



Activism Monthly

...your monthly digest of activist investment

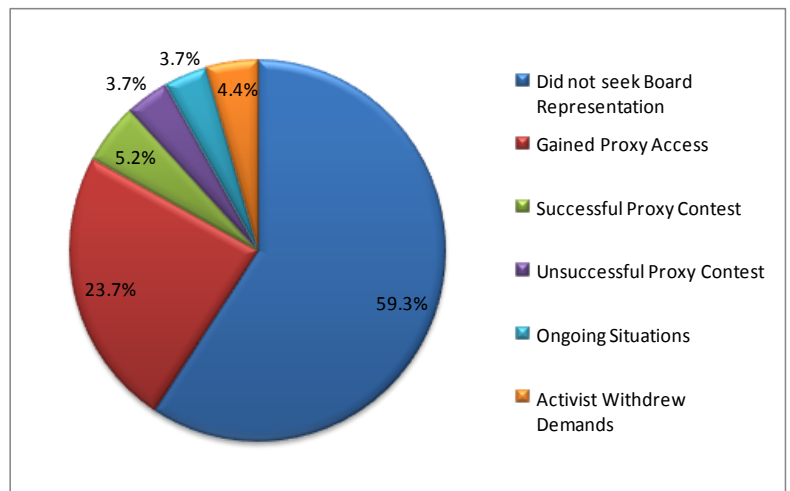
Welcome to December's edition of Activism Monthly. This month, we examine the prevalence of activists seeking board representation at their target companies in 2012. We also review shareholder activism in Canada and take a closer look at Biglari Holdings' involvement at Cracker Barrel.

Feature: Over 40% of activists seek board representation in 2012

Gaining representation on the board of directors at a company is one way in which activist investors might try to re-shape a company's direction.

This year 73 different activists have publicly engaged with 135 different companies in an attempt to make changes. Activists have sought to gain board representation 41% of the time either through being granted proxy access by the company or by launching a proxy contest. So far in 2012, activists have succeeded in having a nominee(s) elected onto the board in more than 3 out of every 4 occasions.

Of the 135 activist campaigns we have identified in 2012 to date, there have been 21 proxy contests. In five of these instances, an activist submitted regulatory proxy filings but then later withdrew. Of the 16 proxy contests, activists had their nominees join the board on seven occasions (six of which saw all nominees successfully elected), while there were five occasions in which the activist slate was rejected. There are currently four contests yet to be resolved due to delayed shareholder meetings and ongoing legal proceedings.



Carl Icahn has been the most prominent activist of the year in terms of board representation, proposing alternative slates at Forest Laboratories where he was partially successful, CVR Energy where he had his full slate of directors nominated and Oshkosh Corp which is still ongoing. He also gained board representation through proxy access at Navistar International Corp, Chesapeake Energy and WebMD Health Corp.

Activism goes global... Canada

Canadian companies are viewed as an attractive investment by many activists given the favourable conditions which currently exist for shareholders. Firstly, the reporting threshold for shareholders in Canadian companies is a 10% stake, giving dissidents a significant advantage over their US peers as they are able to build up a larger stake before making the investment public.

Secondly, an activist is permitted to solicit up to 15 shareholders before filing a circular. This enables the activist to form a good understanding of the views of the shareholder base before going public or engaging with the board.

The staggered boards operating in a significant proportion of US companies prevent an activist investor from overturning and therefore gaining control of the entire

board at a single shareholder meeting. The boards of the majority of Canadian companies are annually-elected, however, allowing activists to affect change far more quickly.

These advantages have seen US activists such as Mason Capital and Jana Partners venture into the Canadian investment market in a bid to improve the fortunes of undervalued companies.

Global Activism Spectrum:



News in brief: our monthly round-up

New Investments in November:

Activist	Company	Stake
Starboard Value	Quantum Corp	15.90%
Third Avenue	Tellabs	9.63%
Carl Icahn	Greenbrier Companies	9.99%
Jana Partners	Agrium	6.19%
Relational Investors	Timken Co	6.15%

In the News:

New York-based activist hedge fund Jana Partners has put forward five nominees in a proxy contest against Canadian agricultural retailer and fertilizer producer Agrium Inc. Barry Rosenstein, the managing partner of Jana, is among the candidates. Jana has around a 6% stake in Agrium and has recently urged the company to spin off its farm-supply retail network but the board disagrees. Agrium's CEO Mike Wilson released a statement saying, "The breakup of Agrium will destroy value rather than create it".

Reed Hastings, the CEO of Netflix, has stated that he thinks it is 'probable' that Carl Icahn will start a proxy contest with the streaming-media company. The activist investor acquired a 9.98% stake in Netflix in early November at around \$60 per share on the basis that the company "makes a great acquisition candidate because of its subscription base." Amazon.com is a likely buyer but Hastings questioned whether a sale would be "the right thing in the long term".

Campaign to watch...

Biglari Holdings - *Cracker Barrel*

Biglari Holdings' proxy battle with Cracker Barrel Old Country Store came to an end this month as shareholders voted against Biglari's nominations Sardar Biglari and Phil Cooley. During the lead up to the proxy contest, Biglari and Cracker Barrel publicly disagreed over how to best improve profitability and shareholder value at the company.

Biglari initially filed a proxy statement nominating himself and colleague Philip Cooley to the board of directors in September. Subsequently, at the beginning of October, Biglari sent a letter to Cracker Barrel questioning Chairman James Bradford's qualifications as Cracker Barrel had falsely stated that Bradford was previously CEO of an NYSE company. A week later, Sandra Cochran responded by sending a letter to shareholders urging shareholders to reject candidates Sardar Biglari and Phil Cooley as the company believed they may be attempting to gain control of Cracker Barrel. Ms Cochran stated, "Mr. Biglari remains inexplicably insistent in his campaign against Cracker Barrel and our Board's nominees – despite the addition of seven new directors in the past 18 months, our accomplishments on key financial and operational objectives and a 68.4% appreciation in the value of the Company's shares since the initiation of our strategic priorities announced in September of last year."

The tensions between the two parties grew as Biglari claimed that Cracker Barrel had miscalculated its EBITDAR (earnings before interest, taxes, depreciation, amortization, and rent margin) in 2012, returns on investment in 2011 and also its return on invested capital. However, a few days later Biglari received a big blow as proxy advisory services ISS and Glass Lewis both recommended that Cracker Barrel shareholders vote for all of the individuals nominated by the company's board of directors for election to the board.

Since the result of the proxy battle there has been speculation that Cracker Barrel may be a target for a private equity buyout. Analysts have suggested Cracker Barrel could be bought at a price of more than \$82 per share due to the company's strong cash generation and the fact that it trades at around 12.9 times free cash flow, less than 89 percent of that seen with US peers valued at more than \$1 billion.

13D Digest November

Activist 13D's	22	↑
Activist 13D/A's	51	↓
New Activist Funding	\$1,790,021,357	↑

Activist Insight...

Activist Insight aims to provide the most comprehensive global information source on activist investment including news, profiles of activist firms, performance benchmarks and more.



Activist Insight