2020 SHAREHOLDER ACTIVISM INSIGHT

Activist Insight

Schulte Roth & Zabel

FOREWORD

MARC WEINGARTEN, ELE KLEIN, ANELIYA CRAWFORD, AND BRANDON GOLD.

This was a banner year for a number of major, hard-hitting campaigns and shifting tactics that saw activists seeking more than just board representation. Activists have displayed ingenuity in campaigns that have led to unexpected victories and creative and informal settlements, showcasing the promise that comes with collaboration between management and shareholders.

FORMALITIES ASIDE

As tactics and tones have shifted, companies and activists have found common ground outside the bargaining table where settlement agreements are signed. Some of the biggest players in the field, such as Trian Partners at Legg Mason, and Elliott Management in its investment in AT&T, have been able to avoid the strictures of lockups and voting agreements through smart negotiating aimed at collaborating over mutually beneficial common ground. Even D.E. Shaw Group, a powerhouse which returned to the activist field, emerged with a board appointment at Emerson Electric without undergoing the rigorous nomination and settlement cycle. In fact, there were 51 instances in which activists gained board seats in 2019 without a vote or a publicly filed settlement agreement and a further five instances with publicly filed agreements that did not include a standstill that would have precluded an activist from quickly redoubling its efforts for change.

Nevertheless, though 2019 saw a drop in the total number of settled demands for board representation (down 19% as compared to 2018), the number of settlements as a proportion of board representation demands in the U.S. rose two percentage points to 72%. And even after Elliott's success with AT&T without a standstill, it later signed on to one with Marathon Petroleum Corporation.

RUNNING OFF THE CLOCK

Some shareholders have bypassed the formal, annual nomination process with consent solicitation campaigns, which became a feature of 2019 activism despite sometimes being called "a rarely used corporate action" by one company that found itself in an activist's crosshairs. Notably, the tactic gained some early prominence when Carl Icahn launched a consent solicitation campaign at Occidental Petroleum as part of his effort to oppose its $38 billion agreement to buy Anadarko Petroleum. This was followed by two consent solicitation battles against major pharmaceutical companies later in the year, with Caligan Partners' consent solicitation battle with Amag Pharmaceuticals and Velan Capital at Progenics Pharmaceuticals, which resulted in, respectively, a settlement with Amag and, among other things, the successful removal of Progenics' CEO from its board of directors. As a coda to the year, Voce Capital also renewed its fight at the insurer Argo International by soliciting consents to call a special meeting, which led to a settlement with the company to close out the year.

M&A IS STILL THE GAME

As we prefaced in last year's foreword, M&A activism is still the name of the game as it made for approximately 14% of 2019's public activist demands. Some of 2019's notable campaigns included Starboard Value's opposition to Bristol-Myers Squibb's takeover of Celgene and Pershing Square and Third Point's rallying cry against a merger of equals between United Technologies and Raytheon.

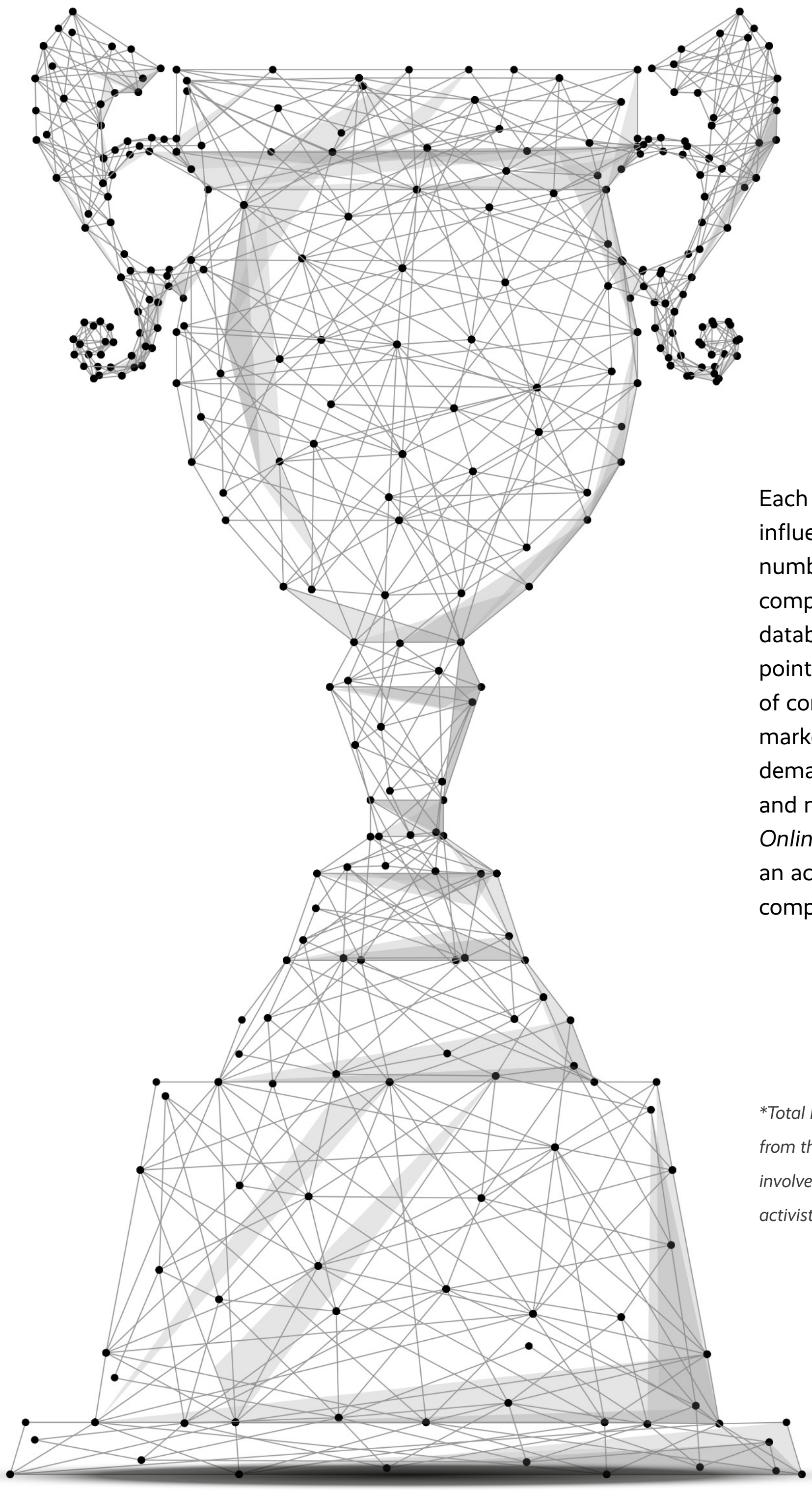
Deal opposition has been heating up in Europe as well – in September, Eminence Capital came out against Just Eat and Takeaway.com's proposed merger, which resulted in an increased offer from Takeaway.com. These demands for higher prices are perhaps reflective of the frothy M&A market, as 49 companies globally were publicly subjected to activist demands opposing the acquisition of the company, in order to secure an increase in consideration, up from 39 in 2018.

* * *

Though the number of activist targets has decreased somewhat from the previous year, shareholders are responding to company actions with greater and greater speed and creativity each year, making for what we believe will be an ever-accelerating playing field into 2020 and beyond.

THE ACTIVIST TOP 10

ELLIOTT MANAGEMENT MAKES IT FIVE IN A ROW, FOLLOWING A SPIRITED FIGHTBACK FROM STARBOARD VALUE, AND BLACKWELLS CAPITAL MAKES ITS DEBUT, WRITE JASON BOOTH AND IURI STRUTA.



Each year Activist Insight creates a ranking of the most influential activists over the past year, based on the number, size, and performance of their activist investments, comprehensively derived from the *Activist Insight Online* database. The following categories have been used to create a points-based ranking of each activist for this year's list: number of companies publicly subjected to activist demands; average market capitalization of targeted companies; success of public demands; average 2019 annualized Total Follower Return*; and news stories written about the activist on *Activist Insight Online* in 2019. To qualify, an investor must regularly employ an activist strategy and have publicly targeted three or more companies in 2019.

**Total Follower Return is a calculation of stock price change plus dividends paid from the later of the first close in 2019 or the close on the date an activist's first involvement is disclosed until the sooner of the last close in 2019 or the date an activist discloses that it has exited the position.*

1

ELLIOTT MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	15
AVERAGE TARGET MARKET CAP:	$36.1 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	13.2%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	240

Elliott Management heads the Activist Top 10 list for the fifth year in a row having used its size and diverse investment skillset to wage more activist campaigns in more countries than any other fund. While the number of companies publicly subjected to activist demands dropped to 15 in 2019, down from 24 the year before, the average size of targets increased to $36 billion from $18 billion as it engaged with some of the world's biggest companies.

Elliott convinced U.S. telecommunications giant AT&T to announce asset sales, long-term financial targets, and new independent directors in a banner campaign. Marathon Petroleum agreed to spin off its Speedway gas station unit and give Elliott a seat on the board as the activist resurrected demands first aired in 2017. Online retailer eBay heeded calls from Elliott and fellow activist Starboard Value to divest non-core asset StubHub and give both activists seats on its board.

One of those seats went to Jesse Cohn, Elliott's head of activism in the U.S., who in an interview with Activist Insight attributed the fund's continued success to it being a "global franchise" that can draw on the cumulative experience of hundreds of activist investments, and thousands of passive ones, made around the world over many years.

"We now have centralized teams, including operating executives, who are not just focused on activism but also on private equity," said Cohn. "That enables us to move forward quickly, go deeper and invest in bigger companies. Or go smaller, buy smaller companies and take them private."

Indeed, some of Elliott's highest profile deals in 2019 were not part of its campaign haul. The activist did not take a position in software firm LogMeIn or U.S. bookstore chain Barnes & Noble before taking each company private (the former in partnership with private equity firm Francisco Partners). In the distressed debt world, Elliott led a group of bondholders in bankrupt California utility PG&E.

Such a high profile (Elliott was featured in 240 stories on *Activist Insight Online* in 2019) comes with a downside, however. In December, Fox News' commentator Tucker Carlson dedicated an entire news segment to blaming Elliott for job losses stemming from the sale of former portfolio company Cabela's. The activist responded with a lengthy defense of its investment, arguing that consolidation had helped retailers survive disruption.

The activist continued to make a global splash in 2019, making public demands at U.K. companies Saga and Hammerson, defending the changes wrought at Telecom Italia in another proxy contest against Vivendi, and pushing German online classifieds company Scout24 to divest assets. Not counted in the data were a new investment at SAP, where Elliott applauded new operational targets it was thought to have advocated privately.

In Asia, Elliott lost proxy contests for board seats and higher dividends at Hyundai Mobis and Hyundai Motor, raising questions about whether its approach could work in the region. However, later success in Japan at Unizo – subject of a bidding war between two U.S. private equity shops – was more encouraging as it gears up for 2020.

COMMUNICATIONS PROBLEM

ELLIOTT MANAGEMENT WAS ABLE TO CONVINCE AT&T TO SET ITSELF AND CEO RANDALL STEPHENSON SOME TOUGH TARGETS FOR THE NEXT YEAR.

2

STARBOARD VALUE

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	11
AVERAGE TARGET MARKET CAP:	$18.3 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	41.6%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	92

Starboard Value had a banner 2019, making public demands at 11 companies, winning 20 board seats (more than any other activist in the Activist Top 10), and turning some troubled stocks into stellar performers. Starboard's success may lie in its pure-play activist strategy. While some other funds have diversified, Starboard maintained a focused portfolio of 17 companies at the end of 2019, all of them activist investments.

"We are extremely thoughtful about each company in which we invest," Starboard founder Jeff Smith said in a statement to Activist Insight.

Starboard appeared to be everywhere in the first quarter of 2019, sending demands or seeking board seats at Cars.com, Dollar Tree, Papa John's International, Magellan Health, eBay, Zayo Group and GCP Applied Technologies. Nearly all resulted in quick settlements as the target companies apparently decided it was wiser to seek accommodation with an activist known for getting what it wants.

"We fully recognize that companies and shareholders respect our influence more than ever and that our viewpoints carry significant weight for shareholders, employees, customers, and any other stakeholders," said Smith, when asked to explain the fund's success at winning settlements.

Not everything went Starboard's way, however. An ambitious attempt to scuttle Bristol-Myers Squibb's acquisition of Celgene foundered after the activist was unable to convince shareholders to reject the $74 billion deal, despite notable support from Wellington Management.

Starboard Value started 2020 as aggressively as it started 2019, disclosing a new 9% position in Merit Medical Systems and nominating nine directors at GCP Applied Technologies.

3

THIRD POINT PARTNERS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	3
AVERAGE TARGET MARKET CAP:	$81.4 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	32.4%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	64

Third Point continued to reassert itself as an activist in 2019. "We believe that our track record and process for making successful activist and constructivist investments provide us with a competitive edge in financial markets," founder Daniel Loeb wrote in the fund's first-quarter shareholder letter. By the end of the year, activist positions accounted for nearly half its net market exposure.

Ironically, however, Third Point made public demands at only three companies in 2019: Sony, United Technologies and Centene, and was rebuffed in each. In Japan, Third Point's call for Sony to sell its semiconductor business was rejected. Loeb joined Pershing Square Capital Management in opposing United Technologies' merger with Raytheon but the deal went forward anyway. Shareholders at healthcare company Centene approved the acquisition of WellCare despite opposition from Third Point.

Third Point's difficulty forcing change may be due in part to the hefty $81.4 billion averaged market capitalizations of its target companies, far larger than the average target of other funds in the Activist Top 10. And it should be noted that Third Point made a sizable profit on each of these investments.

Loeb also spent much of 2019 reaping rewards for prior activist campaigns. Both Campbell Soup and Nestlé sold off assets and improved core operating performance, while auction house Sotheby's sold itself, helping Third Point generate a Total Follower Return of 32% in 2019.

4

CARL ICAHN

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	6
AVERAGE TARGET MARKET CAP:	$15.0 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	48.0%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	83

Carl Icahn continued to hammer boards across multiple sectors in 2019, indicating the veteran activist has no intention of retiring. He made public activist demands at six companies, won six board seats and generated an impressive Total Follower Return of 48%.

While some activists embraced behind-the-scenes détente, Icahn waged a series of old-fashioned activist campaigns. He built a well-timed stake at Caesar's Entertainment, then orchestrated a merger with Eldorado Resorts, generating a 58% profit to date. Xerox spinoff Conduent ignored Icahn's demands for improvement, so he replaced the CEO and installed board members. Long-time Icahn target Cloudera earlier this month replaced its CEO and chairman with Icahn nominees, generating a total follower return of 81%, making it Icahn's best investment of 2019.

Icahn's biggest disappointment of 2019 was his opposition to Occidental Petroleum's acquisition of Anadarko Petroleum. With financial assistance from Warren Buffett, Occidental was able to avoid a shareholder vote on its controversial $38 billion deal. An outraged Icahn sought a full board sweep and the replacement of CEO Vicki Hollub. But so far, the campaign has made little progress.

For now, Icahn is focused on facilitating Xerox's acquisition of technology giant HP in what he publicly called "one of the most obvious no-brainers I have ever encountered in my career." Icahn is both Xerox's largest shareholder and HP's fifth-largest shareholder. Both companies have seen their share prices rise more than 20% since Icahn disclosed his investments.

5

CEVIAN CAPITAL

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	3
AVERAGE TARGET MARKET CAP:	$14.5 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	35.2%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	51

Cevian Capital continued its brand of behind-the-scenes activism with pointed media interventions to put pressure on its targets. It publicly criticized Nordea Bank for failing to improve margins, in a year when the bank replaced its chairman and CEO.

The pan-European investor had a mostly successful year. ABB registered notable progress on its restructuring, also announcing the departure of long-time CEO Ulrich Spiesshofer and the sale of its power grids unit. New investment CRH was up 60% in 2019, while smaller market-cap holdings Metso and Tieto announced mergers. However, Cevian's investment in ThyssenKrupp continued to underperform, as the company walked away from a merger of its steel unit with Tata Steel. It is now considering the sale of its most profitable elevators unit.

The highlight of the year was perhaps Cevian's first-ever proxy solicitation at Swiss-based transportation group Panalpina. Cevian campaigned against a proposal by the largest shareholder, The Ernst Göhner Foundation (EGF), to give equal voting rights to all shareholders in protest at Ernst Göhner's refusal to entertain a cash and stock takeover offer from Danish peer DSV. Eventually, the dispute was resolved via an all-stock merger.

DON'T BANK ON EUROPEAN ACTIVISTS BEING SOFTER

6

BLACKWELLS CAPITAL

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019: 3
AVERAGE TARGET MARKET CAP: $1.4 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN: 172.9%
ACTIVIST INSIGHT ONLINE NEWS STORIES: 7

Blackwells Capital makes the top 10 list primarily due to its lucrative investment in Amber Road, showing the right activist in the right place at the right time can make a lot of money.

Jason Aintabi's fund tagged along as fellow activist Altai Capital Management pressed the trade management software provider to sell itself. While Blackwells never publicly commented on the transaction, a proxy filing revealed that the fund wanted to gain board representation but dropped its request after a March 5 meeting with company representatives. Two months later, E2open acquired Amber Road in an all-cash transaction worth $13.05 per share, giving Blackwells a quick 51% profit.

While some might call that luck, Blackwells has a track record of such plays, most recently doubling its money at American grocery retailing company Supervalu in 2018. Now Blackwells is trying its luck with Colony Capital. Having already won two seats in a settlement in February 2019, Aintabi is seeking majority control of the 12-person board by nominating five additional directors, citing a 17% stock price decline over the last year.

FRESH TAKEOUT

UNITED NATIONAL FOODS ACQUIRED SUPERVALU IN 2018, KICKSTARTING A WAVE OF SUCCESSFUL CAMPAIGNS FOR BLACKWELLS CAPITAL.

7

LAND AND BUILDINGS

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019: 5
AVERAGE TARGET MARKET CAP: $12.6 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN: 27.4%
ACTIVIST INSIGHT ONLINE NEWS STORIES: 48

Land and Buildings continued to punch well above its weight in 2019. Despite reporting just $577 million under management in March 2019, Jonathan Litt's fund targeted companies with an average market capitalization of $12.6 billion. That oversized influence may be due to the fund's narrow focus on real estate investments. Indeed, its only new positions in 2019 were in REITs: Mack-Cali Realty and Gaming and Leisure Properties. "Existing pure-play activists such as Land and Buildings Investment Management... have demonstrated that domain expertise provides a competitive advantage," J.P. Morgan wrote in its 2019 Proxy Season Review.

The fund has also proved ready to fight, sometimes for years, to get what it wants. Litt spent much of 2019 trading blows with long-time portfolio company Hudson's Bay Co. to block a take-private deal he called "woefully inadequate," and which was later increased. He also continued a long-simmering feud with the board of Brookdale Senior Living whose track record he described as "the epitome of bad corporate governance." Brookdale remains a sore spot in Litt's portfolio, the activist withdrawing a proxy fight in 2019 and nursing a follower return of negative 44% since 2016.

8

SACHEM HEAD CAPITAL MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	5
AVERAGE TARGET MARKET CAP:	$8.2 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	56.2%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	21

A robust M&A market helped Sachem Head generate strong performance in a host of investments in 2019 as several of its target companies were either bought or divested non-core assets. Zayo Group announced a sale just three months after Scott Ferguson's fund called on the company to seek strategic alternatives and 2U may be next. After completing a strategic review at Sachem Head's behest, Eagle Materials announced plans to separate its heavy materials and light materials divisions into independent, publicly traded corporations.

But not everything worked out well for the fund. Its reported interest in blocking Centene's $15.3 billion acquisition of WellCare Health Plans came to naught, and it subsequently exited the stock in June. Sachem Head also reportedly pushed software-as-a-service company Instructure to seek a sale. But the deal the company came up with to sell itself to Thoma Bravo has been loudly criticized by other investors as being undervalued. Nonetheless, the deal looks likely to go through with no other buyers emerging.

9

LEGION PARTNERS ASSET MANAGEMENT

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	4
AVERAGE TARGET MARKET CAP:	$1.2 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	10.9%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	36

Legion Partners' year was dominated by Bed Bath & Beyond, where activist pressure resulted in the retailer replacing most of its board, including its two founders and a long-serving CEO. Legion was also involved at pizza chain Papa John's International, which reshuffled its board and management for the second time in two years. "We think one of the highest value creating things a board of a company can do is to fire an underperforming CEO," said Legion's founder Chris Kiper in a statement to Activist Insight. He noted that five of Legion's target companies, around 50% of its portfolio, fired their CEO in 2019.

For 2020, Kiper predicted an increase in small-cap M&A activity driven by what he called an "unprecedented level of undeployed private equity funds." Since the start of the year, two Legion portfolio companies, Cincinnati Bell and Primo Water, have been acquired, though not necessarily at a price the activist hoped for. Regarding Primo Water's acquisition, Kiper told Activist Insight: "It is too bad for Primo shareholders that the board sold at such a low price."

10

ENGINE CAPITAL

COMPANIES PUBLICLY SUBJECTED TO ACTIVIST DEMANDS IN 2019:	6
AVERAGE TARGET MARKET CAP:	$1.4 BILLION
AVERAGE ANNUALIZED TOTAL FOLLOWER RETURN:	78.8%
ACTIVIST INSIGHT ONLINE NEWS STORIES:	11

Engine Capital was up 51.9% net of fees in 2019 and activism played an important part in achieving these returns, Arnaud Ajdler told Activist Insight.

Some of Engine's campaigns concluded quickly. Care.com sold itself to IAC a few months after the activist called for a sale, while PDL Biopharma announced it would monetize its assets following Engine's demand for a transaction. Aecom, where Starboard Value is also invested and gained board seats, sold its management services division after Engine asked for a breakup. Elsewhere, Engine gained board seats at Recro Pharma, a company that saw its stock triple in 2019, although it started 2020 on a weak note.

Some of Engine's campaigns are still works in progress. Its campaign for the sale of Harvard Bioscience is ongoing, while it has yet to publicly reveal its thesis at recent investment CymaBay Therapeutics. "Engine is currently in discussions with some of its portfolio companies and expects settlements or nomination in the near future," Ajdler told Activist Insight. That could make for a busy 2020.

RIPPLES OF ACTIVISM

AN INTERVIEW WITH MARC WEINGARTEN AND ELE KLEIN, CO-CHAIRS OF SCHULTE ROTH & ZABEL'S GLOBAL SHAREHOLDER ACTIVISM GROUP.

ARE ACTIVISTS IMPATIENT TO GET THINGS DONE WITH THE MARKETS WHERE THEY ARE AND ELECTIONS LATER THIS YEAR?

Ele Klein: A lot of "pure activism" is not on that type of calendar. Right now, the markets are heated, M&A is strong, and we are not seeing anything suggesting that is changing in the foreseeable future. If you have Hart-Scott-Rodino or regulatory issues, the administration matters a lot. Other than that, it's really a more pricing question in M&A.

Marc Weingarten: That's exactly right. If there's been any slowdown in activist activity, it's in large part because the market's been so strong that it's taken a lot of potential targets out of play. If the market comes down substantially, as a result of the election or otherwise, you could see a resurgence and even more activity from activists. But the activists at our annual shareholder activism conference in November were pretty bullish about the market generally. They were not anticipating a recession.

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DID ACTIVISTS MAKE ENOUGH OF A DIFFERENCE IN THEIR M&A CAMPAIGNS FOR THIS TREND TO CARRY THROUGH INTO 2020?

Ele Klein: There is definitely enough success. People are going to be more careful and thoughtful about which transactions they want to challenge. Whether you start a full solicitation or just put your opinion out, you have to think about which situations are winnable and which are not.

But there are still plenty of examples, such as Dell or, in the U.K., Just Eat, where deals get announced, objections get weighed, and terms get improved. Identifying transactions where the price is suboptimal is important, particularly in a market where there are private equity and strategic players looking for opportunities, to challenge deals and make sure that buyers are paying a fair price.

WILL THE PAPA JOHN'S INTERNATIONAL SETTLEMENT HAVE A RIPPLE EFFECT?

Ele Klein: Ripple is the right word. You're not going to see hundreds of these types of transactions happening. But it's another tool, another method, particularly with the sophisticated investors in the market like Starboard that have access to significant amounts of capital and real expertise and value to provide as well. We have seen more of these investments such as in Acacia Research in November and at NN in December. It's opened the door for this product to be used in the marketplace.

Marc Weingarten: People have been talking for years about the convergence of activism and private equity, and I think this is just a variant of it. It's not full-on private equity, although there is more of that activity going on as well. I think it's a step in that direction of activists making outsized investments in public companies.

HOW COULD THE SECURITIES AND EXCHANGE COMMISSION (SEC)'S PROPOSED RULES AND THE GUIDANCE FOR PROXY ADVISORY FIRMS AND SHAREHOLDER PROPOSALS HAVE AN IMPACT ON ACTIVISM?

Ele Klein: It will largely depend on what happens. If the SEC doesn't adopt the rules, then we are in the same place. To the extent that they adopt the proposed rules in a form close to what is being proposed, it's going to change the marketplace significantly.

One result could be more settlements in the narrow windows between the previews of reports and publication. Right now ISS and Glass Lewis may delay putting out a report for a day or two if they sense a settlement is imminent in order to avoid affecting the mix of the negotiations. You can imagine the same thing happening once one side knows what ISS and Glass Lewis are recommending.

WHAT WAS YOUR FAVORITE ENTRENCHMENT STRATEGY?

Marc Weingarten: It's hard to ever call an entrenchment strategy our "favorite." But one that we find most offensive is the continuing trend to reject nomination notices on the most frivolous or hyper-technical grounds. Many nomination bylaw provisions are vague, overbroad and poorly written, making compliance uncertain. And rejection of the notice can leave the activist no choice but to litigate, in a potentially hostile jurisdiction, which can be expensive, distracting and time-consuming. It's a really offensive strategy, but fortunately one that only a few defense counsels will stoop to.

HAS ACTIVISM OVERSEAS NARROWED TO A FEW SPECIFIC MARKETS?

Ele Klein: You have the players in mainland Europe who know how to play locally. You really have to know what you're doing. The U.K. is obviously a vibrant market in activism and occasionally a U.S. fund will dip its toe in there. Japan is particularly interesting and there are many questions over whether activism will continue to grow there or whether there's going to be pushback. There are definitely more challenges in that marketplace recently.

Marc Weingarten: I think it's going to continue to be active and continue to ramp up, especially because the U.S. market, as I said before, is so strong that it's put a lot of targets out of play. Activists in a lot of European and Asian markets see a lot more potential for increased value. Those markets are depressed and continue to be depressed. If you're able to do business in those markets, it's going to keep going.

AN INTERVIEW WITH ANELIYA CRAWFORD, PARTNER IN SCHULTE ROTH & ZABEL'S GLOBAL SHAREHOLDER ACTIVISM GROUP.

IS THERE MORE APPETITE FROM ACTIVISTS TO TARGET REGULATED INDUSTRIES?

Yes, from our vantage point there is greater appetite for targeting regulated industries but also there is a stronger understanding that those are not impenetrable. Bank and insurance regulations can require regulatory approval for the holding of proxies from more than 10% of a regulated company's stock. Clearly this means that an activist can never win a contest at a regulated company unless regulators decide not to stand in the way. In our experience, obtaining regulatory blessing is a complex and lengthy process. It requires specialized expertise but more than that it takes speaking the language of the regulators, having the savvy to couch the proxy contest in terms of the objectives and mandates of the regulators and being strategically flexible.

WHERE DO YOU EXPECT ACTIVISM TO BE STRONG IN 2020?

My prediction for 2020 is that we will see more M&A in activism and more activism in M&A. We are already seeing strong signs of the convergence of activist strategies and private equity. Competing bidders are also considering campaigns in opposition to announced deals and weighing tender offers to demonstrate to boards and shareholders the strength of an alternative transaction. Our clients are also showing greater openness to hostile approaches of potential targets. We are spending a lot of time strategizing and negotiating deals that straddle the hostile and friendly arena and framing the conversation with boards where both avenues might be pursued in parallel until a deal is finally reached.

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A CHANGING CLIMATE

INTERVIEWS WITH MICHAEL SWARTZ, CO-CHAIR OF SCHULTE ROTH & ZABEL'S LITIGATION GROUP AND HEAD OF ITS SHAREHOLDER ACTIVISM LITIGATION PRACTICE, AND JIM MCNALLY, LONDON-BASED PARTNER IN SCHULTE ROTH & ZABEL'S GLOBAL SHAREHOLDER ACTIVISM GROUP.

WILL "STAKEHOLDER CAPITALISM" TAKE PRECEDENCE OVER SHAREHOLDER PRIMACY IN THE COURTS?

Michael Swartz: Certain jurisdictions expressly permit directors to take into account all stakeholders when exercising their fiduciary duties. That is not true of Delaware, where fiduciary duties do not extend beyond the corporation and its shareholders, especially when heightened Revlon duties come into play, unless the corporation has taken steps to expressly opt to become a "public benefit corporation." That being said, directors of even traditional for-profit corporations may be able to rely on the business judgment rule, which provides boards with broad latitude to make decisions they believe to be in the long-term best interests of the corporation and its shareholders.

If such decision-making rationally, and in good faith, accounts for the interests of other stakeholders in furtherance of the best interests of the corporation and shareholders, the board's decision will likely be insulated under the business judgement rule. Process is key in these situations and if a board can show it was thoughtful in reaching a decision that considered other stakeholders through a shareholder-primacy lens, the two ostensibly competing.

HAVE ACTIVISTS MANAGED TO GAIN LEVERAGE BY EXPANDING THE SCOPE OF THEIR BOOKS AND RECORDS REQUESTS?

Michael Swartz: While activists have used books and records requests with increasing effect, that usually has been in the context of having identified potential mismanagement. For example, FrontFour Capital Group commenced a books and records action in connection with a potential merger transaction, resulting in the production of documents that revealed multiple disclosure violations and a flawed special committee process. Through subsequent litigation, the deal was enjoined, leading to new board members being appointed and a revised sales process.

That said, courts continue to resist finding that a proxy contest alone is a proper purpose for a books and records request. For example, the Delaware Chancery Court rejected Carl Icahn's books and records demand of Occidental Petroleum on that basis.

HAVE ACTIVIST STRATEGIES SPREAD FROM HEDGE FUNDS TO OTHER TYPES OF INVESTORS?

Jim McNally: It's certainly true that other types of investors are looking at how activists have sought change and at the tools they are using to get results. However, their motives can often be different and are not necessarily primarily focused on shareholder value as it is traditionally measured; themes such as ESG generally or more particularly climate change and diverse representation in leadership roles are more and more prominent. So "yes," it's activism but "no," it's not necessarily looking for the same thing.

WILL THE UK GENERAL ELECTION HAVE AN IMPACT ON ACTIVISM?

Jim McNally: We have a newly elected Conservative government, which has taken off the table some of the more dramatic policies from the U.K. opposition – both in terms of nationalizations and corporate tax rises. Whilst that will elicit a sigh of relief from some, we now also have a parliament elected on a pledge of "get Brexit done," which of course brings its own challenges. Over the course of the next year (and subject to extensions) we should gain a better understanding on what a future trade agreement with the EU might look like.

ARE ANY LEGISLATIVE PROPOSALS ON CORPORATE GOVERNANCE OR M&A LIKELY TO IMPACT THE UK MARKET?

Jim McNally: On January 1 the new U.K. Stewardship Code came into effect. Like the previous code in 2012, it is based on a "comply or explain" model for those signed up to it (FCA-regulated firms must publicly disclose the nature of their commitment to it), but now focuses more heavily on expectations as regards long-term value, leading to sustainable benefits for the economy, the environment and society. This chimes with the (U.S.) Business Roundtable's update to its view of the purposes of a corporation in August, which, for the first time, expanded the core principle of shareholder supremacy to include the interests of customers, employees, suppliers, and communities.

Activist Campaign of the Year

THE DEAL AWARDS U.S.

Activist Adviser of the Year

THE DEAL AWARDS EUROPE

Schulte Roth & Zabel

POWERHOUSE PRACTITIONERS

"… Schulte Roth & Zabel, widely regarded as the dominant global law firm for shareholder activism and activist investing … advises some of the most active and influential activist investors in the space."

– FORBES

"Has the judgment, calm demeanor and sophistication to help clients work through meaningful situations … very, very talented."

– CHAMBERS USA

"Schulte Roth & Zabel LLP is 'truly one of the top firms for shareholder activism; the best in the breed if litigation support is required.'"

– THE LEGAL 500 US

"… Schulte Roth & Zabel partners … have established themselves as go-to lawyers for activist investors."

– THE AMERICAN LAWYER

"With offices in New York, Washington D.C. and London, Schulte Roth & Zabel is a leading law firm serving the alternative investment management industry, and the firm is renowned for its shareholder activism practice."

– THE HEDGE FUND JOURNAL

"Schulte is one of the top U.S. law firms that represents activists in the insurgencies."

– THE DEAL

"Schulte Roth & Zabel … [has] come to dominate the activism market."

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– LAW360

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