13D Monitor

QUARTERLY ACTIVIST REPORT

CORPORATE EDITION

STAY ON TOP OF ACTIVISM BEFORE IT'S ON TOP OF YOU

DECEMBER 2024

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KEN SQUIRE

Ken Squire is the Founder and President of 13D Monitor. 13D Monitor is the premier subscription research service specializing in the analysis of activist investors' 13D filings and following the broader shareholder activist community. Squire has focused exclusively on following shareholder activism and corporate governance since 2006 and is a leading commentator in the industry. He is frequently quoted in the Wall Street Journal and other financial publications, and his weekly column The Activist Spotlight was featured in Barron's from 2007 to 2020. He is now a CNBC Contributor and The Activist Spotlight column can be read on CNBC.

In 2010, Squire created the annual Active-Passive Investor Summit, a forum that brings together the activist and passive investor communities to discuss prevailing corporate governance issues and provides top activist investors a platform to present investment ideas. Speakers have included Carl Icahn, Bill Ackman, Jeff Smith, Marty Lipton, Ken Moelis, Michele Edkins, Donna Anderson and Joele Frank.

In 2012, Squire founded the 13D Activist Fund, an event-driven mutual fund that focuses on investing in opportunities identified in activist engagements. Squire is the founder, chief investment strategist and portfolio manager. The Fund was the first of its kind, providing both individual and institutional investors diversified, liquid and low-cost access to the most compelling activist investments in this asset class.

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13D MONITOR

13D Monitor was launched in 2006 when modern day shareholder activism was a nascent strategy. Since then, we have reviewed and analyzed every activist campaign and sent reports (see Page 47 for samples) to our client base, which includes top activist investors, institutional investors and activist and activist defense bankers, lawyers, proxy solicitors and other advisors. Over 18 years, we have developed a comprehensive database (www.13DMonitor.com) that includes:

Activist Profiles

(see Page 52 for a sample)

Advisor Profiles

(see Page 53 for a sample)

Activist Campaign Database

Searchable and sortable Activist Campaign Database going back to 2006

Letters & Agreements

Library of Activist Letters, Agreements and Presentations

Standstill Database

Searchable and sortable Standstill Database with a real time analysis of Standstill Provisions (see Page 54 for a sample)

Voting Database

Searchable and sortable Voting Database detailing how the largest institutional investors have historically voted

Media Center

Activist News and Articles searchable by activist, company or key words

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December 2024

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Company Vulnerability Ratings

13D Monitor has been analyzing every activist and activist catalyst since 2006 and has a deep knowledge of what factors activists look for and what metrics lead to an activist campaign. We have taken that knowledge and created what we believe to be the most accurate company vulnerability ratings available for virtually every US company with a market cap greater than $300 million that does not have a control shareholder (40% or greater).

Our ratings include, among other things, an analysis of stock performance, relevant balance sheet items, margins, multiples, peer analysis, corporate governance practices, M&A potential and activist tendencies.

We developed these ratings without taking into account the identity of the underlying company. When we finalized the criteria and weightings, we overlaid current activist campaigns and discovered that the median rating (from 0 to 100) of companies that presently had an activist hedge fund engagement was 78.8. In other words, more than half of the activist engagements occurred in the top quartile. Moreover, the ones in the bottom quartile were companies that you would expect to have a low activist vulnerability, such as Exxon/Engine No. 1 (18.1 13DM CVR rating), Disney/ValueAct (13.9) and Meta/ValueAct (13.1).

While even a rating of 100 will not guarantee that an activist will engage or a rating of 0 will not assure you that you will not have an activist show up, they are certainly a strong indicator of activist vulnerability and a valuable tool for activist preparedness. Additionally, the 13DM CVR will be a tool for activists and other investors as an idea generator and for corporate advisors to help them better serve and retain their clients.

CLICK HERE TO VIEW
COMPANY VULNERABILITY RATINGS

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10 QUESTIONS WITH PAMELA CODO-LOTTI

Pamela Codo-Lotti is Global Chief Operating Officer of Activism and Shareholder Advisory and leads Goldman Sachs North America's Activism and Shareholder Advisory practice. Previously, Pam led the firm's activism and shareholder advisory practice for consumer, retail and healthcare clients globally.

Pam joined Goldman Sachs in 2006 and was named managing director in 2017 and partner in 2024. Prior to joining the firm, Pam was an auditor at Ernst & Young in Paris.

Pam serves on the National Governing Board of the Jeremiah Program, a nonprofit association with a mission to disrupt the cycle of poverty for single mothers and their children.

Pam graduated from ESSEC Business School in France in 2002 and earned an MBA from Wharton Business School at the University of Pennsylvania.

13DM// Goldman Sachs is among the most respected names in investment banking, with a stable of Fortune 500 companies as clients. Tell us about the role Goldman plays as it relates to shareholder activism.

PC// We've developed our reputation as the leading financial advisor to which companies turn when attacked by activists, because this defense work is core to our business principles, and specifically our first business principle: our clients' interests always come first.

We view shareholder activism defense as a holistic process that relies on our industry experience and network, M&A and Capital Markets franchises, and, of course, the strategic and tactical expertise in our activism defense team.

Our larger role is in the coordination and leadership we provide our clients. In this effort, we're fortunate to work every day across multiple situations with a talented group of co-advisors from the legal, PR, and proxy solicitation professions to solve problems and look around corners.

We spend a lot of time on educating our clients and proactively working on reducing their vulnerabilities to activism, while there is no activist agitating. This is what we call the preparedness phase. Our goal is to assess and, where needed, give advice on potentially proactive actions tied to performance relative to peers, portfolio, capital allocation, valuation, investor communications and messaging, board composition, and structural defenses.

In a live activism situation, we will, in addition to the above, define with other advisors the defense strategy and tactics. Experience in the timing and execution of tactics matter in producing the best outcomes for clients.

13DM// Goldman rightly or wrongly has a reputation as a bank to go to if you want to fight the activist. Is this fair? Do you ever advise a client to work with the activist?

PC// I like to think that Goldman Sachs never uses a one-size-fits-all approach.

Some situations require a fight, while other situations require an attempt to reach a peaceful resolution. Ultimately, our only objective is to help the Board fulfill their man-

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date of creating long-term value for shareholders.

So, we assess each situation with the Board, and then agree on a path. By the way, as new facts and circumstances emerge, the path can change.

If our assessment is that a fight will be overly disruptive, costly and / or that the outcome is uncertain, and if the Board is willing to go down the settlement or cease-fire route, we will use our expertise and experience to help the Board reach an acceptable peaceful resolution. Whether a peaceful resolution is achieved or not depends on a number of factors, including whether the activist behaves constructively.

However, if our assessment is that an activist's plan will destroy value or create harmful disruption to the company, and if the Board is willing to go down the fight route, we will similarly use our expertise and experience to put up the best defense possible and fight.

13DM// While there are times when a Company should fight an activist tooth and nail because the activist has a short-term minded plan, we have seen a lot of situations this year where the Company took an activist campaign all the way possibly for self-preservation reasons – the CEO would likely lose their job if the activist won. How do you view these situations? Can the CEO be as involved in these defenses as they are when their job is not one of the points on the activist's agenda?

PC// The Board's role is to oversee management and drive decisions that will create long-term value for shareholders.

It is true that campaigns against CEOs tend to turn personal, but from our perspective it is very important to re-center the campaign on the two main questions:

— do the CEO and the Board have the right plan for the company and,
— is the CEO the right leader to execute the plan.

If the Board's perspective on these questions is yes, then, absolutely, the CEO should be involved in the defense. Convincing shareholders that the incumbent Board and management team's plan is the right one would be very hard to do without the leader who knows the details of the plan best, and is in charge of executing it.

13DM// As activism continues to become more global, which jurisdictions are you watching most closely outside of the US and why?

PC// Europe and Asia are key areas of focus for us. We will talk about Japan shortly, so let's focus on Europe for now.

We continue to see record levels of activity in Europe in line with record levels observed in 2023.

In addition, there has been a notable uptick in proxy fights over the past two years, indicating willingness by shareholders and activist funds to use aggressive and persistent tactics to achieve their agendas. Europe is attracting many different types of activists:

— well-established global players, such as Elliott,
— domestic names, such as Cevian, Bluebell and Petrus,
— newly launched funds (such as Sparta and Palliser) spun out from well-established players, such as Elliott, and,
— US activists, who are becoming increas-

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ingly active in the European markets as a way to expand their reach outside of an already saturated US market.

So, we expect that Europe will continue to be very active moving forward.

13DM// How are you looking at activism in Japan specifically?

PC// Goldman Sachs opened its Tokyo office in 1974. Our client relationships in Japan run deep and we are honored to have helped on multiple defenses - most of which remain private (the way we like it, if possible).

Japan has long been viewed as a growth market for activism, and it is, for a few reasons.

One, the Japanese public company market is very deep. Two, the conglomerate structure of many companies in Japan, and the high cash balances that they carry, make them vulnerable to demands for break-ups or return of capital to shareholders. Three, Japan has launched corporate governance reforms that promote board accountability and make for a more shareholder-friendly environment.

That being said, campaigns there take a different form than campaigns in the US or Europe.

Our expertise is in understanding how each specific activist is likely (or not) to prosecute demands they may share privately or publicly, and then to assess how a company's specific shareholder base is likely to react if required to vote on part or all of the activist's thesis through shareholder proposals.

13DM// How does Goldman see the M&A market over the next several years and how do you think that will affect shareholder activism?

PC// We are potentially coming off a period of heavy M&A regulation and are seeing a more stable and declining interest rate environment (which impacts valuations and financing costs), so we expect momentum for M&A to accelerate.

> *If our assessment is that a fight will be overly disruptive, costly and / or that the outcome is uncertain, and if the Board is willing to go down the settlement or cease-fire route, we will use our expertise and experience to help the Board reach an acceptable peaceful resolution. Whether a peaceful resolution is achieved or not depends on a number of factors, including whether the activist behaves constructively.*

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In addition, private equity funds continue to be under pressure to 1) deploy capital and 2) return capital to investors, which points to a potential acceleration of sponsor-driven M&A.

Lastly, portfolio simplification should continue to fuel M&A, as companies seek to create shareholder value with greater operational focus, targeted capital allocation, and more tailored shareholder bases.

M&A has always been a source of alpha generation for activists and, in a more conducive M&A environment, activism is likely to accelerate.

But it goes broader than M&A, by the way.

Activists are now in an environment where they can push for a broader array of requests than they could during the past 18-24 months. In a more stable cost of financing and inflation environment, they can push for capital return and, with regulators' potentially more friendly posture around M&A, they can start pushing more aggressively for the sale of companies or assets.

13DM// What is your view on the relationship between private equity and shareholder activism? Similar strategies? Friends or foes?

PC// They are neither friends nor foes.

Private equity tends to have a longer-term horizon, 3-5 years or more, and access to management as well as reputation is important to many private equity players.

Although some activist hedge funds employ a private-equity-like approach, many have shorter-term horizons and are more focused on shorter-term gains.

There have, of course, been situations where activists (e.g., Elliott, Irenic) have partnered with private equity funds in leveraged buyouts. While this is a type of partnership that has been talked a lot about, and that many activist funds would like to emulate, it has not been very common.

If we look at it from a different angle, private equity is very important for activists; in scenarios where activists push for the sale of companies, particularly in the small- and mid-cap space, sponsors are very relevant buyers.

So, having connectivity with private equity, and being able to "pitch companies", is an important tool in the activist toolkit.

13DM// You work with some of the largest corporations in the world before and sometimes after they are engaged by an activist. How receptive are boards and management teams to learning about and discussing shareholder activism in the absence of an activist at their Company? Do you find that most companies you advise on activist defense are getting a crash course in the beginning of the process?

PC// Proactive activism preparedness has become a best practice of both management teams and Boards of Directors and has become an integral part of the strategic dialogue that Goldman has with its clients.

The prevalence of activism makes it a real contingency for which all companies need to prepare. Per Q3 2024 13F data, one in four S&P 500 companies have an activist in their stock, even if they are not actively agitating.

As a defense advisor, we also make sure our clients are up-to-date with the most recent activism developments, trends and activist behaviors, and go through the preparedness phase that I described earlier. For sure, we

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"Activists are now in an environment where they can push for a broader array of requests than they could during the past 18-24 months. In a more stable cost of financing and inflation environment, they can push for capital return and, with regulators' potentially more friendly posture around M&A, they can start pushing more aggressively for the sale of companies or assets."

spend a lot of time on live activism situations, but our team also spends a large amount of time on preparedness.

13DM// Is there anything they should do to be more prepared if an activist shows up?

PC// Advance preparation is the key to success.

Having a team identified, a communications plan in place and proactively understanding and addressing potential vulnerabilities or activist "attack vectors" are a few things that can help bring the temperature down in the C-suite or Boardroom, should an activist show up.

One thing we find helpful for our clients is to understand that activists are not held to the same communication standards as companies. Activism campaigns can turn very public, aggressive, and sometimes personal.

It is important for management teams and Boards to understand all the potential forms of activism so that they will not be taken by surprise.

13DM// Do you see the level of shareholder activism increasing or decreasing over the next five to ten years?

PC// The U.S. 2024 YTD activism level is already at a five-year high[1] and we see several factors that could lead to a continuation of this trend.

First, we are seeing positive momentum in the M&A market, as discussed. There is potential for the momentum to accelerate. M&A has always been an important source of alpha generation for activists, and a positive M&A environment will likely encourage more campaigns.

Second, we could see continued proliferation of the activist universe. While dedicated activists continue to prosecute campaigns at a high pace, the activity level of first-time activist funds and occasional activists remains elevated, as more and more shareholders want to have a "voice" in the strategic direction of the companies that they own.

The reality is that shareholders view activism as a tool to potentially catalyze change, and I don't see them giving that away any time soon.

1 Source: FactSet. Data as of 28-Jun-2024. Note: 1 Includes campaigns to maximize shareholder value, enhance corporate governance, secure board representation or control, and remove directors or officers at U.S. companies with market caps >$500mm.

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13D MONITOR ACTIVE-PASSIVE INVESTOR SUMMIT

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Investment Idea: Starboard Value

Jeffrey C Smith, *Managing Member and the Chief Executive Officer & Chief Investment Officer,* Starboard Value LP

Salesforce Inc (CRM)
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Kenvue Inc (KVUE)
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Pfizer Inc (PFE)
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Fireside Chat

Kelly Evans, *Anchor,* CNBC's "The Exchange" (Moderator)

Jay Clayton, *Chairman of the SEC 2017-2020*

Gary Cohn, *Vice Chairman,* IBM

Potential Trump Presidency

Kelly Evans opened the conversation by addressing the upcoming election and decided shift in sentiment towards a potential Trump presidency. Pointing out both Jay Clayton and Gary Cohn's former roles in the previous Trump Administration, she asked what the immediate priorities and general expectations for the future administration may look like. Jay Clayton spoke to the limited bandwidth in Washington, particularly in legislation, and stated that the Trump Administration has the experience to know to use executive action and administrative action. Cohn agreed that executive orders wield great power but emphasized that it is not law and can be overturned instantaneously by the next administration. He moved on to discuss the importance of personnel appointments and the Senate's rigorous confirmation process. Clayton added that a Harris presidency would likely result in a more rigorous Senate scrutiny – a Republican-controlled Senate may provide more latitude.

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Differences in Past and Future Administrations

Evans shifted the discussion to ask about differences between a new Trump Administration and the previous one. Cohn spoke to the fact that in this election there are two incumbents running, and there are four years of the Trump regulatory environment that we can look to. He characterized this environment as pro-business – at a high level, deals were generally approved, and they were approved relatively quickly. Cohn went on to contrast this with the Biden-Harris Administration, where delaying and deferring regulatory decisions is far more common. Evans pushed on this, and questioned what Trump's potential legacy and policy outcomes may be. Clayton underlined that Trump's economic North Star is going to be real wage growth and pointed to the nostalgia associated with Trump's previous presidency due to its 3% GDP growth, 3% real wage growth, 3% unemployment, with less than 2% inflation in 2019 going into 2020. When asked about potential shifts in regulatory policies to achieve real wage growth, Clayton emphasized the necessity of speed to market in high-barrier industries and the role of tariffs to achieve this, and Cohn reiterated the importance of growing the economy and growing productivity to deal with debt. Cohn noted that the difficulty lies in growing the base as quickly as you can without discouraging competition in the natural growth.

Current Economic Conditions

Evans then moved to discuss the bond markets' reaction to a potential Trump re-election and its implication on tax policies. Cohn was steadfast in saying that the yield curve was going to act regardless of external factors, and for the first time since the early and mid-2000s we are reentering a normal economy, and the yield curve is normalizing. The conversation then shifted to Clayton regarding the past fiscal year's $1.8 trillion deficit, of which $900 billion is interest cost. Clayton stated that without growth, we cannot slow the acceleration of the deficit. He went on to highlight that the US has the unique ability to fuel this growth through cheap energy, tech, incredible human talent and capital markets. Cohn contributed by highlighting people's growing concern about the Social Security cliff and advised that any politician steer away from cutting Social Security benefits and face it instead. The two aligned that by addressing the many inefficiencies within the US budget, we can better manage the challenges of the growing deficit while also pursuing tax and spending policies.

Final Thoughts: Upcoming Election

In the final moments of the conversation, Clayton and Cohn touched on their final thoughts with the looming election. Clayton encouraged us to look at the global economic stage, particularly the Middle East from a US partnership and global economic trade perspective. Cohn addressed tariffs and noted that they are an important tool for any head of state – particularly when a country has a substantial advantage over you in the production of a good. He pointed to electric vehicles as an example – a good produced at a considerably lower cost in China than in the US due to low costs of capital, no enforcement of living wages, and a lack of economic standards in China. A tariff placed on the Chinese electric vehicle ensures the preservation of US jobs and manufacturing.

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Panel: 2024 Proxy Season Recap and 2025 Outlook

Sebastian Alsheimer, *Partner and Co-Head of Shareholder Engagement & Activism,* Wilson Sonsini Goodrich & Rosati

Bruce Goldfarb, *President and Chief Executive Officer,* Okapi Partners LLC

Patricia Olasker, *Partner,* Davies Ward Phillips & Vineberg LLP

Big Targets and Big Defense Costs

The panelists opened the conversation agreeing that the 2024 season saw continued high levels of activism. Goldfarb noted one macro shift he has noticed is more campaigns targeting large and mega-cap companies like Disney, Starbucks, Norfolk Southern and more recently Air Products and Pfizer. Alsheimer noted their frequency is in line with historical averages, and that the shift people are really noticing is that many of these campaigns reached contested annual meetings and longer campaigns tend to come with more attention. Olasker concurred, adding a new spin to this trend that longer campaigns have led to higher defense spending for companies. For example, Gildan's proxy fight with Browning West has become the high watermark for this, as the combination of hiring investment banks and a slew of lawsuits cost a $7 billion company nearly $77 million. Goldfarb added that company defense strategies have changed and evolved, Disney's defense tactics incorporated multi-channel strategies resembling political ads proving to be effective and more cost efficient than traditional approaches. One reason why these companies may be bolstering their defense arsenal now is the recent trend of activists going after CEOs. Alsheimer cited the Rossman report, which put the life expectancy of a mega-cap CEO after an activist engages to right around 90 days. As a result, CEOs may now be seeing the writing on the walls when activists come in and one can understand why it would be difficult for them to surrender.

Reflecting on the Universal Proxy Card and Changing Dynamic

In last years Proxy Season Recap Panel, panelists agreed that the introduction of the Universal Proxy Card (the "UPC") pushed companies to settle as the UPC made it easier for activists to reach a contested vote. Goldfarb noted that this makes it easier for anyone to be an activist but the UPC has not broken the system in the way some initially anticipated. Though initially seen as a huge disadvantage for companies, while we have seen a few large proxy fights, it seems less than expected as there were fewer proxy fights this 2024 season than in 2023. However, the UPC has introduced new patterns, notably how we are seeing multiple activists target the same Company, as highlighted by Olasker. This has been seen in many engagements throughout the proxy season, but is no doubt highlighted in Disney with Trian and Blackwells and more recently with Mantle Ridge and DE Shaw at Air Products. In both campaigns, the activists surfaced similar objectives around CEO succession and capital allo-

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cation strategies. However, this overlap can be inefficient for activists who are on similar pages, as Olasker stated that Blackwells and Trian both putting up proxy cards may have split the vote a bit, like two Democrats running for president. For this reason, Olasker advocated for DE Shaw to throw their support behind Mantle Ridge at APD (just a few days after the conference on October 24, this happened when DE Shaw dropped their potential nominations and agreed to support Mantle Ridge).

M&A as a Tool in Activism

The panelists agreed that M&A has continued to evolve as a tool in activism. While some "sell-the-company" investment theses have come under fire as lazy or short-term activism, activists continue to use M&A as a way to unlock shareholder value. And as Olasker pointed out, companies are now increasingly using M&A defensively to stave off an activist. She explained how the Gildan proxy fight exemplifies this dual use, where the company attempted to sell itself out from under shareholders to avoid an activist on the Board. However, this approach raises questions about corporate governance, as in this situation, it seemed the defensive sale was not in the best interest of the shareholders. Thus, vocal shareholder opposition ultimately halted the sale.

Activist Lightning Round

Sarat Sethi, *Managing Partner,* Douglas C. Lane & Associates (Moderator)
Christopher Hetrick, *Director of Research,* Engaged Capital, LLC
Changhwan Lee, *Founder, CEO, and CIO,* Align Partners Capital Management Inc.
Scott Ostfeld, *Managing Partner and Portfolio Manager,* JANA Partners LLC
James Smith, *Founder and CIO,* Palliser Capital (UK) Ltd

Portillos Inc (PTLO) - Engaged Capital
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Doosan Bobcat Inc. (241560.KS) - Align Partners Capital Management
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Wolfspeed Inc (WOLF) - JANA Partners
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Tokyo Tatemono Co., Ltd (8804.T) - Palliser Capital
Click here to view the 13D Monitor Report

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Investment Idea: Impactive Capital

Lauren Taylor Wolfe, *Managing Partner,* Impactive Capital

SLM Corp (SLM)
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Basic-Fit N.V. (BFIT.AS)
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Panel: M&A Activism

Joe Berardino, *Managing Director,* Alvarez & Marsal

Peter Feld, *Managing Member, Portfolio Manager, and Head of Research,* Starboard Value LP

Dan Zacchei, *Managing Partner,* Longacre Square Partners

Current M&A Environment

Berardino opened the session describing the M&A environment over the past couple of years, characterizing 2021 as a post-COVID blowout of M&A activity, which got tempered in the subsequent two years. He noted that we are now seeing M&A activity make a come-back, catalyzed by lowered interest rates, and that with the election in two weeks, we are looking forward to an interesting time with more certainty on the interest rate side. Additionally, Beradino pointed out that private equity funds are currently sitting on a trillion dollars of un-levered capital, and they need to transact to survive.

M&A In Activist Campaigns

Peter Feld took the conversation to Starboard's philosophy with regards to M&A, expressing his belief that it's a critical element of corporate strategy in the way that management teams and boards think about how to allocate capital. He stressed the importance of companies having their houses in order before they undertake M&A transactions, pointing out that companies tend to want to do deals when they feel good about their business, when the economy is strong, when money is cheap and when stock prices are higher. This can lead to companies overpaying for acquisitions that may be poorly timed, even if strategically rational. He also noted that Starboard has seen much success in M&A activism, particularly when a highly per forming company identifies an underperforming company, acquires that business at a good valuation and integrates / runs it with the same skill that they run their own business.

Dan Zacchei pointed out that activism doesn't need a strong M&A market to exist and

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thrive, as evidenced by the past few years, but later noted that M&A and activism are linked in many ways. He stated that when M&A activity is on the rise, there is an interesting theme in activist behavior and there is a higher level of deal opposition, even from investors who do not typically engage in activism. He noted that this phenomenon of non-activist activism has even transcended to public companies who have gone activist on other public companies.

Lessons Learned from Market Transitions

Feld addressed the intersection of M&A and activism, highlighting that there is often a ton of attention given to activists pushing for sales of companies, and less recognition of the work that activists do to help companies make smarter decisions about how they spend their capital on buy side M&A. He discussed Starboard portfolio positions Marvell Technologies, Gen Digital (f/k/a NortonLifeLock) and Ritchie Bros. At all three of these companies, Starboard helped focus on good capital allocation decisions, not simply calling for a sale of the company. Zacchei echoed the sentiment of sophisticated activists looking at all capital allocation opportunities and the broad array of ways that a company can create value over time, instead of simply calling for a sale of the company.

Staying Ahead of the Curve

Feld discussed the concept of companies investing in the "bright, shiny object", where they will overpay on new acquisitions at huge multiples to try to play catch up, and that generally just does not work. He noted that the "string of pearls" approach can sometimes work, but only with very good and disciplined operators. There are a lot of companies out there who will do a bunch of M&A deals at what seems like responsible levels, but then at the end of the day they end up spending a ton on new acquisitions and have little to show for it.

OFF THE RECORD Fireside Chat

Ed Garden, *Director,* GE Aviation & Chairman & CEO, Garden Investments

Tom Horton, *Lead Director,* GE Aviation & Lead Director Walmart

Panel: Defending Against Activism

Dan Burch, *Chief Executive Officer,* MacKenzie Partners, Inc.

Barrett Golden, *Partner,* Joele Frank, Wilkinson Brimmer Katcher

Elina Tetelbaum, *Corporate Partner,* Wachtell, Lipton, Rosen & Katz

CEO Targeting

Tetelbaum began the conversation by addressing three dynamics that can happen in an activist battle that can make it more difficult to defend against: (i) when the CEO is targeted; (ii) when there are multiple activists; and (iii) when there are multi-year campaigns. Golden addressed CEO targeted situations, noting that when she sees these campaigns, she knows

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they are in for a fight. The company needs to come up with third party validators to stand by the CEO, and if the board is not quick to back the CEO, there is a problem. She went on to highlight that when a CEO is being targeted, it is not always just a matter of strategy and governance – there can be several behind the scenes, personal components that don't become public.

Burch argued that most proxy fights are aimed at the CEO from the start. Fights ultimately center on the company's performance, and the CEO is the most culpable person. He added that even after a proxy contest or negotiated settlement, there will likely require significant management change, especially if a majority of the board gets changed. Golden agreed that there is no fight that becomes more personal than a CEO fight, and it's important to practice strategic communication. Burch noted that activists are continuing to hone their tactics – there are several instances where an activist knows they want a change of the CEO, but rather than target the CEO they put forward someone with industry experience after the annual meeting. Golden finished off the subject by emphasizing that the bar for a win is extremely high when the CEO is targeted, which is a helpful lever from a defense perspective.

Multiple Activists

Tetelbaum transitioned the conversation to situations where multiple activists are involved. She asked Golden how she advises a company from a media perspective, when there is more than one activist involved. Golden touched on the fact that not every activist is created equal – when there are multiple in one stock, there is strategy behind who you speak to and who you don't. Burch also noted that over the last few years, we have seen traditional investors employing the strategy of activism, which could explain this increase in multiple activists in one stock. Additionally, Burch posited that it may

become more common to see activists on both the buyer and the seller side in M&A situations, as there is a higher level of accessibility to stop and change deals, particularly from the buy side. Golden concluded that the essential take away in defense is to ensure you are building relationships with investors before a fight.

Multiyear and Long-Term Campaigns

Tetelbaum wrapped up by asking how her fellow panelists think the second year in an activist situation differs from the first, and what advice they would give a company experiencing a second round of an activist encounter. Golden emphasized that what happens between the settlement and the second round of an activist is crucial, stating that if there is unwavering alignment at the board level and there is progress being made, there is a stronger foundation for defense. She added that in the case that the activist already has somebody in the boardroom, it can be an easier game of defense the second year. Burch closed out the panel by stating that the second or third-year fight may involve different shareholders, so if your initial plan has proven to have been successful in the past, it is something to shine a light on in future situations. He further noted that if a company continues to believe in their plan, they should not shy away from a proxy fight, as success in the first year can often lead to a stronger defense down the line.

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OFF THE RECORD Panel: Activism in Japan

Brian Doyle, *Managing Partner,* Nihon Global Growth Partners Management Inc. (NHGGP)

Nels Hansen, *Partner,* White & Case

Hirowaka Murakami, *Founding Member and CIO,* Yamauchi No.10 Family

Activist Lightning Round

James Chenard, *Global Head of Equity Solutions,* Nomura Securities (Moderator)

Liad Meidar, *Managing Partner,* Gatemore Capital Management

David Johnson, *Founder and Managing Partner,* Caligan Partners

Sanghyun Lee, *Founder,* Flashlight Capital Partners

Mike Tomkins, *Senior Portfolio Manager,* Elliott Investment Management

Watches of Switzerland Group PLC (WOSG.L) - Gatemore Capital Management

Click here to view the 13D Monitor Report

Verona Pharma (VRNA) - Caligan Partners

Click here to view the 13D Monitor Report

KT&G Corporation (03378.KS) - Flashlight Capital Partners

Flashlight Capital Partners is an investment management firm dedicated to strengthening corporate governance and enacting transformative change at its portfolio companies. The Firm is one of the few activists exclusively focused on investments in South Korea, where its Founder and Managing Partner Sanghyun Lee has a special edge having spent 20 years in private equity, most recently serving as the former Head of Korea for the Carlyle Group. The Firm is based in Singapore and was founded by Sanghyun in 2020.

Before presenting their ongoing campaign at KT&G Corporation, Sanghyun discussed the state of Korean equities and laid out some staggering statistics about the Country. 50 million: the population of Korea. 14 million: the number of retail investors in Korea, a number which has grown 5x in the past six years. 2.5 million: the number of labor union members in Korea, a very active political constituency in the Country. 1 million: the average difference of past Korean presidential election winners and losers. 9 out of 12: the number of Korea's Presidents since 1948 who have been impeached, jailed, or killed.

What Sanghyun was driving at through these illustrative statistics was the foundation of the socio-political alignment in South Korea towards improving stock prices and valuation,

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and the dire need and bipartisan effort to address the "Korea Discount". The Korea Discount, or the perpetual undervaluation of Korean equities, is substantial. 67% of Korean equities are trading below 1x book value, and are discounted compared to peer countries like Japan and the UK, as well as emerging or risk-laden markets such as Taiwan, Vietnam, and the Philippines. Given the rise of retail investors, the important constituency of labor unions, and the photo finishes of past elections, addressing the Korea Discount has become a critical topic and a real bipartisan effort in the Country. This has been evidenced by the Government's launch of the Corporate Value-Up Program, a set of voluntary guidelines to improve disclosure, valuation, and corporate governance inspired by a similar program adopted in Japan.

Given this background, Sanghyun introduced their two and a half years long ongoing campaign at KT&G Corporation. KT&G, or the Korea Tobacco & Ginseng Corporation, is the leading tobacco company in Korea with 67% market share and number five globally. Despite its leading position, strong cash flow, and being one of the largest companies in the country, KT&G has continually traded at a substantial discount. At the onset of their campaign, it traded at a negative EV/EBITDA, with its market cap worth less than the value of its assets and subsidiaries.

Sanghyun touched upon Flashlight's five value-enhancing proposals to the Company, as well as some aspects of their campaign strategy. First, they would like to see the Company transition from its legacy cigarette business towards heat-not-burn (HNB) technology. Sanghyun argued that HNB is safer for the consumer, more profitable for the Company, and is poised for strong growth given its limited penetration in Korea. Next, they would like to see the Company spin-off or sell its 100% owned Ginseng subsidiary Korea Ginseng Corporation (KGC). KGC is the market share leader in Korea for Ginseng, which is the most consumed herbal medicine in the Country. Flashlight believes that the pairing of tobacco with ginseng has been non-synergistic, and that KGC would be better served as a standalone Company to pursue its own growth opportunity and better penetrate global markets. Not mentioned in his presentation but worth addressing, on October 13, 2024, Flashlight submitted a Letter of Intent to the Company to acquire its Ginseng unit for ₩1.9 trillion in order to pursue these opportunities. The final three value-enhancing proposals from Flashlight include: (i) focusing on the Company's core business by exiting non-core real estate and other businesses; (ii) pursuing a ₩6 trillion won plan to improve shareholder returns; and (iii) becoming an ESG leader in Korea primarily through improvements to the Company's corporate governance, such as adding shareholder representatives to the Board, aligning management incentives with shareholders, and committing to increasing its sales from HNB, among others.

After an unsuccessful proxy fight in 2023, Flashlight achieved some big wins at the 2024 Annual Meeting. After proposing the election of Sanghyun as a Director Candidate, the Firm withdrew his nomination after the Industrial Bank of Korea (IBK) submitted its own director candidate. IBK's nominee was elected to the Board in March 2024, and the appointment of a new CEO was approved by shareholders following Flashlight's criticism of the selection process of the former underperforming CEO Baek Bok-in. This was a watershed victory, as Flashlight had the support of the two largest shareholders of KT&G, both of which were backed by the Government of Korea: the Industrial Bank of Korea and the National Pension Service. This goes to show that Flashlight has been uniquely able to affect change at the Company by garnering support from the Government, as well as retail and international investors, through a combination of impressive and compelling letters and presentations, achieving the support of proxy advisors, and the distribution of unique campaign materials via YouTube and other mediums.

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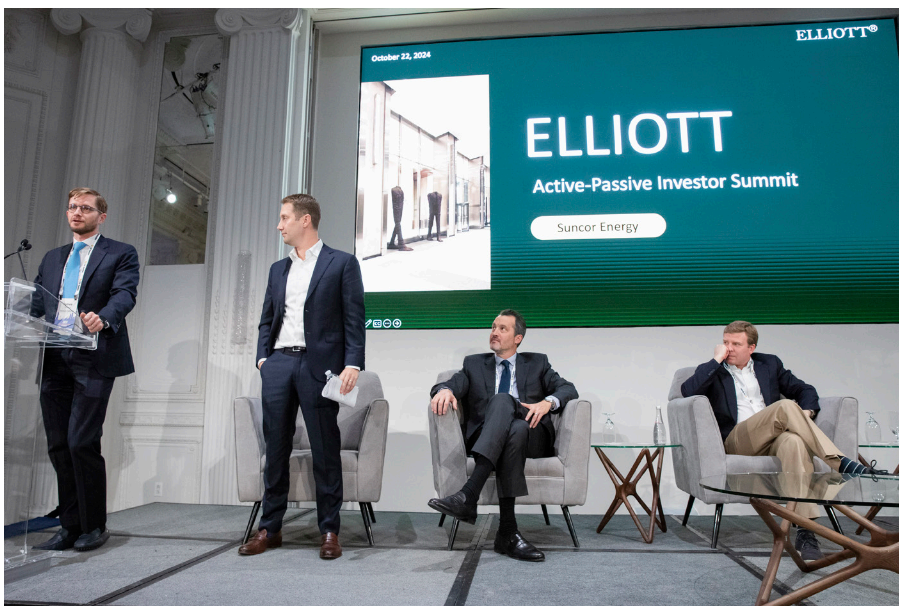

Since the date of their first meeting with KT&G management on April 22, 2022, the Company has delivered an excellent total shareholder return of over 50%, but Sanghyun noted that work remains to be done to unlock the remaining tremendous value of the Company in the coming years. Finally, Sanghyun detailed that the Flashlight I fund is up 88% since 2021 versus -13% for the KOSPI benchmark.

Suncor Energy (SU) - Elliott Investment Management

Mike Tompkins presented on Elliott's live activist campaign at Suncor Energy (SU). Elliott initiated their campaign in April of 2022, reporting a 3.4% economic stake, seeking board seats and an overhaul of management, and pushing the Company to consider selling its retail network of gas stations in Canada. Ultimately, in July of 2022, Suncor replaced their CEO and settled with Elliott, appointing Ian Ashby, Chris Seasons, and Jackie Sheppard to the Board as directors, where they all currently serve. Additionally, the Company agreed to form a new committee to oversee a strategic review of the Company's retail network and form a CEO search Committee. In November of 2022, Suncor announced its decision not to sell its retail network and soon after amended their Cooperation Agreement with Elliott to add another director, Daniel Romasko, to the Board, where he currently serves. Since then, under new CEO Rich Kruger, Elliott has seen a ton of upside at the Company, already returning 28% since their initial investment. But they see even more potential value creation and have doubled their initial stake from $1.6 billion to now nearly $3 billion.

Tompkins highlighted the significant improvements that the Company has made since Elliott's initial engagement. They believe that CEO Kruger's excellent leadership has restabilized the Company, reversing years of missed guidance and safety and operational issues. He noted that 2023 was the safest year in the Company's history and the Company has added new management and has refreshed the board with a total of six new directors. Additionally, the Company's dividend is now above pre-COVID levels and net debt has been reduced by $3.5 billion, allowing free cash flow commitments to be directed towards shareholders through dividends and stock repurchases.

Suncor's management has set aggressive and achievable targets for $3.3 billion in improved FCF, with plans to reduce the oil break-even price by $10 per barrel from $39 to $29, putting them in line with peers. Suncor's peers trade an average of 6.2x EBITDA multiple and if Suncor hits the targets that they have laid out, will trade at a 4.4x multiple. Thus, there is still a 50% upside to the stock from where it is currently trading, which Elliott thinks can be unlocked through improved execution and increased trust from shareholders.

Finally, Elliott sees a lot of parallels between Suncor and their Marathon Petroleum engagement - both energy companies with cultural and operational issues that were turned around by a new CEO from outside the Company. Elliott also noted that Marathon had a retail business that they sold and used to give cash back to shareholders. Suncor also has this opportunity and could choose to sell their high-quality retail business in Canada. Elliott believes this engagement will be a similar long term value creation plan to Marathon.

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Panel: Trending Legal and Regulatory Issues

Shane D'Souza, *Partner,* McCarthy Tétrault LLP

Douglas A. Rappaport, *Partner,* Akin Gump Strauss Hauer & Feld LLP

Bilal Sayyed, *Counsel,* Cadwalader, Wickersham & Taft LLP

Adriana Schwartz, *Partner,* Schulte Roth & Zabel

Masimo

Rappaport opened the panel highlighting the recent surge in hostile disputes between companies and activists that have escalated to litigation, specifically highlighting Politan's second round proxy fight at Masimo. He detailed the back-and-forth lawsuits between the two parties – Politan attempting to prevent the delay of the annual meeting, and Masimo attempting to block Politan from voting their proxies and alleging that Politan made misrepresentations in their proxy statement. Ultimately, the court ruled in Politan's favor, and they won their second proxy fight. Rappaport sees this proxy fight as a learning experience for lawyers who would use this type of "fight for every inch of territory" strategy.

Pfizer

Rappaport then turned to Starboard's engagement at Pfizer and discussed how Ian Read and Frank D'Amelio, former CEO and CFO of Pfizer respectively, were initially involved in their activist campaign and abruptly pulled out. It has been suggested that these former execs were threatened with litigation if they continued to support Starboard and this raises questions about how a particular company is being managed and underscores the importance for consideration of fiduciary obligations.

Moelis

Rappaport also addressed the March 2024 Moelis ruling, which determined that certain rights granted to a founding shareholder impermissibly limited the rights of the board to exercise authority over the company. These rights included preapproval rights for certain board actions, board and committee composition rights along with compensation rights. There was some concern as to how this may impact shareholder settlements, specifically related to activist campaigns, but the ruling has since been amended to specify that shareholder agreements can include the right to restrict corporate actions under certain circumstances.

SEC Scrutiny

Schwartz noted that we are in a time where the SEC is taking a more active role and urged investors to err on the side of caution in their reporting and to commence internal training to ensure timely and accurate disclosure filings. In the same breath, Rappaport mentioned the SEC's focus on Material Non-Public Information and shadow trading, urging activists to consult their lawyers.

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Hart-Scott-Rodino Amendments

Sayyed turned to the antitrust sphere and discussed changes to Hart-Scott-Rodino (HSR) form reporting requirements, which were minor but require slightly more documentation. In the proposed amendments, there were concerns that filing parties would have to disclose all their limited partners, but the final rule only requires limited partners to be identified if they possess management rights with respect to the acquiring entity. Sayyed pointed out that this consequentially may pose as an opportunity for firms to maintain some confidentiality around their investor base. Additionally, Sayyed mentioned the Trump administration's proposal to exempt acquisitions under 10% from HSR filing requirements and noted that if Trump wins, he may be able to again push for that exemption.

Evolution of Canadian Activism

D'Souza remarked on a noticeable shift in corporate behavior in Canada as companies have adopted a more litigious stance, displaying less restraint than in previous years. He used the Browning West / Gildan proxy fight as an example of this trend, where litigation strategies were employed on both sides. He added that this contested situation also displayed a trend of multiple litigations arising from the same engagement. Looking ahead, D'Souza predicts an uptick in contentious engagements in Canada.

Fireside Chat

David Faber, *Anchor,* CNBC (Moderator)

Greg Brown, *Chairman and Chief Executive Officer,* Motorola Solutions

David Deno, *Former Chief Executive Officer,* Bloomin' Brands

Motorola's Activist Interactions

David Faber opened the conversation by asking Greg Brown to share his experiences with activist investors in his 17 years as CEO of Motorola. Brown detailed his experience with Carl Icahn, noting that Icahn's activist position in the Company began before he became CEO. He touched on the importance of keeping close contact with Icahn throughout the engagement and their shared goal of wanting to split the Company. He emphasized the fact that when there is an activist with a large stake, there is a commonality and skin in the game – a good activist acts like an owner. He went on to outline his experience with ValueAct, where Jeff Ubben was the Principal and Brad Singer became ValueAct's board representative. Brown conceded that his mistake was maintaining close contact with Singer but not Ubben, which may have

caused some misalignment and yielded a less amicable relationship. He went on to say that every activist is different and their objectives often differ. He had less clarity on the objective of ValueAct at Motorola than with Icahn, but Brown noted both activists exited their situations successfully, and they had valuable take-

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aways from ValueAct's pressure to cut costs and divest one of its assets. Brown rounded out the conversation by stating that overconfidence likely played a role in his misalignment with Ubben, particularly coming off his relationship with Icahn and Keith Meister.

Bloomin' Brands' Activist Interactions

The conversation then transitioned to David Deno's experience at Bloomin' Brands with JANA, beginning in 2017 when he was CFO, and more recently with Starboard, beginning in 2023 when he was CEO. Deno seconded Brown's sentiment that it is important to build a strong relationship when an activist enters your Company and highlighted the general success of both the Company and the investors during their respective activist situations. He noted that although he was well-versed in the activist world prior to his first direct interaction, there still necessitated a process of educating employees and board members, exploring settlement options, and looking at the broader context of the Company's governance.

Activist Preparedness

Greg Brown then spoke to the layers of activist-induced friction that he experienced at Motorola, recollecting that he entered the role of CEO in January 2008, when Icahn had already taken a position in the Company. Brown noted that the Company was losing a ton of money each quarter and he wanted to settle with Icahn. This was met with a lot of reproach from the Board, but they ultimately ended up agreeing unanimously with Brown and settled. Brown reiterated Deno's earlier point that having an activist on the board can act as a catalyst and that Keith Meister, Brad Singer, Vincent Intrieri, who were brought in by activists, were some of the best board members they ever had. When pushed on why that was the case, Brown emphasized that when an activist is on the Board, there is a commonality and an ownership mentality. They enter with a very high level of preparation and understanding of the business, which Brown ultimately believes made him a better CEO.

David Deno agreed, pointing to Jeff Smith and the Starboard team's preparedness and experience in the restaurant space. He noted that one of the more challenging parts of having an activist in your Company is that you must run your Company and go about the process of negotiating with the activist, articulating the process to the Company and the public, all the while working through an agreement. Running the Company is not sidelined. Brown pointed out that it is important for the CEO to be proactive with engagement and not simply take a secondary role when dealing with an activist.

Activism Behind the Scenes

Faber asked about the unpublicized aspects of dealing with an activist like pre-settlement discussions and what their experiences have been like. Both quickly emphasized the importance of early engagement. Deno went on to say that an activist that enters a Company believes in the success of the Company – they may not agree with where you are taking the Company but the more you engage, the more quickly you can get to the commonalities of your positions and where the issues lie. Brown underscored this by noting the importance of engaging to get alignment on what the activist thinks is

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causing the dislocation of value in the business. He highlighted this point when discussing how board meetings generally went – there was no sword fighting or confrontation because of the constant conversation that happened outside of the boardroom. Brown recollected that Icahn's engagement in Motorola was initially about capital allocation and excess cash on the balance sheet, but as management changed and conditions of the business changed, Icahn pivoted to breaking up the Company.

Activism Hostilities

Faber shifted the conversation to ask how their experiences may have been different if the activist was squarely focused on replacing their positions. Brown stated that the first thing he did upon Icahn getting representation on the board was look at his prior engagements – wherein three out of four of the CEOs were replaced. Deno reflected that when JANA entered, he had just become CEO and when Starboard entered, there was a succession plan for him in place. He noted that he tried to not make the situation personal – the decisions being made were about what was best for the Company, rather than self-preservation. Brown expressed that in his second engagement with ValueAct, in light of a fundamental disagreement between himself and the activists, he was nearly certain his job was on the line. Faber pushed on this disagreement, asking how he was able to move forward. Brown accredited his wife who urged him, if he was so certain that he was correct, to engage and pursue the option rather than quit an argument he thought he could win. Deno highlighted the importance of staying close to the Board and Brown conceded further that there are board members that have greater sway than others and staying close to them to understand their priorities is crucial.

Pieces of Advice

The conversation wrapped up with Deno and Brown offering their advice to activist investors. Deno emphasized the importance of not entering a situation with preconceived notions. There may be pros and cons of the Company that are not obvious, so an investor should not enter with a one-track mind. Brown seconded this note and added that engaging management constructively, rather than through bomb throwing, is much more effective in terms of getting information and transparency. There may come a time for bomb throwing but it is not the way to enter. Brown rounded out the conversation by quipping that in his 17 years at Motorola, he has had either an activist or a private equity person on the board and he thinks it's been a value add. His final pearl of wisdom for management was to think like an activist - evaluate your cost structure, margin profile and have people that take a proactive look at your business, both operationally and strategically.


David Faber, *Anchor,* CNBC (Moderator)
Greg Brown, *Chairman and Chief Executive Officer,* Motorola Solutions
David Deno, *Former Chief Executive Officer,* Bloomin' Brands

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Fireside Chat: Proxy Advisors

Andrew Freedman, *Co-Managing Partner and Chair of Shareholder Activism Practice,* Olshan Frome Wolosky LLP

Cristiano Guerra, *Head of Special Situations Research,* Institutional Shareholder Services (ISS)

Jason McCandless, *Senior Director,* Glass Lewis & Co.

UPC Takeaways

The panelists opened up by discussing how the Universal Proxy Card ("UPC") has affected proxy fights as we approach the two-year mark of its enforcement. Freedman discussed how situations where an activist is pursuing fewer seats tend to settle quickly, sometimes even before the nomination deadline, but the situations that have recently come in front of Glass Lewis and ISS have been highly contested where the activist is putting a target on the CEO or going for control of the board. McCandless expressed that the UPC has not changed the process of how they evaluate proxy fights. He went on to agree that CEO targeting has been a trend in the past year and validated the strategy, particularly when it comes down to a fundamental disagreement on how the CEO carries out a strategy. Guerra's largest takeaway from the UPC is this year's activist win rate, which was at 30%, the lowest it has been by far in the 20 years they have been recording it. He highlighted several of the largest campaigns of the year – Starbucks, Disney, Norfolk Southern – and concluded that regardless of the varying levels of success each campaign had, a spotlight is put on the company and the board and management have no choice but to act differently. Freedman expounded upon this point, adding that activist fights can become very binary when you lose sight of the ultimate goal – the internal status quo of a company can be shifted the moment an activist enters, win or loss.

Glass Lewis and ISS Recommendation Process

McCandless stated that when Glass Lewis evaluates a campaign for recommendation, a large part of their process is engaging with the directors and seeing how teams present and respond to their challenges. The panelists touched on the Norfolk engagement where ISS and Glass Lewis recommended different board slates, showing how their recommendations can differ especially in highly contested situations. Guerra elaborated on the process of how they decide which directors to back, emphasizing that step one is determining whether there is really a case for change and if so, how much. He explained that the difficulty the new UPC presents is an activist's ability to target specific directors. The directors targeted often pose an obstruction to the activist's agenda, rather than being the weakest, so it becomes difficult to back the activist when the skills of the potential

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replacement do not outweigh the targeted director.

Targeting CEOs

Freedman transitioned the conversation to discuss the framework of analysis for when an activist proposes a replacement CEO. McCandless asserted that when a company's performance is lagging, the CEO and management that implemented that strategy should be the ones held accountable. He pointed to the widening acceptance of CEOs working directly with an activist, rather than against, and emphasized the value in that as a tool. Guerra closed out the subject by establishing that there can be good CEOs with bad boards, but you cannot have a bad CEO with a good board – an effective board will remove a bad CEO. He used Norfolk as an example of this: they weren't a bad company; they were a bad executor so the need for CEO change was not the top priority.

Gildan / Browning West

The panelists discussed the lasting significance of Browning West's campaign at Gildan – highlighting the unprecedented removal of 17 incumbent directors over the course of a six-month campaign. Guerra detailed how the situation allowed for creativity and diverting from their framework. McCandless further articulated this point by emphasizing the reversal of operations from a normal campaign – a board removal of the CEO yielding a shareholder revolt. Guerra and McCandless then touched on the do's and don'ts of meetings with ISS and Glass Lewis, where they concurred on entering preparedly but not overly rehearsed. Remaining open to dialog and showing a true understanding of the company goes a long way.

What's Next in Proxy Fights

The conversation came to a close with McCandless reflecting on how activism has progressed in recent years. He highlighted activists' movement towards less aggressive tactics, addressing operating plans and core strategies, recruiting high quality talent, and a general change in sentiment towards long-term investing. Guerra added that he believes proxy fights are going to get more direct going forward. There is no longer a company too big for activists and as they continue to go after these bigger, fish they need to have a really sharp argument to gain broad support.

Panel: Under Pressure: Getting to the Negotiating Table

Patrick Gadson, *Partner and Co-Head of Shareholder Activism*, Vinson & Elkins LLP

Jonathan Salzberger, *Managing Director,* Innisfree M&A Incorporated

Lex Suvanto, *CEO,* Edelman Smithfield

Strategies for the Negotiating Table

The conversation opened by discussing what strategies can help, and what structural issues can deter, two parties getting to the negotiating table. Suvanto emphasized that although lawyers are at the crux of it, principal to principal communication is an underappreciated tool. He went on to say that directors do not always recognize the importance of understanding the nuances of what an activist is looking to change, and further argued that the reputation of the investor can make a difference in how the deal is handled. He also noted that executives and board members can be susceptible to reputational threats when not properly advised – reputation makes a difference in terms of how easy it is to get to the negotiating table.

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Gadson reflected on Suvanto's appraisal of principal to principal communication and stated that there are limits to how genuine those conversations are, and lawyers and advisors often have to be the bad guy. Investors and companies alike can compound on an environment of distrust when both parties act in anticipation of the situation going south – hoisted by their own petards. Gadson underscored this point by impressing the importance of activists being upfront in the changes they want to make rather than just highlighting the underperformance.

Role of Advisors

Salzberger transitioned the conversation to question whether there exists a situation – particularly in more contentious situations involving M&A or change in management – where an advisor can have credibility on both sides of the deal. Suvanto noted that increasingly, from a defense perspective, there is more emphasis placed on knowing the activists personally than there was 5 to 10 years ago. Gadson seconded this and said that from a legal perspective, there are limitations placed on communication because principals are often represented by counsel. He went on to say that within the activism space, there is a relatively small network of people advising on the respective sides, so maintaining relationships and trust among advisors can help keep the disputes less hostile.

Hostile Tactics

Suvanto asked his fellow panelists how they feel about the more antagonistic actions in an activist situation – companies making surprise announcements at inopportune times, activists going to the media to promote more personal details of the executives. Salzberger broke down the two broad trajectories an activist or company can choose: slow and steady or full-bore. Slow and steady is the approach we most commonly see, but in the contentious situations referenced earlier, where the two parties fundamentally disagree, sometimes an attack approach is necessary. The panelists agreed in the importance of director preparedness for effective negotiations. Suvanto touched on the trend of activists revealing their stakes in the Sunday evening Wall Street Journal and questioned whether this is an effective tactic of setting the pace for the situation. Gadson speculated that the amount of engagement prior to the public announcement is what dictates whether this is a shock and awe tactic. Directors historically have jumped to the conclusion that the activist has no intention of being constructive if they open with a shock factor. He went on to say that how you start is how you'll stay – if you want to maintain the option of amicability, starting with the full-bore method is not constructive.

Media Tactics in Activism

The conversation rounded out on creative execution tactics, and whether the use of ads and podcasts creates buzz or detracts from the situation. Suvanto conceded that getting information to shareholders through different medias is generally a good thing. However, it is how that media translates to actual voting power that matters, and there should be caution deployed when using the different tactics. Gadson took a similarly conservative opinion, noting that understanding the reality of how the internet and social media operate is imperative when navigating those strategies. Most current directors do not have the deftness that comes with growing up with these tools.

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Investment Idea: Sachem Head Capital Management

Scott Ferguson, *Managing Partner,* Sachem Head Capital Management

Deliveroo PLC (ROO.L)
Click here to view the 13D Monitor Report

Delivery Hero SE (DHER.DE)
Click here to view the 13D Monitor Report

Investment Idea: Corvex Management

Keith Meister, *Founder & CIO,* Corvex Management LP

Keith Meister took a unique approach to his investment presentation. This year, his theme was: *following other activists*. He noted that investing behind activists has allowed Corvex to benefit from their hard work, sometimes at more attractive prices and often with lower risk as they are further along the journey of driving corporate change. The following three companies are all live activist campaigns, where the stock is currently trading below their respective activist's cost:

Illumina, Inc. (ILMN) / Carl Icahn
Click here to view the 13D Monitor Report

Dollar Tree Inc (DLTR) / Mantle Ridge
Click here to view the 13D Monitor Report

Fortrea Holdings Inc (FTRE) / Starboard Value
Click here to view the 13D Monitor Report

OFF THE RECORD Panel: Investor Perspectives

Chris Young, Managing Director/Global Head of Contested Situations Advisory Team, Jefferies Financial Group Inc. (Moderator)
Glenn Booraem, Principal, Office of the General Counsel, Vanguard
Vincent DeAugustino, Portfolio Manager, T. Rowe Price
Adam Katz, *Co-founder and Chief Investment Officer,* Irenic Capital Management

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Fireside Chat

Lars Förberg, *Founding Partner,* Cevian Capital

Ken Squire, *Founder and President,* 13D Monitor/13D Management

US vs. European Activism

Förberg gave a brief overview of Cevian, which takes a general approach of investing in European listed companies that have sound businesses and good market positions but are underperforming compared to their own potential and peers. He stated that their investing is rooted in making fundamental changes to improve the company and improve earnings per share over time. When asked about activism in Europe, and the benefits and detriments that set it apart from activism in the US, Förberg began by establishing that Europe is a set of several markets that run under different cultures, laws, and regulations. He went on to say that in general, countries in Europe have legislation in place that grant shareholders more power than in the US. There are no poison pills, there are simple voting rules based on a majority win, and typically there is a separation by law between the Chairman and CEO roles. He paralleled this with an almost monarchical structure in the US, where the CEO can be compared to a king or queen that sits in the Chairman role as well. The conversation was shifted towards executive compensation and how it can differ between the US and Europe – particularly given the difficulty in paying CEOs a substantial salary in Europe. Förberg underscored the fact that shareholders possess more power in Europe – if a CEO is not performing well or is leading the company astray, shareholders can vote the CEO out and get someone who will perform. He noted that there are some fields – financial, tech, and med tech – where paying the CEOs higher wages in Europe would deter a lot of candidates from going to US companies, where they could be better compensated.

Activism Over Time

Squire transitioned the conversation to the changing perception of activism, and asked Förberg if Europe, like the US, has slowly shed the stigma that activism once had. Förberg detailed how the criticism he once received, 25 years ago when he was just starting out, is no longer relevant as they have proven time and time again that they are not short-term investors – they work towards the ultimate betterment of the company and are a force for change at underperforming businesses. He then pointed to Cevian's express use of non-hostile tactics and referenced that they have never been in a proxy fight despite getting board seats at a majority of their portfolio companies. The conversation transitioned to how an activist campaign may differ from country to country based on different rules and regulations that are associated with that jurisdiction. Förberg highlighted that every company is different irrespective of what country it presides in – they spend a lot of time before investing to understand the company, industry, culture and people. Attempting to reuse the same playbook across any two situations won't yield the results you want. Förberg then detailed the handful of markets that Cevian generally stays in – German-speaking Europe, Scandinavia, France, and the UK – and spoke to the general tailwind in those markets that have caused even passive shareholders, such as pension funds and mutual funds, to be engaged as an owner due to legislation and regulations being put in place.

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Cevian's Philosophies

Squire then urged Förberg to shed light on the philosophies and practices that built Cevian, particularly as activism was such a nascent strategy in 2002 when the fund began. Förberg detailed his background in private equity, which begged the question if you can own a private company and work with it over time and change aspects to improve it, why can't you do the same with a public company? Not knowing the concept of activism at the onset, Förberg had the mentality that if you build a large enough position in an underperforming company to garner influence and take the time to generate a plan of improvement over a five-year span, you have the ability to double or triple the earnings of these companies. He stressed that Cevian's original strategy was to improve companies fundamentally, which differs from the event-driven hedge fund tactic that generally focuses on one concept of change within a company.

Tools for Value Creation

Förberg moved to discuss the tools Cevian uses when taking on the strategic improvement of a company. The first lever is governance: ensuring that the right board and management team sit at the helm of the company. The second lever is structuring: selling off non-core assets that detract from the core business. Förberg noted that over the approximately 70 investments of the last 25 years, they have sold an average of 25% of the assets of the company. The third lever is strategy: allocating the correct resources to give the company a competitive advantage, whether that be R&D, marketing, etc. The fourth and final lever is operational discipline: confirming that everything the company does is generating revenue. Förberg quipped that in poorly run companies it is very common for there to be hidden businesses that do not perform or profit.

Equity Values and Market Opportunities

Squire moved the conversation to discuss the markets in Europe and where opportunities may arise in relation to equity values. Förberg touched on the fact that many European companies are undervalued compared to their US peers, referencing that the valuation differential between the US and Europe may be the widest ever. Förberg highlighted Cevian's decision to move one of its portfolio companies, CRH, from a European listing to a US listing. By the sole action of changing the listing, in a year the company has closed the discount to American peers from 40% to 25% and is on track to get into the S&P 500 by January. Squire noted that changing listings is a common activist ploy in Europe, with an externality of seemingly automatic value creation in some situations. He then transitioned to ask Förberg if there are any sectors right now that are particularly interesting or appealing. Förberg detailed the importance of analyzing a sector before entering, particularly with regards to downside protection. He stated that their investment intention is for their change program to be the main driver of performance – they avoid industries with high fixed costs, companies that are dependent on raw material prices, and biotech. Those pathways rely too heavily on exogenous factors, and Förberg stated that they have the luxury of picking companies and industries with long term upsides and tailwinds.

Upcoming Election

The conversation closed out with Squire questioning how the upcoming election may impact the European markets and the global ramifications at large. Förberg emphasized that they have positioned their portfolio to avoid exposure to global trade risks. He went on to express that Ukraine is at the center of Europe's thinking when it comes to how Europe looks at a potential democratic win or Republican win – not necessarily from an economic standpoint but in terms of the values of the people. He concluded by saying that the US partisanship is generally based on a difference of values, and that the monetary policy between the two blocs is far less opposing.

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DISSECTING ACTIVIST 13Fs

45 days after the end of each quarter, 13F filings are made by investors who have more than $100 million of qualifying assets under management. We analyze the 13F filings of the major US activist investors and provide the following data and commentary:

AGGREGATE ACTIVIST HOLDINGS

The top 12 major activists increased their 13F holdings by $1.21 billion to $59.7 billion. The most significant increase came from Elliott (+$1.98B), followed by ValueAct (+$817.68M), Corvex (+$410.52M), Starboard (+$408.86M), JANA (+$216.71M), Impactive (+$118.71M) and Engaged (+$32.62M). The decreases came from: Third Point (-$1.31B), Carl Icahn (-$965.83M), Trian (-$208.77M), Sarissa (-$190.09M) and Sachem Head (-$105.11M).

ACTIVIST CONCENTRATION

TOP THREE 13F POSITIONS AS A PERCENTAGE OF TOTAL 13F VALUE

CARL ICAHN (83.08%)
ICAHN ENTERPRISES LP (59.30%)
CVR ENERGY INC (15.55%)
SOUTHWEST GAS HOLDINGS (8.23%)

SARISSA (67.62%)
INNOVIVA INC (34.93%)
IRONWOOD PHARMA (16.78%)
GILEAD SCIENCES INC (15.91%)

TRIAN (64.45%)
JANUS HENDERSON GROUP (31.18%)
GENERAL ELECTRIC CO. (19.53%)
WENDYS CO. (13.74%)

VALUEACT (60.91%)
SALESFORCE INC (24.49%)
INSIGHT ENTERPRISES INC (20.00%)
DISNEY WALT CO (16.42%)

ENGAGED (51.37%)
EVOLENT HEALTH INC (18.30%)
V F CORP (17.28%)
NCR VOYIX CORPORATION (15.78%)

JANA (49.59%)
LAMB WESTON HLDGS INC (19.59%)
TRIMBLE INC (15.73%)
SPDR S&P 500 ETF TR (14.27%)

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ACTIVIST CONCENTRATION

TOP THREE 13F POSITIONS AS A PERCENTAGE OF TOTAL 13F VALUE

IMPACTIVE (48.94%)
ASBURY AUTO GP (17.07%)
WEX INC (16.91%)
SLM CORP (14.95%)

ELLIOTT (44.75%)
SPDR S&P 500 ETF TR (21.40%)
SLCT SECTOR SPDR (PUT) (12.14%)
TRIPLE FLAG PREC MTL (11.21%)

SACHEM HEAD (38.45%)
US FOODS HLDG CORP (15.57%)
CVS HEALTH CORP (11.61%)
TWILIO INC (11.27%)

CORVEX (36.02%)
SOUTHWEST GAS HLDGS (13.66%)
ILLUMINA INC (11.55%)
MDU RES GROUP INC (10.80%)

STARBOARD (31.50%)
AUTODESK INC (10.85%)
GODADDY INC (10.45%)
GEN DIGITAL INC (10.21%)

THIRD POINT (29.81%)
PG&E CORP (13.24%)
AMAZON COM INC (9.28%)
DANAHER CORPORATION (7.30%)

13F COMMENTARY

13D MONITOR'S COMMENTARY ON NOTEWORTHY NEW POSITIONS & MATERIAL POSITION CHANGES

Carl Icahn

New Positions: Carl Icahn did not disclose any new positions this quarter. However, he requested Confidential Treatment on his 13F, which is generally standard for Icahn. So, there is at least one material position that has not been disclosed.

Material Position Changes:

- Since the end of Q3 Icahn has decreased his position in Southwest Gas Holdings Inc (SWX) from 15.36% to 13.43% (click here to view our report) Icahn currently holds four board seats for Andrew W. Evans, Henry P. Linginfelter, Ruby Sharma and Andrew J. Teno.
- Icahn increased his position in Centuri Holdings, Inc. (CTRI) from 2.93% to 4.06%. Centuri is the Utility Infrastructure business that was spun off from Southwest Gas on April 22, 2024 - Icahn purchased the majority of his CTRI shares in a private placement at a price per share equal to the IPO price of $21.

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Corvex

New Positions: Corvex disclosed three new positions, two of which were presented by Keith Meister at the 13D Monitor Conference on October 22nd – (i) a $79.53 million (0.53%) position in Dollar Tree Inc (DLTR) (click here to view our Mantle Ridge report); and (ii) a $44.42 million (2.48%) position in Fortrea Holdings Inc (FTRE) (click here to view our Starboard report). At the Conference, Keith Meister took a unique approach to his investment presentation and highlighted the potential value of investing behind other activists. He noted that this investment strategy has allowed Corvex to benefit from other activists' hard work, sometimes at more attractive prices and often with lower risk as they are further along the journey of driving corporate change. Continuing with this philosophy, Corvex's third new investment this quarter was Air Products & Chemicals Inc. (APD), albeit a small $2.6 million position. On October 4, 2024, Mantle Ridge announced that it had built a more than $1 billion position in APD, and since that time they have nominated a full nine-person director slate, which includes Paul Hilal (CEO of Mantle Ridge), and proposed a CEO replacement. A week after Mantle Ridge announced their position, DE Shaw came out with their own activist campaign and signaled interest in a board refresh. Since that time, they have thrown their support behind Mantle Ridge and stated that they no longer intend to nominate a slate of directors to the Company's Board.

Material Position Changes:

- Corvex increased its position in Algonquin Power & Utilities Corp. (AQN) from 0.15% to 0.43%. Starboard Value (8.86% holder of AQN) has a live 13D at AQN (click here to view our report) and initially called on the Company to initiate a sale of all or a majority of the Company's Renewable Energy Group, and on August 9, AQN entered into a definitive agreement to sell its renewable energy business (excluding hydro) to a wholly-owned subsidiary of LS Power for up to $2.5 billion. Earlier, on April 18, 2024, Starboard settled for board seats for Brett C. Carter and Christopher Lopez.

- Corvex slightly increased its position in Norfolk Southern Corp (NSC) from 0.11% to 0.12%. NSC was at the center of a heated proxy fight with Ancora Advisors, which came to its conclusion at the Company's Annual Meeting on May 9, 2024, where shareholders voted to elect three of Ancora Advisors' seven director candidates but rejected Ancora's attempt to replace the CEO. Most recently, on November 13, 2024, Ancora and NSC entered into a Cooperation Agreement pursuant to which the Company agreed to increase the size of the Board from 13 to 14 members, and Ancora and the Company will mutually agree upon independent director to fill the vacancy prior to January 31, 2025. (click here to view Ancora's report)

- Corvex decreased its long exposure in Illumina Inc. (ILMN) from to 1.66% to 1.44%. ILMN has been the subject of an activist campaign by Carl Icahn since March of 2023 (click here to view our report), but Icahn's board representative did not stand for re-election at the 2024 Annual Meeting. On June 24, 2024, ILMN completed its previously announced spin-off of GRAIL, Inc. and distributed approximately 85.5% of the outstanding shares of GRAIL to its shareholders.

- Corvex slightly decreased its shares held in MGM Resorts International (MGM), which did not move the needle on their 1.93% ownership. Keith Meister has served on the MGM board since January 18, 2019.

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Elliott

New Positions: Elliott has been particularly active this year, with nine new activist campaigns at US-listed companies and seven new activist campaigns at international companies, year to date. Their most interesting position over the past quarter did not appear in their 13F – on November 12, Elliott disclosed a more than $5 billion position in Honeywell International Inc. (HON) (click here to view our report) and sent a letter to the Board calling on them to separate into two standalone companies - Honeywell Aerospace and Honeywell Automation. In their 13F, Elliott disclosed two new call positions on airline stocks - a $45.21 million (0.79%) position in Alaska Air Group, Inc. (ALK) and a $39.34 million (0.53%) position in American Airlines Group Inc. (AAL), increasing their long exposure in the airline industry. Interestingly, Elliott presently has an activist campaign at Southwest Airlines (see below). Finally, Elliott reported a new $103.29 million (0.05%) call position in Texas Instruments Incorporated (TXN). They have been invested here since at least May of 2024, when they announced taking a $2.5 billion position and calling on the Company to adopt a dynamic capacity-management strategy and introduce a free cash flow per share target of $9.00+ in 2026 (click here to view our report). Most recently, on August 20, 2024, Elliott commended TXN's capital allocation update wherein the Company outlined its growth expectations, capacity investments in 300mm wafer fabs, and framework of revenue scenarios across various market conditions, including a path to $12 per share of free cash flow in 2026.

Material Position Changes:

- Elliott increased its position in Etsy Inc. (ETSY) (click here to view our report) from 3.92% to 4.44%, where they have received a board seat for Marc Steinberg (Partner at Elliott), who was also appointed to the Board's Audit Committee.
- Elliott increased its position Match Group Inc (MTCH) (click here to view our report) from 4.54% to 4.80% - on March 25, 2024, Match announced the appointment of Laura Jones and Spencer Rascoff to its Board, following constructive engagement with Elliott. More recently, on July 15, 2024, Starboard Value filed a 13D on MTCH and highlighted various opportunities to improve operations, financial results, and capital allocation, including by optimizing Tinder through product innovation, cutting costs and improving margins, an aggressive and systematic capital return program, and potentially taking the Company private (click here to view our Starboard report). Additionally, on March 14, 2024, Anson Funds Management announced a position in Match and plans to push for a board refreshment (click here to view our Anson report).
- Elliott increased its position Southwest Airlines Co (LUV) (click here to view our report) from 1.0% to 10.19%. Elliott increased its beneficial ownership above 10% to call a special meeting to replace a majority of the board. Ultimately, on October 23, 2024, Elliott and Southwest entered into a Cooperation Agreement pursuant to which the Company agreed to appoint the following five directors to serve on the board: David Cush (former CEO of Virgin America); Sarah Feinberg (former Administrator of the Federal Railroad Administration, Chief of Staff to the U.S. Secretary of Transportation and Interim President of the New York City Transit Authority); David Grissen (former Group President of Marriott International); Gregg Saretsky (former CEO of WestJet); and Patricia Watson (Executive Vice President and Chief Information & Technology Officer at NCR Atleos).

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- Elliott increased its position Western Digital Corp (WDC) (click here to view our report) from 0.36% to 0.65%. Last year, Elliott successfully advocated for the Company spinning off its flash memory business.
- Elliott decreased its position NRG Energy Inc (NRG) (click here to view our report) from 5.02% to 4.77%. Most recently, on November 20, 2023, Elliott and NRG entered into a Cooperation Agreement, pursuant to which the Company appointed the following four individuals as directors: Marwan Fawaz, Kevin Howell, Alex Pourbaix and Marcie Zlotnik, where they all currently serve. As of January 2024, Elliott's total economic exposure in NRG was over 13%.

Engaged

New Positions: Engaged disclosed a $33.62 million (0.98%) position in BlackLine, Inc. (BL), a tech company that provides cloud-based solutions to automate and streamline accounting and finance operations worldwide. This was a new 13F position for JANA last quarter, which they no longer hold, but is a particularly interesting position because of another stockholder – Clearlake Capital. Clearlake is not an activist investor but an $80 billion private equity firm that has lately taken large, select positions in public companies as a precursor to offering to acquire them. They currently have a $315 million (9.14%) position in BlackLine.

Material Position Changes:

- Engaged increased its position in NCR Voyix Corporation (VYX) from 4.33% to 4.91% - At NCR's 2022 Annual Meeting, Glenn Welling was elected to the Board, where he no longer serves.
- Engaged reported increasing its position in Nevro Corp (NVRO) (click here to view our report) from 5.06% to 6.52%. However, since this time, they reported selling below 5% to 1.51%. On February 20, 2024, Engaged settled for a board seat for Kirt P. Karros, who currently serves as a director.
- Engaged reported increasing its position in Portillos Inc (PTLO) (click here to view our report), from 3.76% to 8.24%. This is a live 13D for Engaged and they have communicated potential steps to improve the business, including by optimizing restaurant performance, improving restaurant-level cash on cash returns, enhancing corporate governance through potential changes to the composition of the Board, and exploring a sale of the Company. Engaged has a lot of experience in this industry and a strong track record – they had board seats at Del Frisco's and Jamba in addition to settling for an independent board seat at Shake Shack.
- Engaged decreased its position in Evolent Health Inc (EVH) (click here to view our report) from 3.54% to 3.42%. Thie was a live 13D from August 20, 2020, until August 25, 2022, and Engaged settled for a board seat for Craig Barbarosh, where he currently serves as a director.

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Impactive

New Positions: Impactive disclosed two new positions, which are currently their smallest positions – (i) a $74.14 million (0.74%) position in Charles River Laboratories International, Inc. (CRL), a non-clinical global drug development company; and (ii) a $68.99 million (1.01%) position in SiteOne Landscape Supply, Inc. (SITE), a national full product line wholesale distributor of landscape supplies in the United States. SiteOne traded as low as $115.64 during the third quarter and has spiked since then to over $150 per share today.

Material Position Changes:

- Impactive reported increasing the following positions, all of which are live activist engagements: (i) Concentrix Corp (CNXC) (click here to view our report) from 5.89% to 6.75%; (ii) Marriott Vacations Worldwide Corp (VAC) (click here to view our report), from 7.42% to 8.59%; and (iii) WEX Inc (WEX) (click here to view our report), from 4.82% to 5.46%.
- Additionally, Impactive reported decreasing the following positions: (i) Asbury Automotive Group Inc (ABG) (click here to view our report) from 10.10% to 9.84%; (ii) Clarivate Plc (CLVT) (click here to view our report) from 5.80% to 5.58%; and (iii) SLM Corp (SLM) (click here to view our report) from 9.06% to 8.29%.

JANA

New Positions: JANA disclosed a new position in Lamb Weston Holdings Inc (LW), which they have since taken over 5% and filed a joint 13D with Continental Grain Co (collectively the "Group", holding 5.35%) (click here to view our report). JANA entered into nomination agreements with (i) Bradley Alford, former Chairman and CEO of Nestlé USA; (ii) Diane Dietz, former President and CEO of Rodan & Fields and CMO of Safeway, Inc; (iii) John P. Gainor Jr., former President and CEO of International Dairy Queen Inc.; (iv) Timothy R. McLevish, former Executive Chairman of the board of Lamb Weston and CFO of Kraft Foods Inc.; and (v) Joseph E. Scalzo, former President and CEO of The Simply Good Foods Company.

Material Position Changes:

- JANA reported slightly increasing its shares held in Mercury Systems Inc (MRCY) (click here to view our report) by 16,669 shares. On July 6, 2023, Scott Ostfeld (a Managing Partner of JANA) was appointed to the Board as a director, and earlier, on June 27, 2022, JANA settled for a board seat for William L. Ballhaus, who currently serves as CEO and Chairman of the Board.
- JANA reported increasing its position in Rapid7 Inc (RPD) (click here to view our report) from 4.34% to 5.78%, which they have since increased to 6.40%. In June 2024, JANA initially stated that they may urge the company to sell itself. More recently, on September 27, 2024, JANA announced their intention to continue having conversations with the Company's Board and management team regarding the following: (i) addressing challenges with operational execution, forecasting, investor communication and employee retention, (ii) management, (iii) compensation, (iv)

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corporate governance and board composition, and (v) evaluating the Company's value in a sale transaction, including Cannae's interest to participate in a potential acquisition of the Company. JANA also entered into Special Advisor Agreements with Michael Joseph Burns, Robert Bradshaw Henske, and Chad Kinzelberg, all of whom would presumably be JANA director nominees in case this escalates to a proxy fight. JANA still has several months before the 2025 director nomination window opens on February 13, 2025, but they are getting prepared early.

- JANA reported increasing its position in Trimble Inc (TRMB) (click here to view our report) from 1.71% to 2.0%, where they called on the Company to cease M&A activities and instead focus on organic growth in its existing businesses. On January 30, 2024, Trimble announced its plans to expand its share buyback to $800 million and add two directors to its Board.
- JANA reported decreasing its position in Frontier Communications Parent Inc (FYBR) from 3.85% to 1.57%. JANA initially announced its position in October 2023 and called for a sale of the company - on September 5, 2024, Frontier and Verizon Communications Inc. entered into a Merger Agreement pursuant to which Verizon agreed to acquire the Company for $38.50 per share.

Sachem Head

New Positions: Sachem Head disclosed three new positions. First, a $163.01 million (0.25%) position in Air Products and Chemicals, Inc. (APD). APD has gained the attention of three other activists - Mantle Ridge (1.58%), DE Shaw (0.02%) and Corvex (8,700 shares, <0.1%) (see Corvex 13F Commentary above for a description of activist campaigns at APD). Second, Sachem Head disclosed a $167.72 million (1.85%) position in Talen Energy Corporation (TLN), an independent power producer and infrastructure company, that produces and sells electricity, capacity, and ancillary services into wholesale power markets. Talen is a direct peer of PPL Corp (PPL), where Elliott has a live campaign, and both Constellation Energy Corp (CEG) and Exelon Corp (EXC), where Corvex had activist campaigns that have since been exited. Third, they disclosed a $44.15 million (3.15%) position in Integra LifeSciences Holdings Corporation (IART), a manufacturer and seller of surgical instruments, neurosurgical products, and wound care products for use in neurosurgery, neurocritical care, and otolaryngology. Integra is a direct peer of Smith & Nephew plc (SN.L), which is the subject of a live activist campaign for Cevian, a 5.11% holder. Interestingly, Integra has a 96.6 13D Monitor Company Vulnerability Rating (out of 100) signifying it is ripe for an activist.

Material Position Changes:

- Sachem Head decreased its position in US Foods Holding Corp (USFD) (click here to view our report) from 5.60% to 2.07%. This was a very successful activist campaign for Sachem Head, where they settled for board seats and ultimately had a 50.54% return versus -4.15% for the Russell 2000 over the same period.

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Sarissa

New Positions: Sarissa disclosed a small, $2.9 million (0.04%) position in Lantheus Holdings, Inc. (LNTH), a company that develops, manufactures, and commercializes diagnostic and therapeutic products that assist clinicians in the diagnosis and treatment of heart, cancer, and other diseases worldwide. Lantheus is not a development stage company, but has $1.5 billion in revenue, $548 million in EBITDA and a $6.2 billion market cap.

Starboard

New Positions: Starboard's most interesting new positions were not included in their 13F but were both presented on at the 13D Monitor Conference: (i) a position in Kenvue Inc (KVUE) (click here to view our report), a consumer health company whose brands include Tylenol, Neutrogena, and Neosporin; and (ii) an approximately $1 billion position in Pfizer Inc (PFE) (click here to view our report). Starboard disclosed two new positions in their 13F (a) a $510.19 million (0.86%) position in Autodesk Inc (ADSK), which has been an ongoing activist campaign since June 2024 (click here to view our report), where they have been seeking board seats, a CEO replacement, margin and capital allocation improvements; and (b) a $361.61 million (3.81%) position in Match Group Inc (MTCH), which they have since taken above 5% and filed a 13D (click here to view our report) – Elliott Investment Management (4.8%) and Anson Funds (0.54%) also have activist campaigns at MTCH.

Material Position Changes:

- Starboard reported increasing its position in Fortrea Holdings Inc (FTRE) (click here to view our report) from 8.93% to 9.36% and this remains a live 13D position for them.
- Starboard reported decreasing its position in GoDaddy Inc (GDDY) (click here to view our report) from 3.27% to 2.23%. Starboard exited their 13D on May 2, 2024, and made a 62.50% return on their 13D versus -8.49% for the Russell 2000.
- Starboard reported decreasing its position in Salesforce Inc (CRM) (click here to view our report) from 0.17% to 0.15%. But this is certainly a portfolio management decision as the stock has more than doubled since Starboard first purchased shares. Starboard is still excited about the prospects at Salesforce and pitched it as one of their best current ideas at our October 22nd Conference. Salesforce is a position for the following other top tier activists – Corvex, Elliott, and ValueAct – and Mason Morfit (CEO and CIO of ValueAct Capital) currently serves on the board.
- Starboard also reported exiting their position in Aecom (ACM) (click here to view our report), which they have been winding down since they exited their 13D on January 27, 2023; and Mercury Systems Inc (MRCY) (click here to view our report), a live campaign for JANA Partners (see above).

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Third Point

New Positions: Third Point disclosed (i) a $99.04 million (0.13%) position in CVS Health Corp (CVS) – on November 18, 2024, Glenview Capital Management settled for board seats for Larry Robbins (CEO of Glenview Capital), Leslie Norwalk, Guy Sansone and Doug Schulman; and (ii) a small, $1.36 million position in Clear Channel Outdoor Holdings Inc (CCO), where Legion Partners (5.31%) has a live 13D and a board seat for Ted White (co-founder, CCO and a Managing Director of Legion). Additionally, in typical Third Point fashion, they disclosed several new positions across various sectors. As a successful multi-strategy investor who occasionally uses activism as a tool, we do not expect to see a lot of activism from these positions.

Additionally, Third Point's 5.71% position in Cinemark Holdings, Inc. (CNK) (a current 13G position) remains unchanged, but Third Point has highlighted the various ways in which the company is poised for growth over the next few years as the supply of theatrical releases rebounds from pandemic- and strike-related headwinds. They believe that Cinemark will gain share from undercapitalized competitors and pointed out that while peers Regal Cinemas filed for bankruptcy and AMC became a meme stock, Cinemark has demonstrated their resilience in terms of financial performance. The company currently has a 131.09% YTD return.

Material Position Changes:

- Third Point reported decreasing its position in Bath & Body Works Inc (BBWI) (click here to view our report), which they have since sold down further to 3.65%, as of October 25, 2024. On March 6, 2023, BBWI appointed Thomas J. Kuhn as a director to the board on Third Point's recommendation, where he no longer serves.

Trian

Material Position Changes:

- Trian reported increasing its position in Solventum Corp (SOLV) (click here to view our report) from 3.10% to 4.13%. Solventum is the global healthcare company which was spun out from 3M Company (MMM) on April 1, 2024.
- Trian increased its position in U-Haul Holding Company from 1.99% to 2.29% for the Class A voting shares and from 0.52% to 0.59% for the Class B non-voting shares. Trian respects the business that CEO Joe Shoen and his team have built over the past 50 plus years and believes it is one of the few brands that define an industry. However, Trian believes U-Haul remains underappreciated by Wall Street and, as an income-oriented activist investor, will likely work with the Company to help close the valuation gap.
- Trian reported decreasing its position in Invesco Ltd. (IVZ) (click here to view our report) from 6.05% to 5.16%. On November 4, 2020, the Company announced that it would appoint Nelson Peltz, Ed Garden and Thomas M. Finke to the Board where Finke currently serves as a director. On February 1, 2022, Nelson Peltz and Ed Garden resigned from the Board in light of their appointment to the Board of Janus Henderson Group plc.

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- Trian reported decreasing its position in Wendys Co (WEN) (click here to view our report) from 15.50% to 14.97%. Trian has been involved with Wendy's for over three decades, when Nelson Peltz and Peter May were appointed to the Board, where they currently serve and where Peltz serves as Chairman, and Matthew Peltz has since been appointed to the Board.
- Trian reported exiting their position in Rentokil Initial plc (RTO.L) (click here to view our report), following the Company's September 25, 2024, announcement that Brian Baldwin (Partner and Head of Research of Trian) would be appointed as a director.
- Trian reported exiting their position in Walt Disney Co (DIS) (click here to view our report), after failing to get Nelson Peltz and Jay Rasulo elected to the Board at the 2024 Annual Meeting.

ValueAct

New Positions: ValueAct disclosed five new positions, the most noteworthy of which is an approximate $1 billion position in Meta Platforms Inc (META) (click here to view our report). ValueAct also disclosed a $438.30 million (2.73%) position in Toast, Inc. (TOST), a cloud-based digital technology platform for the restaurant industry. This is an interesting position - ValueAct disclosed the position in a 13F amendment the day after filing Q3 13F. ValueAct has extensive experience with companies in the Information Technology sector, with notable campaigns at Microsoft, Salesforce, Insight Enterprises, Seagate, etc. In their history, ValueAct has an average return of 53.38% for their seventeen campaigns at Information Technology companies versus a return of 28.18% for the Russell 2000 over the same period. ValueAct also disclosed a $102.72 million (0.02%) position in Visa, which operates in an industry with which ValueAct is well acquainted – in 2021, ValueAct took a $1.2 billion position in direct peer, Fiserv Inc (FI), and settled for a board seat for Dylan G. Haggart (a then-Partner at ValueAct).

Material Position Changes:

- ValueAct reported increasing its position in Walt Disney Co (DIS) (click here to view our report) from 0.34% to 0.41%. On January 3, 2024, ValueAct entered into a Confidentiality Agreement with Disney and agreed to support the Company's recommended slate of nominees for election to the Board at the 2024 Annual Meeting.
- ValueAct reported decreasing its position in Expedia Group Inc (EXPE) from 2.62% to 2.03%. On November 15, 2023, it was reported that ValueAct took a position in the Company and stated their belief that the Company is set to benefit from smarter pricing, better cost management and shrewd modernization of the services used to run websites.
- ValueAct reported exiting their positions in (i) Fiserv Inc (FI) (click here to view our report); (ii) KKR & Co LP (KKR) (click here to view our report); and (iii) New York Times Co (NYT) (click here to view our report).

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13F ANALYSIS:
CHANGES IN ACTIVIST HOLDINGS

Carl Icahn
Total Holdings: $9.88B - Versus Previous Quarter: -$965.83 - Confidentiality: Yes

New	Increases	Decreases/Exited	Unchanged
	CENTURI HOLDINGS		AMERICAN ELECTRIC POWER
	ICAHN ENTERPRISES		BAUSCH HEALTH COMPANIES
			BAUSCH PLUS LOMB CORP.
			CAESARS ENTERTAINMENT
			CVR ENERGY INC
			CVR PARTNERS, LP
			DANA INC.
			ILLUMINA INC.
			INTL FLAV AND FRAG
			JETBLUE AIRWAYS CORP.
			SANDRIDGE ENERGY, INC.
			SOUTHWEST GAS HOLDINGS

Corvex
Total Holdings: $2.57B - Versus Previous Quarter: +$410.52M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
AIR PRODS & CHEMS	ALGONQUIN PWR U	ILLUMINA INC	AMAZON COM INC
DOLLAR TREE INC	ALPHABET INC	LIBERTY MEDIA CORP	ARDAGH METAL PKG
FORTREA HLDGS INC	IAC INC	MGM RESORTS INTL	CHENIERE ENERGY INC
	ISHARES TR	CAE INC	COCA-COLA EUROPACIFIC
	NORFOLK SOUTHN	GRAIL INC	COCA-COLA FEMSA SAB
		LIVE NATION ENT (CALL)	CSX CORP
		REVOLUTION MEDICINES	FLYEXCLUSIVE INC (WTS)
			FOMENTO ECON MEX
			GENEDX HOLDINGS CORP
			HEXCEL CORP NEW
			MDU RES GROUP INC
			META PLATFORMS INC
			MICROSOFT CORP
			NVIDIA CORPORATION
			SALESFORCE INC
			SOUTHWEST GAS HLDGS
			STANDARD BIOTOOLS INC
			TESLA INC
			VESTIS CORPORATION

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Elliott

Total Holdings: $19.31B - Versus Previous Quarter: +$1.98B - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
ALASKA AIR GROUP (CALL)	ARM HOLDINGS PLC	BILL HOLDINGS (NOTE)	AMERICAN AIRLS (PUT)
AMERICAN AIRLS (CALL)	ETF SER SOLUT (PUT)	BLACKLINE INC (NOTE)	BAUSCH HEALTH COS
EQUINIX INC (PUT)	ETSY INC	INVESCO QQQ TR	BIOMARIN PHARMA
HILTON WORLDWIDE	LIBERTY BROADBAND	ISHARES TR	BOOKING HLDG (NOTE)
HLDGS INC (PUT)	MATCH GROUP INC	MICROSTRATEGY (NOTE)	CARDINAL HEALTH INC
HYATT HOTELS CORP (PUT)	SELECT SECTOR SPDR	NRG ENERGY INC	CATALENT INC
ICON PLC (CALL)	SOUTHWEST AIRLS CO	SEADRILL 2021 LTD	CONFLUENT INC (NOTE)
IQVIA HLDGS INC (CALL)	WESTERN DIGITAL CO	SPDR SER TR	CORMEDIX INC
MARRIOTT INTL INC (PUT)		VANECK ETF TRUST	CROWN CASTLE INC
SPDR S&P 500 ETF TR		BHP GROUP LTD (CALL)	E2OPEN PARENT
TEXAS INSTRS INC (CALL)		INVESCO EXCH TRADED	HDFC BANK LTD
		MARATHON PETE CORP	HOST HOTLS&RES (PUT)
		SNAP INCV (PUT)	HOWMET AEROSPACE
		UNITED AIRLS HLD (PUT)	ON SEMICOND (NOTE)
			PARK HOTLS&RES (PUT)
			PHILLIPS 66
			PINTEREST INC
			RAPID7 INC (NOTE)
			RINGCENTRAL (NOTE)
			SENSATA TECH
			SUNCOR ENERGY INC
			TRANSOCEAN LTD
			TRIPLE FLAG PREC MTL
			UNITI GROUP INC
			UNITY SOFTW (NOTE)
			WAYFAIR INC (NOTE)

Engaged

Total Holdings: $616.54M - Versus Previous Quarter: +$32.62M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
BLACKLINE INC	BRC INC	EVOLENT HEALTH INC	PRA GROUP INC
	NCR ATLEOS CORP	ENVESTNET INC	V F CORP
	NCR VOYIX CORP	SHAKE SHACK INC	
	NEVRO CORP	SMARTSHEET INC	
	PORTILLOS INC	UPBOUND GROUP INC	

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Impactive

Total Holdings: $2.69B - Versus Previous Quarter: +$118.71M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
CHRLS RIVER LABS	CONCENTRIX CORP	ASBURY AUTOMOTIVE	ENVESTNET INC
SITEONE LANDSCAPE	ETSY INC	CLARIVATE PLC	
	MARRIOTT VAC WORLD	SLM CORP	
	WEX INC	CROWN HLDGS INC	
		WALKER & DUNLOP	

JANA

Total Holdings: $1.92B - Versus Previous Quarter: +$216.71M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
LAMB WESTON HLDGS	ENHABIT INC	FIDELITY NATL INFO	TREEHOUSE FOODS
	FORTREA HLDGS INC	FRONTIER COMM	WOLFSPEED INC
	MERCURY SYS INC	BLACKLINE INC	
	RAPID7 INC	QUIDELORTHO CORP	
	SPDR S&P 500 ETF TR		
	TRIMBLE INC		

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Sachem Head

Total Holdings: $1.91B - Versus Previous Quarter: -$105.11M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
AIR PRODS & CHEMS	CVS HEALTH CORP	COHERENT CORP	MOOG INC
INTEGRA LIFESCI	GDS HLDGS LTD	SPRINKLR INC	NEXTRACKER INC
TALEN ENERGY CORP	WESTERN DIGITAL CO	US FOODS HLDG CORP	SOTERA HEALTH CO
		FLUOR CORP NEW	TWILIO INC
		LAMB WESTON HLDGS	ZOOMINFO TECH
		LIBERTY GLOBAL LTD	
		SEAGATE TECHNOLOGY	
		VESTIS CORPORATION	

Sarissa

Total Holdings: $402.33M - Versus Previous Quarter: -$190.09M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
LANTHEUS HLDGS		BIOGEN INC	AMARIN CORP PLC
		GILEAD SCIENCES INC	CYTOKINETICS INC
		BIOCRYST PHARMA	INNOVIVA INC
			IRONWOOD PHARMA
			NEUROCRINE BIOSCI
			REGULUS THERAPEUTICS
			VOR BIOPHARMA INC

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Starboard

Total Holdings: $4.70B - Versus Previous Quarter: +$408.86M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
AUTODESK INC	FORTREA HLDGS INC	GODADDY INC	ACACIA RESH CORP
HUMANA INC (PUT)		HUMANA INC	ALGONQUIN PWR UTILS
MATCH GROUP INC		ISHARES TR	ALIGHT INC
		SALESFORCE INC	BLOOMIN BRANDS INC
		AECOM	GEN DIGITAL INC
		MERCURY SYS INC	GREEN DOT CORP
			NEWS CORP NEW
			RB GLOBAL INC
			ROGERS CORP
			WIX COM LTD
			WIX COM LTD (NOTE)

Third Point

Total Holdings: $7.43B - Versus Previous Quarter: -$1.31B - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
ANSYS INC	CRH PLC	AMAZON COM INC	AURORA INNOVATION
BROOKFIELD CORP	INTERCONT EXCHANGE	AMPHENOL CORP NEW	AURORA INNOVATI (WTS)
CARPENTER TECH	LIVE NATION ENTERTA	APOLLO GLOBAL MGMT	CINEMARK HLDGS INC
CLEAR CHAN OUTDOO	TELEPHONE & DATA	APPLE INC	CORPAY INC
CVS HEALTH CORP		BATH & BODY WORKS	EQT CORP
FLUTTER ENTMT PLC		DANAHER CORP	FERGUSON PLC NEW
HAWAIIAN ELEC IND		JACOBS SOLUTIONS INC	FLYEXCLUSIVE
LPL FINL HLDGS INC		META PLATFORMS INC	FLYEXCLUSIVE (WTS)
TESLA INC		MICROSOFT CORP	GLOBAL BLUE GROUP
		PG&E CORP	GLOBAL BLUE GROUP
		TAIWAN SEMICOND	HOLDING AG (WTS)
		VISTRA CORP	HERTZ GLOBAL (WTS)
		ADVANCE AUTO PARTS	HESS CORP
		ALPHABET INC	NET POWER INC (WTS)
		AMERICAN INTL GROUP	ROPER TECHNOLOGIES INC
		ASML HOLDING N V	UNITED STATES CELLULAR
		DYNATRACE INC	
		INTL FLAVORS&FRAGRA	
		KB HOME	
		MICRON TECHNOLOGY	
		MSCI INC	
		UBER TECHNOLOGIES	
		VERIZON COMM	

Third Point
SPAC

NEW	HELD SINCE LAST QUARTER	EXITED
	JAWS MUSTANG ACQUISITION COR	

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Trian

Total Holdings: $3.89B - Versus Previous Quarter: -$208.77M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
	SOLVENTUM CORP U-HAUL HLDG CO U-HAUL HLDG CO - B	FERGUSON PLC NEW GE HEALTHCARE TECH INVESCO LTD. THE ALLSTATE CORP WENDYS CO. RENTOKIL INITIAL PLC THE WALT DISNEY CO	GENERAL ELECTRIC CO. JANUS HENDERSON

ValueAct

Total Holdings: $4.37B - Versus Previous Quarter: +$817.68M - Confidentiality: No

New	Increases	Decreases/Exited	Unchanged
LIBERTY MEDIA CORP LIVE NATION ENTERTA META PLATFORMS INC TOAST INC VISA	DISNEY WALT CO ROBLOX CORP	EXPEDIA GROUP INC FISERV INC FLUTTER ENTMT PLC KKR & CO INC NEW YORK TIMES CO SPOTIFY TECHNOLOGY	INSIGHT ENTERPRISES SALESFORCE INC

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SAMPLE REPORT: BFIT.AS / BUCKLEY

Basic-Fit N.V. (BFIT.AS)
Monday, September 30, 2024

International Activist Campaign

Purchaser	Shares	Average Price	% of TSO
Buckley Capital Management, LLC	n/a	n/a	0.78%

13D Monitor Summary	On September 30, 2024, Buckley Capital Management LLC (0.78%) issued an open letter to the Supervisory Board of Basic-Fit N.V. urging them to commence a strategic review with a view that a sale of the Company would unlock significant value.

Noteworthy Activist History	On May 29, 2024, Buckley Capital Management, LLC (1.4%) sent an open letter to the Board of dentalcorp Holdings Ltd. urging them to engage a financial advisor and launch a strategic review with a view that a sale of the Company could be the best path to maximize value for shareholders. Buckley argues that the Company is currently undervalued in the public markets compared to peer multiples and the sum of its parts, and that it could be worth significantly more if sold to a private buyer.

Commentary

The Activist

Buckley Capital Management was founded in 2011 and is a value-oriented fund focused on North American small and mid-cap equities. Buckley seeks a combination of high business quality, double-digit earnings growth, and low valuation, with new positions typically trading below 10 times near-term earnings. Its portfolio is concentrated in consumer stocks, financials, healthcare, and industrials—four sectors with structurally lower valuation multiples. They make extensive use of alternative data to identify mispriced securities, monitor the progress of its positions, and predict upcoming inflections in a company's core business, which serve as clear catalysts for their investment theses.

The Company

Basic-Fit N.V., together with its subsidiaries, engages in the operation of fitness clubs. It operates clubs under Basic-Fit brand in the Netherlands, Belgium, Luxembourg, Germany, France, and Spain.

The Analysis

Basic-Fit N.V. ("BFIT") is a Dutch owner and operator of over 1,500 low-cost gyms across six countries in Europe. The Company enjoys a commanding position in the European market, operating the largest low-cost fitness network in France, Spain, Belgium, Luxembourg, and the Netherlands, and has a rapidly growing Germany segment. BFIT's footprint is about three times the size of its next largest European Competitor and about equal to the top three combined. Despite its strong performance on a number of KPIs, the Company's shares have not done well since its IPO in 2016, delivering a price return of just 62% versus 393% for Planet Fitness, its largest global peer.

Buckley Capital sent a letter to the Board and management of BFIT with the following descriptions of BFIT's business: "industry leader", "track record of growth", "expanding business", "strong competitive advantages", "significant brand awareness", "strong unit economics", and "very high returns on capital." Buckley continues to say that since its IPO, the Company has grown its club base at a 19% CAGR, memberships at a 19% CAGR, revenues at a 22% CAGR, and underlying EBITDA less rent at 18% and BFIT has a long runway to deploy capital in line with these trends. So, their conclusion – sell the Company!

They rationalize this by citing the Company's underperformance to the market and its trading discount to peers (mostly US peers, which tend to trade higher), the best performer of which, according to them, is Shake Shack. We are not sure what a burger and fries chain has to do with a fitness club, except that the one leads to the other. We think maybe Buckley is confusing causation and correlation here. Let's stipulate that the Company appears to be undervalued which distinguishes it from no other activist campaigns ever. The next thing they state and underline for emphasis is: "Based on conversations we have had with various industry participants, we are confident that there is significant interest from private equity . . ." That may be true, but underperformance plus private equity interest does not equal sell the Company. Good, long-term-minded activists weigh the short-term value of the Company in a sale versus the long-term value in continuing to operate as an independent, public company. This is where we thought Buckley was going to make a convincing case that now is a good time to sell because the future is bleak.

Stock Price @ 10-01-23	€ 26.88	Stock Price @ 10-01-21	€ 42.00	Stock Price @ 10-01-19	€ 28.95
One Year Return	-12.80%	Three Year Return	-44.19%	Five Year Return	-19.03%

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SAMPLE REPORT: BFIT.AS / BUCKLEY

Basic-Fit N.V. (BFIT.AS)
Monday, September 30, 2024

Commentary (continued)

So, what does the future of BFIT look like? Buckley points out that the Company's strong growth is expected to continue in the near future, with analyst consensus estimates for underlying EBITDA less rent expected to grow approximately 22% to a new record of €317 million in 2024 and to increase an additional 22% in 2025 to €386 million. Ok, but that is only the next two years. What does the future beyond that look like? Buckley states: "Over the next decade, BFIT's future will be even more exciting" and notes that the Company is exploring the possibility of franchising its brand in new markets, which will add to growth and margins. They go on to quantify this by estimating that if BFIT hits its goal of 3,000 mature gyms by 2030, then assuming the same per-gym profitability it could generate €1.4 billion of EBITDA. At 12 times EBITDA, BFIT would then be worth ~€17 billion, representing 600%+ upside from today's levels by 2030. Note that this is not a rebuttal to Buckley's recommendation to sell the Company, but their own analysis of the Company that they believe somehow justifies a sale now.

So why does Buckley believe the Company would do better as a private entity? They believe that the public undervaluation exists largely because of "perception issues caused by recent shortfalls relative to short-term market expectations, as well as public investors' misunderstanding of the company's financial structure, particularly the distinction between financial debt and lease obligations". The former is essentially an acknowledgement that they are short-term minded and the latter is a gross underestimation of institutional investors – BFIT is far from the only public company with capital lease obligations on their balance sheet; most investors and analysts can grasp this concept.

Buckley acknowledges that BFIT is not a company burdened by financial constraints that must seek a private equity lifeline, but sees three goals to going private. First, better execute its growth strategy without pressures from short-term market expectations. Again, long-term investors do not really worry about short-term market expectations. On the contrary, they see them as buying opportunities. Second, achieve greater operational flexibility; to gain sharper focus on long-term value creation. I am not sure what exactly this means, but later in the letter they suggest that selling to private equity will lead to more jobs and better benefits; not exactly something that most people find synonymous with private equity. Third, it would provide more strategic options for financing growth. More financing opportunities than being a public company? Isn't that one of the main benefits of being a public company – financing capabilities? Moreover, they state this in the paragraph right after they state that "Basic-Fit is not a company burdened by financial constraints."

Despite everything said above, let's assume the Board does explore a sale. What does Buckley think they can sell the Company for today? In their analysis they compare the multiple to the 8-10x EBITDA multiple that U.S. peer Planet Fitness receives when it sells groups of locations; and actually use the high end of the U.S. peer as the low end of the BFIT estimate. So, they use a 13x EBITDA multiple for BFIT. Today, BFIT's market cap is €1.55 billion, or €23.44 per share. At 13x EBITDA, it would be worth €3.9 billion, or €59 per share. That would be a very nice return for the short term if all of Buckley's aggressive assumptions are correct – 152%. However, how does that compare to the long-term value? This is a variable that activists rarely quantify, but lucky for us Buckley did so in this letter. Rember, they said: "If Basic-Fit hits its goal of 3,000 mature gyms by 2030, then assuming the same per-gym profitability it could generate €1.4 billion of EBITDA at 12 times EBITDA, Basic-Fit would then be worth ~€17 billion, representing 600%+ upside from today's levels". That seems like a lot more than 152%.

In arguing for a sale of the Company, Buckley actually writes a blueprint as to why their plan is short-term-minded. This is nothing more than a love letter to private equity and a pretextual letter to achieve short-term gain at the detriment of long-term shareholders. Shareholders get 152% of the upside and private equity gets the remaining 450%. Good activists work with management to create long-term value; bad activists do exactly what Buckley is doing here. Lucky for shareholders, there is a good, long-term-minded activist in the stock. Impactive Capital has a 10% position (versus the < 1% Buckley owns) and is hopefully working behind the scenes with management, as they often do, to pursue a long-term plan that will maximize value for shareholders.

Material Factors

Board Composition: The Company has a six person, three class, staggered Board with three directors up for election in 2025, one director up for election in 2026, and two directors up for election in 2027. Directors may serve up to four years in their first two terms, but subsequent terms may be for a maximum of two years. The Board owns <1% of the outstanding common stock of the Company.

Voting Standard for Elections: Majority

Shareholder Rights Plan: None

Top Ten Institutional Holders: Moos (Rene M): 7,737,523 shares (11.72%); Impactive Capital LP: 6,657,733 shares (10.09%); North Peak Capital Management, LLC: 6,605,768 shares (10.01%); 3i Investments plc.: 4,370,033 shares (6.62%); Abrams Bison Investments, L.L.C.: 2,221,538 shares (3.37%); CAS Investment Partners, LLC: 1,987,842 shares (3.01%); Capital Research Global Investors: 1,925,630 shares (2.92%); OLP Capital Management Limited: 1,901,748 shares (2.88%); Norges Bank Investment Management (NBIM): 1,875,480 shares (2.84%); and JPMorgan Asset Management U.K. Limited: 1,818,749 shares (2.76%).

Proxy Timeline

Last Annual Meeting: April 26, 2024 **Next Annual Meeting:** tbd

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SAMPLE REPORT: BFIT.AS / BUCKLEY

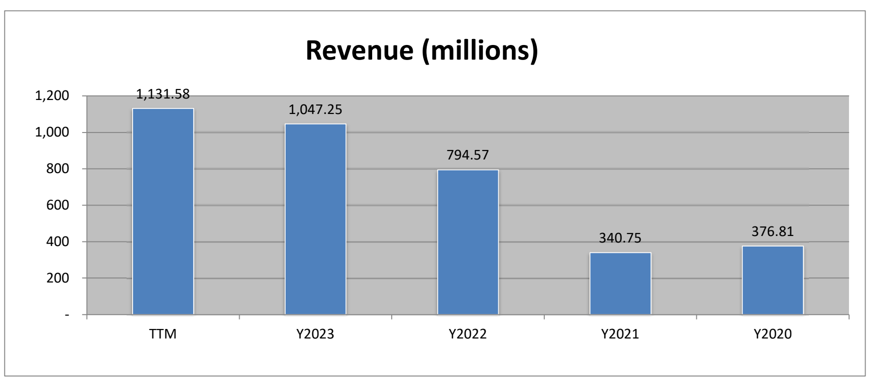
Basic-Fit N.V. (BFIT.AS)
Monday, September 30, 2024

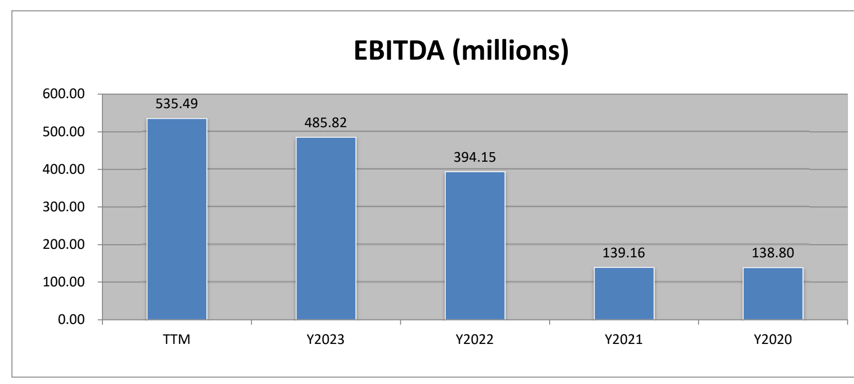
Business Overview

Basic-Fit N.V., together with its subsidiaries, engages in the operation of fitness clubs. It operates clubs under Basic-Fit brand in the Netherlands, Belgium, Luxembourg, Germany, France, and Spain.

Country: Netherlands; Region: Europe; Stock Exchange: Euronext Amsterdam

Sales and EBITDA
(All figures in EUR; 1 EUR equals 1.115822 USD)



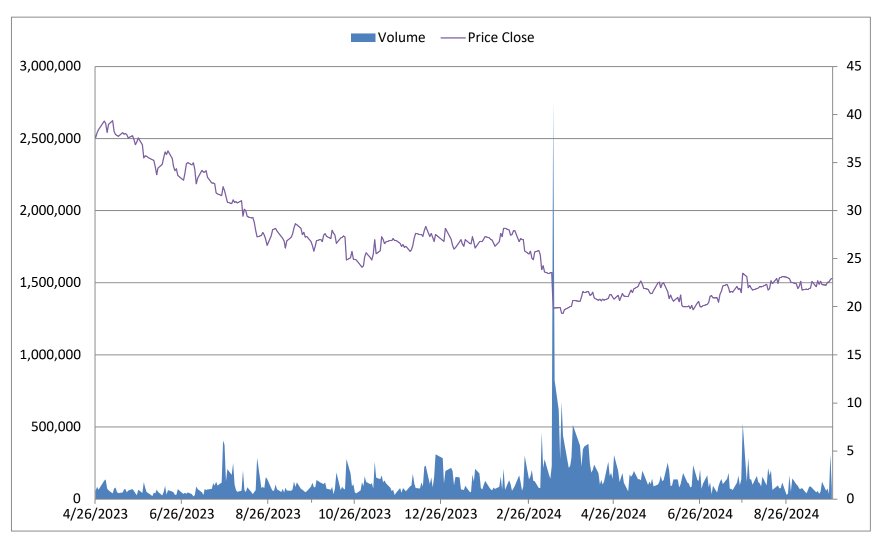


Summary Financial Information (in millions)

Equity Market Cap	€ 1,547.04
Enterprise Value	€ 4,190.35
EBITDA (LTM Ending 06/30/2024)	€ 535.49
EV/EBITDA	7.83 x

Stock Price Performance

Stock Price	€ 23.44
52 Week High (02/12/24)	€ 29.10
52 Week Low (03/20/24)	€ 19.06
Average Trading Volume	86,380



PEER ANALYSIS

Company Name	1 Yr Return	3 Yr Return	5 Yr Return	1 Yr Return Delta	3 Yr Return Delta	5 Yr Return Delta
Basic Fit NV	***-12.80%***	***-44.19%***	***-19.03%***			
GYM Group PLC	38.74%	-48.24%	-39.01%	-51.54%	4.05%	19.98%
Planet Fitness Inc	63.64%	2.46%	39.07%	-76.44%	-46.65%	-58.10%
Life Time Group Holdings Inc	59.17%	36.39%	n/a	-71.97%	-80.58%	n/a
Xponential Fitness Inc	-20.71%	-3.15%	n/a	7.91%	-41.04%	n/a
Smartfit Escola de Ginastica e Danca SA	2.59%	-13.84%	n/a	-15.39%	-30.35%	n/a
Peloton Interactive Inc	-4.75%	-94.47%	-80.84%	-8.05%	50.28%	61.81%
Technogym SpA	31.69%	4.63%	1.54%	-44.49%	-48.82%	-20.57%
Peer Average	**24.34%**	**-16.60%**	**-19.81%**	**-37.14%**	**-27.59%**	**0.78%**

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SAMPLE REPORT: KVUE / STARBOARD

Kenvue Inc (KVUE) - UTT
Monday, October 21, 2024

Under the 5% Threshold ("UTT")

Purchaser	Shares	Average Price	% of TSO
Starboard Value	n/a	n/a	n/a

UTT Summary	Starboard Value has taken a position in Kenvue.

13F Data and Activist History	**13F Holdings *($000)*:** $4,295,391	**# of Activist Campaigns:**	152	**# of Item 4 Actions Taken:**	137
	# of 13F Positions: 20	**Average Return on Activist Campaigns:**	25.10%	**Average Return on Item 4 Actions:**	25.40%
	Average 13F Position: $214,770	**Versus Russell 2000:**	13.85%	**Versus Russell 2000:**	15.15%
	Largest 13F Position: $644,394	**Average Holding Time (Mths):**	18.2	**Average Item 4 Holding Time:**	19.7

Relative Size of Investment: n/a

Noteworthy Activist History	Starboard filed a 13D on Pediatrix Medical Group (MD) (formerly MEDNAX Inc) on February 13, 2020 and earlier, on November 27, 2019, Starboard nominated a majority slate of eight director candidates for election to the Board at the 2020 Annual Meeting. On July 12, 2020, Starboard and the Company entered into an Agreement, pursuant to which the Company accepted the resignations of five incumbent directors and appointed Thomas A. McEachin, Mark S. Ordan, Guy P. Sansone, John M. Starcher, Jr. and Shirley A. Weis to the Board as directors, where they all currently serve.

UTT Commentary

The Activist

Starboard is a very successful activist investor and has extensive experience helping companies focus on operational efficiency and margin improvement. Starboard has taken a total of 152 prior activist campaigns in their history and has an average return of 25.02% versus 13.65% for the Russell 2000 over the same period. In 51 of these situations, Starboard had an operational thesis as part of their activist campaign, and they made an average return of 36.19% versus 15.29% for the Russell 2000 over the same period.

The Company

Kenvue Inc. is a consumer health company. The Company operates through three segments: Self Care, Skin Health and Beauty, and Essential Health. Its Self Care product categories include Pain Care; Cough, Cold, and Allergy; and Other Self Care (Digestive Health; Smoking Cessation; Eye Care; and Other). The Skin Health and Beauty segment's product categories include face and body care and hair, sun, and others. The Essential Health segment's product categories include oral care, baby care and other essential health (women's health, wound care, and other). Its differentiated portfolio of brands includes Tylenol, Neutrogena, Listerine, Johnson's, Band-Aid, Aveeno, Zyrtec, and Nicorette. The Company has a global footprint through which it sells and distributes its product portfolio in more than 165 countries across its four regions. The four region consists of North America, Asia Pacific (APAC), Europe, Middle East, and Africa (EMEA), and Latin America (LATAM).

The Analysis

Kenvue is a consumer health company specializing in Self Care, Skin Health and Beauty (SHB), and Essential Health, with world-class brands that are synonymous with these three categories such as Tylenol, Neutrogena, and Neosporin. The Company was recently spun out of Johnson & Johnson ("J&J") in May 2023 which by all accounts seemed like a smart move by management as the consumer health sector lacked synergies with J&J's core competencies of pharma and medtech. Coupled with the fact that consumer health only made up 16% of total sales for J&J prior to the spin, it was hard to argue against the merit of this separation that now allows a separate company to prioritize these great brands and businesses.

At a glance, post-spin, the Company seemed poised to flourish. It has stronger brand recognition than peers like Colgate-Palmolive, Haleon, and P&G and a lower threat from private label alternatives than peers with private labels only having a 6% share of Kenvue's product categories compared to a peer median of 10%. Additionally, the Company operates in extremely attractive end markets with structural tailwinds, including an increasingly health-conscious consumer and a growing middle class in emerging markets, that provide a strong foundation for low to mid-single digit revenue growth. Despite their enticing market position and superior brand quality, the Company has traded poorly since its spin with the lowest valuation multiple of its peers at 18x – staggeringly lower than the peer median of 25x. As a result, the Company has delivered a -15% total shareholder return since the IPO compared to a peer median of 6% shareholder return over the same period.

Kenvue has struggled with its organic growth in a way they seem to have not expected. The Company missed its post spin FY23 guidance for organic growth by 75 bps, even after previously lowering their guidance by 25bps. The Company's expects a 3.3% CAGR compared to a 4% median for peers. This is not a huge difference, but an issue that can easily be identified and rectified. Self Care delivered a strong year of 8.4% organic growth and Essential Health grew ahead of expectations at 3.6% organic growth, so these sectors are not the issue. The challenge for the Company lies within SHB, which delivered only 1.8% organic growth despite peers growing 4.4% from CY19-CY23. If you were to take SHB out of the picture, Kenvue's organic growth from FY19-FY23 would have been 5.1%, significantly outperforming the consolidated market growth of 4%.

Starboard's path to value creation involves management adopting a marketing first strategy and embracing omni-channel and digital marketing. SHB has been proven to be a marketing business whose growth can be greatly aided by social media. This can make marketing an extremely powerful and profitable tool for companies that know how to use it. L'Oreal's acquisition of CeraVe in 2017 serves as a strong example of this. After acquiring CeraVe for $1.3 billion, L'Oreal launched a hyper focused digital marketing campaign that included iconic advertising material such as the witty "Michael CeraVe" campaign. While it may seem goofy, these strategies really work - just look at CeraVe's sales growth of 10x over the first five years after the acquisition. Starboard plans to tackle the issues with the SHB business head on, as it appears to be the key obstacle preventing the Company from creating immense shareholder value. There is no doubt about the strength of Kenvue's brands and products in this sector, highlighted by two shining stars, Neutrogena and Aveeno, that remain highly regarded and widely purchased. A better marketing plan will not only increase the top line at SHB but also should improve the operating margins, which are presently 12% versus a peer median of 17%.

Kenvue seems to already be making strides towards this business model, as they increased FY24 advertising spend to 11.1% of sales compared to 8.7% for FY23. This budget increase reflects a shift toward a marketing-first approach, particularly through social media, as evidenced by their recent Neutrogena Collagen Bank product launch. First, the Company introduced the product on TikTok prior to in-store distribution. Next, they partnered with major celebrity Haliee Steinfeld to be the face of the product, who currently has over 25 million social media followers. Lastly, they introduced it in the early innings of the Collagen Bank beauty trend.

As far as activist campaigns go, there are two extremes. There are *Herculean, heavy lift campaigns*, where the activist comes in pushing for a complete overhaul of the board, capital allocation, management team, operations, etc. And then there is the *pushing an open-door campaign*, situations where the activist and company are aligned, there are clear paths to value creation and engagement is constructive. By all accounts, this situation is the latter. Kenvue has a solid business with iconic brands and one underperforming segment in SHB. Starboard believes this can be remedied by embracing a marketing driven culture and this is already happening. Management has committed to prioritizing marketing, and they have already begun pushing a marketing-first mentality with increased social media campaigns and celebrity partnerships. Starboard has not made any public demands for board representation, and we expect that they will monitor the Company's progress as an active shareholder before making any decisions in this regard. However, they do not have that much time to spare as the nomination window for directors is between November 11 and December 11. It is possible that they will nominate some directors just to preserve their rights while they are talking with management and monitoring the progress.

Stock Price @ 10-21-23	$19.74	Stock Price @ IPO on 05-04-23	$22.00
One Year Return	17.15%	Spin-Off Return	5.14%

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SAMPLE REPORT:
KVUE / STARBOARD

Kenvue Inc (KVUE) - UTT (cont.)
Monday, October 21, 2024

Material Factors

Board Composition: The Board is not staggered. It consists of 12 directors, each of whom is re-elected at each annual meeting of shareholders. The Board and executive officers own <1% of the outstanding common stock of the Company. The size of the board will be decreased to 11 directors as of December 1, 2024.

Voting Standard for Uncontested Elections: Majority
Shareholder Rights Plan: None

Top Ten Institutional Holders: T. Rowe Price Associates, Inc.: 212,888,831 shares (11.12%); The Vanguard Group, Inc.: 211,295,322 shares (11.03%); State Street Global Advisors (US): 127,221,948 shares (6.64%); Fidelity Management & Research Company LLC: 112,882,869 shares (5.89%); BlackRock Institutional Trust Company, N.A.: 89,995,135 shares (4.7%); Wellington Management Company, LLP: 82,602,110 shares (4.31%); MFS Investment Management: 77,424,556 shares (4.04%); Geode Capital Management, L.L.C.: 44,277,231 shares (2.31%); JP Morgan Asset Management: 35,691,289 shares (1.86%); and Managed Account Advisors LLC: 35,015,253 shares (1.83%).

Proxy Timeline

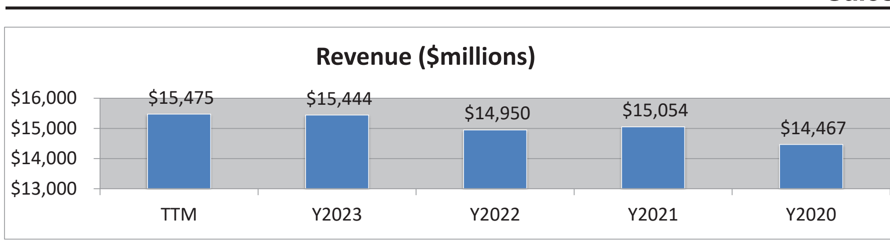
Last Annual Meeting: May 23, 2024 **Next Annual Meeting:** tbd
Shareholder Proposal Notification Deadlines: For proposals to be included in the Company's proxy statement at the 2025 Annual Meeting: December 11, 2024; For proposals not to be included in the Company's proxy statement (including director nominations) : Between November 11, 2024 and December 11, 2024.

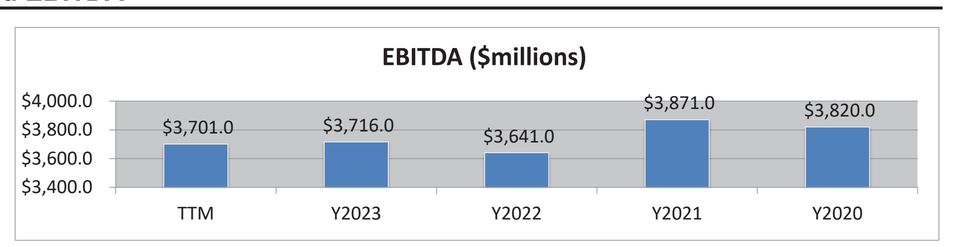
Business Overview

Kenvue Inc. is a consumer health company. The Company operates through three segments: Self Care, Skin Health and Beauty, and Essential Health. Its Self Care product categories include Pain Care; Cough, Cold, and Allergy; and Other Self Care (Digestive Health; Smoking Cessation; Eye Care; and Other). The Skin Health and Beauty segment's product categories include face and body care and hair, sun, and others. The Essential Health segment's product categories include oral care, baby care and other essential health (women's health, wound care, and other). Its differentiated portfolio of brands includes Tylenol, Neutrogena, Listerine, Johnson's, Band-Aid, Aveeno, Zyrtec, and Nicorette. The Company has a global footprint through which it sells and distributes its product portfolio in more than 165 countries across its four regions. The four region consists of North America, Asia Pacific (APAC), Europe, Middle East, and Africa (EMEA), and Latin America (LATAM).

State of Incorporation: DE; Principal Place of Business: Skillman, NJ.

Sales and EBITDA



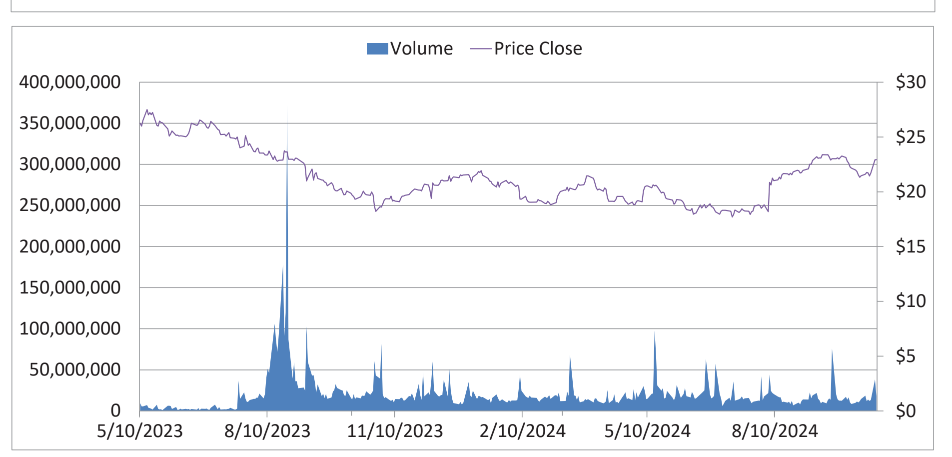


Summary Financial Information

Equity Market Cap	$44.29B
Enterprise Value	$50.33B
EBITDA (LTM Ending 06/30/2024)	$3.7B
EV/EBITDA	13.60 x

Stock Price Performance

Stock Price	$23.13
52 Week High (Date)	$23.55 (09/16/24)
52 Week Low (Date)	$17.67 (07/11/24)
Average Trading Volume	12,819,170
Short Interest as a % of Float	2.36%



PEER ANALYSIS

Company Name	1 Yr Return	IPO on 05-04-23 Return	1 Yr Return Delta	IPO on 05-04-23 Return Delta
Kenvue Inc	***17.15%***	***5.14%***		
Church & Dwight Co Inc	16.62%	6.40%	0.53%	-1.26%
Kimberly-Clark Corp	21.53%	-0.14%	-4.38%	5.28%
Procter & Gamble Co	17.36%	9.02%	-0.21%	-3.88%
Estee Lauder Companies Inc	-33.53%	-55.59%	50.68%	60.73%
Colgate-Palmolive Co	38.59%	22.99%	-21.44%	-17.85%
Clorox Co	35.23%	-6.23%	-18.08%	11.37%
Coty Inc	-20.02%	-34.96%	37.17%	40.10%
Peer Average	**10.82%**	**-8.36%**	**6.33%**	**13.50%**

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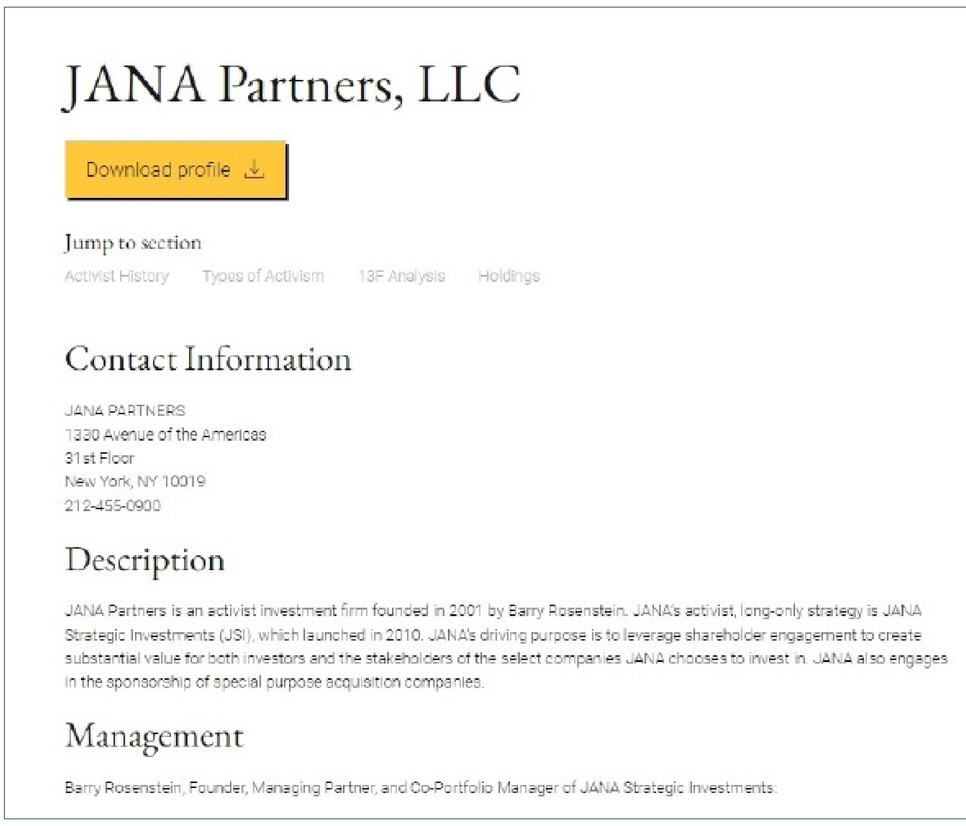
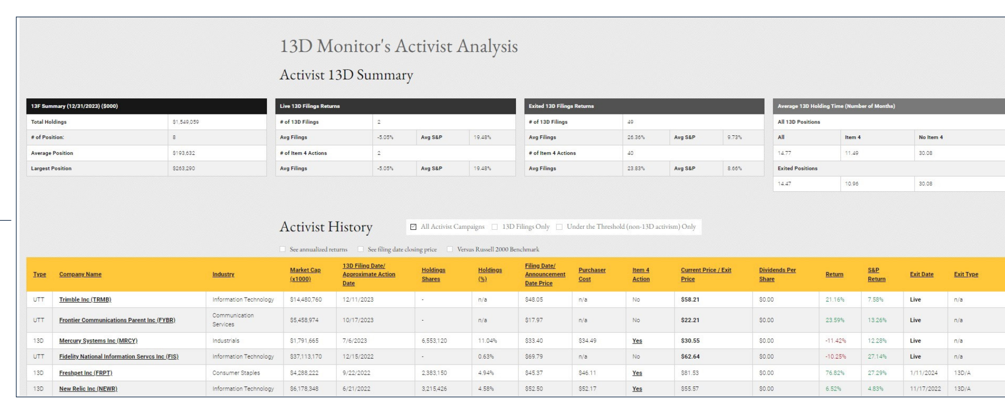
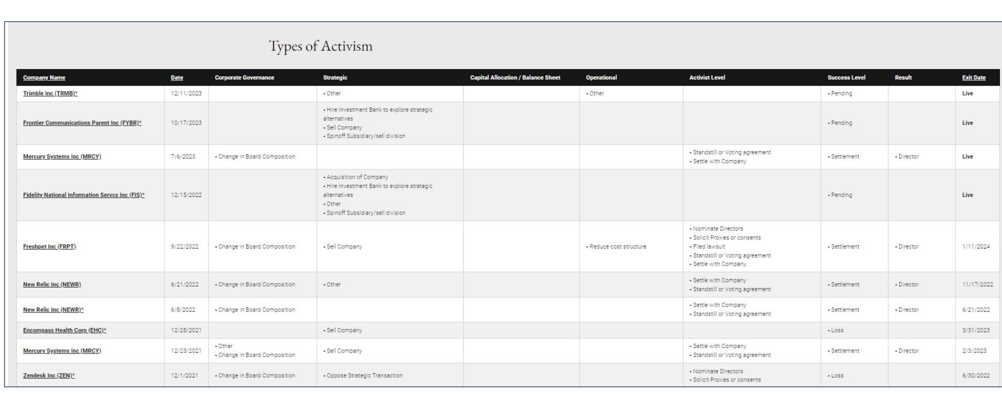
SAMPLE ACTIVIST PROFILE: JANA PARTNERS



Activist Profile

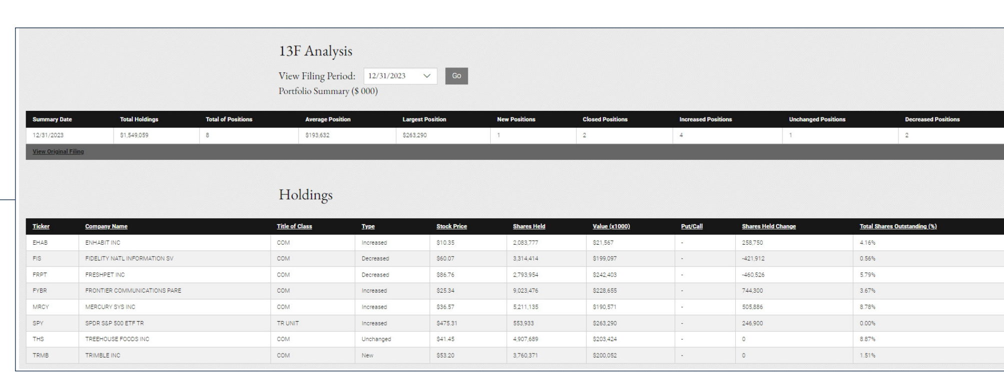
Activim Analysis & History





Types of Activism

13F Analysis & Holdings



CLICK HERE TO VIEW JANA'S COMPLETE ACTIVIST PROFILE

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SAMPLE ADVISOR PROFILE: JEFFERIES GROUP

Jefferies Group LLC

Contact Information

Jefferies Group LLC
520 Madison Avenue
New York, NY 10022
212 284 2300

Company Website

Description

Jefferies is a global investment banking firm that has served companies and investors for over 55 years. Headquartered in New York, with offices in over 30 cities around the world, Jefferies provides clients with capital markets and financial advisory services, institutional brokerage and securities research, as well as asset and wealth management. The firm provides research and execution services in equity, fixed income, and foreign exchange markets, as well as a full range of investment banking services including underwriting, mergers and acquisitions, contested situations and shareholder advisory, restructuring and recapitalization, and other advisory services, with all businesses operating in the Americas, Europe and Asia.

- Jefferies Investment Banking is a global leader, offering deep sector expertise and broad advisory and capital markets capabilities to corporate and financial sponsor clients
- With approximately 900 investment banking professionals across the Americas, Europe and Asia, Jefferies provides global coverage across all products and sectors
- Jefferies Contested Situations Advisory Team has a profound understanding of the current activism landscape, extensive experience advising both corporate and institutional investor clients on contested situations, and has unique insights into perspectives of major institutional shareholders of all stripes

Notable Facts:

- Since the beginning of 2016, Jefferies has completed over 760 M&A transactions with an aggregate value greater than $680 billion, and over 165 M&A transactions greater than $1 billion
- Highest percentage of sole-advised M&A transactions of any major investment bank since 2016 (Source: Dealogic)
- One of Wall Street's leading sell-side advisors, ranking #2 for U.S. sponsor sell-side transactions by revenue since 2016 (Source: Dealogic)
  o Approximately 60% of sale assignments completed with strategic acquirers
- Ranked #3 for U.S Sell-side transactions by number of transactions since the beginning of 2016 (Source: Dealogic)
- Ranked #4 for U.S. M&A transactions by number of transactions since the beginning of 2016 (Source: Dealogic)
- Broad corporate coverage throughout the world with over 90 bankers specialized in M&A worldwide

Core Capabilities:

- Activism Defense
- Takeover Defense
- Shareholder Rights Plans
- Corporate Sales, Divestitures, and acquisitions
- Cross-Border transactions and currency hedging strategies
- Join ventures

Contact Info & Firm Description

Management

John Huwiler - Managing Director, Global Head of M&A (New York)
John Huwiler is a Managing Director and Global Head of the Mergers & Acquisitions Group at Jefferies. Mr. Huwiler has over 30 years of investment banking experience, including fourteen years as Global Head of Mergers & Acquisitions at Jefferies and Ten years as Chairman of Fairness Opinion Committee. Prior to joining the firm, he was a Senior Managing Director at Gleacher Partners where he worked for 11 years. Previously, Mr. Huwiler spent six years at Dillon, Read & Co. He began his investment banking career at Salomon Brothers and has worked on a broad variety of strategic M&A transactions involving public and private companies. Mr. Huwiler has an MBA from The Tuck School at Dartmouth, where he was an Edward Tuck Scholar, and a BA from Williams College.

Christopher Young, JD, CFA - Managing Director, Global Head of Contested Situations Advisory (New York)
Chris Young joined Jefferies in 2018 as a Managing Director and Global Head of the Contested Situations Advisory Team. He is responsible for takeover defense, contested M&A transactions, shareholder activism and corporate governance matters. Prior to joining Jefferies, Mr. Young was a Managing Director and Head of the Takeover Defense Practice at Credit Suisse. Mr. Young joined Credit Suisse in June 2010 from Institutional Shareholder Services (ISS) where he was Director of M&A and Proxy Fight Research. Prior to ISS, Mr. Young was an investment banker at Bear Stearns, an M&A lawyer at Sullivan & Cromwell and a derivatives trader at Sumitomo Bank, all in New York.
At ISS, Mr. Young advised institutional investors on hundreds of contested M&A transactions and shareholder activist campaigns, including hedge fund-led proxy fights for board seats at Heinz, CSX Corp., Target Corp., Motorola, Yahoo, H&R Block, Atos Origin, Tui, and Biogen, as well as hostile bids including Exelon for NRG, Agrium for CF Industries, CF Industries for Terra Industries, BASF for Engelhard, and contested M&A transactions including the aborted Cablevision buyout, Lilly-ICOS, Caremark-CVS-Express Scripts, the Clear Channel and TXU buyouts, Biomet, Lear, and Genentech.
Mr. Young received a BS in foreign service from Georgetown University's School of Foreign Service and a JD, magna cum laude, from Boston University School of Law. He is also a CFA charter holder.

James Thomlinson - Managing Director, European Head of Activism Defense (London, UK)
James Thomlinson joined Jefferies in 2018 and is a Managing Director in the UK Investment Banking team as well as member of the Contested Situations Advisory Team. Mr. Thomlinson has 14 years of related experience. Prior to joining Jefferies, Mr. Thomlinson was a Director and Head of the European Shareholder Activism practice at HSBC. Prior to joining HSBC in 2015, Mr. Thomlinson spent eight years at J.P. Morgan Cazenove having started his career in the European Consumer & Retail team at UBS.

Qin Tuminelli, CFA - Senior Vice President, Contested Situations Advisory (New York)
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STANDSTILL ANALYSIS

	#	%
Situations where an Activist received a board seat	**789**	**100.0%**
Appointed through an Agreement	619	78.45%
Elected by Shareholders	80	10.14%
Appointed by Company without an Agreement	83	10.52%
Granted through Stock Purchase Agreement without a Standstill	6	0.76%

Standstill Term*	#	% of Standstills	% of Total
No Standstill	**204**	**0.0%**	**25.86%**
Standstill	**585**	**100.0%**	**74.14%**
Current	*438*	74.87%	55.51%
1 Year	*100*	17.09%	12.67%
2 Year	*18*	3.08%	2.28%
3 Year	*4*	0.68%	0.51%
4 Year	*4*	0.68%	0.51%
5 Year	*1*	0.17%	0.13%
9 Year	*1*	0.17%	0.13%
10 Year	*1*	0.17%	0.13%
Only Through Representation	*17*	2.91%	2.15%

Restrictions on Proxy Fight	#	% of Standstills	% of Total
Yes	574	98.12%	72.75%
No	11	1.88%	1.39%

Restrictions on Acquiring Stock	#	% of Standstills	% of Total
Yes	365	62.39%	46.26%
No	220	37.61%	27.88%

Agreement to Vote with Board	#	% of Standstills	% of Total
Yes	550	94.02%	69.71%
No	35	5.98%	4.44%

Grouping of Restrictions	#	% of Standstills	% of Total
Proxy Fight/Stock Cap/Voting	348	59.49%	44.11%
Proxy Fight/Voting	192	32.82%	24.33%
Proxy Fight/Stock Cap	17	2.91%	2.15%
Proxy Fight Only	17	2.91%	2.15%
Voting Only	10	1.71%	1.27%

***Standstill Term**

Current: The standstill provisions apply only through the upcoming annual meeting in the year of the standstill agreement.

1 year: The provisions apply through the current year and for the next year's annual meeting.

2 year: The provisions apply through the current year and for the next two annual meetings.

3 year: The provisions apply through the current year and for the next three annual meetings.

Board representation: The provisions apply as long as the investor has board representation.

- There are 32 situations where the standstill provisions expire on the **earlier** of the Standstill Term or when board representation ends.
- There are 63 situations where the standstill provisions expire on the **later** of the Standstill Term or when board representation ends.

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