

Deciphering the 'Wolf Pack'

Jason Alexander, Managing Director, Georgeson Inc.

Beth Flaming, Partner, Sidley Austin LLP

Tom Johnson, President and Head of Mergers and Acquisitions,
Abernathy MacGregor

Michael Macakanja, Managing Director, Mergers and Acquisitions, JP
Morgan Chase

Moderator

Larry Larsen, Senior Vice President, Greentarget Global Group



Outline

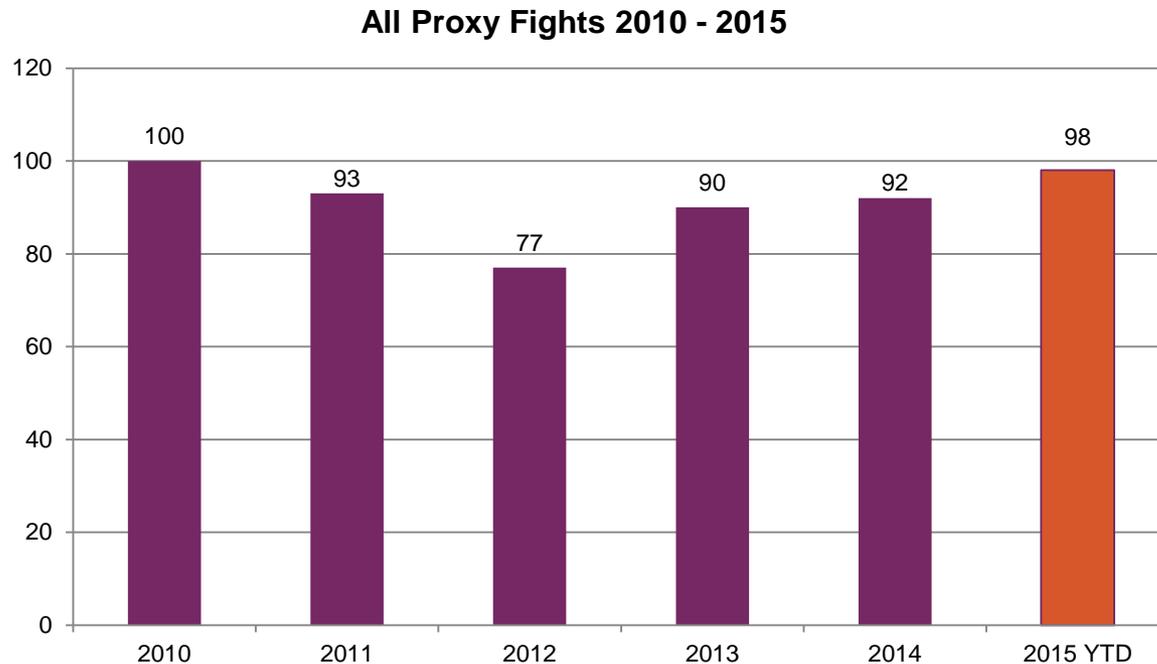
- **Overview and Trends**
- **Growth in Activism**
- **Trend of fights that go the distance**
- **Top 10 activists by Volume**
- **Typical proxy fight timeline**
- **Top 10 Do's**
- **Top 10 Don't's**
- **Key Takeaways**

Overview and Trends

- Increasing frequency of overall activism against companies
 - Many situations “settle” before a proxy fight
 - Activists do not always seek board seats
- Larger-cap companies increasingly being targeted
- Emergence of new, next -generation activist funds
 - Glenn Welling – Engaged Capital (from Relational Investors)
 - Arnaud Ajdler – Engine Capital (from Crescendo Partners)
 - Keith Meister – Corvex Management (from Icahn Enterprises)
 - Richard “Mick” McGuire – Marcato Capital Management (from Pershing Square)
 - Jeffrey Eberwein – Lone Star Value Funds
 - Scott Ferguson – Sachem Head Capital Management
 - Stephen Griggs – Smoothwater Capital
- Traditional long-term institutional investors increasingly willing to support an activist if dissatisfied
 - Some are even encouraging activists to initiate campaigns in their portfolio companies
- Sympathetic media attention on activists
- More sophisticated approach by activists
 - Detailed economic theses
 - Hiring experienced financial, legal and proxy advisors
 - Nominating highly qualified director candidates
 - Willing to lay groundwork early – well in advance of a contest – including reaching out to shareholders for public support early in the process

Activism Campaigns Have Risen

2015 is turning out to be another busy year

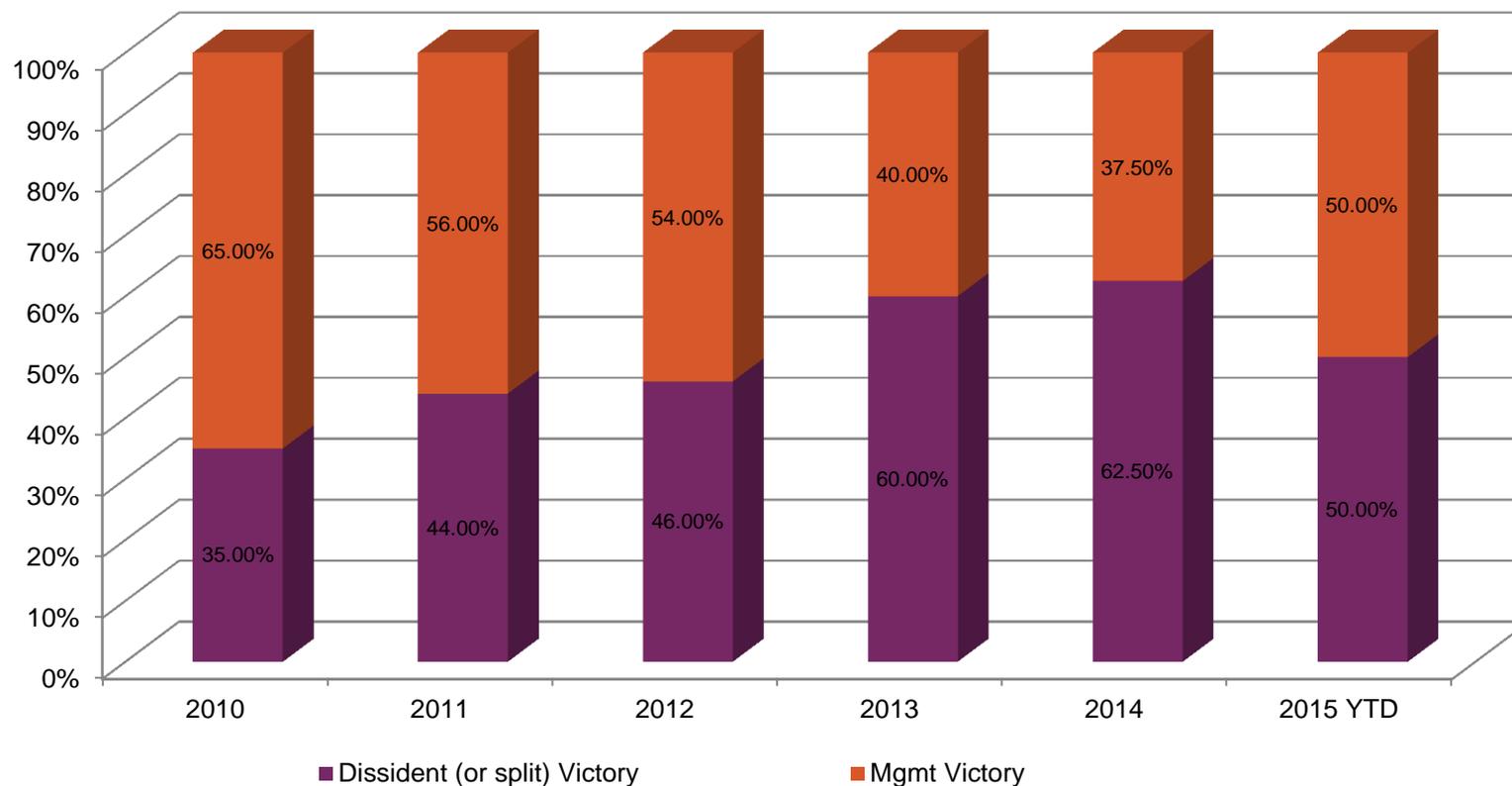


Source: SharkRepellent.net

Source: SharkRepellent data (announced as of 9/21/15) – compiled by Georgeson

Dissidents are Becoming More Successful

In fights that “go the distance,” dissidents are more likely to win



Source: SharkRepellent.net

Top 10 Activists by Volume and Their Notable Campaigns

Each situation requires specific analysis and an understanding of the temperament, tactics and capabilities of the relevant activist or bidder – all activists are not the same

	Activist	Principal	Notable Campaigns
1	GAMCO Asset Management	Mario Gabelli	
2	Starboard Value LP	Jeff Smith	
3	Icahn Enterprises	Carl Icahn	
4	Lone Star Value	Jeff Eberwein	
5	Clinton Group	Greg Taxin – Departed 10/1	
6	Corvex Capital	Keith Meister	
7	Relational Investors	Ralph Whitworth – winding down operations	
8	Elliott Management	Paul Singer	
9	Engaged Capital	Glen Welling	
10	Marcato Capital Management	Richard McGuire	

Proxy Fight Timeline

Three Clearly Defined Stages

Before Proxy is filed	<ul style="list-style-type: none">• 13D filed• Engage with dissident• Ramp up with investor outreach program with major investors• Initiate reconnaissance for dissident activities (investor feedback, additional SEC filings, inquiries regarding mailings, etc.)
Preliminary Filing – Definitive Filing	<ul style="list-style-type: none">• Preliminary proxy is filed by management• Draft / refine deck and coordinate investor roadshow• Create talking points• Strategize media engagement plan• Re-engage with dissident• Enhance investor deck with an eye towards engaging with ISS / GL• Continue and follow up with investor outreach• Continued reconnaissance on dissident activities
Definitive Filing – Meeting Date	<ul style="list-style-type: none">• DEF14a is filed• Refine investor deck and talking points• Initiate retail solicitation strategy• Begin institutional proxy solicitation (as compared to pre-proxy outreach)• Engage ISS & GL• Monitor and identify beneficial voting• Implement fight letter mailing strategies• After release of ISS/GL recommendations, issue press release responses• Continue retail and institutional solicitation / vote ID• MEETING DATE• Consider review and challenge period in advance of final tabulation certification

Top 10 Do's

Everything should be looked at through the lens of “What will win or lose votes?”

- 1. Assemble your team early**
- 2. Look at your company through the eyes of an activist**
- 3. Conduct a critical review of your board**
- 4. Identify and address potential vulnerabilities**
- 5. Know your shareholders**
- 6. Define your core messages / positioning**
- 7. Engage early and often**
- 8. If an activist surfaces and requests a meeting – TAKE IT!**
- 9. Take the high road – focus on your company's strengths**
- 10. Be nimble and ready to jump into action upon dissident escalation**

Top 10 Dont's

Everything should be looked at through the lens of “What will win or lose votes?”

- 1. Realize that no company is immune to activism**
- 2. Don't believe that the Activist investors are acting alone**
- 3. Don't overlook the importance of the Proxy Advisor's**
- 4. Don't ignore your Mom & Pop shareholders**
- 5. Don't be passive**
- 6. Don't send mixed messages, be clear and consistent**
- 7. Don't give them ammunition**
- 8. Don't hide from the activist!**
- 9. Don't mud sling – when possible**
- 10. REALIZE THAT NO COMPANY IS IMMUNE TO ACTIVISM**

Investor Perspective

What do long investors think?

"It is critical, however, to understand that corporate leaders' duty of care and loyalty is not to every investor or trader who owns their companies' shares at any moment in time, but to the company and its long-term owners. Successfully fulfilling that duty requires that corporate leaders engage with a company's long-term providers of capital; that they resist the pressure of short-term shareholders to extract value from the company if it would compromise value creation for long-term owners; and, most importantly, that they clearly and effectively articulate their strategy for sustainable long-term growth. Corporate leaders and their companies who follow this model can expect our support."

Larry Fink, CEO, BlackRock in a message to publicly traded companies

Shareholder Activism - Key Takeaways

- **Recognize that no company is immune from the possibility of shareholder activism**
- **Identify and address potential vulnerabilities – both financial and corporate governance-related**
- **Stay in touch with investors frequently throughout the year for better engagement – including corporate governance contacts**

Preparing for a Potential Activist Situation

Evaluate

- Assess vulnerabilities and weaknesses
- Conduct investor vulnerability study including investor perception study and analysis of shareholder base
- Identify legal defenses
- Know your activists – different activists employ different tactics

Activate

- Reach out to and organize third parties, positioning them to speak positively about the company
- Appoint the defense team including internal representatives from Legal, PR, IR, Gov't Relations, Employee Communications and external legal, financial, proxy and communications advisors
- Develop a regular cadence of communication with the Board of Directors
- Create detailed plans for various scenarios and contingencies

Engage

- Create a written record of good governance that can be cited
- Position the company for a potential dialogue with ISS, putting in place the evidence for “good governance” that will support a positive recommendation

Elements of an Activist Defense Campaign

Messaging

- Develop messaging with the company and its advisors using the company's stated strategy and business goals as the core argument
- Draft/review investor-focused materials from news releases to presentations
- Plan and develop communications to employees and customers
- Draft proxy-specific fight letters and call scripts – and provide communications and PR advice to help shape solicitation and proxy filings

Planning

- Develop communications strategies to advance the company's business objectives
- Provide guidance to internal PR and IR resources, executive team, and board in launching outreach and communications initiatives to further the proxy goals
- Plan and prepare for – and help respond to – leaks and unexpected disclosures
- Create a calendar of key dates and a timetable for logistics

Execution

- Engage media, both on- and/or off-the-record, to shape coverage
- Launch direct communications to those with the influence to create the margin for victory – for example, letters that appeal to non-activist investors
- Sharpen investor communications: earnings releases and scripts; investor non-deal presentations and analyst days; annual reports; and web site materials

Key Principles of an Effective Defense

- ✓ The tactical odds favor the activist; the key is to win on the message.
- ✓ Keep the dialogue going with the activist; maintain a record of listening and engaging.
- ✓ Avoid a brawl in the media. You rarely win by trying to out-punch the other guy.
- ✓ Be pre-emptive, fast and convincing. Recent winners were ready and hit back forcefully and early.
- ✓ Listen to investors and adjust messaging as needed to ensure the corporate strategy is understood and supported.
- ✓ Prepare for a proxy fight.