A REVIEW BY BRUNSWICK GROUP

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talking points

ALSO INSIDE

Activism on the rise: The traditional relationship between shareholders and public companies is undergoing a sea change. Shareholder activism is no longer the province of renegade corporate raiders; it has become a mainstream practice. CONTINUED ON PAGE 2 >>

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The changing face of shareholder activism

<< CONTINUED FROM PAGE 1

Whether today's activists add value is open to debate. To some, they're the Wall Street equivalent of Robin Hood, allowing all shareholders to ride their coattails. To others, activists do nothing more than prey on struggling companies and pressure them to take short-term action to boost their share price without improving long-term prospects.

But regardless of motives or short-term issues in the credit market, shareholder activism is on the rise and it's here to stay. Numbers help tell the story: There were 99 activist campaigns waged in 2006 and 102 so far in 2007, compared to 55 in all of 2005. The number of corporations targeted by activist investors has grown, as has the number of investors engaged in activist activity. (See p. 8). As noted in a recent National Investor Relations Institute (NIRI) survey of corporate members, 47% of 465 respondents saw activists take a position in their stock in 2007.

Perceptions have evolved accordingly, and it is clear that "corporate raiders" such as Nelson Peltz and Carl Icahn are now increasingly viewed by traditional buy-side investors as legitimate voices for shareholder grievances, and others such as Ralph Whitworth have substantial credibility for their actions as board directors. Whether they are agents of change or trouble-makers will continue to be debated, but they are a force boards and managements cannot ignore.

Funds and traditional buy-side investors join the fray

New rules that require mutual funds to report how they vote in corporate elections, along with an increasingly competitive marketplace, mean that mutual fund holders are being held more accountable for the returns they deliver to their client base. There is growing client pressure on buy-side firms to generate hedge fund-level returns. As a result, traditional buy-side investors no longer tolerate management teams that refuse to respond to their concerns about a company's strategy, and they no longer shy away from conflict. They are increasingly adopting a public strategy by creating headlines in support of their objectives - an approach long associated with hedge funds and the corporate raiders of the 1980s. This was most recently evident with Oppenheimer Capital's involvement with hedge funds - including SAC, Tudor and DE Shaw - in leading a board coup at Take-Two Interactive, Inc.

Wolf-pack mentality

Unlike the lone ranger-style activists of the 1980s and 1990s, activists today often build support from a "pack" of like-minded hedge funds, known raiders or traditional buy-side investors, both before and after building a position in a company's shares. While in some cases they act as a strategic group under SEC rules, in many cases investors simply follow other funds' lead into situations following public disclosure of the activists' moves.

This wolf-pack dynamic is increasingly visible in recent years: Barington Capital teamed up with Ramius Capital Management in their proxy contests against Steve Madden and Pep Boys; Carl Icahn and Jana Partners aligned in their fights against Time Warner and Kerr McGee; and SAC Capital and Jana teamed up to engage in a letter-writing campaign against TD Ameritrade.

While IR officers may be quick to note one activist building a position in their company, they may be completely unaware of funds that are quietly working in tandem with the activist or of the voting support the activist is building. If a company notices that an activist is building a position in its stock, it is critical to identify which funds the activist has collaborated with in the past; it is equally important to carefully monitor activity in the stock to see who else might be following the activist in.

Key activist triggers

There are a number of governance, operational and financial issues that can stoke investor ire and potential activism. Those triggers include: >>

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- **Financial and operational performance that lags a company's peer group.** In today's marketplace, any company that has been substantially underperforming its peer group for a period of time should consider itself a potential activist target.

- **Ineffective deployment of capital and value creation.** Shareholders are increasingly quick to demand change when a company isn't deploying its capital effectively. They will pressure management to return cash to them via dividends or larger stock buybacks, or by unlocking value in the business through a spin-off.

- **Acquisition attempts.** Activists have become watchful of acquisitions, especially when there is concern that a bidder is overpaying or that a seller isn't receiving an appropriate premium.

- **Executive compensation out of line with the company's performance.** Nothing triggers investor anger more than CEO pay that appears exorbitant and grossly out of sync with the company's performance for the year. Much has been written about executive compensation over the past year, and the topic will likely continue to generate debate in the year ahead.

- **Denial of the right to be heard.** As Richard Breeden stated at Tulane Law School's Annual M&A Conference in March of this year, "Not every shareholder may have a good idea, but companies should listen to what their shareholders have to say." Increasingly, mutual funds are seeking out a company's chairman or an independent board member directly to air shareholders' concerns about management strategy - as Morgan Stanley did in its well-documented campaign against the New York Times Co. Sometimes shareholders just want the opportunity to have their views heard by those outside management. This presents a new dilemma for investor relations professionals, who now have to grapple with how boards of directors can engage with shareholders without undermining the management team's authority.

A shift in engagement strategy

Over the past year, there has been a subtle shift in how companies engage when faced with shareholder activism. Companies targeted by activist shareholders seem more willing to come to a resolution rather than fight a contested election of directors. For example, when it was revealed that Nelson Peltz had more than a five percent stake in Tiffany and Co. stock, the company publicly announced it would consider his strategic suggestions. By the same token, the activists themselves may have learned that proxy campaigns are more difficult than they anticipated -- Mr. Peltz did not demand board seats from Tiffany, as he had with H.J. Heinz, and so far he has remained outside the board room.

Looking ahead

New regulatory challenges and SEC regulations have emerged that may prompt even more shareholder activism in 2008.

- **E-proxy and shareholder access**
  In 2007 it became clear that investors do not need to have a significant stake in a company to wage a proxy campaign. However, it is still prohibitively expensive for most investors. The SEC's decision to provide Internet-based solicitation will allow vocal shareholders to mount proxy campaigns easily and cheaply. While the SEC still has not finalized the rules governing e-proxy, and the first phase for large accelerated filers will not come into effect until January 1, 2008 (the starting date for other issuers is on or after January 1, 2009), e-proxy is sure to become fertile ground for shareholder activists.

- **Empty voting**
  Empty voting of lending voting rights along with shares, continues to unnerve corporate America. The practice makes it almost impossible for companies to know who is holding their shares at the record date, what their motivations are and how they will vote. Furthermore, in some circumstances, long-term buy-side investors, whose economic interests are aligned with those of the company, may not see their wishes reflected in the actual vote of their shares. According to Institutional Shareholder Services, empty voting has the potential to change the outcome of a shareholder vote by anywhere from five to thirty percent. While a regulatory solution does not seem imminent, this trend has caught the attention of SEC Chairman Christopher Cox.

Communications imperatives

The changing face of shareholder activism demands a new, more actively engaged form of investor communications. On the next page, we set out our recommendations for effective communications to help you avoid finding yourself in an activist's cross-hairs. ■

Brunswick viewpoint

How to engage with investors in an activist age

Companies that underestimate the evolving nature and increasing threat of shareholder activism will increasingly find themselves operating from a position of weakness. If the past few years have taught us anything, it is the importance of maintaining open lines of communication between corporations and their investors before a wolf shows up at the door.

Once a company receives a public letter or 13D filing from a shareholder activist, or is attacked in the media, the communications battle is on to win the hearts and minds of the shareholder base, protect the company's reputation and persevere against the activist's claims.

In the current environment, it is crucial to shape your corporate positioning and communications to properly reflect the competitive landscape and your long-term strategy. Companies also need to think proactively. We recommend that you:

Do

- Articulate operational and financial milestones that the Street can use to monitor progress of initiatives.
- Provide simple and straightforward disclosure around executive compensation and demonstrate how it is aligned with operational objectives, financial goals and, ultimately, shareholder interests.
- Be aware of the impact a company's corporate governance, CSR, and labor practices can have on its reputation.
- Assess your shareholder base thoroughly and research the past campaigns of any activist shareholders so that you are fully aware of their track records and their allies, and have a more realistic sense of their voting positions in your stock.
- Rethink how you plan to use the Internet to communicate with different segments of your shareholder base in the age of the e-proxy, particularly with respect to annual shareholder meetings and proxy campaigns.

Do Not

- Underestimate the importance of conducting regular investor audits to help uncover any communications issues or signs of investor uneasiness with management and the company's strategic direction.
- Rely on the sell-side to tell your story or provide intelligence on your shareholder base. While they can be helpful, always remember that your investors are the ones who own your stock.
- Brush off irate shareholders or automatically turn down any shareholder's request to meet with board members.
- Be fearful of engaging in dialogue with hedge funds – they have their ear to the ground on Street sentiment and can sometimes serve as long-term shareholders.
- Underestimate the importance of your communications and engagement with stakeholders beyond the investment community, such as third-party supporters, customers and employees. They may have an impact on the outcome of a contested proxy vote, and certainly have an impact on corporate reputation. ■

Activism around the globe
Shareholder activists rattle Europe and Asia

As financial markets have globalized, shareholder activists have followed suit. In Europe, the rise of activism has led to philosophical debates over the nature of capitalism, calls for regulation of hedge funds and a proactive move by several leading funds to establish voluntary industry standards. In Asia, where foreign holdings in Asian companies have reached record levels, activists are challenging conservatively managed businesses to return more value to shareholders. Japanese and Korean companies in particular are grappling with the question of how to react to a much more demanding breed of investor.

Fear and loathing in Europe

The rise of shareholder activism across Europe has created widespread concerns, particularly among political and trade union leaders who fear that the consensus management style customary in most of Continental Europe is being forced aside by a more investor-oriented approach that has upset many constituencies.

Franz Münterfering, then-chairman of Germany's ruling Social Democrats, set the tone in 2005 when he described private equity and hedge funds as "locusts" after the latter blocked Deutsche Börse's bid for the London Stock Exchange and forced out the German stock exchange's chief executive. Trade unionists and parliamentarians often confuse private equity, hedge funds and activists, largely because they view all three as drivers of an insidious new trend that threatens their preferred model of stakeholder capitalism.

Such so-called "Rhineland capitalism" holds that shareholders are just one of several constituencies to which corporate managements are accountable, along with workers, suppliers and the national interest, particularly when a company is regarded as a national champion. The European debate around shareholder activists is often characterized as a fight between free-market "Anglo Saxon" beliefs versus the "Rhineland" model.

Although European tension over shareholder activism has racheted up to a level that seems to promise regulatory change, the end result is hard to predict. The more activists publicly take on corporations, the greater the pressure to curb their activities in some way – even though the most vocal activists have had little success. The activists who tend to make headlines also aren't representative of the many investors in the region who prefer private dialogue with management to public agitation.

But even the most discreet activists are hampered by rules in some European countries that tilt against shareholders, and by attempts to roll back the limited rights that exist.

Holland is a good example of this dynamic in connection with the row over Dutch bank ABN-AMRO. Earlier this year, The Children's Investment Fund (TCI), a U.K-based hedge fund, wrote an open letter to ABN-AMRO that pushed it to pursue options for a merger, sale, >>

Shareholder activists rattle Europe and Asia

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or spin-off of some assets. The bank announced agreements to merge with Barclays and sell its U.S. unit to Bank of America. This was challenged by a Dutch shareholder group. The group won a court injunction ordering the sale of the U.S. unit to be put to a shareholder vote. Holland's Supreme Court overruled the injunction.

The banking sector and regulators are keenly watching the situation. Activism elsewhere in the sector is widely anticipated, and it has recently been reported that HSBC has now been targeted by activist investor Knight Vinke.

Despite support for investors' rights to hold management accountable, there have been some calls for more regulation. The Association of British Insurers, a leading investor body that supports strong corporate governance standards, recently called on the FSA to require greater disclosure of activists' holdings, particularly when a fund has an economic interest through a derivative position but does not own physical stock.

So far, threats to regulate activism have remained just that. Although European leaders such as German Chancellor Angela Merkel and French President Nicolas Sarkozy have argued for regulatory intervention to curb hedge fund activism, other G8 leaders snubbed Merkel's call for a G8 Code of Conduct at the group's May summit. The AGM season in France saw a steady increase in legal poison pills, but efforts by the European Commission to outlaw them throughout Europe were undermined by Commission-sponsored research that found little to no adverse impact on valuations for companies that use poison pills.

Several leading European hedge funds have taken the proactive move of asking Andrew Large, former deputy governor of the Bank of England, to lead a study on voluntary self-regulation of the European hedge fund industry. But even if hedge funds agree to improve transparency on issues such as the identity of their own investors and disclosure of their positions, the legitimacy of shareholder activism will remain questionable in many quarters of Europe. Any subsequent action to curb what politicians regard as unhealthy activism is likely to undermine broader shareholder rights in the region.

Activists on the hunt in Asia

Shareholder activism is gaining momentum in Asia as global investors begin to hunt further afield from their traditional markets in Europe and the U.S. for companies they perceive as undervalued. Although Asian stock markets saw significant improvements in recent years, particularly in South Korea and Japan, investors maintain that many companies in these markets can return more value to shareholders.

With the exception of the Murakami Fund in Japan, large global institutions and hedge funds rather than domestic funds have led the way in Asia. (The Murakami Fund, long controversial in Japan, made headlines again in June when Yoshiaki Murakami himself was sentenced to two years in prison after being found guilty of insider trading.)

Japan saw a burst of activity this spring from foreign activist shareholders demanding bigger dividends from conservatively managed, cash-rich companies. The number of shareholder resolutions submitted during Japan's annual meeting season in June hit a new high this year, roughly doubling that of 2006, which partly reflects just how rare such actions were until now.

Increased overseas stakes in Japanese firms are driving the trend, with foreign investors now holding a record 28% of Japanese shares even as the number of domestic "stable shareholders," such as Japanese banks, has dropped. More than 300 Japanese companies have introduced pre-emptive poison pills in response to the rising tide of activism, while other firms have proactively hiked their dividends or announced stock buybacks.

U.S. hedge fund Steel Partners Japan Strategic Fund has stirred debate in the region by taking a stake in 30 Japanese companies and making takeover bids for a handful of them, including condiment maker Bull-Dog Sauce. But Steel is by no means the only foreign activist making waves. TCI and Brandes Investment Partners are among the foreign funds currently pushing Japanese companies to raise their dividends, and Perry Capital is gunning for part of NEC Corp's 70% stake in its NEC Electronics Corp. unit. And while every shareholder resolution lost in this year's annual meetings, some resolutions garnered as much as 35% of shareholder support. The view in Japan is that activists are hardly in retreat. On the contrary, they are seen to be regrouping and honing their strategies for the coming year.

Foreign activists have sparked some telling cultural clashes. Warren Lichtenstein, the head of Steel Partners, infuriated the Japanese public and the financial community by stating his intention to >>

"educate Japan." Yet the Japanese press appears to recognize that not all activists are alike. There has even been some sympathy with Steel, in the form of criticism of the Japanese High Court, which ruled that Bull-Dog Sauce's poison pill is legal because Steel is an "abusive acquirer."

In South Korea, the landscape has changed since 2005, when Dubai fund Sovereign Global Investment struggled unsuccessfully to remove Korean oil refiner SK Corp.'s chairman, who had been convicted of accounting fraud. Korea has since become an activist battleground. Korean companies are viewed as good buys, with solid businesses and lower share prices relative to earnings than companies in other markets.

Korea Tobacco & Ginseng (KT&G), South Korea's largest tobacco company, provided the platform for the country's first taste of high-profile U.S.-style investor activism last year, when Carl Icahn acquired 6.6% of KT&G and pushed for restructuring of the company. His partner, Steel Partners' Lichtenstein, was elected to the board and pushed through a number of changes that boosted the dividend and resulted in a 33% return in 10 months. The case demonstrated that shareholder activism can force even notoriously change-resistant South Korean corporations to shift course.

Elsewhere in the region, both Singapore and Hong Kong have seen a few examples of shareholder activism, most notably over Giordano International Ltd., Hong Kong's largest clothing retailer, but such incidents are still fairly limited. The same goes for China, which so far has had only a few isolated cases of minority shareholder activism.

U.S. and European activist funds are clearly scouring the world for results. Investor activism remains nascent in Asia in comparison to the West and is only really prevalent in South Korea and Japan. But there have been enough shareholder activist cases in the last two years to suggest that momentum is growing and that a new era of activism is under way in Asia. ■

Key players

High-profile activists often band together. Here is a list of alliances over the past 18 months, along with their favorite fellow travelers.

Barington Capital Group, LP
- Ramius Capital Group, LLC
- RJG Capital Management, LLC
- Zwirn Holdings, LLC

Carl C. Icahn, Icahn Associates Corp.
- Sandell Asset Management Corp.
- Steel Partners II, L.P.
- Meadow Star, LLC and WH Rome Partners, LLC
- JANA Partners LLC

JANA Partners LLC
- SAC Capital Advisors, LLC
- Third Point LLC
- Icahn Associates Corp.

Nelson Peltz and Peter W. May, Trian Fund Management, L.P.
- Sandell Asset Management Corp.
- Pershing Square Capital Management, L.P.

The Children's Investment (TCI) Fund Management, LLP
- Atticus Capital, LLC

Pirate Capital LLC
- Caxton Associates, LLC

Ramius Capital Group, LLC
- John Mutch of MV Advisors LLC
- Castlerigg Master Investments Ltd., affiliate of Sandell Asset Management Corp., together with Cornell Capital Partners LP, and Evolution Master Fund Ltd
- Moon Capital Master Fund Ltd.
- Barington Capital Group, LP
- Zwirn Holdings, LLC and RJG Capital Management, LLC
- Knightspoint Partners II LP
- Black Sheep Partners, LLC

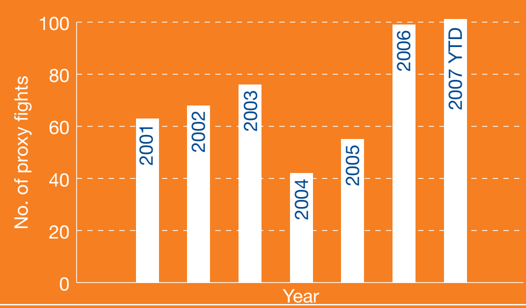
SAC Capital Advisors, LLC
- Oppenheimer Funds, Inc., D.E. Shaw & Co., Inc., and Tudor Investment Corporation
- JANA Partners LLC
- Icahn Partners LP, together with Franklin Mutual Advisers, LLC, and JANA Partners LLC

By the numbers

Statistics show that the number of U.S. activist campaigns has risen sharply in the past four years.

Proxy fights 2001 to present*

Year	Total
2001	63
2002	68
2003	76
2004	42
2005	55
2006	99
2007	102 Year-to-date



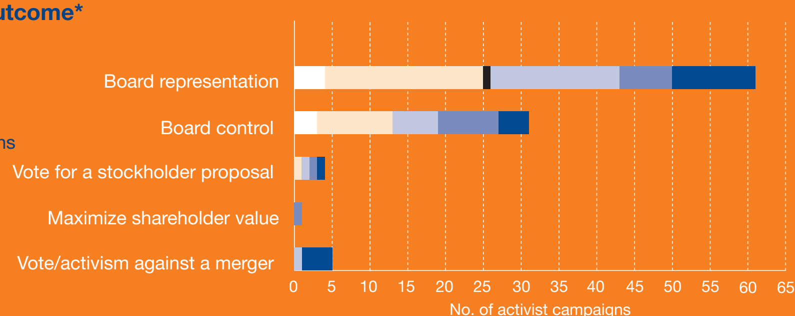
Activist success rate*

Year	Activist wins (%)
2001	44
2002	46
2003	37
2004	45
2005	55
2006	58
2007	52 Year-to-date

Campaign type/outcome*
2007 Year-to-date

Key

- Dissident win
- Settled/concessions made
- Split vote
- Pending
- Withdrawn
- Management win



* Source: FactSet SharkRepellent data as of August 27,2007 refers to U.S. only

About Brunswick Group

Brunswick Group is a leading corporate financial communications consultancy with offices around the globe. The firm provides strategic advice to businesses and other organizations, helping them address critical communications challenges that may affect their valuation or reputation. Brunswick advises on media and investor relations programs, M&A transactions, activist defense, corporate reputation, and crisis and litigation management. In 2006, Brunswick was ranked first by mergermarket in announced transactions in North America and Europe and advised on deals worth over $750 billion.

For more information please contact:

In the US:
Mike Buckley / Amanda Duckworth
Tel: 415 293 8461
Email: mbuckley@brunswickgroup.com / aduckworth@brunswickgroup.com

In Europe:
Gill Ackers
Tel: 44 20 7404 5959
Email: gackers@brunswickgroup.com

In Asia:
Tim Payne
Tel: 852 3512 5000
Email: tpayne@brunswickgroup.com

A PDF of this newsletter is available. Please email newsletter@brunswickgroup.com