2020

THE ACTIVIST INVESTING ANNUAL REVIEW

THE SEVENTH ANNUAL REVIEW OF TRENDS IN SHAREHOLDER ACTIVISM

Activist Insight

FOREWORD

JOSH BLACK, ACTIVIST INSIGHT

Welcome to the seventh edition of *The Activist Investing Annual Review*. In the many years we've been producing this report, we've prided ourselves on providing not just the numbers behind the past year but insights into the ways activist investing has changed: from trials of different strategies and jurisdictions, to the biggest fights and most prolific activists. Not all outcomes are easily quantified, even when board seats are tallied and cross-referenced with probable returns. Some campaigns resonate, regardless of the formal conclusion.

> WE ASPIRE NOT JUST TO PROVIDE THE BEST DATA ON ACTIVIST INVESTING AND CORPORTATE GOVERNANCE, BUT THE BEST REPORTING TOO."

Whether you are new to our company or one of our valued long-term followers, it's worth reiterating that this approach is central to what Activist Insight offers. We aspire not just to provide the best data on activist investing and corporate governance, but the best reporting too. Analyzing the 839 targets of activists last year by their various characteristics is a start, but the more than 3,000 news stories we wrote, magazine profiles, and special reports give us a breadth of coverage that we hope is unparalleled.

Indeed, 2019 was an exciting year for Activist Insight in many respects as we recorded advances on both the editorial and data fronts:

- On *Activist Insight Online*, our shareholder activism module, we updated our news functionality to make scrolling through stories from a particular campaign or search easier, added a white paper database, and started distributing quarterly summaries of campaign activity and 13F disclosures. On *Activist Insight Shorts*, our activist short selling module, we added European short positions, activist or otherwise.

- *Activist Insight Governance*, our database of bylaws and directors, added U.K. board members and easier-to-read diversity statistics, as well as downloads for clients to quickly digest company profiles.

- For *Activist Insight Vulnerability*, our target identification module, we added the ability to customize peer groups and wrote 100 detailed analyses of U.S. companies – 15 of which went on to be targeted along with others from prior years (see page 42).

- In *Activist Insight Monthly*, our magazine module, we added personnel moves and activist profiles, the latter covering such names as ValueAct Capital Partners, Starboard Value, Cevian Capital, Hudson Executive Capital and Mantle Ridge. We also produced a number of special reports, on *M&A Activism*, *Activist Investing in Europe*, *Activism in the Tech Sector*, and *Activist Investing in Canada*. A favorite cover feature looked at what had changed in activism in the five years since the Darden Restaurants proxy fight.

- *The Activist Insight Podcast* went from strength to strength, with two episodes a month featuring interviews with activists and advisers (to say nothing of the guest appearances from Activist Insight's editorial team).

If any of these modules is unfamiliar to you, please don't hesitate to ask for more information. We are happy to provide training, demonstrations, or trials on request.

Each article in this report seeks to emphasize a trend or strategy by balancing reporting with data, drawing conclusions that might be helpful in bracing for the year ahead. For instance, we look at the development of European and Asian markets, as well as what U.S. activists are doing overseas, or how private equity firms have succeeded in their first forays into using activism in public markets. Hopefully you find the approach both insightful and useful. For a more comprehensive statistical overview of activism in 2019, we suggest you try our **annual report**, which was published in January.

CONTENTS

THE ACTIVIST INVESTING ANNUAL REVIEW 2020

FOREWORD	**03**	*JOSH BLACK, ACTIVIST INSIGHT*
2019: AN OVERVIEW	**05**	*JOSH BLACK, ACTIVIST INSIGHT*
BREAK IT UP	**08**	*JOHN REETUN, ACTIVIST INSIGHT*
OFFBOARDING	**10**	*JOSH BLACK, ACTIVIST INSIGHT*
US AND THEM	**12**	*JOSH BLACK, ACTIVIST INSIGHT*
LESS PRIVATE, MORE EQUITY	**14**	*ELEANOR O'DONNELL, ACTIVIST INSIGHT*
NEW CHALLENGES	**16**	*MICHAEL VERRECHIA, MORROW SODALI*
THE OLD WORLD CATCHES UP	**18**	*ELEANOR O'DONNELL, ACTIVIST INSIGHT*
FIGHT OR FLIGHT	**20**	*JASON BOOTH, ACTIVIST INSIGHT*
THE YEAR OF THE PERFECT ESG STORM	**22**	*CAS SYDOROWITZ, GEORGESON*
THE ACTIVIST TOP 10	**24**	*JASON BOOTH AND IURI STRUTA, ACTIVIST INSIGHT*
IN A RUSH	**30**	*IURI STRUTA, ACTIVIST INSIGHT*
COMPOSE YOURSELF	**32**	*ELEANOR O'DONNELL, ACTIVIST INSIGHT*
THE OTHER REFORM	**34**	*MATT SCOTT, PROXY INSIGHT*
THIS MEANS WAR	**36**	*JOHN REETUN, ACTIVIST INSIGHT*
THE ACTIVIST SHORT SELLER TOP 5	**38**	*ELEANOR O'DONNELL AND JOHN REETUN, ACTIVIST INSIGHT*
2020 TARGETS	**40**	*ROB CRIBB, ACTIVIST INSIGHT*
2019 TRACK RECORD	**42**	*ROB CRIBB, ACTIVIST INSIGHT*

MANAGING EDITOR:
Josh Black

ACTIVIST INSIGHT CONTRIBUTORS:
Jason Booth, Iuri Struta, John Reetun, Eleanor O'Donnell, Rob Cribb, James Martin, Husein Bektic, Daniel Davis, Joseph Taylor.

WITH SPECIAL THANKS TO:
Morrow Sodali, Georgeson, and Proxy Insight.

Image credits (All Shutterstock.com):
p15, Papa Johns: photo-denver; p19, AT&T: Jonathan Weiss; p21, Nordea: Vytautas Kielaitis; p22, SuperValu: Wozzie; p37, BlackRock: Heerapix

Definitions:
Primary focus:
A fund or individual which dedicates most, if not all of its assets to activist positions.
Partial focus:
A fund or individual which often employs activist tactics yet also uses other investment strategies.
Occasional focus:
A fund or individual that adopts an activist stance on an infrequent basis.
Engagement focus:
Typically large institutions and individuals that rally for change to promote good corporate governance.
Concerned shareholders:
An individual or group of individuals who collectively form a group of shareholders to enforce change, typically as a 'one-off' situation.
Total Follower Return:
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 they have exited the position
Total Campaign Return:
Total campaign return is a calculation of the stock price change percentage, minus any dividend payment obligations, of campaigns initiated in 2019 from the close prior to the campaign's announcement until the last close on the defined period.

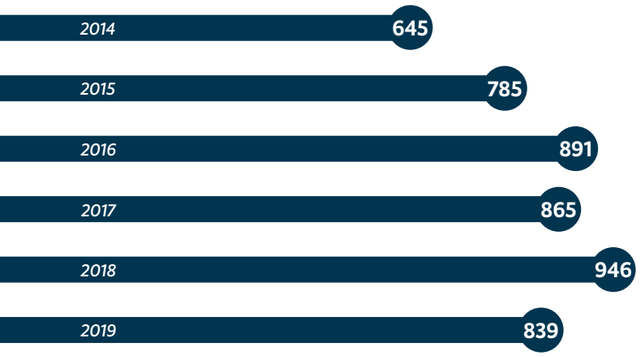
2019: AN OVERVIEW

WHILE ACTIVIST INVESTING HAS WITNESSED A MUCH LONGER SECULAR EXPANSION, THE YEARS FROM 2015 ONWARD SAW A PARTICULARLY PRONOUNCED BOOM AS THE STRATEGY WENT FROM A SMALL GROUP OF FUNDS GROWING ASSETS UNDER MANAGEMENT TO A WIDELY ADOPTED TOOLKIT, WRITES ACTIVIST INSIGHT EDITOR-IN-CHIEF JOSH BLACK.

By some measures the slowest year since 2015, 2019 might look like the end of that boomlet. Although not the first down year in recent memory (2017 was too), the 839 companies publicly subjected to activist demands worldwide and the 666 investors making those demands were both four-year lows.

Yet the type of activist involved belies that impression. In 2015, 32% of investors making public demands had a primary or partial focus on activism. In 2019, the comparable figure was 23%. Concerned shareholder groups have taken up a lot of the slack but the activist toolkit has become frequently used by institutional investors and occasional activists too. In these pages, we make the case that private equity firms are increasingly being drawn into competition with activists that requires them to ape some of their strategies.

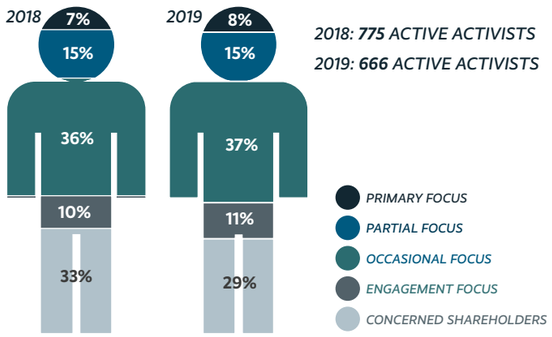
ACTIVIST TARGETS BY YEAR



Number of companies publicly subjected to activist demands globally, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

ACTIVE ACTIVISTS BY YEAR



Number of investors making at least one public demand of a company globally, in 2019 and 2018, including a breakdown of those investors by focus type. See page 4 for full definitions.

SOURCE: ACTIVIST INSIGHT ONLINE

For years, onlookers have debated how much room activism has to grow. On the one hand, there will always be laggards – relative underperformers. On the other hand, many speculated that the "low-hanging fruit" was mostly picked over, forcing activists to adopt more operational strategies.

Perhaps a combination of the time involved in developing more robust investment theses and an evolving fundraising environment that prefers single-idea funds will limit the number of opportunities some activists can exploit. In the future, we may see more activists that look like Mantle Ridge, which launched its second fund and invested in Aramark in 2019. On the other hand, fund-based activists like Starboard Value and Elliott Management have found plenty to do, even if the latter may be busier on the debt side before too long.

Another solution is to go abroad. The number of non-U.S. companies publicly subjected to activist demands by American investors increased sharply starting in 2015 and has remained at elevated levels. Many markets have seen a rapid development in business practices and particularly activist defense industries as a result. An increase in settled demands for board seats in Japan and the U.K. in 2019 may be a sign of increased sophistication or of pressure, given both also saw an increase in contested meetings.

U.S. activists retreated from overseas activism somewhat in 2019 compared with 2018's recent peak. The exception was Japan, where attention was focused in a dramatic proxy season. Indeed, Japanese companies represented between 2% and 3% of activist targets globally (including by local investors) between 2013 and 2016. In 2019, they represented 7%, behind only the U.S. and Australia.

Then again, 2020 could be a year of rebirth for dedicated activists after a fortifying rally in the markets that many were able to ride. Activist Insight's Follower Returns, which measure total shareholder return performance, suggest the annualized total return for primary and partial focus activists was 17.7% in 2019, ahead of that for all activist positions and more than three times the median return of occasional activists.

Perhaps fortified by those returns, a quieter 2019 proxy season in the U.S. – fewer contested meetings, more settlements – gave way to a busy second half of the year and an increase in consent solicitations. That could set 2020 up as a year to watch.

By contrast, 2020 could be a year for activist short sellers, who increased their activity in 2019 for the first time since 2015 (coincidence?) and saw improved performance. Wherever the action is, it won't be boring.

2020: AN OUTLOOK

With borrowing so cheap, any company can get a loan to buy back stock or acquire a competitor, ValueAct Capital Partners' Jeff Ubben said recently. Unlike the San Francisco-based impact evangelist, other activists will have strong opinions about which option boards should take and will continue to explicitly oppose empire-building M&A, with a streak of breakup activism. In particular, environmental activism has proven a popular lever in the utility space for ValueAct and Elliott.

Environmental and social activism was a less influential theme in 2019 while the market was soaring, but it isn't going away. If the proxy fight at Pacific Gas & Electric represented the first to incorporate these issues, 2020 might see the first proxy fight or CEO targeting campaign over a company's environmental impact.

Japan and the U.K. were attractive markets for activism in 2019 and should be again in 2020. U.S. activists might also stray into Australia, but more will use earnings misses to find things to do at home. Breakup plays could be the best way to exploit high valuations.

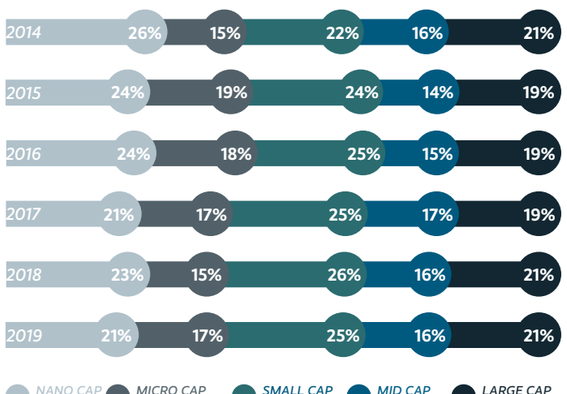
Debt overhangs in the energy sector and the impact of the election cycle on healthcare may force activism toward tech and consumer stocks. Crowding might ensure a second successive down-year and greater focus on existing portfolio positions at the expense of new investments.

A large private equity fund might run its first semi-public campaign. Hostile and opportunist takeover bids will pick up as the election approaches.

A rising market is a good excuse for CEOs and activists to share the credit, where incremental changes can be conceded, and investors might view board seats as restrictive if there is the prospect of a sell-off. However, the punishment for companies that underperform their own predictions will be severe. Expect friendly gentlemen's handshakes at a few large companies and an increasingly warlike footing in the small- and mid-cap space.

As companies have used advance nomination deadlines and delays to neuter some of the impacts of proxy fights, so activists have gone looking for new ways to cut the knot. Consent solicitations and books and records demands allow for a public relations campaign with teeth, although so far, the latter has not delivered on expectations.

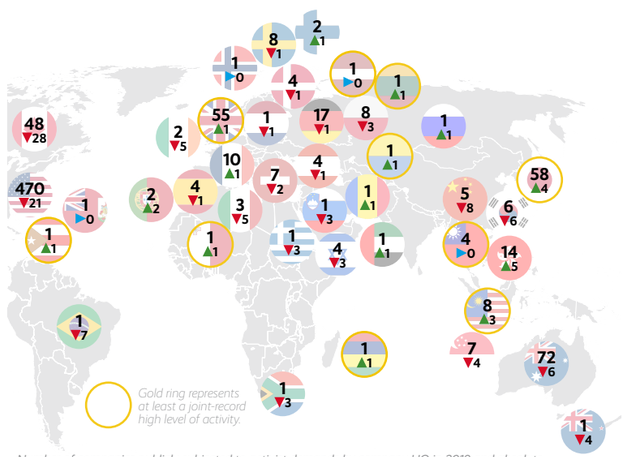
ACTIVIST TARGETS BY MARKET CAP



Market cap breakdown of the companies publicly subjected to activist demands globally, since 2014. Note: rounding may lead to summation errors.

SOURCE: ACTIVIST INSIGHT ONLINE

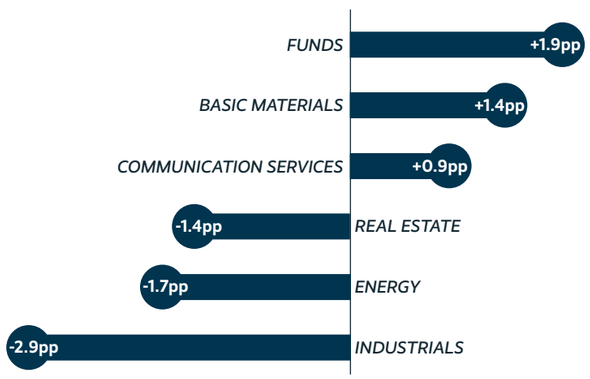
ACTIVIST TARGETS BY GEOGRAPHY



Number of companies publicly subjected to activist demands by company HQ in 2019 and absolute change from 2018.

SOURCE: ACTIVIST INSIGHT ONLINE

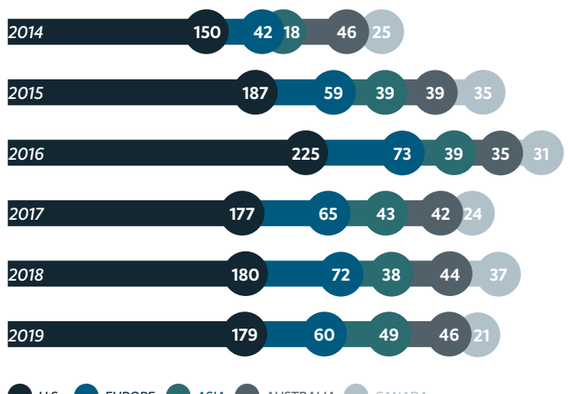
CHANGES IN ACTIVIST TARGETS BY SECTOR



Percentage point change between 2018 and 2019 of proportion of companies publicly subjected to activist demands globally, by selected sectors.

SOURCE: ACTIVIST INSIGHT ONLINE

BOARD SEAT TARGETS BY GEOGRAPHY



Number of companies publicly subjected to activist demands for board representation, by company HQ and year.

SOURCE: ACTIVIST INSIGHT ONLINE

BREAK IT UP

THE LURE OF M&A REMAINS STRONG BUT 2019 SAW AN INCREASED FOCUS ON HALTING ACQUISITIONS, A TREND THAT SUGGESTS IT'S NOT ALWAYS ABOUT THE QUICK BUCK, WRITES JOHN REETUN.

Opposition to M&A and breakup campaigns were prominent in 2019 as activists sought to navigate a toppy dealmaking environment.

While the U.S. saw the lowest number of companies publicly pushed into M&A since 2013, dragging down the overall number of M&A activism targets, above-average deal opposition dominated headlines. M&A-related activism is "now essentially a permanent fixture of the capital markets," David Whissel, executive vice president at MacKenzie Partners, said in an interview for this report.

Confidence in the market may have been a factor, judging by the rising number of demands that companies break up. A record number of companies were subjected to such demands worldwide, rising two years in a row from a shaky 2017.

PLAYING HARD TO GET

Overall opposition was most notable in the U.K. and Europe, where 21 companies saw deals opposed. Canada was stable in 2019 with six companies facing opposition to M&A deals. A slight dip in the U.S. saw the number of companies facing public demands opposing M&A fall from 28 in 2018 to 25 in 2019 – still above the near-term average.

> GIVEN THE HIGH LEVELS OF STOCK PRICES OF MANY PUBLIC COMPANIES, THERE'S LIKELY GOING TO BE A SUBSTANTIAL AMOUNT OF OPPOSITION TO DEALS."

Such campaigns can lead to a bump in the stock price – as at Hudson's Bay Co. – or force companies to justify their deals with additional information – as at Inmarsat. According to Whissel, they also demonstrate that profits are not always the priority. Indeed, Cat Rock Capital spurned a cash deal for the U.K.'s Just Eat that was preferred by fellow occasional activist Eminence Capital, in favor of a stock-for-stock merger with Takeaway.com that gives Just Eat's shareholders a majority stake.

Investors "are scrutinizing deals more closely," Whissel said, with criticism against "growth for the sake of growth." Occidental Petroleum's $55 billion takeover of Anadarko Petroleum, involving pricey financing from Berkshire Hathaway, angered asset manager T. Rowe Price Group and led Carl Icahn to threaten a proxy contest that could run into 2020.

LOOK, DON'T BUY

Eight U.S. companies saw acquisitions opposed by one of their own shareholders in 2019, the highest since at least 2013. The tactic all but disappeared elsewhere in the world.

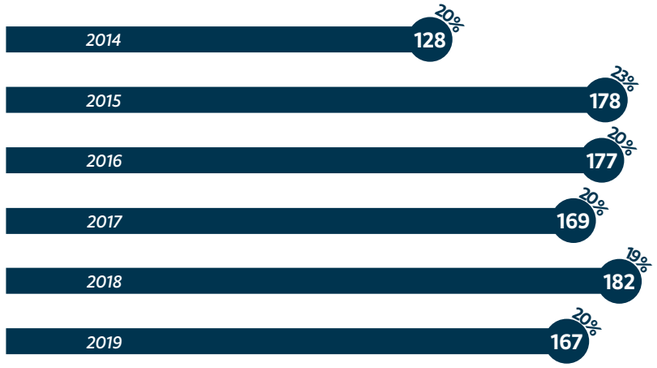
"Given the high levels of stock prices of many public companies, there's likely going to be a substantial amount of opposition to deals," Alfredo Porretti, managing director at Greenhill, told Activist Insight.

Such tactics can still pay off. Paulson & Co. opposed Callon Petroleum's sale to Carrizo Oil & Gas and succeeded in changing its terms. But that was an outlier in 2019, where outcomes were divided almost equally between success, failure, and activists withdrawing their demands. Across the prior two years, more than half of activist campaigns against acquisitions globally were at least partially successful.

Notably, Starboard Value's call for Bristol-Myers Squibb to break off its engagement with Celgene failed despite a vigorous campaign when both proxy advisers supported the deal. Though the activist made the case for a full operational overhaul as a third option, investors owning both Bristol-Myers and Celgene shares and the uncertainty of throwing out the deal made for an uphill battle.

Despite the significance of that fight, most market participants expect a continuation of the trend in 2020, so long as M&A markets hold up. "We're still nearly in the same place," Goldman Sachs' Managing Director Pete Michelsen told Activist Insight. "Activists would rather companies sell right now and aren't buyers. You'd expect more activism against buysides or mergers of equals."

M&A ACTIVISM TARGETS



Number of companies publicly subjected to M&A-related activist demands globally, by year, also represented as a share of all companies publicly subjected to activist demands.

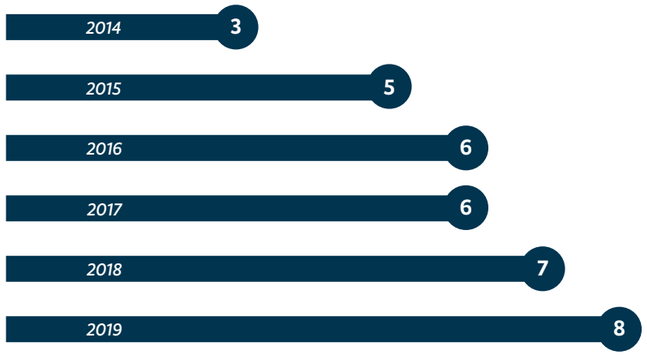
SOURCE: ACTIVIST INSIGHT ONLINE

SUCCESS RATE OF ACTIVISTS OPPOSING ACQUISITIONS SINCE 2014

Percentage of all activist demands opposing acquisitions of third parties, globally, that ended with the deal broken up, amended, or otherwise supported by the activist since 2014.

SOURCE: ACTIVIST INSIGHT ONLINE

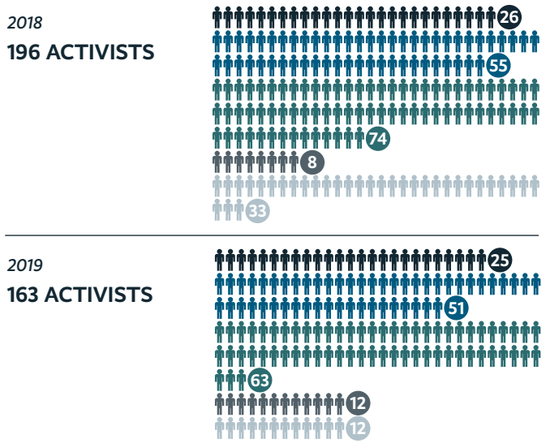
US COMPANIES FACING ACTIVIST OPPOSITION TO ACQUISITION OF THIRD PARTY



Number of U.S.-based companies publicly subjected to activist demands opposing the acquisition of a third party, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

ACTIVE M&A ACTIVISTS

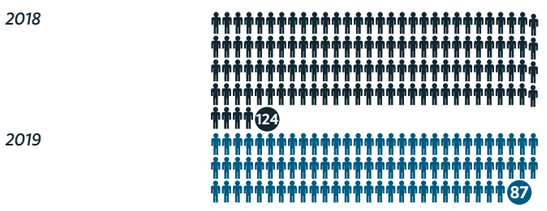


Number of investors publicly subjecting companies to M&A-related activist demands by focus level and year. See page 4 for full definitions.

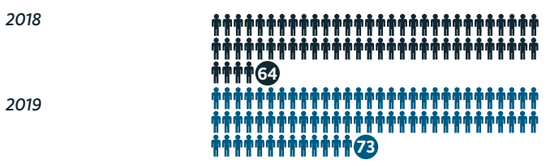
SOURCE: ACTIVIST INSIGHT ONLINE

INVESTORS MAKING M&A DEMANDS BY TYPE

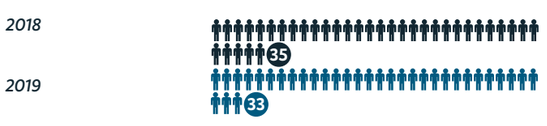
ADVOCATE M&A TRANSACTION



OPPOSE M&A TRANSACTION



PUSH FOR COMPANY BREAKUP



Number of investors making M&A-related activist demands, globally, by demand type and year.

SOURCE: ACTIVIST INSIGHT ONLINE

OFFBOARDING

ACTIVISTS MADE FEWER DEMANDS FOR BOARD SEATS AT U.S. COMPANIES THAN IN ANY YEAR SINCE 2014, LEADING TO FEWER FIGHTS, WRITES JOSH BLACK.

The 179 U.S.-based companies that received public demands for board representation from activists in 2019 marked a five-year low, accompanied by a dearth of proxy contests and speculation that activists were looking for more flexible arrangements with their targets. The 231 board seats won fell short of the 246 averaged by activists since 2014.

STANDSTILLS BACKTRACKING?

Concessions to activist investors without binding standstills by the likes of Emerson Electric, SAP, AT&T, and Marathon Petroleum gave rise to a view that more informal settlements were on the rise. If so, that would be a big change. In an academic article covering the years 2000 to 2013, Lucian Bebchuk, Alon Brav, Wei Jiang, and Thomas Keusch described standstills as "the most important and almost universal concession" of settlements.

Evidence for the rise of non-standstill settlements is mostly anecdotal, however. *Activist Insight Online* data show the proportion of formal settlement agreements containing a standstill rose from 88% in 2018 to 92% in 2019. And while activists did sometimes shy away from explicit demands for board representation, Spotlight Advisors' defense adviser Greg Taxin argues that, "For the most part, companies are going to insist on a standstill if an activist is going to get special treatment or a say on board composition or strategy."

The non-standstill settlement may be a bluff. Indeed, months after Marathon announced plans for a leadership change and breakup, the company signed a cooperation agreement with Elliott Management, complete with standstill, and agreed to add a new director. ValueAct Capital Partners ended 2019 with a non-disclosure standstill at Citigroup and not the board seat it had been expected to take.

> "THE NON-STANDSTILL SETTLEMENT MAY BE A BLUFF.

"Most activists are looking for a catalyst to move the stock, whether it's a public statement or a formal settlement," Stifel Managing Director Juan Bonifacino told Activist Insight. And while noting that activists are become more creative about how they create that catalyst, he added that, "For funds that have relatively longer investment horizons, board seats are an attractive way of pursuing that catalyst."

> FOR FUNDS THAT HAVE RELATIVELY LONGER INVESTMENT HORIZONS, BOARD SEATS ARE AN ATTRACTIVE WAY OF PURSUING THAT CATALYST."

A YEAR WITHOUT FIGHTS

Proxy fights going to a vote at U.S.-based companies dropped precipitously in 2019, falling by one-third from a year earlier to 16 – the first time below 20 since at least 2013. Companies won 69% of votes, ceding just 21 board seats.

"2019 experienced fewer proxy fights that went to a vote, in part because investors put forth ideas that would be very well accepted by other participants in the market," Okapi Partners CEO Bruce Goldfarb told *The Activist Insight Podcast* in December. "Where we still had proxy fights were the situations where the sides were so far apart that they couldn't reach an obvious conclusion."

Those fights that did go the distance were typically by more inexperienced activists. Veterans such as Starboard Value and Elliott Management busied themselves with more innovative tactics, while Occidental Petroleum's nomination deadline closed before its annual meeting, leaving Carl Icahn to wage an ultimately ineffective consent solicitation. Newcomers Bow Street Capital and Rice Investment Group won seats at Mack-Cali and EQT respectively – the latter in a ringing demonstration that the universal ballot can still deliver overwhelming board change. By October, the outlook was bright enough for Doug Braunstein's avowedly pacifist Hudson Executive Capital to launch its first-ever proxy contest, at USA Technologies. Following a legal battle, the fight will take place in April 2020.

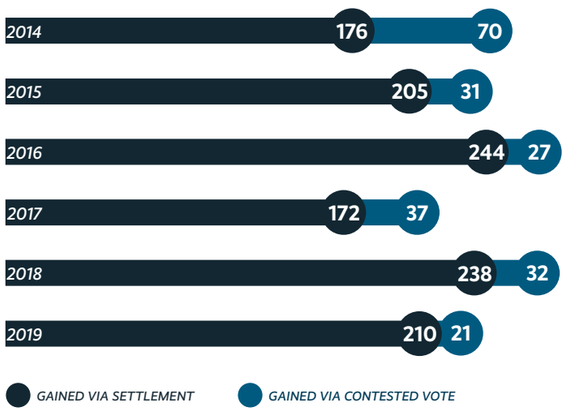
> "WHERE WE STILL HAD PROXY FIGHTS WERE THE SITUATIONS WHERE THE SIDES WERE SO FAR APART THAT THEY COULDN'T REACH AN OBVIOUS CONCLUSION.

SETTLEMENTS FOR THE WIN

Other factors behind settlements included exhaustion and the rising costs of litigation. At least two fights – at Argo Group International and Texas Pacific Land Trust – ended up settling after being unable to proceed to a vote.

Though fewer in number than in 2018, the 117 settlements at U.S.-based companies accounted for 72% of board campaign outcomes, up slightly from 2018's 70%.

US BOARD SEATS GAINED BY ACTIVISTS



Number of board seats gained by activists at U.S.-based companies, by method and year.

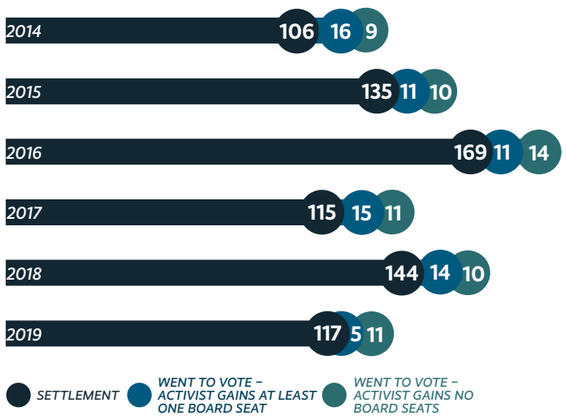
SOURCE: ACTIVIST INSIGHT ONLINE

SETTLEMENTS WITH STANDSTILL AGREEMENTS

Percentage of formal settlement agreements for board representation at U.S.-based companies with standstill provisions, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

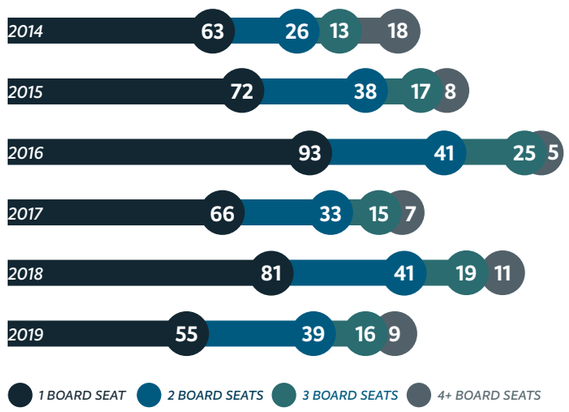
US BOARD REPRESENTATION DEMAND OUTCOMES



Outcomes of public board representation demands made at U.S.-based companies, and breakdown of those that went to vote, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

FREQUENCY OF ACTIVIST BOARD SEAT GAINS



Number of resolved public demands for board representation at U.S.-based companies when activists gained at least one board seat, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

US AND THEM

AMERICAN ACTIVIST INVESTORS DIDN'T TARGET AS MANY OVERSEAS COMPANIES IN 2019 BUT THEY STARTED TO EXPERIENCE THE IMPACT THEY CRAVE, WRITES JOSH BLACK.

U.S. activists made public demands at 64 companies based outside of the U.S. in 2019, down from 87 a year earlier. Even so, an abrupt halt is unlikely.

ASIA

Settlements for board seats involving ValueAct Capital Partners at Olympus and King Street Capital at Toshiba highlighted the strides U.S. activists have made in Asia, while Third Point Partners also received a notably less hostile response to the resumption of its campaign at Sony after a five-year hiatus. Although Sony's management rejected the suggested separation of its semiconductor business, the stock has been a runaway success in 2019, justifying Daniel Loeb's campaign.

"There continues to be interest in doing things abroad," Pete Michelsen, a managing director in Goldman Sachs' activism defense team, told Activist Insight for this report. "From a fundamental perspective, Japan remains a clear opportunity. It's just the pathway with shareholders that's unclear."

Indeed, excitement about the Japanese market saw U.S. activists make public demands at a record 11 companies. Across Asia, the number of U.S. targets was just one below 2018's record.

> YOU GET A LOT OF VIEWS THAT U.K.-LISTED STOCKS WITH AN INTERNATIONAL COMPONENT LOOK CHEAP."

In their enthusiasm, U.S. activists also threw off a self-enforced conservativism, participating in seven of the 24 proxy fights resolved across Asia in 2019, (up from an average of 2.8 per year), and five of Japan's total of 14.

That may have been inspired by domestic upstarts shaking up management, says Alfredo Porretti, an activism defense banker at Greenhill & Co. in New York. "Domestic activists should bridge the cultural gap for foreign ones."

EUROPE

U.S. activists were less likely to take the bait in Europe, where they were behind three proxy fights in 2019 even as the U.K. saw an upsurge in fights by domestic activists. And though Sherborne Investors and Coast Capital were both unsuccessful at Barclays and FirstGroup's ballot boxes, respectively, each forced significant changes in approach from their targets.

For the most part, activists that have made the trip across the pond in recent years have tempered their approach, especially since ValueAct Capital Partners negotiated its way onto the board of Rolls-Royce Holdings in 2015. That campaign, which seemed to come to a close in 2019 as Bradley Singer left the engineering company's board, introduced the U.K. to standstill agreements of a kind common in the U.S. But Trian Partners needed nothing of the kind to persuade Ferguson to spin off its U.S. division.

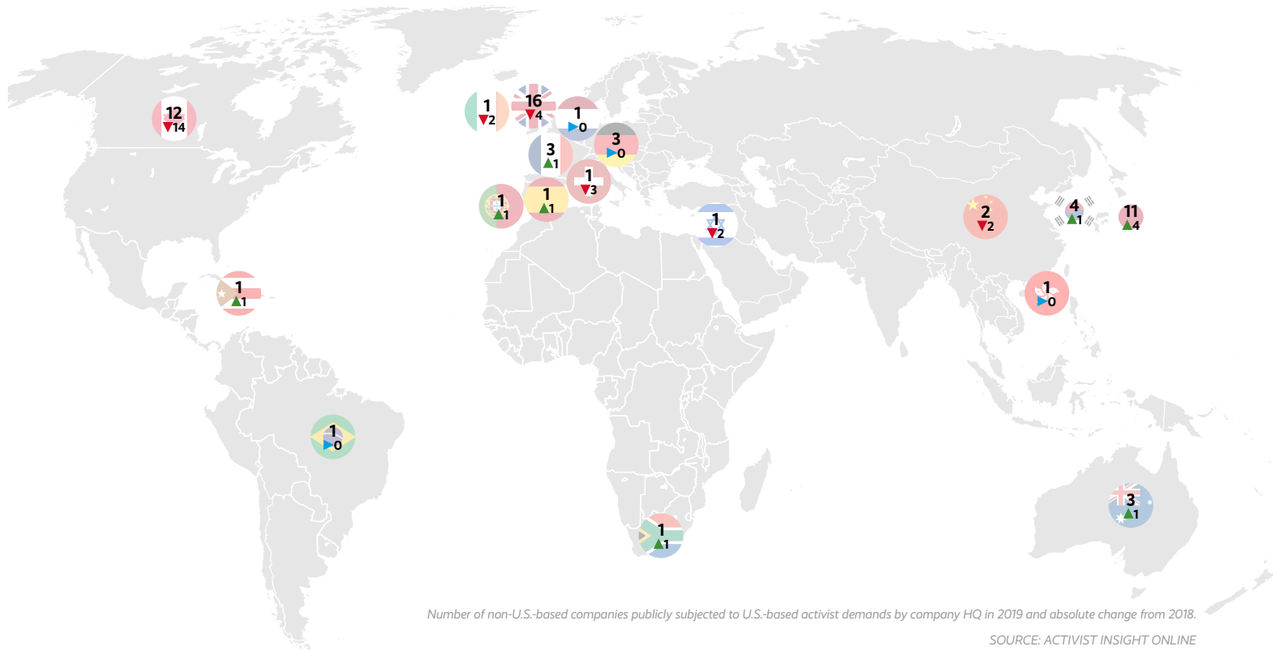
"There was a maturity in terms of the U.K., where boards are realizing that if they have a serious engaged shareholder, they need to respond to it and respond to it quickly," says Andrew Honnor, managing partner at Greenbrook Communications.

Although Elliott Management continued to push into Continental Europe, including with a campaign at German software giant SAP led by the investor's New York office, interest in the U.K. held up much better.

"We get very polarized views in the U.S. – some don't want to touch the U.K., can't get their heads around Brexit, others think Brexit is overdone, there's huge value," Honnor said, adding that the return of a Conservative majority in December's general election could spur dealmaking. "You get a lot of views that U.K.-listed stocks with an international component look cheap."

U.S. activists may also temper their demands that companies sell themselves. In 2019, they made no such demands in Asia and just one-quarter of the U.K.'s push for M&A demands, although that could be explained by the size of targets required to lure activists to foreign shores. "The level of comfort in terms of ability to perform adequate 'due diligence' is going to be lower for a foreign activist, but if you can find companies that have a pedigree or global footprint, you're not going to be as concerned," Porretti concluded.

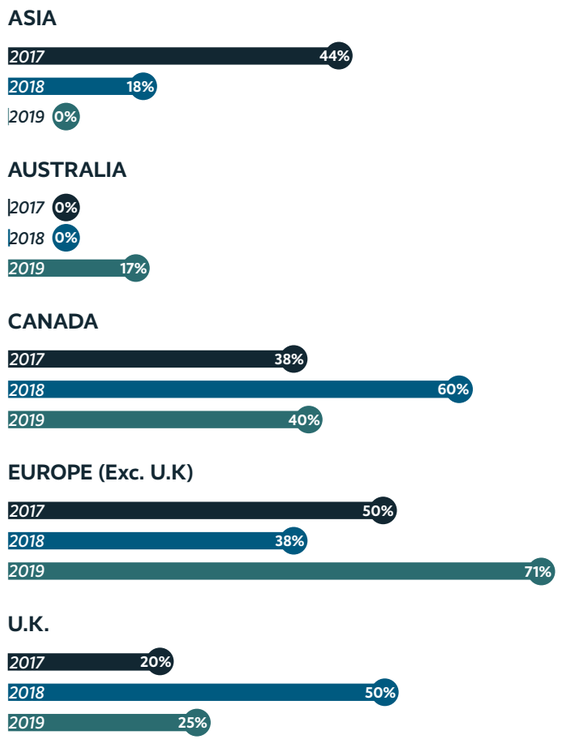
TARGETS OF US-BASED ACTIVISTS



Number of non-U.S.-based companies publicly subjected to U.S.-based activist demands by company HQ in 2019 and absolute change from 2018.

SOURCE: ACTIVIST INSIGHT ONLINE

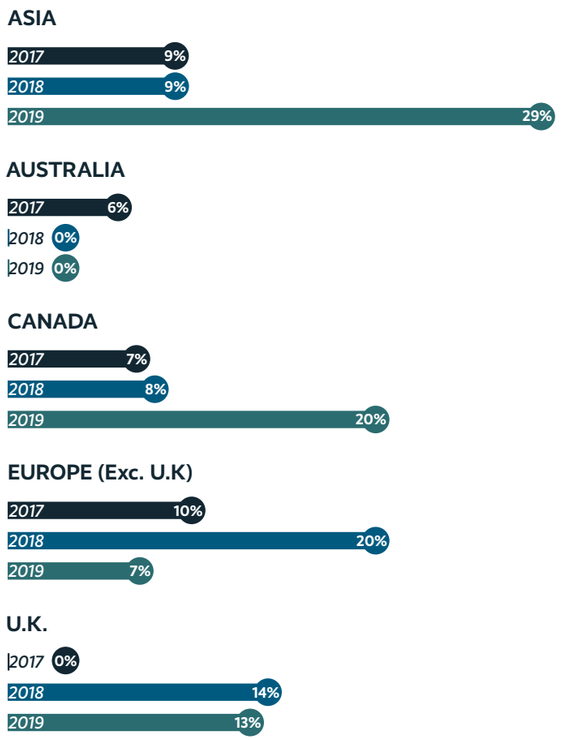
PROPORTION OF COMPANIES FACING PRO-M&A DEMANDS BY US-BASED ACTIVISTS



Companies publicly subjected to an activist demand advocating an M&A transaction by U.S.-based activists, as a proportion of all companies facing activist demands advocating for an M&A transaction, by company HQ and year.

SOURCE: ACTIVIST INSIGHT ONLINE

PROPORTION OF PROXY CONTESTS WAGED BY US-BASED ACTIVISTS



Proxy contests waged by U.S.-based activists, as a proportion of all proxy contests, by company HQ and year.

SOURCE: ACTIVIST INSIGHT ONLINE

LESS PRIVATE, MORE EQUITY

PRIVATE EQUITY FIRMS ARE STARTING TO STEP AWAY FROM WHITE KNIGHT ROLES AND INTO THE CROSSFIRE TO PUSH COMPANIES TO MAXIMIZE VALUE, WRITES ELEANOR O'DONNELL.

As the private equity space becomes crowded, anecdotal evidence suggests its players are increasingly using the tools of activist investing as fear of repercussions recedes.

> IT'S UNDERSTANDABLE THAT PRIVATE EQUITY INVESTORS WOULD BEGIN TO BORROW CERTAIN TACTICS FROM ACTIVISTS."

Elliott Management's adoption of take-private deals is widely considered to have put pressure on some private equity funds, even when the activist has partnered with industry stalwarts. In 2019, Elliott showed for the first time that the strategy could be a response to the short-lived effects of an activist campaign. Its private equity affiliate, Evergreen Coast Capital, teamed up with Francisco Partners to take LogMeIn private in a $4.3 billion deal, two years after Elliott's representative had left the board and it had exited the stock.

In the past 18 months, activist funds Trian Partners and Engaged Capital reportedly considered taking Papa John's International and Medifast private, respectively. Papa John's instead received a strategic investment from Starboard Value – another private equity-like move – and no bid has yet emerged for Medifast. In Canada, Catalyst Capital Group rivalled an insider buyout of Hudson's Bay Co., using a tender offer to build its stake, but withdrew when the management group upped its offer.

RETAINING TRUST

In a sign that hostile approaches may be on the increase, data from *Activist Insight Online* reveal that seven U.S. companies received demands for board representation at the same time or shortly after a takeover bid from the same investor, the highest since at least 2013 when records began.

Outright proxy fights by private equity firms are so far uncommon. As with traditional activists, many board campaigns end in settlements. In 2019, Altaris Capital Partners placed co-founder Daniel Tully on the board of Tivity Health and Capital Point inked a settlement with Can-Fite Biopharma, as part of which the fund was appointed as a consultant to advise Can-Fite on capital raisings, potential deals, or finding "suitable" investors. A two-year agreement between Deutsche Bank and Cerberus Capital Management ended discordantly in the same year, highlighting the difficulties of such relationships in turnarounds.

Nonetheless, private equity firms are realizing that "a more aggressive approach will not necessarily preclude them from earning management's trust in a buyout," MacKenzie Partners Executive Vice President David Whissel said in an interview.

While Whissel outlined that there are contractual and cultural limitations on a private equity fund's ability to wage proxy contests or hostile takeovers, he sees similarities with operational activist strategies. "The amount of research and due diligence that goes into each investment, the long-term nature of each project, and the focus on using different capital allocation and operational efficiency levers to drive returns – it's understandable that private equity investors would begin to borrow certain tactics from activists," he says.

> "PRIVATE EQUITY IS NOW VERY CROWDED... EXPANDING INTO ACTIVISM PROVIDES A WIDER RANGE OF TARGETS.

NATURAL PROGRESSION

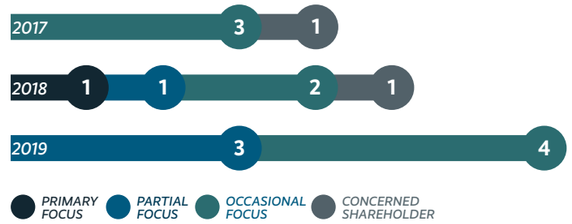
Innisfree Chairman Arthur Crozier sees the movement of private equity into activist investing as natural and board representation as an effective way to bring about change. "As Willy Sutton said when asked why he robbed banks: 'because that's where the money is,'" he told Activist Insight. "Private equity is now very crowded... expanding into activism provides a wider range of targets."

Moreover, in circumstances where an agreement on price is hard to come by, a proxy fight may be the only way for private equity firms to get what they want.

> PRIVATE EQUITY FIRMS ARE REALIZING THAT A MORE AGGRESSIVE APPROACH WILL NOT NECESSARILY PRECLUDE THEM FROM EARNING MANAGEMENT'S TRUST IN A BUYOUT."

Atlas Holdings and Blue Wolf Capital, private equity firms that have pursued a takeover of paper manufacturer Verso, are in the vanguard of this movement, running a proxy fight for board seats out of frustration and the suspicion that the company could be better managed. When Red Robin Gourmet Burgers rejected Vintage Capital Management's takeover bid in September 2019, the fund said it planned a books and records request and possibly a proxy contest. Potentially to stop Sycamore Partners taking the same approach after multiple unsolicited takeover proposals, Chico's FAS refreshed its board and appointed a new CEO.

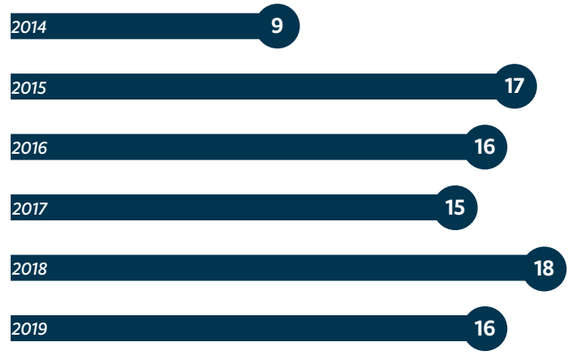
TAKEOVER DEMANDS MADE ALONGSIDE BOARD REPRESENTATION DEMANDS AT US-BASED COMPANIES BY THE SAME INVESTOR



Number of demands to take over the company made at the same time or up to one year before demands for board representation at U.S.-based companies, by focus type and year. See page 4 for full definitions.

SOURCE: ACTIVIST INSIGHT ONLINE

US-BASED ACTIVIST TAKEOVER TARGETS



Number of U.S.-based companies publicly subjected to takeover demands by activist shareholders, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

DELIVERED PIPE-ING HOT

STARBOARD VALUE TOOK A LEAF OUT OF PRIVATE EQUITY'S BOOK BY STRIKING AN AGREEMENT TO ACQUIRE PREFERRED AND ORDINARY SHARES IN PAPA JOHN'S INTERNATIONAL (A PRIVATE INVESTMENT IN PUBLIC EQUITY, OR PIPE) ALONGSIDE AN AGREEMENT OVER GOVERNANCE CHANGES.

NEW CHALLENGES

AN INTERVIEW WITH MICHAEL VERRECHIA, MANAGING DIRECTOR, M&A AND ACTIVISM ADVISORY GROUP, MORROW SODALI.

MICHAEL VERRECHIA

M.VERRECHIA@MORROWSODALI.COM

WHAT OPTIONS DO SHAREHOLDERS HAVE TO CHALLENGE M&A THEY DON'T LIKE?

Over the last 24 months we've seen shareholders or third-party bidders employ various opposition strategies to challenge M&A deals. Whether it's been through competing bids, vote no campaigns, full blown contests with competing ballots in the mail, or in some cases simply injecting rumors into the marketplace via media outlets regarding other deals that were not fully explored or others waiting in the wings, all can be effective strategies in blocking a deal.

The most effective of those campaigns have been the ones where the activist has clearly communicated the rationale for opposing the deal and also filed an opposing proxy statement soliciting votes against a transaction. A formal campaign not only secures an audience with the various proxy advisory firms, but also tends to get more airtime with both institutional and individual shareholders.

SHOULD COMPANIES PLAN TO DISCLOSE MORE ABOUT THEIR PROCESSES FOR REVIEWING OFFERS, AND EARLIER, THAN HERETOFORE?

I think it is wise for companies to be very transparent about their processes and rationale right from the announcement of a deal, especially considering the level of investor outreach and engagement they should expect shortly thereafter. Obviously, demonstrating a thorough process and strategic rationale will be a vital piece of the proxy statement, but also a significant part of any initial investor presentation that's made available shortly after announcement.

TRADITIONALLY, M&A ACTIVISM IS MORE POPULAR ON THE SELLER'S SIDE BUT IN 2019 IT WAS COMMON ON THE BUYER'S. HOW DOES THIS CHANGE DEFENSE STRATEGIES?

Defense strategies are always situational. Whether activism surfaces on the side of the buyer or seller is just part of the equation. I think the most critical aspect of the response is for both parties to convey a thoughtful, thorough message that supports the strategic rationale for the transaction and the conflict-free process in coming to terms on the deal. It is crucial to stay on point with that message when companies are in front of shareholders. To that end, understanding the different shareholder constituencies and how each effectively receives that message is paramount to the communications campaign and the key to securing the vote.

HOW DO RETAIL/INDIVIDUAL SHAREHOLDERS PERSPECTIVES DIFFER FROM INSTITUTIONS AND HEDGE FUNDS?

While traditional institutions have internal voting guidelines and access to proxy advisory firm research, and hedge/event-driven funds have their own outlook, the individual investor often has only what is directly provided to them. When the retail component of the shareholder profile is critical in an otherwise close vote, understanding their sometimes unique perspectives and explaining the rationale in language they will understand can be a challenge.

In recent situations where we have been out in front of individual holders with sizable positions, it has been fairly common to hear about their long history as a shareholder/customer and their reliance on a dividend, etc. Obtaining a favorable vote from someone so attached to their investment can be particularly challenging, even in the face of what might be considered "a great deal" from an economic perspective.

DO YOU ANTICIPATE A CONTINUATION OF 2019'S TRENDS? WHAT ELSE COULD WE SEE?

I think it is fairly reasonable to see a continuation of deal activism in the coming year. We are already involved in a few situations that have seen opposition in different forms. It will be interesting to see if these campaigns will be limited to trying to block the deals, or if they eventually take shape as proxy contests for board seats. whether activism will continue to grow there, or whether there's going to be pushback. There are definitely more challenges in that marketplace recently.

THE OLD WORLD CATCHES UP

WHILE ACTIVISM MAY HAVE DIPPED IN EUROPE, ACTIVISTS SEEM TO BE MAKING MORE HEADWAY AT COMPANIES WITHOUT A FIGHT, WRITES ELEANOR O'DONNELL.

Against the backdrop of a worldwide drop in activism, the story was no different in Europe, excluding the U.K., where the number of companies publicly subjected to activist demands in 2019 fell 26% compared to 2018, according to *Activist Insight Online* data.

> EVEN IF AN ACTIVIST LOSES AT A VOTE, THE FACT THAT THERE IS SOME SUPPORT IS WEAKENING THE COMPANY."

Upon a closer look, however, the picture is not all as it seems. With activity levels in the U.K., Germany, and France at a similar level in 2019 to 2018, and regular announcements of multibillion-dollar investments, it seems as though activism continues to take hold in Europe, just not as widely as it previously did.

RESISTANCE DOWN

In an interview for this report, SquareWell Partners' Edouard Dubois explained that the fall in activity could have been due to less resistance from boards and therefore less of a need for an activist to push a fight to a vote. "Even if an activist loses at a vote, the fact that there is some support is weakening the company – there are no winning scenarios for it," he said.

Greenbrook Communications managing partner Andrew Honnor also saw that boards had a better grasp of activist situations in 2019. "Four or five years ago, boards were more intransigent in the face of sensible arguments," he noted.

Proxy contests did spike in the U.K., mostly because of domestic activists targeting small-cap companies. Indeed, Ferguson provided Trian Partners with a model win in which the activist said barely a word publicly before Ferguson's announcement that it would spin off its U.S. division. Europe's relatively few headline-grabbing spats – among them Sherborne Investors at Barclays and Cevian Capital at Swiss logistics company Panalpina – proved the exception.

THE NEW ESTABLISHMENT

One investor with an easier year was Elliott Management, which saw longstanding opposition to M&A at Uniper, Ansaldo STS, and XPO Logistics (Europe) resolved favorably and relations with Pernod Ricard continue cordially. Elliott also cut its stake in Scout24, a German classifieds provider, two weeks after the company said it was in "advanced negotiations" over the activist's main demand, the sale of its auto unit, AutoScout24.

Elliott also found success in Italy in 2019, winning a proxy contest at Telecom Italia where it was on the defensive against French media firm Vivendi. Vivendi sought to oust Telecom Italia chairman Fulvio Conti and four Elliott-appointed directors, but canceled its proposal at the eleventh hour as it became clear there was not enough shareholder support (Conti resigned months later). Elliott had also gained critical support from the Italian establishment.

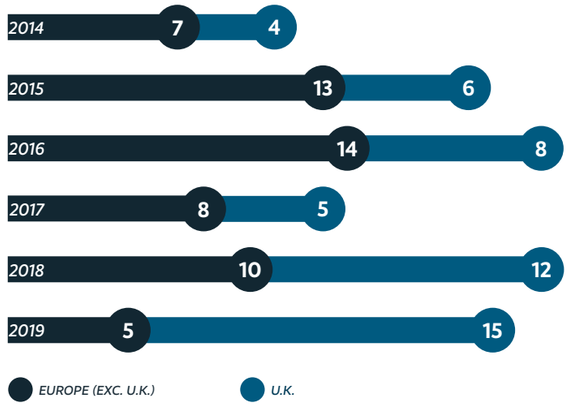
Dubois sees this as another reason why fights are not reaching a vote in Europe, with U.S. investors more sophisticated in their adaptations of practices to suit the European environment. "They have learned how to get support from other shareholders early on but also from key stakeholders," he explained.

ALREADY CREDIBLE

UBS' head of activism, Darren Novak, believes the continued uptick of activity in European markets from a "healthy mix" of funds is due to a global change in attitude toward activist investors. Speaking with Activist Insight for this report, Novak said that he believes there will be continued interest in Europe from activist investors, where some funds are already credible and can easily win shareholders over, especially with operational arguments at large-cap companies that face valuation challenges. "Activists don't have to run proxy contests any more to apply pressure, they can do it with shareholder support," he noted.

As clarity around Brexit continues to emerge, Novak believes that M&A markets will improve, increasing the appeal of activism in Europe.

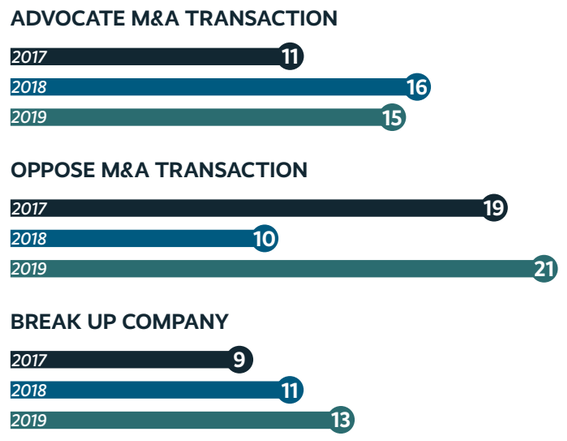
SETTLEMENTS FOR BOARD SEATS IN EUROPE



Number of settled demands for board representation between activists and Europe-based companies, by company HQ and year.

SOURCE: ACTIVIST INSIGHT ONLINE

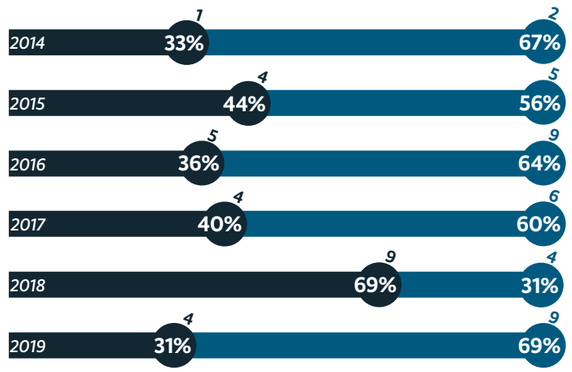
M&A ACTIVISM BY TYPE IN EUROPE



Number of Europe-based companies publicly subjected to M&A- and breakup-related activist demands, by demand type and year.

SOURCE: ACTIVIST INSIGHT ONLINE

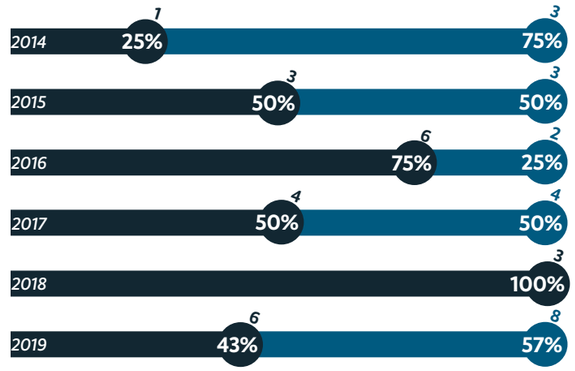
PROXY CONTEST OUTCOMES IN EUROPE



Outcome of proxy contests that reached a shareholder vote at Europe-based companies (excluding U.K.), and the proportion and frequency of each outcome, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

PROXY CONTEST OUTCOMES IN THE UK



Outcome of proxy contests that reached a shareholder vote at U.K.-based companies, and the proportion and frequency of each outcome, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

A BRIGHT FINNISH

FINLAND'S FORTUM GAINED MAJORITY CONTROL OVER GERMAN UTILITY UNIPER BY BUYING OUT ELLIOTT MANAGEMENT AND KNIGHT VINKE AFTER THE ACTIVISTS HAD SOUGHT TO FIND CREATIVE SOLUTIONS TO A REGULATORY DEADLOCK.

FIGHT OR FLIGHT

SHAREHOLDER ACTIVISM IN ASIA LAST YEAR CAN BE ROUGHLY DIVIDED INTO TWO GROUPS: JAPAN AND EVERYONE ELSE, WRITES JASON BOOTH.

Across the region, 107 companies were publicly subjected to activist demands in 2019, a 10% drop from 119 in 2018 though still the second highest number since records began in 2013. The 2019 numbers were largely supported by Japan, where a record 58 companies were publicly targeted.

> JUST TRACKING WHAT HAPPENS AT THE AGMS IS MISSING MOST OF WHAT IS GOING ON."

While activism in Hong Kong and Malaysia remained steady, the usually vibrant South Korean market saw the number of companies targeted fall by half on 2018, while Singapore, India, and China also saw sharp slowdowns in activist activity.

SEATS AT THE TABLE

Board-related demands topped the list of requests made by activists in Asia, accounting for almost half of all demands. In Japan a record 22 companies saw shareholder demands for board representation, versus 11 in 2018. Activists went on to win seats at eight of the 22 companies publicly subjected to demands for board representation in 2019, including Lixil, Toshiba, and Olympus.

2019 also saw the highest number of proxy fights since 2015 and the highest proportion going all the way to a vote at 92%, up from 74% in 2018. And if Asian management teams were more confident of shareholder support, that confidence appears well placed. In Japan, shareholders rejected the efforts by Fir Tree Partners, Moab Capital, and Falcon Edge Capital to gain seats at Kyushu Railway Company, as well as Dalton Investments' bid for a board seat at Shinsei Bank.

In South Korea, Hyundai Motor and Hyundai Mobis shareholders voted down all of Elliott Management's proposals for special dividend payments and board seats after the powerful National Pension Service said it would vote against the U.S. activist. "The only way you are going to win is if you have an agreement with the NPS," said one activist in South Korea who asked to remain anonymous.

However, 2019 also saw a rise in settled demands for board representation – from seven across Asia in 2018 to 12 in 2019, including five in Japan.

"Just tracking what happens at the AGMs is missing most of what is going on," said CLSA Japan Strategist, Nicholas Smith. "If you had to take it to an AGM, you failed."

DEAL OR NO DEAL

Asia activism in 2019 was also notable for the low level of demands related to mergers and acquisitions. Just 5% of demands in Asia were M&A-related, the lowest level in at least seven years.

> "RECENT EVENTS INDICATE THAT MERGER ACTIVITY, AND ASSOCIATED ACTIVISM, MAY BE ON THE RISE.

One cited reason was uncertainty over foreign investment regulations, due in part by the U.S.-China trade war that has made acquiring companies with Asia-wide operations more complicated. Japan's recently proposed amendments to the Foreign Exchange and Foreign Trade Act, including the reduction of the threshold for a foreign investor to file a "pre-acquisition notification" from 10% to 1%, in order to protect "national security" caused particular concern.

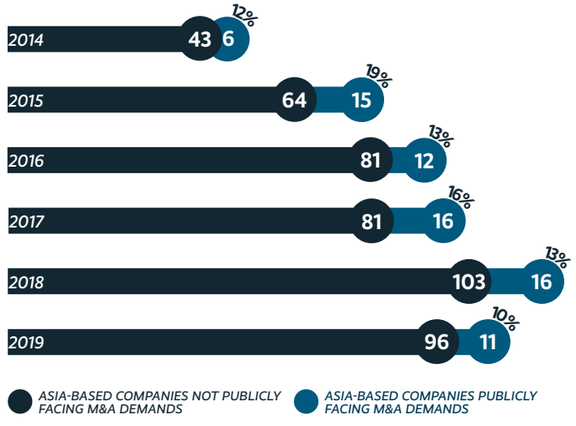
Such worries now appear to be overstated.

"The Japanese government was upset to hear such negative reaction from foreign investors so I do not expect they will try and stop pure investors (such as ourselves) from buying shares of Japanese companies," said Strategic Capital's CEO Tsuyoshi Maruki.

Recent events indicate that merger activity, and associated activism, may be on the rise. In December, Hoya made an unsolicited offered to buy NuFlare Technology, topping an earlier bid by Toshiba that some called undervalued. A fund linked to Japanese activist Yoshiaki Murakami is among NuFlare's shareholders. And rare hostile takeover attempts at Unizo, Sakura Sogo, and Descente point to a marked change in Japan's business culture.

"It seems that corporate governance reform has given domestic CEOs who want to take advantage of M&A the platform that is needed to expand their enterprises," said veteran Asia shareholder activist Jamie Rosenwald of Dalton Investments, which spent 2019 pressing for corporate governance reform in South Korea and just launched a new activist fund targeting Japan.

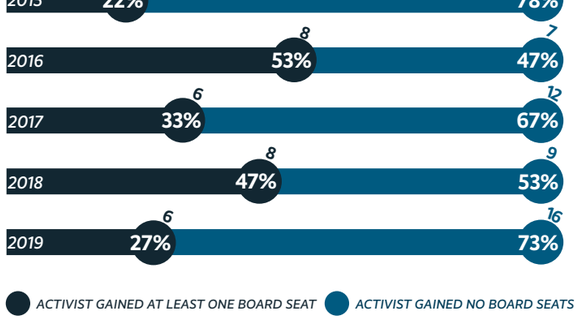
ACTIVIST TARGETS IN ASIA



Number of Asia-based companies publicly subjected to activist demands, and the proportion of those facing M&A-related demands, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

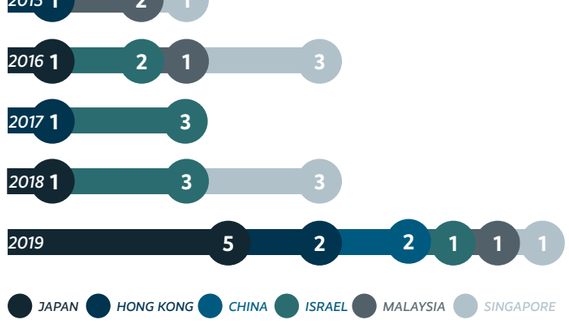
PROXY CONTEST OUTCOMES IN ASIA



Outcome of proxy contests that reached a shareholder vote at Asia-based companies, and the proportion and frequency of each outcome, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

SETTLEMENTS FOR BOARD SEATS IN ASIA



Number of settled demands for board representation between activists and Asia-based companies, by company HQ and year.

SOURCE: ACTIVIST INSIGHT ONLINE

NEW THINKING, SAME OLD POSSIBILITIES

ELLIOTT MANAGEMENT SOLD ITS SHARES IN TWO HYUNDAI GROUP COMPANIES IN EARLY 2020, A YEAR AFTER LOSING PROXY CONTESTS FOR BOARD SEATS AND DIVIDENDS. SOUTH KOREA HAS PROVED A HARD MARKET FOR THE ACTIVIST TO CRACK.

THE YEAR OF THE PERFECT ESG STORM

CAS SYDOROWITZ
CAS.SYDOROWITZ@GEORGESON.COM

THIS WILL BE THE YEAR COMPANIES FACE REAL SCRUTINY AND SHAREHOLDER PRESSURE TO DEAL WITH ENVIRONMENTAL RISKS, WRITES CAS SYDOROWITZ, GLOBAL HEAD OF ACTIVISM AND M&A AT GEORGESON.

Pressure to face up to the risks of climate change is mounting not just on carbon-emitters but, perhaps more surprisingly, on the financial industry. Climate activists seek to persuade asset managers to be more critical or divest some portfolio holdings, banks to stop financing companies or projects that are significant carbon-emitters, and insurance companies not to insure coal mines or thermal power plants in order to make ongoing operations and start-up costs prohibitive.

FROM COAL TO BLACKROCK

The most significant development of 2020 thus far is BlackRock leader Larry Fink's letter to public company CEOs. According to Fink, BlackRock will increasingly ask companies to follow the disclosure requirements of the Sustainability Accounting Standards Board (SASB) and Task Force on Climate-related Financial Disclosures (TCFD). "Given the groundwork we have already laid engaging on disclosure, and the growing investment risks surrounding sustainability, we will be increasingly disposed to vote against management and board directors" that do not make progress on disclosures, Fink concluded.

This development follows a period of growing pressure on BlackRock. Chris Hohn, founder of $28 billion hedge fund TCI Fund Management, said in December that "major asset managers like BlackRock have been shown to be full of greenwash," and that BlackRock's record on voting for climate-related shareholder resolutions was "appalling." A Ceres and Fund Votes study of votes on climate-related proposals in the 2018 proxy season found BlackRock supported just 10% of these resolutions. And although it is the largest and most influential asset manager in the world with over $7 trillion under management, BlackRock this year faces a shareholder proposal from Mercy Investment Services, requesting a public review of its 2019 voting record on climate matters.

Until recently, BlackRock was also a notable absentee among supporters of the Climate Action 100+, an investor initiative targeting 100 "systemically important emitters," with demands to improve transparency and disclosure. Now that BlackRock is a signatory, the movement will be more potent.

AFTERSHOCKS

More companies will face the same pressures as BlackRock. At the end of 2019, TCI wrote to portfolio companies to request disclosure of carbon and greenhouse gas emissions with Hohn saying, "Investing in a company that doesn't disclose its pollution is like investing in a company that doesn't disclose its balance sheet." TCI will also vote against directors at companies with inadequate disclosure and auditors that fail to account for climate risks.

A wider array of companies should be prepared to receive shareholder proposals, even if they are not major emitters. This year, Barclays received one from ShareAction and 11 institutional investors concerned about its exposure to stranded assets and seeking targets for the bank to phase out the provision of financial services to affected industries and companies or projects. The requisition notes Barclays "has not demonstrated that its provision of financial services to the energy sector and electric and gas utilities is aligned with the Paris goals."

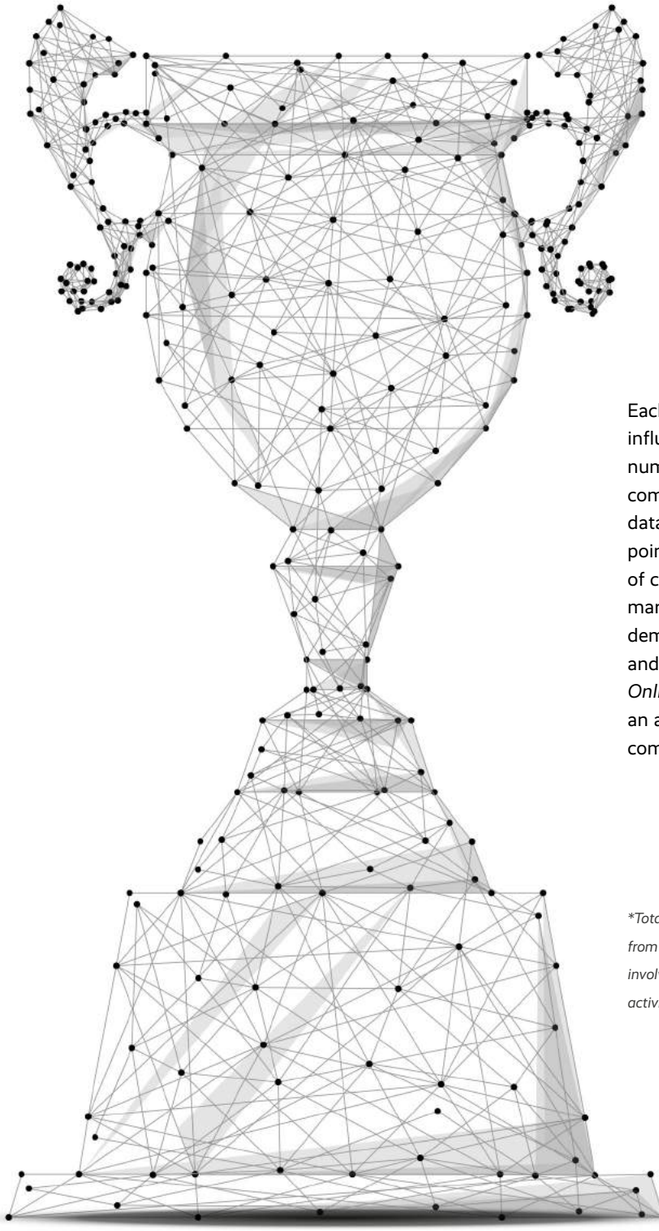
Moreover, climate disclosure will start to influence money flows, including debt costs as investors demand higher financing costs for companies in riskier industries or with inadequate disclosures. Singapore's SG$313 billion ($231 billion) sovereign wealth fund Temasek sat out the initial public offering of Saudi Aramco, citing environmental, social, and governance (ESG) concerns. Other companies coming to market must calibrate the appetite of investors in conjunction with their E&S profile.

Meanwhile, the Bank of England has stress-tested U.K. financial service companies for their exposure to various climate scenarios and Unfriend Coal has pressured global insurers to stop insuring coal mines and coal-fired power generators and divest investments in coal. To date, 35 large insurance companies with combined assets of more than $9 trillion (over one-third of all insurance assets) have divested from coal in some form.

In this environment, all companies need to articulate how their business purpose intersects directly or indirectly with companies identified as climate offenders. No company is an island.

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

NORDEA WAS JUST ONE COMPANY TO EXPERIENCE CEVIAN CAPITAL'S WRATH IN 2019.

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.

IN A RUSH

ACTION BY WRITTEN CONSENT IS THE MORE COMMON WAY TO CHANGE BOARDS OFF-SEASON, BUT COMPANIES APPEAR KEENER ON PROVIDING SPECIAL MEETING RIGHTS, WRITES IURI STRUTA.

Activist investors stepped up their off-season activity by launching consent solicitations and calling special meetings in 2019. According to data from *Activist Insight Online*, eight actions by written consent were initiated, more than in the two previous years combined, although three were steps to call a special meeting.

> [THE] WRITTEN CONSENT RIGHT IS MORE EMPOWERING TO SHAREHOLDERS NOT BECAUSE OF WHAT SHAREHOLDERS CAN DO, BUT BECAUSE OF WHAT DIRECTORS CANNOT DO."

While previously most consent solicitations were limited to small-cap companies because of lower costs and more concentrated shareholder registers, 2019 saw larger capitalization firms targeted, including Occidental Petroleum and Amag Pharmaceuticals.

FRONT RUNNING

Although the reasons for off-season campaigns can be highly circumstantial, the scramble to force shareholder votes may not be a coincidence. Companies have been more adept at making changes when an activist surfaces, taking some steam out of the dissident's arguments in the run-up to the next annual meeting.

"As an activist, if you don't want the company to front-run you with some of these [board] decisions, you have to start the campaign earlier before they are made," Aneliya Crawford, a partner at Schulte Roth & Zabel, said in an interview for this report.

Launching a consent solicitation or calling a special meeting might also be a way for activists to gain concessions much earlier. Of the eight consent solicitations launched in 2019, three ended in settlements for board seats – including at Argo Group International, Amag and Liberated Syndication, while Hudson Executive Capital's action forced USA Technologies to announce a date for its annual meeting. At Progenics Pharmaceuticals and Aura Systems, activists delivered the consents and gained board seats as a result. Icahn withdrew his consent solicitation at Occidental and is now considering a proxy fight at the next annual meeting.

PREFERRED METHOD

Consent solicitations are far cheaper and more effective than special meetings, where the board has more control over things like timings and can therefore prepare a counter-offensive. And while it remains the most popular option, nominating at annual meetings when advance notice bylaws and regulatory approvals are involved can mean the windows for action are unduly curtailed, forcing activists to look outside the traditional proxy calendar.

> "A BOARD OF DIRECTORS IS MUCH MORE CONCERNED ABOUT A CONSENT THAN A SPECIAL MEETING.

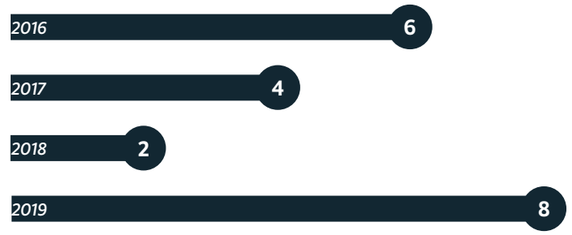
"As a dissident, the preference is to use a consent solicitation because you have more control over the timing and it's much faster," Tom Ball, former senior managing director at proxy solicitor Morrow Sodali and the founder of consultancy Vanderbilt Consulting, said in an interview for this review. "A board of directors is much more concerned about a consent than a special meeting."

When faced with shareholder proposals to allow the right to act by written consent, companies often argue that they already give the shareholders the right to call special meetings. The view of institutional investors on the matter is largely divided, while proxy advisers Institutional Shareholder Services and Glass Lewis generally favor the right to act by written consent even when shareholders can already act by special meeting.

Indeed, Meredith Foster, a Judicial Law Clerk at United States Courts for the Ninth Circuit, argued in a 2019 paper that in Delaware at least, where more than half of U.S. publicly-listed companies are incorporated, the "written consent right is more empowering to shareholders not because of what shareholders can do, but because of what directors cannot do."

Unsurprisingly, special meeting provisions are more popular. Since 2013, 69 companies adopted the right to act by written consent and 145 embraced the special meeting right, according to *Activist Insight Governance*. At the same time, 78 companies removed written consent versus 54 that did the same with the special meeting provision.

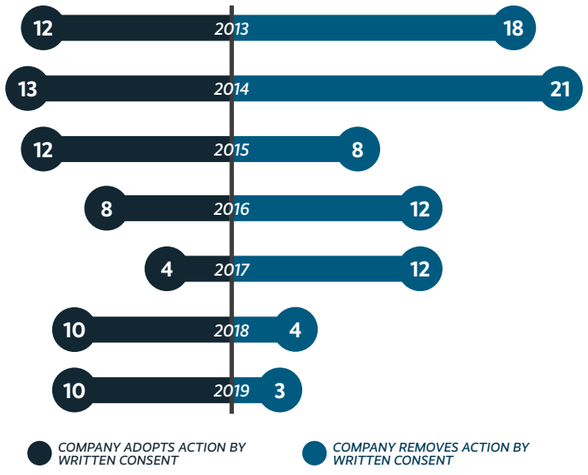
CONSENT SOLICITATIONS LAUNCHED



Number of consent solicitations launched at U.S.-based companies, by year.

SOURCE: ACTIVIST INSIGHT ONLINE

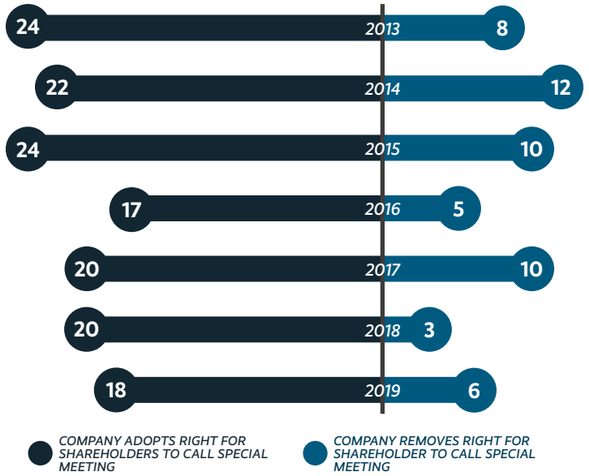
CHANGES IN ACTION BY WRITTEN CONSENT



Number of U.S.-based companies adopting and removing action by written consent, by year.

SOURCE: ACTIVIST INSIGHT GOVERNANCE

CHANGES IN RIGHT TO CALL A SPECIAL MEETING



Number of U.S.-based companies adopting and removing the right for shareholders to call a special meeting, by year.

SOURCE: ACTIVIST INSIGHT GOVERNANCE

UNSCHEDULED BROADCAST

ACTIVISTS HAVE BEEN TAKING TO THE AIRWAVES OUTSIDE OF PROXY SEASON TO PREVENT COMPANIES CONTROLLING THE SCHEDULE.

COMPOSE YOURSELF

AS BOARDS CONSIDER WHAT INVESTORS WANT FROM THEIR DIRECTORS, THE LOUDEST VOICES ARE CALLING FOR DIVERSITY AND INDEPENDENCE, WRITES ELEANOR O'DONNELL.

Activists sought board representation at 179 U.S. companies in 2019, according to *Activist Insight Online*, but outside of proxy fights and settlement agreements, boards had to grapple with the traditional concerns of diversity and independence.

PASSIVES GET VOCAL

At the end of 2018, California mandated that all public companies headquartered in the state had to have at least one female director on their boards by the end of 2019, with larger companies needing at least three directors by the end of 2021, fuelling a fight for improved gender diversity on corporate boards. According to Okapi Partners Senior Managing Director Mark Harnett, "The heightened awareness and now accelerated growth of significant gender diversity on boards has been shareholder activism's biggest success story."

> HAVING A LEAD INDEPENDENT DIRECTOR ISN'T NECESSARILY ENOUGH."

However, the impetus comes not from activist hedge funds but from passive investors. Index fund managers have advanced diversity "through voting policies and engagement [and] steered companies into tapping into a talent pool that has been historically overlooked, which has made for more dynamic boards," Harnett added.

While index funds pushed companies to select more diverse directors, shareholder proposals focusing on independent chairmen came into focus. According to Proxy Insight data, the number of independent chairman proposals at U.S. companies rose 23% to 59 in the 2018-19 season (July to June), compared with a year earlier.

Strategic Governance Advisors Manging Director Steve Balet noted that votes on proposals to have independent chairmen have garnered much more support than in previous years (indeed, the average vote 'for' such proposals has hovered around 30% in the past four seasons). Yet Institutional Shareholder Services (ISS) responded to client pressure when it introduced a new list of factors that it would consider when weighing whether to recommend support at the looming annual meeting season.

"Having a lead independent director isn't necessarily enough to defeat those proposals," Balet cautioned.

UNINTENDED CONSEQUENCE

While companies across the U.S. sought to diversify their boards, parallel attempts to prevent overboarding may make that task harder. Asset manager Vanguard tightened its proxy voting guidelines for U.S. portfolio companies in 2019, following BlackRock's example and limiting management to four directorships, with CEOs allowed to sit on only one other board.

Despite organisations like The Business Roundtable focusing more on the importance of director attentiveness, proxy voting advisers such as Glass Lewis and ISS oppose CEOs who are serving on more than two boards and any other director who serves on more than five boards. According to Balet, these "cookie cutter policies" were developed due to the sheer number of proxies regarding the issue but they don't truly capture what may be best for a given board.

While the guidelines help to keep directors' attention focused, they also further limit the small pool of female CEO candidates who are being used to diversify boards. Balet calls this the "law of unintended consequence" but does not think it will check the progress of diversity as senior management is increasingly used to grow the pool of diverse candidates.

"The focus on diversity will continue to expand in the boardroom and in management selection," he predicted.

> "THE FOCUS ON DIVERSITY WILL CONTINUE TO EXPAND IN THE BOARDROOM AND IN MANAGEMENT SELECTION.

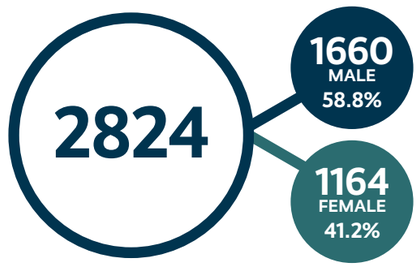
INDEPENDENT CHAIRMAN PROPOSALS

Number of independent chairman shareholder proposals, by proxy season (July - June).
SOURCE: PROXY INSIGHT

INDEPENDENT CHAIRMAN PROPOSALS (% FOR)

Average votes 'for' independent chairman shareholder proposals, by proxy season (July - June)
SOURCE: PROXY INSIGHT

RUSSELL 3000 DIRECTOR APPOINTMENTS



Breakdown of all board appointments made at Russell 3000 companies in 2019, by gender.
SOURCE: ACTIVIST INSIGHT GOVERNANCE

S&P500 DIRECTOR APPOINTMENTS

Breakdown of all board appointments made at S&P500 companies in 2019, by gender.
SOURCE: ACTIVIST INSIGHT GOVERNANCE

FINK ABOUT IT

INDEX FUNDS LIKE BLACKROCK AND STATE STREET HAVE BEEN INFLUENTIAL IN INCREASING GENDER DIVERSITY ON BOARDS. INDEPENDENT CHAIRMEN COULD BE THE NEXT BIG THING.

THE OTHER REFORM

REFORMS TO THE SHAREHOLDER PROPOSAL FRANCHISE COULD HAVE THE UNINTENDED EFFECT OF SHELTERING COMPANIES WITH DUAL-CLASS SHARE STRUCTURES FROM PRESSURE, WRITES PROXY INSIGHT'S MATT SCOTT.

Much has been said about the Securities and Exchange Commission (SEC)'s proposed changes to proxy voting adviser regulation, both before and after a draft rule was published on November 5. Considerably less has been said about its suggestions for the rules governing shareholder proposals, which were announced on the same day.

WHAT COULD CHANGE?

The new rules would raise the ownership requirements for submitting a shareholder proposal and ramp up resubmission thresholds – the amount of support a proposal must receive to be eligible for resubmission the following year.

Currently, a shareholder proposal appearing on the ballot for the first time must receive 3% support to be eligible for resubmission within the next three years. This rises to 6% on the second attempt and 10% on the third. The SEC has proposed that these thresholds could become 5%, 15% and 25% respectively.

According to data from Proxy Insight, the new rules would have seen an extra 18 proposals fail to gather enough support for resubmission in the 2018-19 proxy season. But for companies where independent shareholders own less than a majority of the voting power, that could be a drastic reduction of influence.

> "ACCORDING TO DATA FROM PROXY INSIGHT, THE NEW RULES WOULD HAVE SEEN AN EXTRA 18 PROPOSALS FAIL TO GATHER ENOUGH SUPPORT FOR RESUBMISSION IN THE 2018-19 PROXY SEASON."

Outlining the reforms, the SEC said it had considered excluding insider votes, or applying a different vote counting method at companies with dual-class share structures. These ideas were rejected, with the regulator saying it "believe[s] that including these votes in the voting calculation more accurately captures the sentiment of all shareholders."

> "MANY INVESTORS ALREADY TAKE A DIM VIEW OF INSIDERS WIELDING CONTROL THAT IS NOT PROPORTIONATE TO THEIR OWNERSHIP.

At the time of writing, the proposal was still out for consultation and might yet be changed. However, Proxy Insight thought it worth considering the potential effects.

A LOSING BATTLE

To get the measure of how shareholder proposals perform at dual-class companies, we looked at some examples of proposals to equalize voting rights. After all, these are by definition submitted only to companies with multiple share classes. Past analyses have found they often enjoy broad support from independent shareholders, only to be scuppered by the very impediment they seek to overthrow.

One of the most prominent examples is Facebook, which has received a shareholder proposal seeking equal voting rights for each of the past six years. Mark Zuckerberg controls 60% of voting rights through supervoting stock so this proposal can never succeed without his support. But for investors, repeatedly proposing equal voting rights is a way to make a point.

According to Open MIC, a lobby group that works with the sustainable investment community, independent support for 2019's equal voting rights proposal was 83%. Yet the steadily rising support would be insufficient to qualify for resubmission under the SEC's suggested policy; in 2019, the final voting results showed 24.5% support for the proposal.

Clearly the proposal has wide appeal, but under the suggested reforms it would have been eliminated on the third attempt. Even after twice as much time building support, it has not met the new requirements.

A similar proposal at Google parent Alphabet received just over 30% support in 2019, its eighth consecutive year. It was not until the fourth attempt in 2015 that it broke 25% support. The new rules would have nipped it in the bud on its third attempt, which was backed by just 23.7% of shareholders.

> "FOR INVESTORS, REPEATEDLY PROPOSING EQUAL VOTING RIGHTS IS A WAY TO MAKE A POINT."

Supporters of the SEC's reforms could reasonably claim that the proposed thresholds are designed to exclude only the outliers among shareholder proposals. Last proxy season, the average shareholder proposal at an S&P 500 Index company received 29.7% support, comfortably clearing all of the suggested hurdles.

At companies in the same index with dual-stock structures, the average proposal received just 17.0%. A penalty of 12.7 percentage points undoubtedly presents an extra barrier for shareholder proposals at these companies, and places a three-year limit on the average proposal.

A BROADER VIEW

The problem is not only limited to calls to collapse dual-class share structures. It has implications for a wider array of issues that shareholder proponents care about.

Returning to Facebook, another shareholder proposal that has been popping up for several years seeks a report on the gender pay gap. In 2019, its fourth iteration managed to receive 9.9% support – neither dismal nor spectacular, and not enough to get it beyond the second attempt under the potential reforms.

However, it is likely that all Class B shares represented at the meeting, which hold 10 votes per share, opposed this item. When the votes are equalized, it seems the actual percentage of shares backing the proposal was 27.5%. This is well over twice the reported figure, and more than enough to keep it coming back year after year.

Many investors already take a dim view of insiders wielding control that is not proportionate to their ownership. They may be even less comfortable if the amplified voice of management not only keeps shareholder proposals from passing, but actually pushes them off the ballot despite broad independent support.

SELECTED DUAL-CLASS COMPANIES THAT FACED ONE-SHARE, ONE-VOTE PROPOSALS

ISSUER	MONTH MISSED THRESHOLD	ATTEMPT NUMBER	FOR % (ACTUAL)	FOR % (EQUAL VOTING)
INGLES MARKETS	FEBRUARY 2013	1	3.8%	22.8%
ALPHABET	MAY 2014	3	23.7%	73.0%
FACEBOOK	JUNE 2016	3	16.0%	51.0%
FIRST CITIZENS BANCSHARES	APRIL 2015	3	20.2%	60.5%

SOURCE: PROXY INSIGHT

The table above shows cases since 2013 where one share, one vote proposals would have ground to a halt if the new regime had been in place. All continued to be put forward in following years. The table also estimates the support these proposals would have received if all votes had been counted equally. This assumes that all holders of supervoting stock opposed having their voting rights cut. Where this information was not disclosed, it also assumes that they all participated in the meeting.

THIS MEANS WAR

SHORT SELLERS REMAIN OPTIMISTIC THAT MARKETS WILL PROVIDE FRUITFUL HUNTING GROUNDS, DESPITE HURDLES PUT IN PLACE BY REGULATORS AND INSTITUTIONAL INVESTORS, WRITES JOHN REETUN.

After a dip in 2018, the number of activist short selling campaigns launched in 2019 rose to 168, from 159 the year before. The modest increase came as many markets surged upwards, though that was not the only reason 2019 was a precarious one for short sellers.

"There's more open hostility toward short sellers – including toward activist short sellers," Muddy Waters' founder Carson Block told Activist Insight in an email.

CIRCLING THE WAGONS

Securities regulators led the perceived war on short selling in 2019. German watchdog BaFin banned short sales at payment solution firm Wirecard in February after shares crashed 40% in just over two weeks, and later filed criminal complaints of market manipulation against two Financial Times journalists and several short sellers.

In October, Turkey followed suit with a ban on short selling at seven banks and France's Woerth Report presented new regulatory proposals, including new disclosure requirements for bets against derivatives, criminal charges for "abnormal functioning of the market," and tracking who short sellers sell shares to. The European Union will introduce a similar measure in April, allowing regulators to follow lending and borrowing activity.

> THERE'S MORE OPEN HOSTILITY TOWARD SHORT SELLERS – INCLUDING TOWARD ACTIVIST SHORT SELLERS."

Such steps were ridiculed by short sellers; Dan David, founder of Wolfpack Research, said the threat of increased regulation "could never work for countries interested in having a fair-valued, efficient market," adding that the idea "never fails to help politicians get a headline, especially in an economic downturn." Gabriel Grego, founder of Quintessential Capital Management, said the French proposals would only succeed in "postponing the inevitable blow up of frauds and encouraging criminal corporate behavior." In a written response to the Woerth Report, Muddy Waters agreed greater transparency surrounding securities lending "seems [like] a good thing," but would not be "sufficient to fight against the risks of manipulation of stock prices."

> "2020 HAS THE POTENTIAL TO BE A BLOODBATH FOR SHAREHOLDERS IF LIQUIDITY STARTS TO TIGHTEN AND INTEREST RATES RISE.

A more serious concern emerged in December. Japan's Government Pension Investment Fund (GPIF) announced it had temporarily suspended stock lending, which it believed could be "inconsistent with the fulfilment of the stewardship responsibilities of a long-term investor." It may resume the program if transparency improves but Block suggested the move was one of "ignorance, or a misguided mentality," adding that GPIF's "claim that short selling is not compatible with ESG [environmental, social, and governance] goals shows the hollowness of much of ESG culture."

IS EARLY STILL WRONG?

Although 2019 saw a slight decrease in the number of activist short campaigns by known active short sellers, down to 114 from 125, there was an increase in campaigns by anonymous activists, from 34 in 2018 to 54 in 2019. Moreover, according to Grego, remaining market participants are more institutionalized, and the increased competition ensures "there is less time available for due diligence if we want to be the first to strike." Block agreed, noting that "the U.S. has become crowded with activist short sellers," and "a bit inured to claims of company wrongdoing."

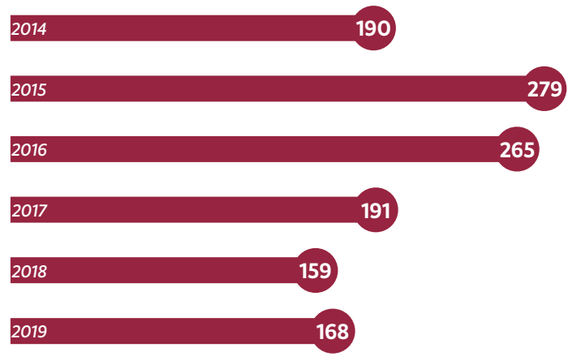
Despite the added pressure, short sellers remain optimistic of the upcoming year. For one thing, 2019 saw decent returns. A report from The Friendly Bear into Waitr Holdings saw a 97% total campaign return*, while Quintessential's report into Bio-on delivered a 61% return in its first week. On average, short selling campaigns in 2019 saw a 6.7% return after one week, up from 5.5% in 2018 and 4.0% in 2017.

> THERE IS LESS TIME AVAILABLE FOR DUE DILIGENCE IF WE WANT TO BE THE FIRST TO STRIKE."

Grego said that his fund is "active in a few very interesting names already. So, we are very optimistic about our prospects." Spruce Point Capital's Ben Axler said the environment remains "robust and attractive," and an interest rate cut could see "extreme earnings disappointment" among large-cap companies.

David agreed. "2020 has the potential to be a bloodbath for shareholders if liquidity starts to tighten and interest rates rise to anywhere near reasonable levels," he said.

ACTIVIST SHORT CAMPAIGNS



Number of activist short seller campaigns launched, by year.

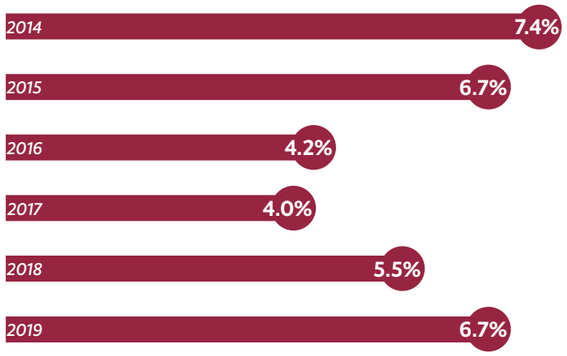
SOURCE: ACTIVIST INSIGHT SHORTS

	U.S.	ASIA	CANADA	EUROPE (exc. U.K.)	U.K.	OTHER
2014	137	34	9	2	6	2
2015	189	43	19	17	5	6
2016	187	36	21	11	4	6
2017	143	25	9	7	4	3
2018	100	18	22	7	5	7
2019	120	28	6	7	1	6

Number of activist short seller campaigns launched, by company HQ and year.

SOURCE: ACTIVIST INSIGHT SHORTS

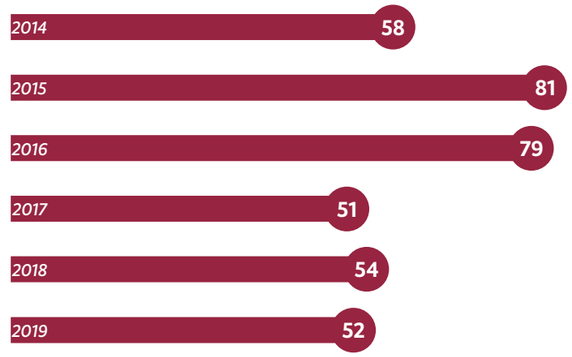
ONE-WEEK ACTIVIST SHORT CAMPAIGN RETURN



Average one-week activist short selling total campaign return by year of campaign launch.*

SOURCE: ACTIVIST INSIGHT SHORTS

ACTIVE ACTIVIST SHORT SELLERS



Number of short sellers launching an activist short selling campaign, by year.

SOURCE: ACTIVIST INSIGHT SHORTS

**Total campaign return is a calculation of the stock price change percentage, minus any dividend payment obligations, of campaigns initiated in 2019 from the close prior to the campaign's announcement until the last close on the defined period.*

IF YOU GO DOWN TO THE WOODS TODAY

ACTIVIST SHORT SELLERS ARE STARTING TO EMERGE FROM THEIR HIBERNATION. ONE TOLD ACTIVIST INSIGHT THAT 2020 COULD BE A "BLOODBATH."

THE ACTIVIST SHORT SELLER TOP 5

MUDDY WATERS COMES STRAIGHT INTO THE TOP FIVE IN POLE POSITION ALONG WITH TWO OTHER NEW NAMES AS HINDENBURG ADVANCES, WRITE ELEANOR O'DONNELL AND JOHN REETUN.

**Total campaign return is a calculation of the stock price change percentage, minus any dividend payment obligations, of campaigns initiated in 2019 from the close prior to the campaign's announcement until the last close on the defined period.*

1 MUDDY WATERS RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2019:	5
AVERAGE TARGET MARKET CAP:	$7.1 BILLION
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN*:	17.2%

Carson Block's Muddy Waters launched five new short campaigns in 2019, kicking up quite a media storm with its over-arching theme of fraud. The fund started the year with a short position in Inogen in February, claiming the manufacturer of portable oxygen concentrators has created "an egregiously false narrative" about the size and growth of its total addressable market. The short seller put a $46 per share price on Inogen's head, a 67% downside at the time. The company's share price hit $68.33 at the close on December 31, 2019.

Other targets included Anta Sports where Muddy Waters questioned the firm's financial foundations; Burford Capital, which was accused of manipulating key financial metrics to mislead investors; PeptiDream, which the short seller alleged will likely fail to meet investor expectations; and NMC Health which Muddy Waters said "manipulated" its balance sheet to understate its debt.

Despite widespread criticism of short selling, Block told Activist Insight this doesn't affect his approach. "We use an exacting process, and are always cognizant that there's little room for error in this business," he said. The new year will be "target rich" for short sellers, he added.

2 HINDENBURG INVESTMENT RESEARCH

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2019:	6
AVERAGE TARGET MARKET CAP:	$2.1 BILLION
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN*:	23.2%

Hindenburg Research was less busy in 2019 than in 2018, with only six new short campaigns. Another fraud-exposer, Hindenburg focused mainly on the healthcare sector, with SmileDirectClub and Predictive Technology Group two of its most notable campaigns of 2019. Hindenburg claimed SmileDirectClub put customer safety at risk, and was just "another ugly IPO" that has avoided public scrutiny thus far. Hindenberg said Predictive Technology had a 95% downside risk and accused the company of involvement in "dubious" sales tactics and acquisitions "that reek" of insider self-dealing. The company's shares dropped 74.7% to $0.73 from the beginning of the campaign to December 31, 2019. The short seller also targeted Bloom Energy in the utilities sector and Eros International in the media industry.

Hindenburg founder Nathan Anderson told Activist Insight that the short seller has "two reports on deck" already this year: "One that we think will curtail predatory lending practices in Africa and Asia, and another that exposes thousands of instances of flagrant bank fraud," he noted. "We think 2020 will be busy and we are excited to publish more hard-hitting research," he added.

3 SPRUCE POINT CAPITAL MANAGEMENT

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2019:	18
AVERAGE TARGET MARKET CAP:	$8.8 BILLION
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN*:	0.1%

Spruce Point's 18 targets tied the short seller with White Diamond Research for the most campaigns launched in 2019.

Yet that resulted in a mixed year for Spruce Point. Success at large-cap companies like Church & Dwight, which saw an 11.5% campaign return between September and December, were offset by heavy losses at Carvana. However, founder Ben Axler was most disappointed with the market reaction to Monolithic Power Systems. Confidence in the company following Spruce Point's October report illustrated the "structural challenges of investing in a world geared toward passive and thematic investing," Axler said, lamenting the "never-ending bull cycle" for semiconductor shares.

Campaign returns are only one side of the coin at Spruce Point and Axler said the fallout from its short report into Mettler-Toledo made it the best campaign of 2019. "Following our report, Mettler cut its growth estimate, and its chief information officer left," Axler told Activist Insight, adding that he thought the company has more to correct and there was "no justification for the excessive optimism" in the company's share price.

Axler also said that, while Spruce Point will continue to research a diverse collection of companies in the new year, it was "generally easier" to target industries "going through fundamental disruption," pointing in particular to the troubled retail sector.

4 EMERSON ANALYTICS

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2019:	3
AVERAGE TARGET MARKET CAP:	$696 MILLION
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN*:	21.7%

Anonymous short seller Emerson Analytics returned in 2019 after a quiet 2018. Emerson's modus operandi continued to be fraud-related short activism in China and Hong Kong, with three reports that led to a mixed year for the short seller.

Emerson saw a 94.8% one-week campaign return following its report on Chinese energy company Southern Energy Holdings, which claimed the coal producer had inflated revenues and was destined for delisting.

That success was slightly dulled by campaigns at Hong Kong investment firm Realord Group Holdings, which Emerson said was "on the brink of bankruptcy," and Chinese food company Zhou Hei Ya International Holdings. Both finished 2019 on a high.

5 BLUE ORCA

NUMBER OF ACTIVIST SHORT CAMPAIGNS LAUNCHED IN 2019:	5
AVERAGE TARGET MARKET CAP:	$5.1 BILLION
AVERAGE ONE-MONTH TOTAL CAMPAIGN RETURN*:	9.7%

Blue Orca increased its activity, launching five short campaigns in 2019. Founder Soren Aandahl told Activist Insight that Mega Expo Holdings (now known as Nova Group) was his best of the year. The short provided a hefty 30% one-week campaign return after Blue Orca claimed the company was fabricating revenues through shell acquisitions. In a 15-page refutation of Blue Orca's attack, the company said the allegations were "untrue and misleading," including that it acquired businesses from the same seller. It later changed its name, but the share price has not recovered.

While Blue Orca enjoyed an excellent year of returns, Aandahl lamented the "fish that got away." The fund decided a bet against an unnamed company didn't meet Blue Orca's standards. "Boy, were we wrong," he said. The missed opportunity may sting, but Aandahl remained "proud that we are vigilant about our process and uncompromising in our standards."

Looking ahead to 2020, Aandahl asked "is there a better time to be a short seller?" A "frothy bull market" has led to increased valuations, Aandahl said, meaning "companies run by incompetent or unscrupulous executives trade at high multiples, creating fantastic opportunities for activist short sellers."

2020 TARGETS

ACTIVIST INSIGHT VULNERABILITY HIGHLIGHTS NINE COMPANIES EACH MONTH THAT ARE SUSCEPTIBLE TO AN ACTIVIST CAMPAIGN. ROB CRIBB HIGHLIGHTS SOME OF 2019'S PICKS THAT HAVE YET TO BE TARGETED.

**DATA AS OF JANUARY 27, 2020*
***TSR: TOTAL SHAREHOLDER RETURN - A CALCULATION OF STOCK PRICE CHANGE PLUS DIVIDENDS PAID FROM JANUARY 28, 2019, TO JANUARY 27, 2020.*

TRUECAR

VULNERABILITIES	PERFORMANCE	PROFITABILITY	BALANCE SHEET
GOVERNANCE ISSUES	STAGGERED BOARD	NO PROXY ACCESS	SUPERMAJORITY VOTE
SECTOR	TECHNOLOGY	**TICKER**	TRUE
MARKET CAP*	$419M	**1 YEAR TSR****	- 58.2%

Since *Activist Insight Monthly*'s October vulnerability report, TrueCar's fortunes have not changed and the company remains vulnerable to an activist. In an automotive dealership space which has already seen activist engagement, TrueCar's costs are mounting and increasing operating losses since its initial public offering in 2014 raise concerns over the performance of management. While insider ownership is 7%, this should not serve as a barrier to activist interest. A strategic review could be a likely demand, along with changes to the board, particularly given the CEO role is still vacant following Chip Perry's brief stint as interim CEO. The nomination deadline closes on February 18.

COMMVAULT SYSTEMS

VULNERABILITIES	VALUATION	PERFORMANCE	GROWTH
GOVERNANCE ISSUES	STAGGERED BOARD	SUPERMAJORITY VOTE	
SECTOR	TECHNOLOGY	**TICKER**	CVLT
MARKET CAP*	$2.0B	**1 YEAR TSR****	- 27.5%

The mid-cap data and information management software company operates in a space that has been rife with activism over the past 12 months. Peers 2U, Box, and LogMeIn have all been targeted throughout that period. Commvault was itself targeted by Elliott Management back in 2018, and while Elliott pushed successfully for board seats before exiting the stock, Commvault's fortunes have not changed dramatically since then; at January 27 the company was rranked by *Activist Insight Vulnerability* in the top 5% of companies most likely to be targeted by an activist over the next nine months.

Our report notes excessive expenditure as a concern as well as some board members' long tenures. With the deadline for any shareholder nominations closing on April 13, a review of management could be a possibility.

BIG LOTS

VULNERABILITIES	VALUATION	PERFORMANCE	INSTITUTIONAL OWNERSHIP
GOVERNANCE ISSUES	SUPERMAJORITY VOTE	LONG-TENURED CHAIR	
SECTOR	CONSUMER DEFENSIVE	**TICKER**	BIG
MARKET CAP*	$1.1B	**1 YEAR TSR****	- 13.5%

After a good year for Big Lots in 2017, its share price was heading for $60. Now the stock sits at half that – and could have been even lower if not for a Santa rally in late 2019. The Ohio-based firm has undergone a leadership change in recent years, but CEO Bruce Thorn could still face scrutiny from shareholders who have seen their returns diminish. *Activist Insight Vulnerability* argued that cutting expenses or pushing for the sale of the company to private equity given its discount to peers could be a key demand. With existing shareholder discontent voiced at the annual meeting in May 2019, if an activist has a clear vision to enable shareholders to recover lost value at Big Lots, the store could be 2020's Bed Bath & Beyond. The nomination deadline is March 2 but an activist could act by written consent.

TARGA RESOURCES

VULNERABILITIES	VALUATION	PERFORMANCE	PROFITABILITY
GOVERNANCE ISSUES	STAGGERED BOARD	NO PROXY ACCESS	NO INDEPENDENT CHAIR
SECTOR	ENERGY	**TICKER**	TRGP
MARKET CAP*	$8.7B	**1 YEAR TSR****	-0.9%

After an activist forced a leadership change at rival gas company EQT, Targa Resources could be next. In September, *Activist Insight Monthly* discussed some of its issues, including uncertain revenue streams, diminishing returns for shareholders, and shareholder concern over remuneration. All are conditions where an activist could argue for change. Operating two main segments, *Activist Insight Vulnerability* argued that Targa could exit certain natural gas fields to pay off its approximate $7 billion debt. While its governance provisions could be more shareholder-friendly, none should prohibit an activist campaign at the mid-cap firm.

PTC

VULNERABILITIES	VALUATION	PERFORMANCE	ACTIVIST OWNERSHIP
GOVERNANCE ISSUES	NO PROXY ACCESS	LONG TENURE CEO	LONG TENURE CHAIR
SECTOR	TECHNOLOGY	**TICKER**	PTC
MARKET CAP*	$9.7B	**1 YEAR TSR****	3.4%

With the deadline having already passed for director nominations at global computer software services company PTC, an activist has time to build a campaign. At January 27, *Activist Insight Vulnerability* ranked the firm in the top 13% of companies most likely to be targeted by an activist over the next three quarters.. A September vulnerability report details a strategy including expensive acquisitions, which an activist would almost certainly want to halt given increasing costs and shareholder losses. With debt sitting at around 10% of its market cap, an activist might point to PTC's strategic relationship with Rockwell Automation and the board seat it gave to Rockwell CEO Blake Moret as an unnecessary distraction.

2019 TRACK RECORD

FIFTEEN COMPANIES THAT ACTIVIST INSIGHT VULNERABILITY'S JOURNALISTS IDENTIFIED AS POTENTIAL TARGETS IN 2019 HAVE SUBSEQUENTLY BEEN SUBJECTED TO A PUBLIC ACTIVIST DEMAND, A NEW ACTIVIST INVESTMENT, OR A 13D FILING. ROB CRIBB DETAILS SOME OF THOSE HITS.

BOX

REPORT DATE: JULY 2019
ACTIVIST: STARBOARD VALUE
AIV THESES: GOVERNANCE REFORM, SALE
DEMANDS: NONE
TARGETED: SEPTEMBER 2019

Just over a month after *Activist Insight Vulnerability*'s report cited conditions that could tempt an activist to become engaged at Box, activist Starboard Value built a 7.5% stake. The report noted that the firm had underperformed and that shareholders had criticized the board's lack of accountability. Starboard's view was that the cloud content management company was "undervalued and represented an attractive investment opportunity."

LOGMEIN

REPORT DATE: JULY 2019
ACTIVISTS: ELLIOTT MGMT., FRANCISCO PARTNERS
AIV THESIS: SALE
DEMANDS: TAKEOVER
TARGETED: DECEMBER 2019

After a 30% decline in its stock price over a 12-month period, *Activist Insight Vulnerability* cited LogMeIn as a potential future target. Despite a brief interplay with Elliott Management in 2018 when merging the GoTo division of Citrix Systems, the company's dealings with Elliott Partner Jesse Cohn didn't end there: this time Elliott Management and Francisco Partners reached a deal worth $4 billion to take the company private.

MEDNAX

REPORT DATE: JULY 2019
ACTIVIST: STARBOARD VALUE
AIV THESES: SHARE BUYBACK, MANAGEMENT CHANGE
DEMANDS: BOARD REPRESENTATION, SALE
TARGETED: DECEMBER 2019

Relative underperformance led to *Activist Insight Vulnerability*'s prediction that Mednax was vulnerable to an activist pushing for a sale and governance changes. Starboard Value later nominated a full board slate and is pushing the company to sell its assets or pursue an outright sale. The healthcare company is underperforming peers in many areas, including short- and long-term total shareholder returns: its management could struggle to justify its contribution going forward.

EMERSON ELECTRIC COMPANY

REPORT DATE: AUGUST 2019
ACTIVIST: D.E. SHAW INVESTMENT MANAGEMENT
AIV THESIS: BREAKUP
DEMANDS: BREAKUP, COST CUTTING
TARGETED: OCTOBER 2019

Emerson and D.E. Shaw reached an informal agreement at the end of 2019, after the multistrategy fund called for cost-cutting, better alignment of compensation with performance, and splitting Emerson into automation and climate technology companies, moves D.E. Shaw said would boost the stock 50%. Emerson is expected to announce the results of a portfolio review in February but has met D.E. Shaw's other demands. Judging by the stock price, half the work has been done.

SOME OF AIV'S OTHER PREDICTIONS: ROUNDUP

Activist Insight Vulnerability profiled **Bed Bath and Beyond** in July 2018, and a trio of activists targeted the firm in early 2019. At **Circor**, Crane made a hostile takeover bid and Gamco Investors announced plans for a proxy contest, one year after an *Activist Insight Vulnerability* report. In August, **Groupon** saw Chapman Capital push for changes, around nine months after *Activist Insight Vulnerability*'s report. In February, **Hilton Grand Vacations** saw its activist ownership increase from 0% to 9%, just over two months after *Activist Insight Vulnerability* tipped it as vulnerable. And after our report on **Red Robin Gourmet Burgers** in 2017, an activist finally showed up: Vintage Capital Management with a takeover bid. Sachem Head is also said to be pushing February 2019 prediction **2U** to sell. 2020 has already got off to a good start; Starboard Value showed up at **Merit Medical Systems**, **GrubHub** had to deny it was reviewing its activist defences, and **XPO Logistics** announced it was considering a breakup.

TAKE CENTRE STAGE

PROFESSIONAL CO-BRANDED REPORTS

PRODUCED IN-HOUSE FOR YOUR ORGANIZATION

Activist Insight