropped 21% on news that the firm will only focus on three business units following the commencement of its internal review. Blue Sky launched the probe after Glaucus Research accused the fund of misleading accounting.

Muddy Waters Research accused China-based TAL Education of overstating its profits since at least fiscal year 2016. The tutoring service denied the allegations, adding that its board intends to review the short seller's claims and consider "appropriate actions" to protect shareholder interests.

Citron Research said Netflix - the most vulnerable of the FANG (Facebook, Amazon, Netflix, Google) stocks - will face increased competition following the merger of AT&T and Time Warner.

Cannell Capital reiterated its belief that investors should sell Avid Technology stock, while adding that the company's debt is safe to buy. The occasional short seller also noted that the company's recent quarterly results missed analyst estimates.

Tesla sued a former employee for allegedly stealing gigabytes of data and writing computer code to systematically export the data to outside parties. Chairman and CEO Elon Musk said, "there are a long list of organizations that want Tesla to die," including short sellers "who have already lost billions of dollars." Greenlight Capital and Jim Chanos are among the most prominent activists to predict the automaker's downfall.

Greece-based jewelry maker Folli Follie has said that a financial audit following Quintessential Capital Management's May presentation on the stock will be concluded in August, with a full review of the company's 2017 financial statements coming after.

The Street Sweeper published its third negative report against TransEnterix after eight months of silence, claiming the surgical robot company is promoting its stock while suffering from fierce competition.

Spruce Point Capital Management accused Chinese video streamer Momo of investing in illegal Chinese online gambling operations. The group denied the allegations a day later, claiming the short seller's report was erroneous and misleading.

New short investments

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

<table>
<tr><th>Activist</th><th>Company</th><th>HQ</th><th>Date announced</th><th>Primary allegation(s)</th></tr>
<tr><td>Spruce Point Capital Mgmt</td><td>Momo</td><td></td><td>June 27, 2018</td><td>Bubble</td></tr>
<tr><td colspan="5">Spruce Point said it found “material inconsistencies” between Momo’s SEC and local filings, adding that acquisitions were made to hide slowing growth.</td></tr>
<tr><td>White Diamond Research</td><td>Generation Next</td><td></td><td>June 27, 2018</td><td>Product Ineffective</td></tr>
<tr><td colspan="5">White Diamond called Generation Next a “slam dunk” short idea, noting that the company is burning cash while its business is unsustainable.</td></tr>
<tr><td>Absurd Research</td><td>Shopify</td><td></td><td>June 26, 2018</td><td>Other overvaluation</td></tr>
<tr><td colspan="5">Absurd said Shopify has short average customer lifetime, although it admitted underestimating the exact data.</td></tr>
<tr><td>Citron Research</td><td>PolarityTE</td><td></td><td>June 25, 2018</td><td>Major business fraud</td></tr>
<tr><td colspan="5">Andrew Left accused PolarityTE of premeditated securities fraud by failing to disclose that a patent would likely be rejected.</td></tr>
<tr><td>The Friendly Bear</td><td>Conduent</td><td></td><td>June 22, 2018</td><td>Other overvaluation</td></tr>
<tr><td colspan="5">The short seller claimed the Xerox spinoff faces several near-term risks, including a Texas lawsuit demanding $2 billion Indent.</td></tr>
<tr><td>Checkmate Research</td><td>Credit Corp Group</td><td></td><td>June 20, 2018</td><td>Other illegal</td></tr>
<tr><td colspan="5">Checkmate accused the Australian debt buyer of attempting to exploit a loophole in Australian law to avoid regulatory scrutiny and access cheap bank funding for its payday lending business, which Credit Corp calls small amount credit contracts.</td></tr>
<tr><td>The Street Sweeper</td><td>Galectin Therapeutics</td><td></td><td>June 15, 2018</td><td>Medical effectiveness</td></tr>
<tr><td colspan="5">The short seller noted the “obscene amounts of stock” sold by insiders, which it took as an indication that executives and directors have lost confidence in the company.</td></tr>
<tr><td>Muddy Waters Research</td><td>TAL Education Group</td><td></td><td>June 13, 2018</td><td>Accounting fraud</td></tr>
<tr><td colspan="5">Carson Block’s short selling entity accused TAL Education of overstating its net income since at least fiscal year 2016.</td></tr>
<tr><td>White Diamond Research</td><td>Viveve Medical</td><td></td><td>June 12, 2018</td><td>Other overvaluation</td></tr>
<tr><td colspan="5">White Diamond predicted Viveve would miss annual revenue guidance after a “huge miss” in the first quarter of 2018.</td></tr>
<tr><td>Spruce Point Capital Mgmt</td><td>Healthcare Trust of America</td><td></td><td>June 01, 2018</td><td>Other overvaluation</td></tr>
<tr><td colspan="5">Spruce Point said Healthcare Trust was likely manipulating quarterly profit metrics and margins.</td></tr>
<tr><td>Edward Vranic</td><td>Viking Therapeutics</td><td></td><td>June 01, 2018</td><td>Other overvaluation</td></tr>
<tr><td colspan="5">The short seller predicted dilution for stockholders, noting Viking’s share count has more than doubled over the past year.</td></tr>
</table>

Dining out

Kynikos Associates' Jim Chanos is bearish on restaurant stocks, saying the separation of brands from franchisees has inoculated several companies from a tougher economic environment.

Dunkin' Brands (top) and Restaurant Brands International (bottom)

Sector - Services	Market cap - $ 5.7B (mid cap)	Exchange - NASDAQ	Ticker: DNKN	HQ - Canton, MA
Sector - Services	Market cap - $19B (large cap)	Exchange - TSX	Ticker: QSR.TO	HQ - Oakville, Canada

On April 26, Jim Chanos told CNBC he had been short a basket of restaurant stocks for "about a year," among them Dunkin' Donuts' parent company Dunkin' Brands, and Restaurant Brands – the owner of the Burger King and Tim Hortons franchises.

Chanos did not respond to *Activist Insight Monthly*'s requests to expand on his first public positions since September. Yet the outlines of his thesis are clear enough. "You can't have a situation where the [franchisees] are struggling and the parent is profiting. That just doesn't work over time," he said. Falling or slowing sales and aggressive low-margin expansions would soon cap the payments available to franchise-owners.

> "For those hoping to extract yet more value from the sector, last year saw the highest level of activity on record."

About a month later, a bankruptcy at Applebee's operator RMH Franchise Holdings caused some pain for the casual dining chain's parent Dine Brands. Yet there remains skepticism. Unlike Dine Brands, Restaurant Brands and Dunkin' Brands' stocks have risen since Chanos went public and outperformed the S&P 500 Index. Carrols Restaurant Group, the largest operator of Burger King franchises, hit an eight-month low days after Chanos' comments; since then, it has come roaring back.

Moreover, Sara Senatore, a restaurants analyst for Bernstein, said in an interview with *Activist Insight Monthly* that franchisees generally seem to be in good health. "Right now, it's still a pretty good operating environment such that restaurants are producing pretty good cash flows," she said, adding that while demand was always foremost when it comes to the industry's prospects, near-term inflationary pressures seemed to be subsiding.

If the war between the brand owners and the franchisees does not yet seem to have reached Chanos' apocalyptic vision, the famed-short seller can still point to valuations at record absolute highs. "We've had this dichotomy now of restaurant stock multiples going higher, higher, and higher, as restaurants themselves have struggled," Chanos argued.

Indeed, in equity research published on the same day as his interview, Wells Fargo analysts said Dunkin' Brands' "premium valuation" was "challenging to justify" in the current environment. (Without backing away from that assessment, the bank raised its price target in early June to account for a buyback that will boost earnings per share.)

On Restaurant Brands, Wells Fargo's analysts were more ambivalent, saying both bulls and bears could be emboldened by the company's first quarter, while activist

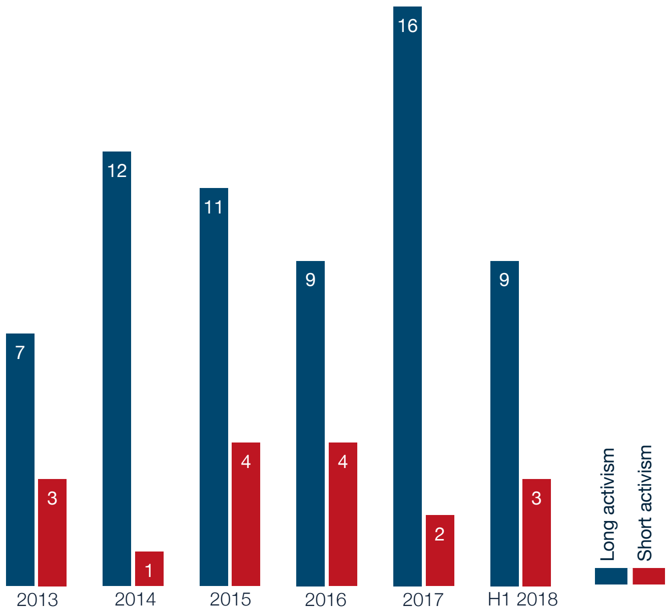
“Right now, it’s still a pretty good operating environment such that restaurants are producing pretty good cash flows.”

investor **Pershing Square Capital Management** called the stock “inexpensive” in May. **Chipotle**, another restaurant stock owned by Bill Ackman’s fund that Chanos is not short because it owns its restaurants, is on a tear, up 61% year-to-date, recovering losses from 2017.

While Kynikos is known for being ahead of the market on some major calls, short activists have generally shied away from the space, targeting an average of three restaurant and specialty eatery companies each year between 2013 and 2017.

Interest from long activists has often spiked when short activists were conspicuous in their absence, as in 2014 and last year. In the first half of 2018, nine restaurants and specialty eateries were targeted by long activists, just one behind the half-year record. And while much of the space has been picked over, activists could set their sights higher still. In May, Senatore hosted a conference call responding to a clamor over whether an activist could create value at Starbucks. High costs, sluggish growth and underleverage suggest that, despite a price-to-earnings-ratio of 28, one could.

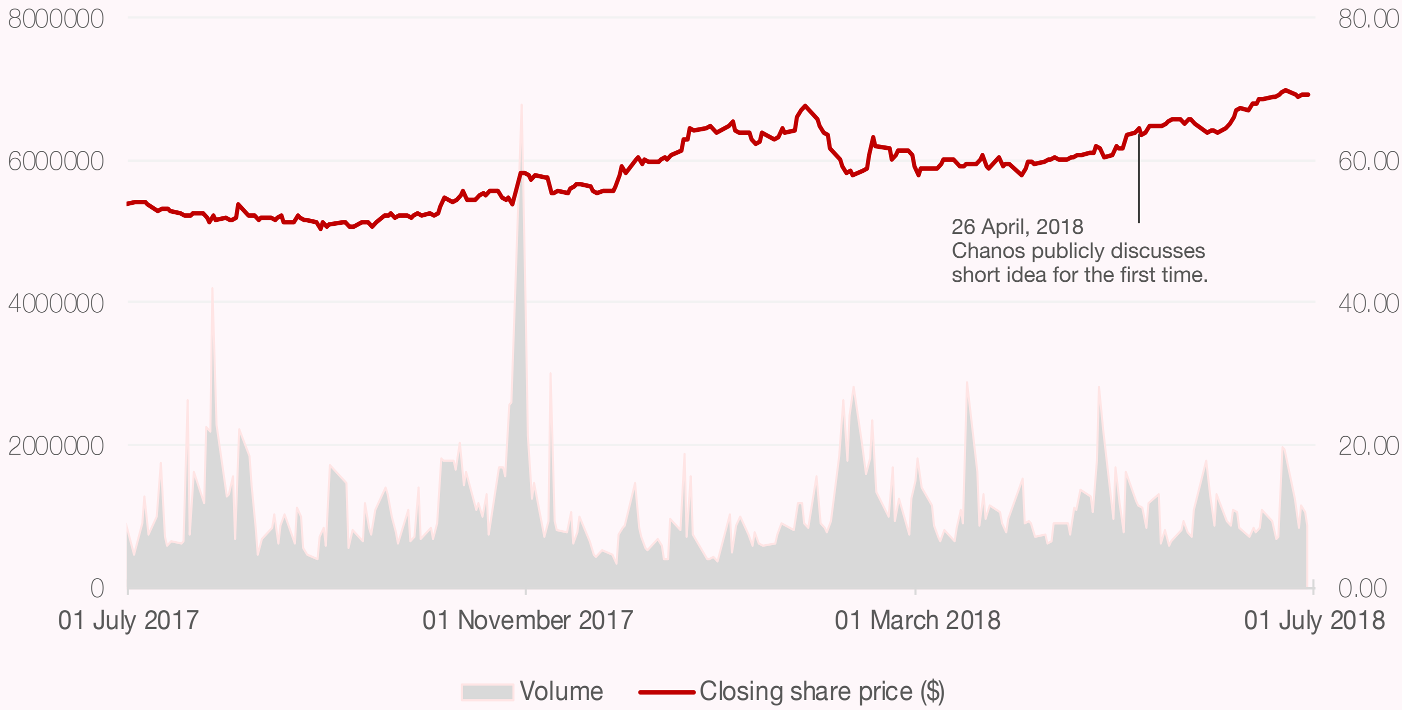
Shareholder activism and activist short selling restaurant targets



Right bar - Number of companies that operated in the restaurant and specialty eatery industries that were subjected to activist short campaigns each year.

Left bar - Number of companies that operated in the restaurant and specialty eatery industries that were publicly subjected to shareholder activist demands each year.

Dunkin’ Brands’ share price performance



Roadmap to success

Jay Frankl, Senior Managing Director at FTI Communications, on shareholder engagement in an age of activism, sustainability and M&A.

Which countries are most susceptible to activism right now?

Portions of Europe and Asia, countries like Japan and France, are attracting some shareholder activism activity. The common denominator is relatively low valuations in markets with good disclosure regimens and shareholder-friendly corporate governance rules. Australia, for example, has a legal and regulatory environment that enables activists to influence their target companies. Although the U.S. remains the most fertile ground for shareholder activism, high valuations and competition among funds that engage in shareholder activism has forced activist funds to consider companies in other countries.

If a company is uncomfortable making a big strategic decision in the current climate, how can it communicate that without attracting an activist?

In this environment, where a single tweet can send share prices tumbling, the most effective approach is to maintain an ongoing dialogue with large investors, which includes discussion of both strategies that are being pursued and strategies that are not being pursued. Shareholder engagement is a constant process, requiring management to provide their roadmap to success, key metrics along the way, and risks they are prepared to face. This fosters long-term buy-in from shareholders that are in alignment with the board's vision. This must include the current long-term strategy and steps to execution, but must also include what has been considered and not acted upon, and an explanation as to why.

What governance topics are important for companies to emphasize right now?

A company's governance guidelines should be written such that it promotes the growth in long-term value for shareholders. Great corporate governance begins with transparency. Influential investors are increasingly adding environmental, social, and governance (ESG) factors to investment models and screens; aspects of which include board diversity, executive pay and gender pay-gap. Additionally, investors are looking for the incorporation of these issues, particularly the impacts of stewardship, within investment communications.

Hostile M&A seems to have returned. How can targets best defend themselves?

The best way for companies to avoid hostile M&A is to engage with qualified and interested suitors so as not to be viewed as entrenched. That does not mean that every suitor is treated alike. When hostile M&A occurs, it typically stems from personality conflicts among CEOs, culture clashes or a speculative value proposition from the aggressor. If the bidder includes equity in its offer, which is often the case, the target needs to conduct comprehensive diligence on the acquirer and its stock. This must include, at a minimum, a close examination of the quality of the suitor's accounting and disclosures, its quality of earnings, its products/services and its business model. These efforts may identify weaknesses or irregularities that the bidder cannot or will not explain, which is reason enough to deny the bid.

How important is the activist's track record in a campaign today?

An activist's track record will demonstrate to shareholders whether that activist protected shareholders from downside risk after its investment horizon or, alternatively, if it acted recklessly and irresponsibly in its quest for short-term gains. However, if your company is targeted by an activist with a poor track record, this is not sufficient rationale to ignore the activist. It is usually in the best interest of management to be open to shareholder perceptions and ideas, particularly from large shareholders.

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EXPERTS WITH IMPACT

Make PPL boring again

Elliott Management's latest campaign at Sempra Energy, its third in partnership with Bluescape Energy, has put a focus on the entire utility industry. Ripe for a shake-up, Pennsylvania-based PPL may be the next utility firm to face an activist investor, Activist Insight Vulnerability predicts.

PPL

Sector - Utilities | Market cap - $23.5B (large cap) | Exchange - NYSE | Ticker: PPL | HQ - Allentown, PA

Cherished by income investors for stable dividends and low volatility, utility companies are not forgiven when their quest for growth backfires. Paul Singer's Elliott Management and Bluescape Energy have created a niche in the sector predicated on a single message: divest noncore assets and focus on regulated operations. After wild success with NRG Energy, the duo pushed FirstEnergy in January to transition to a "fully regulated utility company." More recently, Elliott and Bluescape sought to break up $30 billion market-cap electricity and gas company Sempra Energy, their biggest utility target so far, and the jury is out on whether their campaign will succeed.

Pennsylvania-based PPL, a $23.5 billion conglomerate with operations spanning two continents, may be next in line. According to *Activist Insight Vulnerability*, PPL is badly lagging peers in terms of performance, valuation, and total shareholder return (TSR). PPL's price-to-EBITDA ratio is 4.9, compared to over 7 for peer companies. On a TSR basis, PPL has underperformed over all relevant periods, with five-year returns lower by 36 percentage points than peers, which include NRG Energy and Sempra, at an average of 19%. The three-year TSR is positive 13%, but still well below its rivals' 37%.

PPL has three unrelated businesses: a legacy electricity distribution business in Pennsylvania, an electricity production and distribution system in Kentucky, and another distribution unit in the U.K., called Western Power Distribution. Although the U.K. business is currently the most profitable – responsible for more than half of net income – it presents the most risk. Brexit and an unstable political climate in the U.K. provide uncertainty, with nationalization sentiments rising in the opposition Labour Party.

PPL's U.K. earnings had already nearly halved in dollar terms in 2016 after the British pound fell dramatically following the Brexit referendum. Further potential for poor earnings and growth prompted Goldman Sachs in March to lower Western Power's valuation from $15 per share to $11.

PPL's corporate governance

PPL's board may not have a shareholder mindset, owning less than 1% of the company. *Activist Insight Governance* indicates the company may need fresh thinking. Except for Phoebe Wood, no director has been added in the past four years. Rodney Adkins, a former IBM executive who was appointed four years ago, received more than 20% of votes against his election at the last annual meeting in mid-May, likely because he serves on four other boards. Spence himself faced a relatively high level of discontent, with 3.4% of the shares voted against him. A further red flag is that lead independent director, John Conway, 72, is the longest-tenured board member, appointed 18 years ago.

> “Divesting the U.K., either in part or whole, continues to be value destructive due to significant tax leakage and some other issues, and we’ve got a fairly long history of this U.K. business being under a premier regulatory jurisdiction.”

CEO William Spence says those challenges are temporary and the U.K. unit will return to prosperity as “uncertainty fades,” but he may be overly optimistic. The Goldman Sachs analysts argue the U.K. business “may endure a couple of unconventional headwinds” stemming from regulatory changes in the next years. Ofgem, the U.K. electricity regulator, will introduce a new framework for price controls in 2023, potentially lowering Western Power’s profitability. Indeed, Goldman Sachs wrote the new Ofgem regulations could create “an earnings cliff” after 2023.

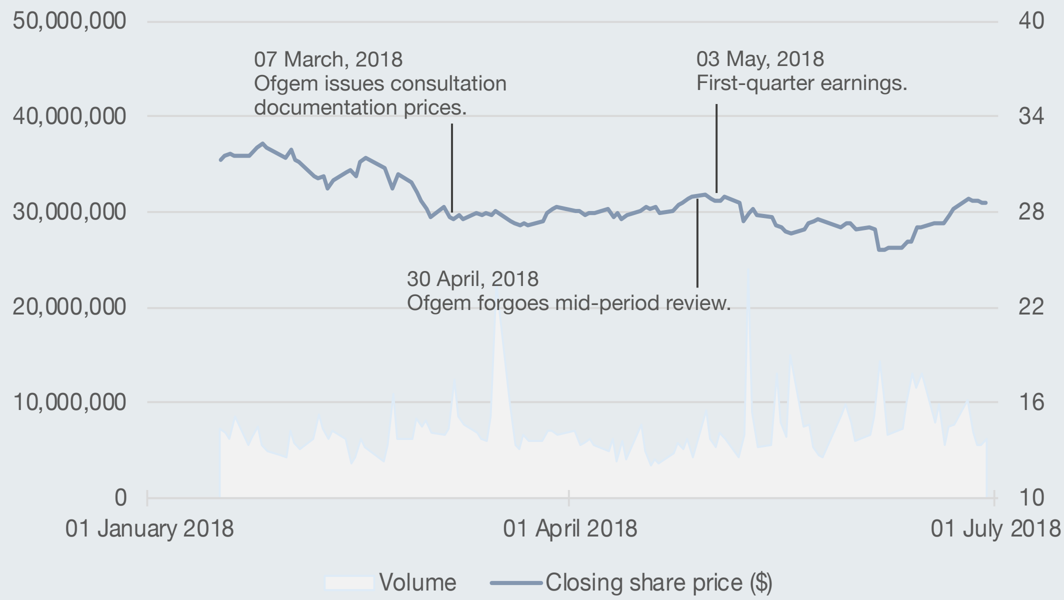
Divesting the U.K. business now would help the company reduce long-term overall risks, such as a $20 billion debt load and the need for several equity raisings in the coming years. PPL could also reinvest closer to home, where it has almost a century of expertise. A further potential slimdown could see the company sell its electricity producing business in Kentucky, given its low profitability and heavy reliance on coal. Steps in that direction were made in 2015, after the firm spun off its money-losing energy generation business and combined it with Riverstone Holdings.

The new company would improve focus on the legacy Pennsylvania business. While net income at both the Kentucky and U.K. businesses has dropped in the past three years, Pennsylvania posted impressive growth rates, with net income rising by 42% in the three years through 2017 thanks to higher revenues and lower costs.

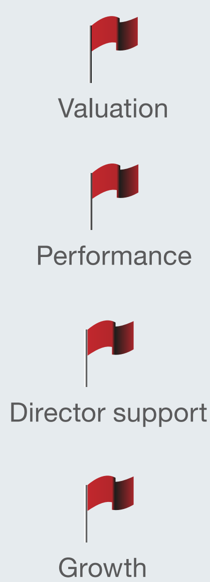
Spence, who was promoted from the chief operating officer role in 2011 shortly after the U.K. business was acquired, has acknowledged that Western Power is undervalued, but made clear a sale was off the table. “Divesting the U.K., either in part or whole, continues to be value destructive due to significant tax leakage and some other issues, and we’ve got a fairly long history of this U.K. business being under a premier regulatory jurisdiction,” he said on a recent conference call.

Yet the potential rewards may be hard to overlook. The precedents set by Elliott and Bluescape should serve as a warning shot to PPL. For investors, simpler is better.

PPL’s share price performance



PPL’s vulnerability to an activist campaign



New investments

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

<table>
<tr><th>Activist</th><th>Company</th><th>HQ</th><th>Date notified</th><th>Stake</th></tr>
<tr><td>Elliott Management</td><td>RPM International</td><td></td><td>June 28, 2018</td><td>Unknown</td></tr>
<tr><td colspan="5">Elliott gained two seats on RPM’s board as the specialty coatings company formed a new operating improvement committee.</td></tr>
<tr><td>Q Investments</td><td>Weatherford International</td><td></td><td>June 21, 2018</td><td>Unknown</td></tr>
<tr><td colspan="5">Q Investments urged the oilfield services company to explore all strategic alternatives, including a sale.</td></tr>
<tr><td>Resurgent Capital</td><td>Western Troy</td><td></td><td>June 21, 2018</td><td>Unknown</td></tr>
<tr><td colspan="5">Resurgent advanced a four-person slate at the Canadian mining and exploration company.</td></tr>
<tr><td>James Dahl</td><td>Pope Resources Delaware</td><td></td><td>June 18, 2018</td><td>11.8%</td></tr>
<tr><td colspan="5">The activist called on the real estate management company to sell itself or convert into a real estate investment trust.</td></tr>
<tr><td>Oasis Capital Management</td><td>Idemitsu Kosan</td><td></td><td>June 15, 2018</td><td>Unknown</td></tr>
<tr><td colspan="5">The Hong Kong-based activist sought a merger between Japan’s Idemitsu Kosan and a competitor.</td></tr>
<tr><td>GTT Global Opportunities</td><td>Baraka Energy & Resources</td><td></td><td>June 14, 2018</td><td>5.2%</td></tr>
<tr><td colspan="5">A group of shareholders aims to replace the entire board of the Australian oil and gas explorer.</td></tr>
<tr><td>Spectre Capital</td><td>MEC Resources</td><td></td><td>June 14, 2018</td><td>Unknown</td></tr>
<tr><td colspan="5">Spectre criticized a group of dissident investors seeking control of MEC’s board, urging fellow shareholders to support the incumbents.</td></tr>
<tr><td>Key Colony Fund</td><td>Medallion Financial</td><td></td><td>June 14, 2018</td><td>5.3%</td></tr>
<tr><td colspan="5">Key Colony met with Medallion’s executives to discuss the company’s “strategic direction and operations,” but does not have a plan or proposal yet.</td></tr>
<tr><td>Goff Capital</td><td>Contango Oil & Gas</td><td></td><td>June 13, 2018</td><td>18.3%</td></tr>
<tr><td colspan="5">Goff intends to influence Contango’s management and operations but has yet to reveal its plans.</td></tr>
<tr><td>Elliott Management/Bluescape</td><td>Sempra Energy</td><td></td><td>June 11, 2018</td><td>4.9%</td></tr>
<tr><td colspan="5">The activists are pushing Sempra to refresh its board and conduct a strategic review, calling for the appointment of six new directors to the 14-person board.</td></tr>
<tr><td>Deutsche Balaton</td><td>Biofrontera</td><td></td><td>June 11, 2018</td><td>15.9%</td></tr>
<tr><td colspan="5">Deutsche Balaton launched a campaign to remove six company directors and advanced a tender offer to buy 6.3 million Biofrontera shares.</td></tr>
<tr><td>Sententia Capital Management</td><td>Schmitt Industries</td><td></td><td>June 11, 2018</td><td>6.6%</td></tr>
<tr><td colspan="5">Sententia pushed for a sale of Schmitt and plans to advance a slate of nominees for election to the board.</td></tr>
<tr><td>Starboard Value</td><td>Web.com</td><td></td><td>June 08, 2018</td><td>9.4%</td></tr>
<tr><td colspan="5">Weeks after Starboard disclosed a stake, Web.com sold itself to Siris Capital. Starboard never revealed its plans.</td></tr>
</table>

Activist	Company	HQ	Date notified	Stake
Manus Vermogensverwaltung	Albis Leasing		June 08, 2018	32%
The dissident teamed up with Christoph Zitzmann to replace Albis' chairman and CEO with two director nominees.				
Christoph Zitzmann	Albis Leasing		June 08, 2018	10%
Zitzmann and Vermogensverwaltung also demanded Albis exclude subscription rights from capital increases.				
Crestview Partners	WideOpenWest		June 07, 2018	31.3%
Crestview gained three seats on the cable operator's board after announcing a holding above a threshold of 22.5%.				
Carl Icahn	Allergan		June 06, 2018	0.1%
Icahn reportedly built a small stake in Allergan, which is under pressure to appoint an independent chairman following pressure from Appaloosa Management and Senator Investment Group.				
Shah Capital Management	Aegean Marine Petroleum		June 06, 2018	14.2%
Shah said it plans to engage with Aegean's board and management, noting that it may present proposals to the company.				
Denali Investors	Donnelley Financial Solutions		June 06, 2018	Unknown
Denali Investors urged the company to form a special committee to pursue strategic alternatives.				
HealthCor Management	ReShape Lifesciences		June 05, 2018	11.5%
HealthCor gained the right to nominate two candidates to ReShape's board after entering into a voting and standstill agreement with the company.				
Thorney Investment Group	Encounter Resources		June 04, 2018	5.5%
The Australian activist has yet to reveal its plans for Encounter Resources.				
Taiyo Pacific Partners	Sosei Group Corporation		June 01, 2018	5.0%
Taiyo said it plans to advance "important proposals" at the biopharmaceutical company but did not elaborate any further.				
Concerned Shareholders	Global Resources Investment		June 01, 2018	Unknown
Concerned shareholders requisitioned a meeting at the closed-end fund in the hopes of electing a director to the board.				

Goff Capital intends to engage Contango's board on the company's operations, assets, business strategy, corporate governance, and/or financial condition, according to a regulatory filing.

News in brief

A roundup of developments in activist investing in June.

North America

Athenahealth initiated a strategic review after CEO Jonathan Bush stepped down amid allegations of historical misconduct. Elliott Management has offered to take the firm private.

Elliott Management and Bluescape Resources joined forces to pressure Sempra Energy to refresh its board and conduct a strategic review.

Apple unveiled a new application aimed at limiting screen time for users and providing enhanced parental control tools five months after Jana Partners and California State Teachers' Retirement System (CalSTRS) called on the technology giant to play a leading role in tackling child smartphone addiction.

Rent-A-Center agreed to sell itself to private equity firm Vintage Capital Management one week after ending a strategic review without a transaction. The sale capped an 18-month campaign by Engaged Capital, which pushed for a transaction and took control of the board.

Fujifilm sued Xerox for more than $1 billion, criticizing the printer manufacturer for abandoning a merger and submitting to pressure from activist investors Carl Icahn and Darwin Deason.

After winning five seats on the board of SandRidge Energy, Carl Icahn confirmed that he will not pursue a takeover of the company.

Shareholders of AmTrust Financial Services approved a going-private transaction advanced by the controlling Karfunkel-Zyskind family after Carl Icahn supported a revised bid of $14.75 per share in cash.

Land and Buildings won a seat on the board of Taubman Centers, marking an end to its two-year campaign. However, an advisory proposal from the activist on collapsing the REIT's dual-class stock was defeated.

Conagra Brands bought Pinnacle Foods in a cash and stock deal worth $10.9 billion, including debt. Jana Partners and Third Point Partners each had positions in both parties.

The CEO of Iconix Brand resigned two weeks after Sports Direct International nominated a four-person slate for election to the company's board.

Envision Healthcare sold itself to private equity firm KKR for $46 per share, concluding a strategic review that lasted about seven months. The company launched a review shortly after Starboard Value indicated in October that a sale would be a good way to improve shareholder value.

Following a successful withhold campaign at USG, Gebr. Knauf acquired the firm for $44 per share. Warren Buffett's Berkshire Hathaway supported the merger.

Supervalu proposed reorganizing its structure by separating its wholesale and retail operations, converting itself into a holding firm, and increasing its strategic and financial flexibility. The announcement came amid a proxy contest with Blackwells Capital, which accused the board of entrenchment and bad faith.

Xerium Technologies will sell itself to Andritz for $13.50 per share in cash. The move came two months after Barington Capital nominated two candidates for election to the board and called for a strategic review of alternatives.

AllianceBernstein discussed plans for activist-like engagement with portfolio companies in an interview with *Activist Insight Online.* The asset manager is looking to articulate its views more clearly, as is fellow active investor T. Rowe Price, which swore off requests for activists in June.

After collaborating with Elliott Management, RPM International formed an operating improvement committee and added two new independent directors to its board. The company plans to conduct a review to focus on operational and financial initiatives to create shareholder value.

Europe

Trian Partners was reported to be meeting investors to discuss raising a 1 billion pound U.K.-listed fund to target a British or European company. The $12.5 billion activist once ran a campaign at confectioner Cadbury before its acquisition by Kraft.

Oasis Management sought to replace the CEO of Premier Foods, blaming the executive for the U.K. food manufacturer's "persistent shareholder value destruction, poor financial performance, consistent missed targets, … lack of strategy and weak corporate governance."

> "Oasis Management sought to replace the CEO of Premier Foods, blaming the executive for the U.K. food manufacturer's persistent shareholder value destruction."

Stobart fired Andrew Tinkler from its board after the dissident director announced his intention to replace the firm's chairman with entrepreneur Philip Day. The British transportation company sued Tinkler for breach of fiduciary duty and said his actions threatened to destabilize the firm.

Britain's secretary of state for culture, media, and sport said he would bless Twenty-First Century Fox's acquisition of broadcaster Sky if Sky News was divested to The Walt Disney Company. The deal also gained U.S. antitrust approval.

Disney will buy Sky News to allow Twenty-First Century Fox's takeover of parent company Sky to take place.

Carl Icahn built a stake in Allergan days after Appaloosa Management and Senator Investment Group pushed the Botox maker to separate its chairman and chief executive roles. The duo also demanded Allergan replace at least two directors and upgrade management personnel in critical operating units.

Whitbread said it was making progress on its plan to separate coffee chain Costa and hotels business Premier Inn after an executive pay scheme suggested it was considering selling one of the businesses. Elliott Management and Sachem Head Asset Management pushed for the split.

Brent Saunders has survived Icahn twice before. Will he a third time?

Odey Asset Management sought a leadership overhaul at Tungsten due to growing frustration over the electronic invoicing group's poor performance. Odey aims to replace both the chairman and CEO with its own candidates.

Greek construction company Ellaktor was gearing up for a board battle following the resignation of its former Chairman Anastasios Kallitsantsis and Vice Chairman Dimitrios Kallitsantsis, who want to remove the other board members.

Petrus Advisers withdrew its board nominees at Austria-based brick producer Wienerberger at the last minute. The company said Petrus would contribute to the director selection for the next annual meeting.

Caius Capital urged UniCredit investors to pressure the Italian lender to convert about 3 billion euros of instruments into common shares. The activist claimed some assets were incorrectly classified as top-quality equity, adding that the conversion would bolster the bank's capital.

Swedish activist investor Cevian Capital agreed to hold its investment in Veoneer, an Autoliv spinoff, for a period of nine months following the transaction's completion in late June.

A group of concerned shareholders is working to persuade investors of Takeda Pharmaceuticals to vote against the company's proposal to approve an issue of new stock to help fund the Shire takeover. Takeda proposed acquiring its Irish peer for $30.33 per share in cash, dealing a victory to Sachem Head Capital Management, which had pushed Shire to sell or spin off several divisions.

Rest of the world

Mellanox Technologies settled a battle for board control with **Starboard Value**. The Israeli chipmaker agreed to appoint two Starboard nominees and a mutually agreeable independent director to its board.

Fortis Healthcare initiated a fresh bidding process following pressure from **Jupiter Asset Management** and **East Bridge Capital** to consider additional acquirers.

Shares in Japan's **Toshiba** rose 12% after the company unveiled a 700 billion yen share buyback, which was influenced by a host of activist investors including **Oasis Management**, **Argyle Street Management**, and **King Street Capital Management**. The move came weeks after the technology giant sold its loss-making PC unit to Sharp for $36 million.

Australia-listed **China Dairy** indicated that the second meeting requisition made by former CEO Youliang Wang was valid. Wang, who is seeking to replace four directors, requested the meeting take place in China.

RMB Capital launched a proxy campaign at Japanese entertainment company **Faith** after its request for a board seat was rebuffed. The activist said its proposed nominee will "monitor the incumbent executive team from the viewpoint of minority shareholders" and "enhance the corporate governance system."

> "RMB Capital launched a proxy campaign at Japanese entertainment company Faith after its request for a board seat was rebuffed."

Argyle Street Management said its engagement with **TTK** led to the sale of the Japanese telecommunications contractor to Mirait Holdings. The activist previously pushed TTK for business growth in Asia as well as improvements in capital efficiency and corporate governance.

Oasis Management failed to force a dividend hike at Japan-based **Alpine Electronics** as shareholders voted down the activist's proposal and nominees. Oasis launched its campaign in October, contending suitor Alps Electric was underpaying for Alpine.

BHP received a host of offers for its U.S. shale assets but said it may not complete the sale before early 2019. The Anglo-Australian miner targeted by **Elliott Management** said it is considering whether to start a second round of the bidding process.

China Dairy claimed that a second meeting requisition made by Youliang Wang was valid.

Sandon Capital won a board seat at **Smiths City** and saw **Fleetwood Corporation** finally sell its caravan business, 20 months after first publicly demanding the divestment. "They have now sold two of the three business we called on them to sell," Gabriel Radzyminski told *Activist Insight Online*.

In a landmark achievement for shareholder activism in South Korea, **KB Asset Management** won a legal fight against **Golfzon**'s parent company, preventing a transaction on unfavorable terms for minority shareholders.

KB Asset Management has called on South Korean department store **Gwangju Shinsegae** to increase shareholder payouts and improve corporate governance.

Australia's **Mineral Deposits** recommended shareholders reject a takeover offer from French miner **Eramet**, saying an updated bid of AU$1.75 per share still undervalues the firm.

Platform Partners Asset Management is seeking to oust the external manager of **Macquarie Korea Infrastructure Fund** or reduce its fees by a tenth.

Chinese biopharmaceutical company **Sinovac Biotech** has filed litigation against **Sinobioway Consortium**, accusing the investor – which is affiliated with Sinobioway Biomedicine – of conspiring with shareholders before the company's annual meeting in February.

Most read

View a selection of the most-read news stories from Activist Insight Online over the last month.

Litt elected to Taubman board

Thursday May 31, 2018

Activists don't have it easy, Singer says

Thursday June 07, 2018

Elliott eyes Sempra shakeup

Tuesday June 12, 2018

Icahn wins five seats on SandRidge board

Wednesday June 20, 2018

In a Changing Landscape

Ultimate Shareholder Voting Intelligence

Proxy Insight

Monthly summary

Activist targets by geography.

Issuer HQ location	June 2018	H1 2018	H1 2017
U.S.	31	367	332
Canada	9	57	37
U.K.	5	25	25
Australia	7	42	30
Europe (excluding U.K.)	8	52	76
Asia	6	60	48
Other	1	7	11
TOTAL	**67**	**610**	**559**

Companies publicly subjected to activist demands by company HQ location.

Activist targets by sector.

Sector	June 2018	H1 2018	H1 2017
Basic materials	23.9%	15.2%	11.4%
Conglomerates	1.5%	0.5%	0.7%
Consumer goods	7.5%	8.4%	8.8%
Financial	13.4%	19.0%	23.1%
Healthcare	10.4%	9.8%	10.9%
Industrial goods	4.5%	9.0%	8.9%
Services	20.9%	21.5%	19.7%
Technology	13.4%	13.3%	14.1%
Utilities	4.5%	3.3%	2.3%

Proportion of companies publicly subjected to activist demands by sector.

Activist targets by market capitalization.

Market Capitalization	June 2018	H1 2018	H1 2017
Nano cap (Less than $50M)	29.9%	18.4%	15.6%
Micro cap ($50M - $250M)	19.4%	13.1%	16.8%
Small cap ($250M - $2B)	29.9%	23.6%	24.3%
Mid cap ($2B - $10B)	11.9%	18.0%	18.8%
Large cap (More than $10B)	9.0%	26.9%	24.5%

Proportion of companies publicly subjected to activist demands by market capitalization.

Activist demands by type.

Demand type	June 2018	H1 2018	H1 2017
Board-related	44.4%	43.4%	43.4%
Balance sheet	8.1%	9.3%	8.5%
Business strategy	11.1%	6.3%	6.0%
M&A	22.2%	11.9%	10.4%
Remuneration	2.0%	4.7%	7.6%
Other governance	11.1%	23.0%	21.2%
Other	1.0%	1.5%	2.8%

Proportion of public activist demands by demand type.

Success of resolved demands.

Outcome	June 2018	H1 2018	H1 2017
Activist at least partially successful	46.5%	46.5%	39.0%
Activist unsuccessful	39.6%	41.5%	47.6%
Withdrawn demands	13.9%	11.9%	13.4%

Outcomes of resolved activist demands.

Number of active activists.

	June 2018	H1 2018	H1 2017
Active activists	77	524	444

Number of investors making a public demand of a company.

Performance

-0.73%*

Stock price performance of activist-held U.S.-listed stocks in June 2018. (S&P 500 Index: -0.47%*)

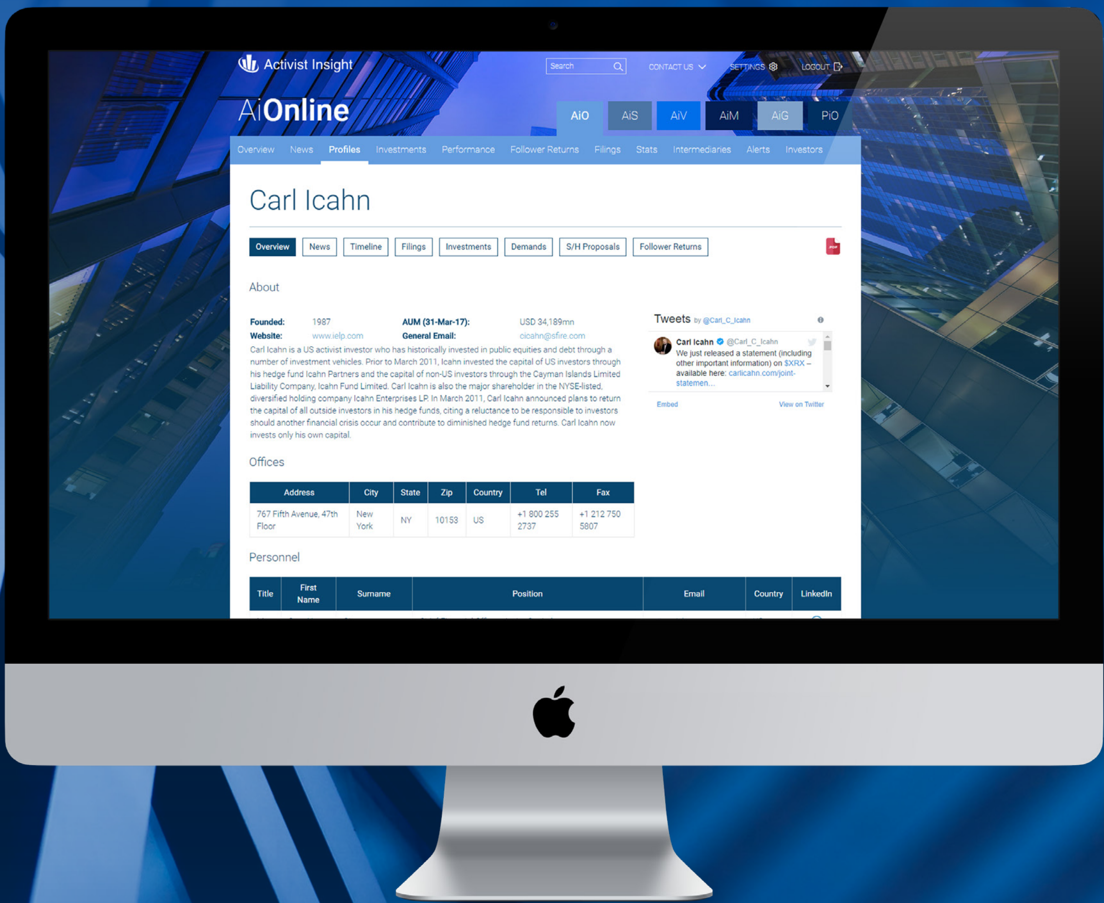
New investments

39

Number of activist investments disclosed in June 2018.

N.B. 1. All data exclude activist short positions.
N.B. 2. All percentages (excluding performance) are given to one decimal place, and may cause rounding errors.
N.B. 3. YTD figures are as of the end of June of the given year, unless otherwise specified.
N.B. 4. Market capitalization figures are as of June 30, 2018.
*Trimmed mean (10%)
Source: *Activist Insight Online*

Activist Insight Online



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Steve is considered by sources to be "a pioneer in the industry" and maintains an "impressive practice"
— *Chambers USA "Leading Lawyer" in Shareholder Activism*

Andy is "very strong on the activism front" and is "extremely knowledgeable"
— *Chambers USA "Leading Lawyer" in Shareholder Activism*

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