

THE ACTIVIST REPORT

13D Monitor

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People always discuss the bump that stocks get when an activist 13D is filed and how difficult it is to get in at or below the activist's price. For the most part, that is true. However, there are always good opportunities to get into activist situations at well below the activist's cost. Even in the 10th year of a bull market, there are many live activist situations where an investor can get

in below the activist's cost and in many cases, well below their cost. Beginning on Page 8 is a chart of 20 live activist 13D situations where the stock is trading below the activist's average cost and 10 live activist Under the Threshold situations where the stock is trading below the closing price on the day the activist announced its position, including investments by Carl Icahn, Cevian Capital, Starboard Value and ValueAct. You can go to www.13DMonitor.com to see full histories and commentaries on these situations.

continued on page 8

1 Question 10 Lawyers



In this month's Activist Report, we decided to bring back our popular segment where instead of asking one individual ten questions, we asked ten of the premier Activist/Activist Defense lawyers the same question. We would like to thank each of them for taking the time to answer our question for this month's edition of 1 Question, 10 Lawyers.

13DM: What do you see as the biggest changes to shareholder activism over (1) the past ten years and (2) the past two years?

Jeff Kochian (Akin Gump Strauss Hauer & Feld LLP): (1) While they are – in a way – at odds with each other, I think there have been two significant changes in activism over the last ten years which really have to be discussed at the same time. First, is the growth of activism overall as an investment strategy. According to some statistics I have seen, in the last ten years, the number of activist campaigns per year has more than doubled. There is no doubt that activism can be an effective investment strategy and likely to remain popular. Second, is the remarkable in-

continued on page 2

Under the Threshold

Brookdale Sr. Living (BKD): Land & Buildings; Liberty Property (LPT): Land & Buildings; Sony Corp (SNE): Third Point; Tuesday Morning (TUES): Jeerédi Partners/Purple Mountain



On July 16, 2019, **Land & Buildings Investment Management, LLC** sent a letter to **Brookdale Senior Living Inc.'s (BKD)** shareholders expressing its disappointment that the Company's Nominating and Corporate Governance Committee has not engaged with James F. Flaherty III and Jonathan Litt, its two director nominees. Land & Buildings stated that in addition to the appointment of Flaherty and Litt to the Board, it believes the Company's Investment Committee

continued on page 13

Around the World

Altran Technologies: Elliott Management; Saga Plc: Elliott Management; Scout24: Elliott Management; Ferguson Plc: Trian Fund Management; Suez: Amber Capital



On July 12, 2019, **Elliott Management** announced that it has built a position in **Altran Technologies SA**. Last month, the Company agreed to be acquired by Capgemini SE for €3.6 billion (\$4 billion).



continued on page 14

UPDATE



NEW



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IN THIS Issue

Item	Pg.
1 Question, 10 Lawyers	1
Priced Below Cost	1
Under the Threshold	1
Around the World	1
Monthly Activist Activity	9
One to Watch	9
Nomination/Standstill Calendar	10
Activist Directory	15

1 QUESTION, 10 LAWYERS (cont'd. from pg. 1)

crease in size (and hence, power) of the index funds. The tremendous growth of the ETF/passive investment business has certainly had some impact on the success of the activists, but as more and more of those funds start analyzing contests internally, it will certainly lead to a shift in strategy from companies and activists alike.

(2) Activists' increasing willingness to take control positions (in addition to the usual arsenal of proxy contests, shareholder proposals and the like) as a means to influence outcomes has become more significant – being referred to as a “blurring of the lines with private equity”. In particular, it has forced management teams to look at activists as partners, as opposed to adversaries, and it has put pressure on the “short-termism” label often ascribed to activists.

Jon Feldman (Goodmans LLP): While Canada has always been and continues to be one of the world's most activist friendly jurisdictions, the last ten years has seen exponential growth in both the frequency of activism and the understanding of its importance in our market.

Ten years ago when we were one of the few players in the activist space we would run screens and “cold call” companies that seemed vulnerable to activist attacks – there was a lot of “low hanging fruit” back then. We would provide vulnerability reports to boards and explain how we could help with a potential defense strategy. In every single case we were either ignored or rejected and in many of those cases, these companies ended up being subject to activist campaigns or hostile takeover bids. Today companies of all sizes and risk profiles and in all industries are pre-

emptively engaging counsel and other advisors to ensure they have a team in place and are in a position to take proactive steps to address any activist campaign. Today boards and management understand the need to engage with their shareholders in a way that was never done ten years ago. Boards now appreciate that activism is real and in exercising their fiduciary duties they need to be thinking like activists themselves.

On the activist side our non-Canadian clients love the legal flexibility they have to impact change at the company level including by requisitioning meetings, soliciting without a circular and the growing of vote no campaigns in board elections and M&A transactions. In addition to the traditional advantages that activists enjoy, because our law is very much untested in many areas relating to activism, we have seen and been a part of a lot of innovation and creativity in this space. Whether is it strategically using the universal proxy, coming up with proposals to obtain “back door” board changes or using social media in campaigns, activists are constantly thinking of news strategies and tactics and our environment is wide open to this creativity. Activists are also much more emboldened – ten years ago the conventional wisdom was that you could never win a majority of the board because management has the home court advantage, ISS/Glass Lewis will never support it and too much change is scary for investors. Our client, Paulson & Co. Inc.'s overwhelmingly victory with Detour Gold Corporation in 2018 was an example of a complete activist win that has now been emulated more and more often.

The most profound change, however, is the maturation of the market that has

led to a significant increase in settlements. As is the case in every jurisdiction, most activism in Canada takes place behind the scenes and most of these conflicts get settled before the public has any indication that this activity is happening. Canada is a small market and so most of the players are repeat players who know each other and for the most part trust each other. As result, advisors in Canada can work with their clients to achieve a win/win outcome for both sides.

Joseph L. Johnson III (Goodwin Procter LLP): (1) Over the last ten years, the reaction of Boards of Directors to the emergence of an activist shareholder has changed dramatically. Ten years ago, many Boards had a “circle the wagons” approach once an activist appeared. Often the goal was to “win” and avoid activist representation on the Board at almost any cost, including a willingness to incur the costs and distraction of a full blown proxy contest. Today Boards view activists like any other business problem which needs to be resolved (hopefully quickly and without undue expense). Boards seek to actively engage with the activist and, if possible, negotiate a resolution which works for all sides. A full blown proxy fight is to be avoided in almost all cases. Thus, in 2019 only seven proxy contests have gone to a vote and 91 % of the Board seats obtained by activists have been through settlements.

(2) Over the past two years traditional institutional investors have become increasingly willing to be publicly vocal over a broad range of topics. Today's focus on gender diversity on Boards of Directors began with State Street's public pronouncements on this issue. These investors are increasingly willing to publicly voice their views and vote

continued on page 3

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1 QUESTION, 10 LAWYERS (cont'd. from pg. 2)

against an issuer's recommendation on a broad range of topics including executive compensation, board composition, corporate strategy and M&A.

Paul Tosetti (Latham & Watkins LLP):

(1) Without question, the biggest change I've seen, as someone who focuses on the area from the perspective of Company-side representation, is the increased sophistication and maturity of the activist firms. Ten to twenty years ago, activists tended to advocate a narrow range of responsive alternatives – the pursuit of a sale, stock buybacks, etc. – often using vitriol to compensate for the absence of a comprehensive operational analysis. That is clearly no longer the case – now, many of the most effective activists present comprehensive alternative business models to make their case for change – whether the approach to the issuer is public or private. While companies can still refute these models, their responses, in turn, need to be as sophisticated and thoughtful as are the activist analyses.

This development in the strategic approach of activists is, of course, to some extent a response to the enhanced demands of the "voters" – the institutional investment community. Another change over this period, noted by many, is the increased willingness of institutional investors to support activist initiatives – *if* those initiatives are considered appropriately persuasive.

These developments have served, in my view, to lessen, in most cases, the ad hominem attacks that used to characterize the area. While exceptions are certainly visible, activist initiatives and Company responses today generally stick to the core issues – what are the optimal operational and capital allocation decisions for the issuer?

(2) I saw a statistic recently that suggested that only a half-dozen or so activist initiatives had proceeded all the way to a contest at a stockholder meeting thus far in 2019. Obviously, there have been many more activist approaches than that in the past 18 months. This suggests that both activists and the listed companies approached by them have determined that resolving contested situations outside the electoral realm is the course preferred by many members of the investment community. Given the concentration of stock ownership and the sophistication of the activists, issuers and members of the associated advisory world (bankers, proxy solicitation firms, etc.), both activists and company managers can often determine, relatively early on, whether an electoral battle at the board level is likely to succeed. This has accelerated the trend toward negotiated resolutions of activist challenges, often quite early in the contact process. I suspect that that trend will continue.

Keith E. Gottfried (Morgan, Lewis & Bockius LLP): Over the past ten years, the most significant changes to shareholder activism that I have seen have been the following: (i) more activist investors entering the field; (ii) more law firms, investment banks, consulting firms, and other advisory organizations developing activism specific practices and focusing on activism as a distinct practice area; (iii) the increased bifurcation between small-cap activism and large-cap activism; (iv) the increased focus by the general business and news media as well as specialty news subscription services on shareholder activism; (v) the increased willingness of public company boards and management teams to understand how their companies can be vulnerable to activist shareholders and to proactively address such vulnerabilities; (vi) the increased

sensitivity by public company boards and management teams to the need to proactively develop, implement, and publicly communicate a value creation strategy that potentially preempts an activist investor; (vii) the increased acceptance by institutional investors of shareholder activism as an investment strategy; (viii) the greater willingness of institutional investors to openly support activist investors; (ix) the greater willingness of public companies to engage with activist investors and to approach such engagement in a thoughtful and constructive manner; (x) the greater willingness of public companies and boards to discuss a settlement with an activist investor at an earlier point in the engagement; (xi) the continued removal of traditional structural defenses that have caused public companies, particularly those with poor operating, financial, and stock price performance, to be more vulnerable to activist investors such as multi-year poison pills, staggered boards, limited or no right of shareholders to call a special meeting, limited or no right of shareholders to take actions by written consent, supermajority voting requirements, and limited or no right of shareholders to fill board vacancies; and (xii) the evolution of corporate governance standards like majority voting, director resignation policies, and proxy access bylaws that have provided activist investors with additional pathways for influencing a company's board composition outside of a traditional contested solicitation.

Within the past two years, the most significant changes to shareholder activism that I have seen have been the following: (i) the greater willingness of public companies and activist investors to engage outside of public view such that the entire engagement, including the ultimate resolution, never becomes public; (ii) the greater willing-

continued on page 4

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1 QUESTION, 10 LAWYERS (cont'd. from pg. 3)

ness of some institutional investors to adopt a more activist approach to an investment; (iii) the continuing reduction in the likelihood that an activism campaign will go all the way to a shareholder vote as settlements and/or other amicable resolutions are reached in advance of the shareholders' meeting; (iv) the increased frequency of shareholder activism outside of the United States, including in Europe and Asia, as many U.S.-based activist investors shift their attention to non-U.S. companies; and (v) the greater focus by institutional investors and proxy advisory firms, as well as state legislatures, on board diversity, and the potential for that to change how activist investors assemble their director nominee slates.

Steve Wolosky (Olshan Frome Wolosky LLP): (1) A significant improvement in the quality of dissident slates is the most significant change we have seen during the past 10 years. The composition of dissident slates during this timeframe has evolved in a very profound way, resulting in shareholder activists nominating more qualified, diverse and dynamic slates today than ever before. Ten years ago, when shareholder activism really began to gain traction as a legitimate, widely-recognized asset class, we began to see strategy-driven efforts by activists to really focus on improving the quality of their slates. Dissident slates consisting of two or more principals or employees of the activist fund and a few professional directors frequently enlisted by activists as "hired guns" were quickly becoming a thing of the past. Activists began to put real pressure on companies with sleepy, ineffective boards by assembling slates of candidates with deep industry knowledge and expertise, prior public company board experience and track records of creating shareholder value in the relevant field. However, while the

quality of dissident slates significantly improved during the late 2000s and early 2010s, they were predominantly comprised of white males. We then began to see gradual slate enhancements through the selection of more diverse nominees, particularly women. Starboard Value was a real trailblazer in this area when you look at its landmark proxy fight against Darden in 2014. In Darden, Starboard Value's 12-member slate included four women and one African American, all of whom were elected. Around two years later, emphasis on board diversity began to snowball with studies showing a correlation between diverse boards and stronger corporate performance and the emergence of the "me too" movement. Since then, the leading proxy advisory firms, the three largest index fund managers and companies themselves have endeavored to foster greater board diversity awareness resulting in most dissident slates today possessing at least one element of diversity, something that would have been a rarity 10 years ago. The latest trend pushing the boundaries of director quality is the desire of boards to attract highly-specialized directors. These directors, referred to by consulting firm Spencer Stuart as "next-gen directors," are typically younger than the average director and possess highly-coveted expertise in high-tech fields such as cybersecurity and social media. Next-gen directors are beginning to be wooed by activists in order to further enhance the quality of their slates.

(2) Although we wouldn't say there have been any seismic shifts in shareholder activism during the past two years, one development we have kept an eye on during this timeframe has been the increasing relevance of universal proxies. Although the SEC's 2016 rule proposal to require the use of universal proxies in contested elections was put on hold due

to concerns that the proposed regime would favor shareholder activists, there have been a few instances since then where companies and activists have dabbled in their own use of universal proxies. In May 2018, Mellanox Technologies obtained shareholder approval to require universal proxies in contested elections in anticipation of an election contest waged by Starboard Value. However, the parties' subsequent settlement obviated the requirement for universal proxies at the annual meeting. A few months later, in Carl Icahn's proxy contest against SandRidge Energy, the company, but not Icahn, was able to utilize a universal proxy after obtaining the consent of the dissident nominees to be named on the company's card (in accordance with the bona fide nominee rule). In July 2019, shareholders of EQT Corporation replaced the entire board with directors nominated by a shareholder group led by Toby and Derek Rice in an election contest involving the first successful use of reciprocal universal proxies for a control slate in the U.S. In its report recommending the election of all the dissident nominees, ISS stated: "The adoption of a universal card was an inherently positive development for EQT shareholders (as it would be in any proxy contest), in that it will allow shareholders to optimize board composition by selecting candidates from both the management and dissident slates." We believe the use of universal proxies may become more common in future proxy contests as proxy advisory firms such as ISS and shareholder advocacy groups such as the Council of Institutional Investors tout their mix-and-match capability as being in the best interest of corporate democracy in the context of an election contest. In addition, universal proxies would become the norm if the SEC ever resurrects and adopts its 2016 proposal mandating the use of universal proxies in contested

continued on page 5

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1 QUESTION, 10 LAWYERS (cont'd. from pg. 4)

elections, as recently recommended by The Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee in its July 22 report on improving the U.S. proxy system. However, unless and until a universal proxy regime is mandated by federal rules, shareholder activists should be careful not to jump on the “universal proxy bandwagon” just yet. While there appears to be a perception that universal proxies will always benefit the activist, there are circumstances where universal proxies could be more advantageous to management. MacKenzie Partners does a great job illustrating how reciprocal universal proxies in an election contest could actually have the unintended consequence of putting the activist at a strategic disadvantage to management in its article entitled *The Universal Proxy Gains Traction: Lessons from the 2018 Proxy Season*.

Eleazer Klein (Schulte Roth & Zable LLP): The Activism landscape changed dramatically over the past decade. Activism went from a fringe strategy used by a few sophisticated investors to an asset class recognized as part of the finance world. This evolution was accompanied by a shift in the views among market participants from cautiousness to being supportive of the concept. As shareholders across the spectrum recognized the benefits that often result from activism, companies shifted their views to recognize the need to engage with their shareholders proactively and even go so far as inviting activists into the boardroom. Outright hostility to activists yielded to listening to good ideas when presented. Activism also matured through the increasing quality of board nominees and driving diversity. Activists to the greatest extent ever bring a package of deep analysis, resources, expertise and people capable of delivering needed improvement

to companies. This combination of support, recognition and value has resulted in fewer proxy battles and more agreements between companies and activists to bring in this value add without the historic fight.

The global reach of activism is another obvious trend over this time frame. What was predominantly an American based activity has expanded to being an active part of the UK, European, Australian and Asian markets.

While these trends have continued to advance throughout the past decade, more recently some companies have looked to reverse some of the improvements by engaging in troubling entrenchment tactics. The introduction of extraordinarily onerous advance notice requirements, burdensome questionnaires, hyper-technical challenges to the validity of nomination notices, refusals to seat newly elected board members, hostile litigation tactics, lobbying of regulators to prevent activists from being able to take proxies, are just a few of the tools employed. The introduction of the Universal Proxy is another recent event that finally may allow shareholders to vote the way they truly want. And the growing concentration of share ownership among a few, large institutions has begun to change the way campaigns are run and won.

What was a niche area has exploded and we will all continue to watch its maturation and future developments with anticipation and interest.

Richard J. Grossman (Skadden, Arps, Slate, Meagher & Flom LLP):

(1) *Proliferation of New Funds and Increase in Assets Under Management*

The last 10 years of activism have seen

a proliferation of new funds. Frequently started by protégés of established activists (sometimes referred to as “sons of activists”), these new funds have demonstrated that assets under management (AUM) held by activist funds have become their own asset class that is here to stay.

Shareholder and Issuer Receptivity to Activism

In addition, issuers and shareholders alike have become more receptive to activists than in prior periods. Understanding that there is no monopoly on good ideas, these constituents have expressed an increased willingness to engage with and listen to activists and their proposals and recommendations. This increased receptivity to activists coincides with a broader transition to a shareholder-centric model of corporate governance, under which gaining the support of a wide shareholder base (particularly large institutional investors) is key to success in many activist situations. There has also been a rise in so-called “reluctivists,” or traditionally long-only institutional investors who are increasingly engaging in activist campaigns, demonstrating that the use of activist tactics has become more accepted as almost any investor can “become an activist.”

(2) *Merging of Activism and Private Equity Transactions*

A key change in recent years is the blurred line between traditional shareholder activism and private equity transactions. In traditional shareholder activism, investors (typically hedge funds) take an ownership position in a public company and seek to effect material change through tactics such as proxy contests, stockholder proposals, and public and private engagement. In

continued on page 6

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1 QUESTION, 10 LAWYERS (cont'd. from pg. 5)

private equity transactions, investment firms aim to acquire or take a significant position in private companies (or public companies that they seek to take private) with the goal of improving the financial outlook of the company in order to exit in the future at a higher price. For example, in the past two years, activist investor Elliott Management has engaged in a more traditional private equity strategy, including its acquisition of Gigamon in 2017; its acquisition (with Veritas Capital) of athenahealth in November 2018; and, most recently, its acquisition (with Siris Capital) of Travelport and its pending acquisition of Barnes & Noble. Also, in early 2019, activist investor Starboard Value stepped into the quasi-private equity space with its \$200 million strategic preferred stock investment in Papa John's.

A private equity strategy is a natural next step for activist investors who, in many instances, identify and articulate to the public a company's weaknesses and seek to capitalize on them. The ability to engage in a private equity style investment or acquisition also increases an activist's own credibility when it makes an approach to a company, because the threat exists that the activist itself can and will make a bid to acquire or make a significant investment in the company. Thus, an activist investor that approaches a target company with sufficient capital and a proven willingness to take a long-term position in a company, or to take a company private, will likely pose a more legitimate threat.

Global Expansion of Activism

Shareholder activism has become an accepted strategy across global markets to bring about change, even in regions once believed to be either unfriendly to activist shareholders or structurally difficult for activists to execute their

strategies. Increased activism in Europe and Asia may be driven by relatively high equity prices in the U.S., the presence of global institutional investors on targeted companies' registers, the resolution of a number of local macro issues that decreased uncertainty (such as Brexit) and a continued warming to a shareholder-centric model of corporate governance. Many larger companies in the U.S. have addressed vulnerabilities by updating their corporate governance practices to be in line with the broader market; as a result, activists have migrated to seek new opportunities in markets where poor corporate governance practices may be used as a lever with shareholders. For example, Lazard recently noted that Europe and the APAC region (including Asia, Australia and New Zealand) witnessed significant activism activity in 2018, as over \$20 billion in capital — representing almost a third of the capital deployed in activism activities worldwide — was deployed in Europe and the APAC region, collectively. In addition, there was a significant increase in the number of Japanese companies that became subject to activist demands in 2018 compared to 2016 and 2017.

Anticipating Activism and Proactive Self-Review by Issuers

Issuers now recognize that shareholder activism is here to stay and has become an integral tool for certain shareholders to effect change. As a result, more and more issuers are becoming "their own activist." Boards of directors and management teams are increasingly engaging legal, financial and other advisers to proactively assess their own vulnerabilities, identify areas of potential improvement and review their shareholder engagement strategies. Taking these measures to prepare for activism (even when an issuer may not have or may

never have had an activist take a position in its stock) continues to be critical in helping issuers effectively engage with activists, and in many instances it can assist companies in driving shareholder value and avoiding activist activity altogether.

Patrick Gadson (Vinson & Elkins LLP):

In a way, this is really two separate questions — what are the biggest changes in activism over the past two years from the perspective of shareholders, on the one hand, and from the perspective of companies on the other hand?

Two years is really just the "short term." From an activist perspective, they are more frequently coming to the conclusion that if they are going to do deep dive analyses on targets, it does not make a lot of sense to fail to have a granular white paper or deck that includes a plan for the future. In the past, the thinking was "well, since the proxy advisors don't require a detailed plan unless control for the board was at risk, no reason to cook up a 360 plan if you're running a short slate." That mindset was terribly inefficient because it is not like an activist does a less thorough analysis or has fewer plans for a target company just because the activist plans on targeting a minority of the board, especially since a targeted company is going to use its long-term plan and strategy in a hostile fight, whether the activist has one or not. Recently, activists have realized that if they are going to fill the quiver with arrows no matter what, they might as well let all of them fly.

In terms of the short term from a company perspective, it has been about understanding and combating withhold campaigns. In the past, withhold campaigns were more of an irritant than a nightmare scenario for boards. Directors were not tossing and turning at

continued on page 7

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1 QUESTION, 10 LAWYERS (cont'd. from pg. 6)

night worrying about a withhold campaign. More recently, withhold campaigns have essentially just become "campaigns." Boards understand that, from a vulnerability and optics perspective, if a withhold campaign by an activist is overwhelmingly successful, shareholders, including institutional holders, expect compositional change on the board. The shareholder base is not thinking, "Wow, it'd be really nice if the board realized that change needs to happen." They are thinking "You guys better make changes, and you'd better make them fast. Please don't test our 'or else' resolve."

Long term, and we will consider 10 years long term, from an activist's perspective, there are just many, many more activists, which squeezes supply of potential target companies with so many more funds going after a nearly fixed (and actually shrinking) supply of public companies. In a way, many activists benefit from this, as after a fight has been publicly announced, the shareholder base might turn over into a "hedge-fund hotel." But the downside still remains — they are chasing a fixed number of targets, and it is all about who can be first and make the largest impact. 10 years ago, there was not this sort of culture of "competition" among activists themselves, it was more of a club; now that they are competing more, it's more of a league.

For companies, the level of preparedness over the past 10 years has deepened tremendously. 10 years ago there was still an aura of mystery around shareholder activism in boardrooms. Was it corporate raiding? Should they expect threats of green-mail? What exactly was it? That level of naivety for the most part just does not exist anymore. When it comes to activism, the doe-eyed deer director who has little to no substantive understanding of activism just does not sit on boards anymore.

David Katz (Wachtell, Lipton, Rosen & Katz): The biggest changes to shareholder activism over the last ten years is that targeted companies are now required to engage with the activist. This has come about as the institutional shareholders have punished companies that do not engage. Similarly, companies get real information when they engage with activists and not just a laundry list of complaints. This dialog between activists and targeted companies also means that many more situations are resolved without going to a public fight.

The biggest change in the last two years is that institutional investors themselves have become reluctant activists when required and they have also pushed back on companies that put an activist on their board as opposed to a new independent director that is likely to have better industry knowledge. This has resulted in activists being more willing to put independent directors on boards instead of simply putting themselves or their employees on targeted boards.

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PRICED BELOW COST (cont'd. from pg. 1)

Type	Ticker	Company	Investor	Industry	Market Cap. (\$)	13D/Action Date	Averag Cost/ UTT Price (\$)	Price (\$)	Return
13D	ADNT	Adient PLC	Blue Harbour	Consumer Discretionary	2.13B	9/15/2017	71.67	22.71	-68.31%
UTT	GE	General Electric Co.	Triam	Industrials	83.82B	10/4/2015	27.6	9.6	-65.22%
13D	SD	SandRidge Energy	Carl Icahn	Energy	216.62M	11/22/2017	17.16	6.07	-64.63%
UTT	INWK	Innerworkings Inc	Engine Capital	Industrials	162.06M	7/30/2018	8.72	3.12	-64.22%
UTT	TIVO	Tivo Inc	Engaged Capital	Information Technology	952.78M	3/26/2015	18.73	7.57	-59.58%
13D	CARS	Cars.com Inc	Starboard Value	Communication Services	748.20M	12/18/2017	26.32	11.23	-57.33%
UTT	EQT	EQT Corp	DE Shaw & Co	Energy	3.13B	9/14/2017	64.87	27.83*	-57.10%
13D	STKL	SunOpta Inc	Engaged Capital	Consumer Staples	233.50M	9/15/2016	5.54	2.66	-51.99%
UTT	QEP	QEP Resources, Inc.	Elliott	Energy	987.89M	1/7/2019	8.53	4.15	-51.35%
UTT	TCO	Taubman Centers Inc.	Land & Buildings	Real Estate	2.43B	10/19/2016	74.64	40.07	-46.32%
UTT	BKD	Brookdale Sr. Living	Land & Buildings	Health Care	1.37B	12/20/2016	13.1	7.35	-43.89%
13D	UFI	Unifi Inc.	ValueAct Capital	Consumer Discretionary	336.78M	5/14/2018	32.16	18.28	-43.16%
13D	PRGO	Perrigo Company	Starboard Value	Health Care	6.86B	11/14/2016	88.58	50.41	-43.09%
13D	NWL	Newell Brands Inc.	Carl Icahn	Consumer Discretionary	6.52B	3/16/2018	26.35	15.4	-41.56%
13D	NNBR	NN Inc.	Legion Partners	Industrials	284.71M	1/18/2019	11.25	6.72	-40.27%
13D	CNDT	Conduent Inc	Carl Icahn	Information Technology	1.74B	1/9/2017	13.27	8.26	-37.75%
13D	HIL	Hill International Inc	Engine Capital	Industrials	173.10M	11/6/2017	4.54	3.11	-31.50%
13D	INVA	Innoviva Inc.	Sarissa Capital	Health Care	1.14B	2/25/2019	15.92	11.30	-29.02%
13D	ADS	Alliance Data System	ValueAct Capital	Information Technology	8.0B	7/11/2016	210.39	152.66	-27.44%
13D	HAIN	Hain Celestial	Engaged Capital	Consumer Staples	2.22B	6/29/2017	29.03	21.34	-26.49%
13D	OSPN	OneSpan Inc.	Legion Partners	Information Technology	529.60M	11/1/2018	17.71	13.13	-25.86%
UTT	AAP	Advance Auto Parts	Starboard Value	Consumer Discretionary	10.17B	9/30/2015	189.53	141.74	-25.22%
13D	SLM	SLM Corp	ValueAct Capital	Financials	3.58B	4/6/2018	11.19	8.39	-25.02%
13D	WCC	WESCO Int'l	Blue Harbour	Industrials	2.02B	7/2/2018	59.25	45.03	-24.00%
UTT	BLMN	Bloomin' Brands Inc.	Barington Capital	Consumer Discretionary	1.46B	2/21/2018	22.02	16.78	-23.80%
13D	GCP	GCP Applied Tech.	Starboard Value	Materials	1.47B	6/6/2019	25.59	20.32	-20.59%
13D	ALV	Autoliv Inc	Cevian Capital	Consumer Discretionary	5.93B	3/1/2018	139.04	113.67*	-18.25%
13D	ABB	ABB Limited	Cevian Capital	Industrials	38.85B	6/26/2015	21.19	17.94	-15.34%
UTT	LB	L Brands Inc	Barington Capital	Consumer Discretionary	6.48B	3/5/2019	26.93	23.45	-12.92%
13D	APOG	Apogee Enterprises	Engaged Capital	Industrials	1.02B	4/17/2018	42.87	38.31	-10.64%

*Price adjusted to reflect spinoff

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New 13D Filings for July

Company Name	Investor	Mkt. Cap.	Filing Date	%	Cost	Item 4 Action
Catalyst Biosciences Inc (CBIO)	Julian Singer	\$100.0M	7/23/19	6.85%	\$11.24	change in board comp, evaluate alternatives
Fednat Holding Co (FNHC)	Capital Returns	\$156.86M	7/23/19	6.54%	\$3.08	seeking board seat, declassify board

One to Watch

<i>Company</i>	<i>Investor</i>	<i>Investment</i>
Catalyst Biosciences Inc (CBIO) Market Cap.: \$100M Enterprise Value: -\$3.92M Cash: \$105.28M Debt: \$1.69M EBITDA: -\$42.70M	Julian Singer 13F Holdings: n/a # of 13F Positions: n/a Largest Position: n/a Avg. Return on 13Ds: n/a Versus S&P500 avg: n/a	Date of 13D: 7/23/2019 Beneficial Ownership: 6.85% Average Cost: \$11.24 Amount Invested: \$9.23M Highest price paid: \$9.89 # of larger shareholders: 2

On July 22, 2019, Julian Singer, Wayne Barr, Jr. and David S. Oros (the "Group") sent a letter to the Company's Board expressing its belief that the Board should add shareholder representation on the Board, adopt best practices for good corporate governance and retain an investment bank to evaluate potential strategic alternatives. The Group stated that the Board should work cooperatively with them by adding two shareholder representatives to the Board in place of the legacy, long-tenured directors who were appointed to the Board in connection with the Company's August 2015 reverse merger with Targacept, Inc. The Group also highlighted various corporate governance failures at the Company, including the Company's staggered Board, lack of diversity on the Board, the Board's lack of stock ownership and a plurality voting standard for director elections without a director resignation policy. Julian Singer may not be a name that is very familiar in the activist world, but he has been doing activism for many years with his father and mother Gary and Karen Singer. He focuses on small cap names that could need some help with corporate governance, communication to the market or monetizing assets. He has taken proxy fights to a vote before but has the experience to understand that proxy fights are a last resort and not good for anyone involved. Accordingly, we expect this situation to be amicable. Catalyst Biosciences is trading below net cash value as the market does not attribute any value to its pipeline of drugs, mainly two hemophilia drugs that are in Phase 2. However, the Company's stock traded as high as \$32.15 last year but dropped to \$10.52 in June of 2018 when it announced that its ongoing phase 1/2 trial testing for its DalcA hemophilia B treatment showed the presence of a neutralizing antibody in a couple of its patients. They have since announced that they are working on this issue and will not reboot their Phase 2 study until it is resolved, but could be communicating with the market a little better. They have an investor day on August 15 where hopefully they will lend some clarity to the issue. Other than their hemophilia drugs they have developed an early stage ophthalmology treatment and a gene therapy molecule that might have some value, but hard to ascertain. The real opportunity here is to fix the issues with DalcA to get it past Phase 2, better convey developments to the marketplace so they begin to attribute value to the Company's pipeline and ultimately sell the drugs to a larger company that has the infrastructure to commercialize them. While this is not a case of inferior management, it would be helpful to have an experienced shareholder representative on the board to help oversee this process, particularly with communicating to the marketplace. Any board recommendations Singer makes to the Company will most certainly include Wayne Barr, Jr. who has extensive board experience and has been on several of Singer's prior slates.

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NOMINATION/STANDSTILL CALENDAR UPDATES

August 2019						
■ Nomination Deadline (Window Open) ■ Nomination Deadline (Window Closed) ■ Standstill Expiration Date						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
28 A10 Networks Inc. (ATEN); VIEX Capital Advisors, LLC The Standstill Period is from the date of the agreement until 11:59 p.m., Pacific time, on the day that is fifteen business days prior to the deadline for the submission of stockholder nominations of directors and business proposals for the 2019 Annual Meeting.	29	30	31 Landec Corp. (LNDG); Wynnefield Capital	1 Tuesday Morning Corp. (TUES); Jeereddi Partners, LLC Window Closes Aug 31, 2019	2 Unifi Inc. (UFI); ValueAct Capital	3 Ascena Retail Group Inc (ASNA); Stadium Capital Management, LLC
4 Telenav Inc. (TNAV); Nokomis Capital, LLC The Standstill Period is from the date of the Agreement until 11:59 PM, Pacific Time, on the day that is 15 days prior to the deadline for stockholder nominations of directors for election at the 2018 Annual Meeting. However, if the Company agrees to nominate the newly appointed director at the 2018 Annual Meeting, the Standstill Period will be extended until 11:59 PM Pacific Time on the day that is 15 days prior to the deadline for stockholder nominations of directors for election at the 2019 Annual Meeting and (b) if at any time Nokomis ceases to own at least 5% of the Company's outstanding shares, then the Standstill Period will immediately terminate.	5	6	7	8 Hill International Inc (HIL); Engine Capital, L.P. Window Closes Sep 06, 2019 Zayo Group Holdings Inc. (ZAYO); Sachem Head Capital Management; Starboard Value	9	10
11	12 A10 Networks Inc. (ATEN); VIEX Capital Advisors, LLC	13	14	15 Cars.com Inc (CARS); Starboard Value	16	17 Cracker Barrel Old Country Store Inc (CBRL); Biglari Holdings Inc.
18	19 Telenav Inc. (TNAV); Nokomis Capital, LLC	20	21 Roadrunner Transportation Systems Inc. (RRTS); Elliott Associates, LP	22	23	24
25 Actuant Corp (ATU); Southeastern Asset Management, Inc. Window Closes Sep 24, 2019	26	27	28	29	30	31 Campbell Soup Co. (CPB); Third Point, LLC Window Closes Sep 30, 2019 Tuesday Morning Corp. (TUES); Jeereddi Partners, LLC

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NOMINATION/STANDSTILL CALENDAR UPDATES

September 2019						
■ Nomination Deadline (Window Open) ■ Nomination Deadline (Window Closed) ■ Standstill Expiration Date						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1 Occidental Petroleum Corp (OXY); Carl Icahn Window Closes Nov 30, 2019	2	3	4	5	6 Hill International Inc (HIL); Engine Capital, L.P.	7
8	9	10	11	12	13	14 The Hain Celestial Group, Inc. (HAIN); Engaged Capital LLC
15 Navistar International Corp (NAV); Carl Icahn Window Closes Oct 15, 2019	16	17	18	19 Nuance Communications, Inc. (NUAN); Neuberger Berman Group LLC Window Closes Oct 19, 2019	20	21
22	23	24 Actuant Corp (ATU); Southeastern Asset Management, Inc.	25	26	27	28

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NOMINATION/STANDSTILL CALENDAR UPDATES

September 2019 cont.

Sun	Mon	Tue	Wed	Thu	Fri	Sat
29	30 Campbell Soup Co. (CPB); Third Point, LLC	1	2	3	4	5

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UNDER THE THRESHOLD

UPDATES

should be tasked with evaluating all strategies to maximize the value of the Company's real estate, including outright asset sales as well as separating the real estate from the management company into two separate public companies. Land & Buildings noted that it has engaged Green Street Advisors, an independent real estate research and advisory firm to help evaluate the company and the possibility of a split.



On July 22, 2019, **Land & Buildings Investment Management LLC** sent a letter to **Liberty Property Trust (LPT)** calling on the Board to undertake a full review of strategic alternatives and highlighting the Company's discount to NAV.

SONY

On July 30, 2019, **Sony Corp (SNE)** rejected **Third Point LLC's** call for the Company to spin off its image sensor business, which the Company described as foundational to its future growth strategy. The announcement came as the Company cut a revenue forecast from three months ago, projecting revenues of ¥8.6 trillion (\$79 billion) compared with the ¥8.8 trillion it projected in April.

Tuesday Morning

On July 24, 2019, **Jeereddi Partners LLC** and **Purple Mountain Capital Partners LLC ("the Group")** and **Tuesday Morning Corp. (TUES)** entered into an Amendment to their October 1, 2017 Cooperation Agreement, pursuant to which the Company agreed to nominate James Corcoran for election to the Board at the 2019 Annual Meeting. Also, the Standstill Period will be extended through the later of (x) the first day for the submission of stockholder director nominations for the 2021 Annual Meeting and (y) the date that Mr. Corcoran no longer serves on the Board; provided, however, that if Mr. Corcoran is not re-nominated by the Board for election at the 2020 Annual Meeting, the Standstill Period shall end thirty days following the conclusion of the 2020 Annual Meeting. Further, if Mr. Corcoran resigns for any reason prior to the 2021 Advance Notice Date, the Standstill Period shall continue until the 2021 Advance Notice Date. In addition, the Cooperation Agreement continues to provide that if the Group no longer beneficially owns at least 533,344 shares of the Company's common stock, Mr. Corcoran will offer his resignation to the Board and the Group will no longer be entitled to replacement rights.

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AROUND THE WORLD



NEW



On July 17, 2019, **Elliott Management** announced that it took a 5.14% stake in **Saga Plc.**



SCOUT 24

On August 5, 2019, **Elliott Management** (7%) sent a letter to **Scout24** urging the Company to sell its car listings business, AutoScout24, and ramp up a share buyback program. Elliott expressed its belief that the Company's CEO, Tobias Hartmann, lacks ambition and urged management to take prompt remedial action. Elliott also stated that several investors and sponsors had shown interest in AutoScout24, including Axel Springer and AUTO1 Group. The Company responded to Elliott's letter, stating that it would maintain a dialogue with all shareholders and noting that it has announced steps to strengthen its core businesses and optimize its capital structure.



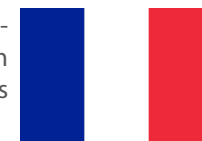
UPDATES



On July 27, 2019, it was reported that **Triam Fund Management** (6%) is urging **Ferguson Plc** to sell its UK business.



On July 18, 2019, **Amber Capital** (1.9%) sent a letter to **Suez's** Board calling on the Company to review its portfolio of assets, buy back shares and reduce the size of its board from 19 members to between 12 and 14. The Company responded that a strategic review is already underway and will be presented in the fall.



[Click here for more information and to read about the ongoing situations Around the World](#)

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