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GOWLINGS

**COGENCY
GROUP**

**MARCH IN
NUMBERS**



**ACTIVISM
MONTHLY** *Lite*



Activist Insight

www.activistinsight.com



Editor's letter

Josh Black, Activist Insight

Welcome to an issue of Activism Monthly with a slightly different flavor. This month we've gone to great lengths to talk to some of the most important people in Canadian activist investing to understand some of the big questions being asked about that country. We've asked Patricia Olasker and Wes Hall, who worked on Bill Ackman's proxy fight at Canadian Pacific, as well as Walied Soliman and Orestes Pasparakis from Norton Rose Fulbright questions such as: Will the US invasion continue? Is Canada a great place to be an activist?

The articles contained in this magazine suggest that activism has indeed achieved a kind of breakthrough since Bill Ackman took on Canadian Pacific in 2012 in a proxy contest most thought he would lose. There has been significant activity in Canada since then, driven by high reporting thresholds, the ability to requisition shareholder meetings and the lack of well-funded homegrown activists (though assets under management are apparently growing).

However, a series of recent campaigns suggest that talk of an "activist's paradise" is not straightforward. Many Canadian campaigns involve expensive litigation, and the beginnings of a groundswell of support for pro-board governance changes suggest that activists will be resisted forthrightly.

We are also happy to have finalized the results of a survey we carried out in association with FTI Consulting of activists who have been involved in over 500 campaigns between them and include well known names, as well as established mid-cap players and new funds.

“Talk of an activist paradise in Canada is not straightforward”

The results of this survey are fascinating. Given the significant increases in the number of companies targeted since 2010, it's worth bearing in mind that activists believe only 31% of their engagements enter the public domain. More importantly, perhaps, of those surveyed, 69% support other activists by investing in previously commenced activist situations. These investments are often not disclosed, but are a powerful force for companies to reckon with.

As we have often said, activism comes in many flavors. One of those revolves around M&A activity and is favored by event-driven funds. The results of the FTI/Activist Insight survey suggest the return of animal spirits to the economy will embolden these activists—89% of those surveyed say that the amount of M&A activism will increase this year, and 45% say it will see the largest increase,

above other types of activism.

Within the bracket of M&A activism, we are likely to see two kinds of approach. On the one hand, activists are likely to engage in strategies that force up an offer price to the benefit of all shareholders, something they are keen to stress distinguishes them from the corporate raider stereotype from the 1980s. Yet activists are also keen on companies being careful with their cash, and will intervene to veto acquisitions they disapprove of. Either way, activism should be in the minds of company directors involved in M&A deals this year as they defend themselves to shareholders.

Two other announcements are worth noting before you enjoy this second issue of Activism Monthly Premium. First, we are pleased to announce we'll be media sponsors of a conference on The Growth of Activist Investing in Europe in London this June, details of which are available on request. Second, Activism Monthly Premium is now subscription only. If you're reading your copy now, your support is much appreciated. If you're reading our slimmed-down electronic edition, Activism Monthly Lite, and want to read the great features I've mentioned, please contact me to find out about our fantastic rates. As ever, I hope you enjoy reading this magazine, and look forward to hearing your comments.

The strategists

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An interview with Kathleen Keller-Hobson and Bob Armstrong of Gowling Lafleur Henderson LLP

Perhaps we could start with the shareholder activism practice and how that's grown over recent years.

Kathleen Keller-Hobson: Activism has increased significantly in Canada over the last several years and our activism practice has really grown with that trend. We represent both activists and issuers, but last year saw us working with a lot more activist and dissident shareholders. There has also been a significant amount of behind the scenes advice. While activism is a relatively new development in Canada, Bob and I have both been practising for over 30 years so our experience in this area also precedes the recent growth. My background includes public M&A and securities law, and Bob is an experienced commercial and securities litigator, which are important parts of strategic planning for an activist campaign.

Bob Armstrong: One thing that distinguishes us is that we are trying to provide the best result for our client. Sometimes that involves letter-writing campaigns and making a lot of noise, but that's not the only way to run an activist campaign. We're very strategic, we see ourselves as problem solvers. There were some campaigns last year where we thought, 'what can they possibly gain from going to court?' And we were proved right. If you can identify a leverage point, you can use that to achieve your aim. That is especially so

in activist campaigns.

You say you've had increasing interest from US activists recently. What are some of the attractions of Canada from an activist's perspective?

KKH: The major one is that it's easy to convene a shareholder meeting when you own 5% of a company's shares.

“ Activism has increased significantly in Canada ”

That allows you to nominate a full slate, replace a couple of directors or conduct any other kind of business. We don't have staggered boards here, so you can remove directors at any time. But the ability to requisition a special meeting comes with a proviso. When faced with a valid requisition, a company has to give notice of the special meeting within 21 days. But the actual timeframe for holding the meeting isn't prescribed by law, so the courts have deferred to the 'business judgement' rule, and sometimes found a delay of 5 to 6 months to be reasonable.

BA: All the US activists we've met recently have been asking us about Canada's 'oppression remedy.' To understand what this is, think of it as a 'fairness remedy.' If a company comes up with a plan that disadvantages

shareholders, or delays a meeting for its own purposes, the court often takes offence, and has the widest range of remedies you can imagine. In doing so, the court is trying to find a good result for shareholders. This is a powerful tool, and is being used more and more.

KKH: Another thing that makes Canada a good place to invest is that it is familiar to US investors. They don't see it as quite so foreign as other jurisdictions, and that helps to build a real rapport with institutions.

Is the general mood in Canada favorable to activism?

KKH: There have been some positive outcomes recently, so the general mood is positive. Institutions are less transparent about when they are likely to support an activist than in the US, but some major pension funds have disclosed their sympathies to activists' campaigns recently. It's worth noting we have significant pension funds in Canada, who can hold large positions in a stock.

BA: Something I've noticed, and I think Kathleen agrees, is that institutions appear to be giving an indication that they will be more open in their support within the next 24 months or so.

KKH: There has been talk of the symbiotic relationship between activists and institutions, where the latter invite

“WE ARE INCREASINGLY GOING TO SEE AMERICAN AND CANADIAN ACTIVISTS WORKING TOGETHER”

activists to look at stocks the institutions have invested in. That’s also happening with other stakeholders, because activists are seen as effective in bringing change.

Presumably they will be cautious about being classed as an investment group?

KKH: That’s right. Our early warning threshold is 10%, which is twice as high as in the US, but there is a proposal to bring it down to 5%. Investors here have to be conscious of the reporting threshold which captures a group of investors acting in concert—there was a case last year where an issuer successfully argued that an activist was not properly reporting its stake with other investors. Another thing activists should be conscious of is that when they reach 20% ownership of a company along with joint actors, they may trigger a takeover requirement, where they have to make an offer to other shareholders.

How would you advise issuers to respond to activists?

BA: It’s important for issuers to reach out to activists, especially when there is likely to be litigation. You don’t want to go before a court and say you rebuffed a meeting requisition on an unreasonable basis. Behaviour is also very important where a shareholder seeks the oppression remedy. Litigation can be used very strategically by an activist.

KKH: Canadian companies started adopting advance notice by-laws within the last two years to prevent shareholders from nominating directors at the AGM. Because it’s annual meeting season now, I am seeing companies adopt these by-laws every day, and it’s something they should consider. Last minute shareholder nominations are like stealth proxy contests, and mean some companies are quite unprepared.

Are there any other trends you’ve noticed in activism recently?

BA: I think we are increasingly going to see US and Canadian activists working together. It’s something that’s been talked about a lot, and Canadian activists are being approached about partnering up.

KKH: One trend is the increasing use of advisers, and investment bankers in particular, by both sides. Activists use them to review their white papers, and companies are considering their strategic options earlier. In fact, there are a whole host of advisers—proxy solicitors, media and strategic communications firms—and they’re being hired earlier. To be successful an activist now has to run a pretty clever campaign, and has to be prepared to give off-the-record briefings and soundbites to the media.

Gowling Lafleur Henderson is one of Canada’s largest law firms with offices across Canada. Its multi-disciplinary team provides strategic advice to shareholders, activist investors, issuers and special committees on all aspects of shareholder activism, including activist and defensive strategies, securities law compliance, proxy contests, and proceedings before the courts and securities regulators. For more information about its shareholder activism practice, contact Kathleen or Bob using the details to the right.



Kathleen L. Keller-Hobson
Partner
+1 416 862 4359
kathleen.keller-hobson@gowlings.com



Bob L. Armstrong
Partner
+1 416 862 3594
robert.armstrong@gowlings.com

Activist Monthly Premium

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Keeping Pace

An interview with Jack Muir and Rick Wlodarczak of Cogeneity Group

Cogeneity Group is a new investment firm based in Vancouver that also provides investment banking, proxy solicitation, investor relations and management services. Its partners were previously principals at Nova Bancorp. The firm is constantly looking for compelling investment opportunities and the opportunity to be a key player on a deal or management team.

[Your business has been rebranded as Cogeneity Group? What else has changed?](#)

Jack Muir: 2013 was an important year for us. Most of Q1 was dedicated to a proxy contest with the board of Pace Oil & Gas Ltd. We had opposed a \$500 million merger transaction. After this contest, we began investigating new business opportunities, initially in the proxy solicitation business and eventually in the investor communications area as a whole.

As a result of this investigation, the “change” in our business is the primary focus on investor communications, which includes our providing services to both shareholders and companies.

Rick Wlodarczak: Some things haven’t changed. Oil & gas continues to be a focus. We understand the business and we know the players in Calgary. To be honest though, we have experience in many other sectors. We’re in Vancouver

after all, so we’ve covered a wide range of mining companies over the years.

[What’s the single biggest lesson you learned from the Pace contest?](#)

RW: Time kills. In the Pace contest, our initial success forced the board to postpone two shareholder meetings. As a result, the process dragged on for three months. Serious portfolio managers often can’t justify the time necessary to follow a protracted contest. In our case this problem undermined some of our support. This is a reality many activists underestimate.

Unfortunately the only way to eliminate this problem is expensive and by no means certain. Mounting legal challenges on any issue is always risky. To defeat a board’s delaying tactics however, a coordinated legal, regulatory and PR initiative might be justified.

[There already seems to be many proxy solicitation and communication firms in the Canadian market. What sets you apart?](#)

JM: I think we have a unique offering. We combine institutional quality due diligence practices with exceptional communication skills. We can help shareholders and companies analyze, plan and execute any investment or business strategy. Our service offering is particularly well suited to activist investors.

We do extensive financial, technical, legal and shareholder research. When necessary, we enlist third party consultants to work with us. Detailed due diligence is a critical element of our approach to communications, which targets both the institutional and retail markets. Press releases are the building blocks. We believe a press release needs to serve a broad market including the proxy advisory firms, investment funds, brokerage analysts and small retail shareholders. We can spend days getting them right. Press releases are also the fuel for any PR initiative or digital, social or mobile strategy. They’re so important.

We believe we offer certain of the services of an investment banker, a proxy solicitor and an IR or communications firm. The difference? It’s all under one roof here. Combine that with our entrepreneurial approach to business, and I think you have a winning proposition.

Jack Muir and Rick Wlodarczak are the founding partners of Cogeneity Group. They were previously principals at Nova Bancorp. Prior to that Mr. Muir was at Sprott Securities and Mercantile Bank. He holds a BA, MBA and CA. Mr. Wlodarczak was at Consolidated Environmental and Continental Securities. He holds a BCom, CA and CBV.

Cogency Group

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New Focus

Investor Communications

Here's the Big Picture



We've Got It Covered!

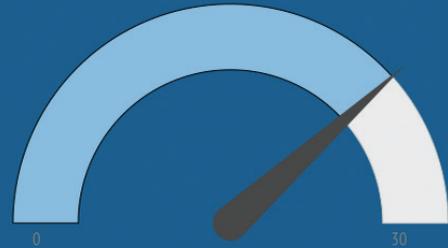
Cogency Group Partners Inc.
204-1650 Duranleau Street
Vancouver, British Columbia
V6H 3S4 Tel: 604-336-3809
jackmuir@cogencygroup.ca
rickwlodarczak@cogencygroup.ca

March in numbers

Activists active in March



Location of new investments

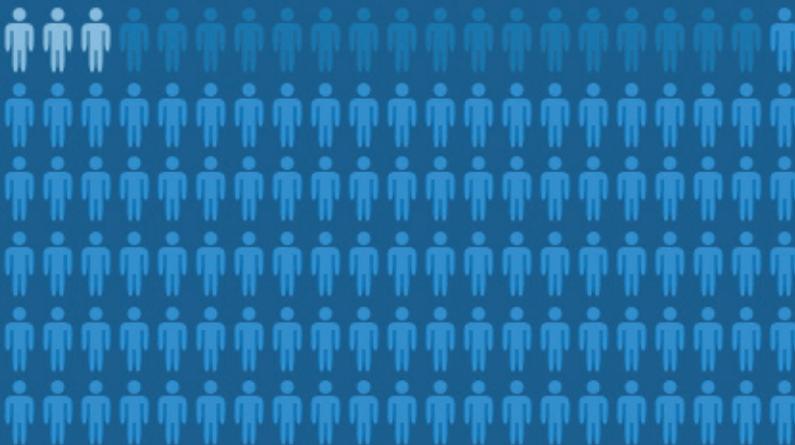


77% of new campaigns were at US companies



20% of new campaigns were at European companies

Doubling up



4 activists 3 activists 2 activists

131 companies have more than one activist on their share register, and in these cases activists own an average of 17.1% of the company's shares

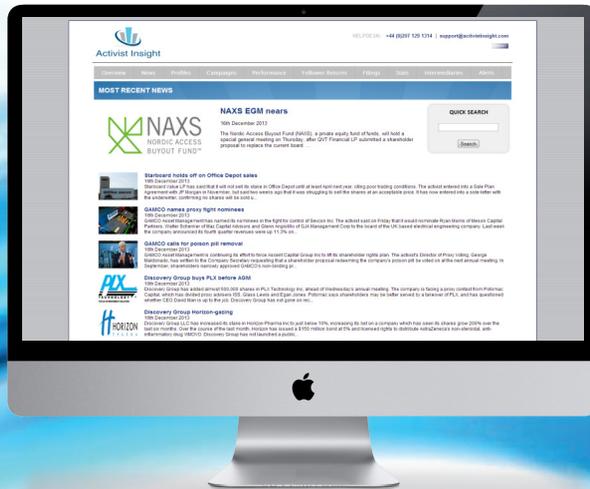
13D digest

11

Number of SC 13Ds filed by activists in March, up from 9 in February

85

Number of SC 13D/As filed by activists in March, up from 64 in February



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