

The Deal

Activists Board Control Campaigns Spike, With Wins

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In June, Elliott Management's Paul Singer took control of Telecom Italia's board, concluding a bitter fight that installed a dissident, 10-person slate of nominees onto the large European communications company's board.

Big institutional investors from Europe, the U.K., and the U.S. chose Singer's candidates over a slate French media conglomerate Vivendi S.A. was backing.

The win was a watershed event as it was the largest U.S.-style director fight that has ever gone to a vote in Europe. But it also is interesting from another point of view—it became one example of a massive spike in change-of-control director contests this year in the U.S., Europe, and elsewhere.

According to a Lazard report, there were 10 change-of-control contests in the first half of 2018, far more than the two, five and six in the first half of 2017, 2016 and 2015, respectively. In addition, in 53% of long-slate campaigns, the result was an activist win, settlement or move to have the company auction itself.

In addition to Telecom Italia, activists launched change-of-control campaigns at Natus Medical (BABY), Fortis Healthcare (FORTIS), SandRidge Energy (SD), Mellanox Technologies (MLNX), Cars.com Inc. (CARS), SuperValu Inc. (SVU), Pure Multi-Family REIT LP (RUF.U), Monotype Imaging (TYPE) and reportedly at Macerich Co. (MAC).

Some other change of control contests this year weren't even counted because they settled or were cancelled before activists filed their definitive proxy statements. Case in point: Starboard Value's Jeff Smith had a change-of-control contest underway at Newell Brands Inc. (NWL) but later settled to add two dissident directors to the company's board.

A big chunk of the campaigns took place outside of the U.S. For example, Elliott's Telecom Italia effort was, obviously, in Italy. In addition, two funds, Jupiter India Funds and East Bridge Capital Management succeeded this year at installing a change-of-control slate of three dissident-backed directors at Fortis Healthcare, an Indian hospital chain. Starboard cancelled its effort to install eight directors at Israeli Mellanox Technologies after the chipmaker agreed to install a minority slate of three, possibly four, new directors onto its 11-person board. And K2 Principal Fund ended its control contest at Canadian Pure Multi-Family REIT after proxy advisers recommended against their slate.

Some of the campaigns appear to involve M&A actions. For example, state-side, Carl Icahn took control of SandRidge Energy's board last month in a contest that went the distance and one that ensures that the oil and gas exploration company is conducting a real auction of its business. Starboard settled its change-of-control effort with Cars.com after it agreed to bring on three mutually agreed upon directors. The online automotive marketplace has reportedly hired a bank and has begun a sales process. Also, Fortis Healthcare faces takeover bids. Meanwhile, Starboard-targeted Newell Brands, where Icahn also succeeded at installing directors this year, is working towards meeting a \$10 billion divestiture target.

Voce Capital's J. Daniel Plants put two dissidents on a six-person board in a contest that went the distance at Natus Medical last month. As part of that effort, Voce also had two separate proposals to drive out the board's chairman and replace him with a dissident nominee that didn't get approved. It didn't matter in the end as on Wednesday Natus ousted its CEO and removed its chairman, both big wins for Plants.

In addition, in the spring, Starboard reportedly privately nominated a change of control slate of directors at Macerich in an effort to have the REIT remove its CEO. In April, the company's long-time chief executive, Arthur Coppola, announced he was stepping down, which suggests that Smith's fund succeeded in its efforts and cancelled its contest.

Finally, there is at least one big change-of-control director fight yet to conclude - Blackwells Capital's Jason Aintabi's effort to replace a majority of the board of SuperValu in an attempt to have the supermarket chain and food distributor split in two. That contest is set for Aug. 18.

Last year, the two change of control contests in the first half of 2017 were Engaged Capital's battle at Hain Celestial (HAIN) and Engine Capital's Motorcar Parts of America Inc. (MPAA) effort, according to Lazard.