The Activist Report

13D Monitor

Volume 5 Issue 2 February | 2015

Compensating Potential Director Nominees to Achieve the Best Slate

By Steven A. Seiden

Proxy advisors and institutions have come to accept that a payment of approximately $50,000 (and higher in some cases) by an activist to those they nominate is justified. The use of the names of these individuals, their time spent completing the lengthy D&O questionnaire, and their involvement in the occasional "road show" merits such compensation. What follows in this article is an equitable plan to create a "win – win" for all who participate in the process.

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Under the Threshold Activism Below 5%

NEW

BROOKDALE SENIOR LIVING

On February 6, 2015 Sandell sent a letter to Brookdale Senior Living (BKD) urging the Company to spin off its real estate portfolio to shareholders through the formation of a REIT and reconstitute its Board. Sandell believes the changes could help boost the Company's price to $49 per share. Sandell would like to see the Board appoint two new members with real estate experience and make certain changes to its corporate governance which would make it easier for shareholders to elect new directors, such as adopting annual board elections and giving the investors the ability to call special meetings. Sandell did not specify its stake in the Company, but stated that it is a shareholder.

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HIGHS AND LOWS

zoet-tle-ment [zo-et-l-muh nt] a settlement agreement between a company and an activist that shows signs of the the company's continual bias against activists in general, and the activists' lingering suspicions of distrust, often due to the over- lawyering of paranoid advisors. Pershing Square's settlement with Zoetis had more than a few interesting provisions. First, Zoetis restricts Pershing Square from selling their shares to any holder who would own more than 5% and has run a proxy contest with respect to ***another company*** in the past three years. So, basically they are saying that any share-

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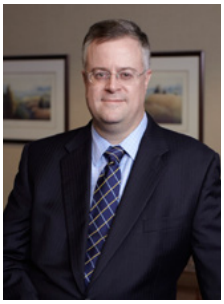
10 Questions with Christopher Davis

Christopher P. Davis is the partner in charge of the Activism and the Mergers and Acquisitions Groups at Kleinberg Kaplan. Chris has been delivering results for his activist hedge fund clients for nearly two decades in engagements ranging from constructivist dialogs to contested tenders and proxy battles. Christopher took the time to sit down with us for this month's edition of *10 Questions*.



13DM: Kleinberg Kaplan has somewhat of a unique activist representation practice. Can you tell us a little about your practice and what type of engagements you represent?

CD: Kleinberg Kaplan has been representing activists in a full range of

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COMPENSATING POTENTIAL NOMINEES (cont'd. from pg. 1)

The goal is to assemble a pool of highly qualified and willing candidates who will make a meaningful contribution in the boardroom towards enhancing shareholder value.

When recruiting dissident nominees, the search consultant representing the activist or company first needs to identify those whose profiles closely match the requisite criteria. Because the standards are higher in a contested election and there is still a certain reluctance to be on an activist's slate, at least four times the number of prospects needs to be approached. That requires considerably more time than in a non-contested situation. It is frequently necessary for potential nominees to be bound by a confidentiality agreement, adding another element to the process. Additionally the nominee will likely request written indemnification combined with an agreement to be paid the promised sum.

So the question is how to coordinate the slate recruitment process with the compensation of the nominees. In my experience in over some 30 activist (and corporate) situations, there has evolved a multi-stage modus operandi, which has yielded the best slates.

To obtain the willingness of a potential individual but at the same time not commit to nominating him/her is a desirable objective. (Merely signing a confidentiality agreement where necessary is evidence of a basic interest in board service and requires no payment.) An activist or company should agree to a partial payment of $10,000 – $20,000 to those who go through the process, including paper work, background checks, interviews, etc. and agree to be nominees. The balance of the $50,000 should be paid to those who are ultimately selected for nomination. Here's why. Say the activist (or acquisitor) wants to nominate six directors. Using this tactic provides the luxury of being able to choose the very best suited people within a group of perhaps twice that size without officially having to name them. Thus the activist can avoid the temptation to sign the first six willing individuals required to fill the intended slate. The beauty of this is that if individuals meeting more of the desired criteria surface before the proxy deadline, they can be chosen. Conversely those whose D & O questionnaires, media histories, or background checks reveal unfavorable items can be eliminated on a timely basis. Fairly compensating those who enter the process but are not ultimately selected for the slate encourages a broader range of individuals to participate. Most important, this "option" on potential nominees provides the widest latitude in the selection process.

When the activist is ready to make the slate public, he should notify those to be nominated or not and remit the balance of the $50,000 accordingly. That should also apply to any person submitted to the target company to be considered in a settlement.

The benefits of assembling a world class slate by optioning a larger group than required far outweigh the additional $10,000 - $20,000 costs in doing so.

Steven Seiden, President of Seiden Krieger Associates, a New York search firm, has recruited directors for activists and companies alike.

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CHRISTOPHER DAVIS (cont'd. from pg. 1)

engagements since the late 1990s, targeting companies ranging from household names to small caps. Our ranked activism practice grows out of the confluence of Kleinberg Kaplan's traditional specialty in forming and advising leading hedge funds and our extensive experience in M&A. Whether representing multi-billion dollar activists or newer players, we have successfully helped our clients obtain Board representation and control, institute financial and operational improvements, upgrade underperforming executives and directors, oppose poorly conceived business combinations, foster well-conceived business combinations, win important litigations and pursue lucrative new commercial and partnering opportunities. Yes, we have had major proxy contest victories and settlements, but we have also had many satisfying below the radar successes for our clients.

13DM: What advice do you give your activist clients about approaching management? When should they first approach them and what should the tone of that conversation be?

CD: Start out with an eye towards the furthest step you might contemplate taking in the upcoming proxy cycle and work backwards from there so you do not foreclose options if management and the Board react in a negative or unpredictable way. My preference is to engage early and constructively whenever time permits. People naturally do not like having their work criticized, and management is prone to take what the activist is saying as a personal attack. Yet the goal of value creation is one that good management teams and activists can and should share. Placing the focus on the analysis of what is not working and providing new ideas of how to improve things can be done in a way that fosters cooperation if not immediate trust. Focus on content, not personality. If ultimately management cannot rise to the occasion in the face of the compelling story presented by the activist, then the activist can still present that story to the shareholders, with the added bonus of having created a record showing the lengths to which the activist went to avoid unnecessary and expensive discord. Nothing obligates the activist to stick to engagement if management is not serious about making progress.

Admittedly some activist engagements, such as opposition to announced deals, may require you to move directly to a more pointed challenge to management. Additionally, if the activist knows that a fight will be unavoidable, it may be well served by creating a big splash by making things public at the outset and avoiding prior communicating with management. Having that first-mover advantage can be beneficial to the activist in attracting both publicity and like-minded investors to its cause.

13DM: What is the biggest thing an activist could do to be well received by management?

CD: Do your homework, understand the situation and go in with a plan of having a real conversation with management. I think that this is one area where most of my colleagues doing the company defense work and I agree -- it is generally in nobody's best interests for an activist to approach management with guns blazing. Volume is not a substitute for convincing arguments; testosterone is not a substitute for judgment.

While all situations are different, I have generally found it to be more effective and beneficial for an activist to approach management with the goal of reaching a mutual solution that is reasonably acceptable to all parties. The activist should view those initial interactions with management as an opportunity -- management, for all of its possible flaws, knows (or should know) the company better than anyone else. During those initial stages, the activist has an opportunity to gain significant insight into the company and its management with minimal additional effort. If common ground can be reached and a viable working relationship can be established, then the improvements by the company can be particularly cost effective. The alternatives – including proxy contests or litigation -- are expensive and time consuming and, while often effective tools for activists, should not be taken lightly.

I would also emphasize how important it is for other shareholders who support the activists ideas to reach out to management and make their wishes known. Even bad Boards can count.

13DM: What is the biggest thing that Boards could do to be viewed as shareholder friendly?

CD: Activists really can tell the difference between directors who are honestly trying to engage with shareholders and those who are merely trying to create a favorable record at the prompting of outside advisors. Smart and well counseled Boards should commit to an open (not necessarily public) dialog focused on the ideas and proposals being

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CHRISTOPHER DAVIS (cont'd. from pg. 3)

presented, and should avoid reacting defensively based on the status of the shareholder as an "activist", or to the identity of the particular activist. It's rare for an activist to fail to present any worthy suggestion, and it is not unheard of for an activist to make a few proposals that are not uniformly supported by the investor base generally. So a Board that wants to look good to their investors needs to work hard to show that it is distinguishing between the two. It should be open-minded enough to recognize when its own game plan is not working or not working fast enough. It should be capable of thoughtfully changing direction to unlock hidden value for shareholders. That is the type of flexibility and leadership that shareholders hoped for when electing the directors as their fiduciaries in the first place. Boards get into trouble when their conduct conveys a disdain for shareholder views, an aversion to investor participation and a readiness to construct enhanced defenses to silence and immobilize shareholders. If directors are hearing their advisors advocate the more confrontational approach, which failed repeatedly in 2014, it may be time to change advisors.

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13DM: Activists are often accused of being short term investors and sacrificing the long term benefit of companies for their short term interests. How do you respond to this allegation?

CD: You need only look to the support activists get from institutional shareholders to see how empty this frequently repeated charge is. Simply put, activists would get nowhere with long term institutional investors if they truly were looking to pocket a quick buck and run. Look at how activist involvement has radically improved things for shareholders on a sustained basis at companies as diverse as Canadian Pacific, Hess and Forrest Labs and it is clear how unsubstantiated that allegation becomes. Note also in each of those particular interventions by Pershing Square, by Elliott and by Icahn, the improvement required multiyear commitments from the activists. Such commitments are hardly unique; and hardly what could be characterized as short term self-interest.

Luckily, Boards rarely if ever prevail against activists by labeling them short term investors. Boards prevail when their stockholder base believes that the Board's plan is better than the activist's. Perhaps Boards should spend a bit more time focusing on that.

13DM: The size of the activist investor community is growing at an exponential rate. You represent seasoned activists and first time activists as well as activists all across that spectrum. Do you see a difference in how different types of activists are received by boards with whom they engage?

CD: Each situation necessarily is different, with multiple variables influencing how the activist is perceived. A reputation that proceeds you can be both an advantage in terms of instant credibility and a disadvantage if the Board thinks reasonable compromise is unlikely. A first time activist can go a long way towards compensating for its lack of a track record by being well prepared with rigorous analysis and good materials, by having proposals that are likely to elicit broad investor support, by displaying a cool and practiced demeanor in interactions with the company's negotiators, and by surrounding himself or herself with a seasoned deal team that can help avoid the foot faults that can derail a campaign. As activist counsel we dedicate considerable time and attention to weighing the various factors to help our clients and their other advisors formulate the game plan most likely to achieve their goals for the position.

13DM: When I started 13D Monitor in 2006, even activists did not want to be referred to as "activists." Now it seems like every fund wants to be considered activist to some extent. We even just heard of an activist defense lawyer starting an activist hedge fund. What are the pros and cons to such a widespread adoption of activism?

CD: I know how you feel. When I started doing activism I don't think activism was even a word. It has been great to see it grow into the movement you see in 2015.

Generally the spread of activism to new

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CHRISTOPHER DAVIS (cont'd. from pg. 4)

players, whether as a strategy or a tool, continues to be positive. There are plenty of underperforming public companies in the market, and more activists means that more Boards will be held accountable. More ownership in the hands of activists and shareholders inclined to support activists could translate into more Boards seeing the writing on the wall earlier in the engagement process. It will drive real economic growth. Frankly, it has been exciting to see the rise and success of a new generation of activists whose returns continue to be noteworthy.

Rapid expansion can pose risks, too. Potential activists, particularly those not spinning off from established activist firms, need to understand how critically important it is for their first foray or two into the arena to be successful. Regulatory, communications and negotiating pitfalls abound for the unwary and inexperienced. Choosing the right advisors with a demonstrable specialty in helping activists navigate those dangers is important. There is also the risk of overlap, with activists discovering after a lot of effort that one or more other activists has similar designs on the same corporation.

13DM: The growing acceptance of activism by the marketplace and institutional investors seems to be allowing activists to expand their playbooks like the Pershing Square/ Allegan strategy or going for control of companies like Darden and Commonwealth REIT. Are these strategies just circumstantial or do you expect to see more of this in the future?

CD: Perhaps a little of both. Activists and their lawyers are by nature creative and on the lookout for new opportunities and strategies. That said, I am not convinced that innovative structures like Pershing Square/Allergan will proliferate, partially because you need willing and capable corporate M&A counterparts. But activists did not fail to notice the potential.

Fights for control will continue to happen, but the success of those will always be partially a function of how tone-deaf and entrenched a Board is in responding to the activists. After management seriously misplayed situations like Darden, Echo Therapeutics, Bob Evans and Commonwealth, you have to think that Boards will figure out that antagonizing the shareholder base is an embossed invitation for being swept out of office. It certainly made it easier for proxy advisory firms to get over their traditional reluctance to support changes of Board control. Failure to learn that lesson would indicate a real learning curve problem in corporate America.

What I do think has permanently changed is that the deference investors gave to Boards in the wake of the recession is gone for good. Companies cannot expect their shareholders to accept that the management's plan for value creation will work if just given a few more years. Accountability has become accelerated. Fund managers who owe fiduciary duties to their investors just as public company directors owe fiduciary duties to their shareholders, and understandably expect directors to be as focused on value and wealth creation as they are. If a Board is "too chummy and not doing its job" (to borrow a quote from a Sotheby's director), then that Board should expect shareholders will act to fix the problem.

13DM: What do you think the most pressing corporate governance issues will be over the next five years?

CD: I believe my activist fund clients are focused on issues like:

- The need for more imminently qualified directors independent from management and existing director group-think, who are willing to explore all available options for realizable value creation. Honest Board self-evaluations could help eliminate problems, such as perpetually re-nominated directors, but I am not optimistic change will come from within.
- Unilateral adoption by Boards of bylaws and other defensive measures that inhibit shareholder rights, no matter what spin management may try to put on them. Directors may see these as defense in depth. Investors can see these as betrayals.
- Timely assessment and management of risk.
- Paying for the right type of performance while avoiding false incentives that reward insiders without

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creating appropriate value for the shareholders.

13DM: Do you see the level of shareholder activism increasing or decreasing over the next five to ten years and any trends that you foresee?

CD: There is no reason to think that a decrease is around the corner absent some regulatory intervention to tilt the playing field or a downturn in the positive impact activists are having in unlocking value. In my view activism is the new normal. It is an entirely appropriate way to interact with management and Boards at companies that are underperforming peers or failing to meet their obvious potential. For the foreseeable future activism should increase.

"In my view activism is the new normal. It is an entirely appropriate way to interact with management and Boards at companies that are underperforming peers or failing to meet their obvious potential."

A number of trends do worry me:

- Judicial developments, such as the decision upholding Sotheby's discriminatory pill, that make it increasingly hard to believe that activists are getting treated the same as other shareholders.
- The extremes to which some Boards are going to silence, sideline or pauper their activist critics. I'm thinking particularly of things like fee shifting bylaws, abusive advance notice bylaws that plainly are designed to be suppress shareholder participation despite pretenses that they are merely ministerial or informational, and the growing tendency to exclude shareholder proposals in favor of Potemkin proposals from management that pretend to achieve the same ends while really frustrating them.
- Strident criticism of proxy advisory firms and even some in the institutional investor community. Where was the outrage when they were voting with management?
- The continued push to change the regulatory playing field negatively. Dress it up with talk of disclosure though you may, it is an attempt to deprive activists of the economic upside that drives the release of value for all shareholders.

Other trends are rather encouraging:

- The sea change in the attitudes of institutional investors, and in their demands for demonstrable value generation that is not somewhere over the rainbow, has meant that management continues to lose even when it deploys every available defense and delay tactic. Boards may want to think about the blowback from obvious entrenchment schemes in this environment.
- Increased and lasting media attention to activist matters, including when they intersect with M&A. This probably has sped up the acceptance of activism.
- Some of the returns have been phenomenal. Success has led to more available capital, and spawned imitators and innovators.
- Smarter Boards are starting to listen to the voice of reason and their more reasonable advisors, with a resulting increase in engagement with activists resulting in a trend towards settlements that benefit everyone.
- The SEC's willingness to consider ways to improve proxy voting, including universal ballots.

Some trends that I would like to see develop:

- Greater activist involvement from funds managed by women. The relative returns of hedge funds run by women is well known, and in my experience women managers make superb activists.
- Boards proactive enough to catalyze change in the absence of an activist, and brave enough to initiate value-focused conversations with their shareholders.

Overall, the last three years in particular have been good times for activists and the prosperity they bring. Let us hope that trend continues.

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HIGHS AND LOWS (cont'd. from pg. 1)

holder who exercises its right to nominate directors is bad. This provision appears to have the fingerprints of Wachtell Lipton all over it. Second, Pershing Square actually had to get Zoetis to agree in writing that they will not utilize committees of the Board for the purpose of discriminating against the new directors in order to limit their participation in substantive deliberations of the Board. Not exactly kumbaya.

Activists as "Short Term" Investors? **Nelson Peltz** steps down from the board of **Legg Mason** after more than five years on the Board during which time the stock appreciated by 86.12%. **Trian** still owns over 11% of the Company's common stock and has yielded a 113.59% return in the stock versus 76.90% for the S&P500.

Santa Claus, the Easter Bunny and . . . The WSJ just had an article asking why don't activists go after companies that return too much cash to shareholders? I imagine the answer is for the same reason they do not go after companies that severely underpay management or that give too many rights to shareholders – they haven't found any that are undervalued.

Is that the Sound of a Bubble Bursting? Two activist defense advisors with no real history of investing have launched an activist hedge fund and reportedly raised $250 million from current and former CEOs.

Good things Come to those Who Wait. In 2006, **H.J. Heinz Co.**, headed by CEO **William Johnson**, refused to appoint **Nelson Peltz** to its Board stating that Peltz "would be a disruptive force that could hamper the board's efforts to improve the company's performance and lift its stock." Peltz won a proxy fight, got a seat on the Board and the Company was ultimately acquired for more than $23 billion. Eight years later, Johnson is joining Pepsi's board as a Trian Fund Management adviser in a deal between Peltz and Pepsi.

And the Biggest Loser is . . . How is it that so many media outlets have reported that **Pershing Square** lost his battle with **Allergan** when Pershing Square has made no secret from the beginning that its goal and fiduciary duty to its investors was to get Allergan sold for the highest price, regardless of the acquirer? I guess Bill Ackman "losing" sells more papers and gets better ratings than a story on him winning.

So Much For Journalistic Integrity: In a recent article about Jeff Ubben speaking at a conference, the Wall Street Journal, once the embodiment of journalistic integrity, stated: "speaking at a conference closed to the media and off the record, Mr. Ubben said . . ." How do they expect to get credible and candid sources and participants in their stories if they cannot respect the phrase "off the record."

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New Filings for January

Company Name	Investor	Mkt. Cap.	Filing Date	%	Cost	Item 4 Action
OM Group (OMG)	FrontFour	$918.96M	1/9/15	5.80%	$28.02	nominated directors
Energy Recovery (ERII)	Ludvig Lorentzen	$230.33M	1/13/15	16.00%	n/a	nominated directors
Baker Hughes (BHI)	ValueAct	$24.47B	1/16/15	5.10%	$55.68	n/a
Insperity (NSP)	Starboard	$920.56M	1/20/15	13.20%	$33.75	enhance value, explore a sale
Informatica (NFA)	Elliott	$4.39B	1/26/15	5.01%	$36.54	enhance value
A.M. Castle & Co. (CAS)	Raging Capital	$143.14M	1/26/15	16.00%	$7.19	nominated directors

One to Watch

Company	*Investor*	*Investment*
Insperity, Inc. (NSP)	**Starboard Value LP**	**Date of 13D: 1/20/2015**
Market Cap.: $920.56M ($36.34)	**13F Holdings: $2.87B**	**Beneficial Ownership: 13.20%**
Enterprise Value: $637.93M	**# of 13F Positions: 27**	**Average Cost: $33.75**
Cash: $282.63M	**Largest Position: $598.74M**	**Amount Invested: $112.59M**
Debt: 0	**Avg. Return on 13Ds: 29.09%**	**Highest price paid: $35.74**
EBITDA: $68.39M	**Versus S&P500 avg: 9.0%**	**# of larger shareholders: 0**

On January 20, 2015, Starboard delivered a letter to the Company's Board stating its view that the Company is deeply undervalued and that a number of opportunities exist to create significant value for shareholders based on actions within the control of management. Starboard outlines a broad plan to improve the Company's performance, detailing action that management should take to improve execution, reduce operating expenses, improve capital allocation, improve corporate governance, and explore all available alternatives to maximize shareholder value. Starboard believes that the Company can improve its operating margins through a combination of reducing excessive corporate overhead expenses (including selling its two large corporate jets), and more efficiently allocating advertising expenses (including shifting advertising away from expensive television advertising, golf tournaments, and other golf and sports-related marketing). Further, Starboard suggests that the Company should consider share repurchases and explore a potential sale of the Company. In addition, Starboard's letter details several corporate governance policies of the Company that Starboard believes are in need of improvement, including excessive executive compensation, numerous related-party transactions, the lack of an independent chairman, a staggered Board, and the existence of a poison pill. Starboard is making detailed recommendations to the Company in the areas of operations, capital allocation, corporate governance and strategy. The two easiest changes that can be made in the short term would be to cut costs and buy back shares. Just by selling the two corporate jets and terminating the golf related advertising, the Company could increase EBITDA by almost 50% and take in $35 million of additional cash. Combining this with a share buyback gets the Company's stock to $53.84 - $64.80 in Starboard's estimation. Moreover, having two large corporate jets for a company this size and a huge ad spend in golf by a founder/Chairman/CEO (Paul Sarvadi) who is a member of Augusta National has an appearance of perks more than justifiable spending. However, as Starboard points out, these are not problems as much as they are symptoms of a larger problem. That problem is that the Company is being run like a private company for the benefit of the founder more than for the shareholders - a majority of the directors have been on the board since the Company went public in 1997. To fix this problem and get any further shareholder value from the activist agenda would require a management overhaul or a sale of the Company. This may not be that difficult. Aside from Starboard's 13.2%, Stadium Capital owns 9.39% and they had previously publicly suggested a formal review of strategic alternatives. An additional 17% of shareholders withheld votes from director nominees at last year's election. So, winning a proxy fight seems very likely, and Paul Sarvadi is up for election this year. Faced with potentially losing his board seat and potentially his job in the future, he could opt for a sale of the Company. Furthermore, Golden Gate Capital, a private equity firm that acquires these types of companies owns 4.3% of the Company's common stock.

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UNDER THE THRESHOLD (cont'd. from pg. 1)

NEW

On February 10, 2015, General Motors (GM) said that Harry J. Wilson, retired hedge fund investor who helped the Obama Administration restructure GM following the financial crisis, gave the Company notice that he planned to stand for election to the Board at the Company's next annual meeting in an effort to get the Company to repurchase $8 billion of its shares within a year. Wilson also indicated that he represents Appaloosa Management, Hayman Capital, Taconic Capital and HG Vora Capital, which collectively represent a 2.1% stake.

NEW

On February 3, 2015, Marcato Capital Management sent a letter Lear Corp. (LEA) urging the Company to split its car seat and electrical parts businesses into two publicly traded companies. Marcato stated that splitting the businesses could value the two companies at a combined $145 per share. Marcato was initially a 13D filer on the Company and sold below 5% on June 19, 2014. Marcato filed its 13D on February 8, 2013 and on April 1, 2013, settled its proxy contest pertaining to the election of directors to the Company's Board at the Company's 2013 Annual Meeting. Pursuant to the Settlement Agreement, among other things, the Company's Board authorized management to further accelerate repurchases under the Company's existing $1 billion share repurchase program and the Board approved a new two-year share repurchase authorization of $750 million to commence immediately following the completion of the existing $1 billion share repurchase program. Further, the Company agreed to: (i) increase the size of the Board to nine and appoint an additional director mutually acceptable to both the Company and the Marcato-Oskie Group to the Board as promptly as practicable following the 2013 Annual Meeting and (ii) nominate each of the eight individuals currently listed as nominees of the Company in its most recently filed preliminary proxy materials for election to the Board at the 2013 Annual Meeting.

NEW

On January 26, 2015, Sandell sent a letter to SemGroup Corporation (SEMG) calling on it to realize its intrinsic value through reviewing strategic alternatives, including a sale of the Company. Sandell believes there are a number of potential acquirers who would covet the Company's global crude oil infrastructure assets, as well as its strong position in the Montney/Duvernay Canadian shale basins, its US mid-continent gas gathering and processing assets and its exposure to Mexican energy reform through its SemMexico assets. Sandell states that as the cost of debt and equity capital have remained quite low for many of these acquirerers, Sandell believes there would be an active competitive process for the Company, yielding a significant control premium over current share price given the Company's moderate enterprise value, strategic assets and under-levered balance sheet. Tom Sandell further stated that a takeout price of up to $104/share for the Company would easily be justified.

UPDATE

On January 20, 2015, Apache Corp. (APA) CEO, Steven Farris, retired immediately. Mr. Farris will continue to serve as non-executive chairman of the Board until May 1, 2015, at which time he will retire from the Board.

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UNDER THE THRESHOLD (cont'd. from pg. 9)

UPDATE

On February 5, 2015, Dupont sent a letter to Trian stating that its Board considered appointing one of the independent Trian nominees in return for Trian dropping its slate and backing the Company's nominees, but stated that Trian rejected the settlement because it did not include adding Nelson Peltz to the Board. Also, on February 5, the Company announced the resignation of Curtis J. Crawford and Richard H. Brown from its Board and the appointment of James L. Gallogly and Edward D. Breen as new directors. Trian stated that: "With today's announcement, DuPont appears to be acknowledging the need to upgrade its board of directors with individuals that have "fresh, independent, highly relevant perspectives." Trian has spent time with Messrs. Breen and Gallogly and respects their records of stockholder value creation. Trian still believes there is more value to be unlocked and states that the Trian nominees, working collaboratively with the remaining board members, will seek to assure that management is held accountable for achieving their stated financial targets.

UPDATE

On January 12, 2015, EMC Corporation (EMC) appointed José Almeida and Donald Carty to the Board, as part of an agreement with Elliott. In connection with the Board's decision to add these two new board members, Elliott has agreed to certain limited standstill and voting provisions through September 2015, including voting in favor of the Company's proposed slate at the 2015 Annual Meeting.

UPDATE

On January 13, 2015, Sandell sent a letter to the Board of JDS Uniphase Corporation (JDSU) and called for an immediate amendment to the Company's bylaws to remedy changes made in 2014 that Sandell believes frustrates the ability of shareholders to hold the Board accountable for its actions. Sandell states that compliance with the Company's nomination of directors when the date of the meeting is disclosed to stockholders 40 to 60 days before the meeting date is impossible because in that event, the bylaw purports to require that the stockholder deliver notice of nomination on or before the day it learns of the meeting date. Sandell formally calls upon the Board to amend its bylaws so that they no longer impinge upon "this most fundamental of shareholder rights." Also, Sandell reiterated the need for the Company to pursue further strategic actions to maximize shareholder value.

UPDATE

On Janaury 27, 2015, Barington filed a preliminary proxy statement with regards to its campaign to elect Joseph M. Gingo, Javier Perez and James A. Mitarotonda to serve as directors of OMNOVA Solutions Inc. (OMN). Also, Barington is recommending that shareholders vote against the vote on executive compensation.

UPDATE

On January 16, 2015, PepsiCo (PEP) said that it had elected William Johnson, an advisory partner at Trian Fund Management to its Board.

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UNDER THE THRESHOLD - ONGOING SITUATIONS

Abercrombie & Fitch

On December 3, 2013, **Engaged Capital** sent a letter to the Board of **Abercrombie & Fitch. Co (ANF)** urging them not to renew CEO Jeffries' employment agreement when it expires on February 1, 2014 and to immediately commence a CEO search for candidates with relevant retail apparel and turnaround experience. Engaged believes that the Company's continuing underperformance is a result of a failure of leadership. Engaged notes that management's strategy of investing hundreds of millions of dollars to expand the Company's domestic footprint has resulted in a materially overbuilt U.S. store base which has led to years of store closures and asset impairments. Engaged also notes management has pursued the same "spendthrift capital allocation discipline" internationally through a high-risk flagship store strategy which has saddled the Company with costly and underperforming stores in Europe and Japan. Also, Ruehl and Gilly Hicks, the Company's two newest brands were costly failures. Altogether, according to Engaged, investors have suffered through asset impairments and operating losses of over $500 million during the past six years alone, operating margins that have deteriorated from over 21% in 2007 to below 5% today, and return-on-capital declined from over 20% to levels below the Company's current cost-of-capital. While Engaged believes that investors should benefit from recently announced expense reductions of over $130 million in fiscal 2014, they note these changes are coming a full six years after margins and returns drastically declined. In the letter, Engaged discusses that the Company's management team has a reputation for habitually under-estimating and under-executing on the changes needed to remain competitive in the fast moving teen apparel market. Since 2000, the Company has only generated positive same-store-sales five times while experiencing material declines in eight of the last fourteen years, and over this time period, compounded same-store-sales have declined by 41%. However, Engaged notes the Company still maintains brands with domestic and international appeal, a highly profitable direct-to-consumer business, and significant cash flow generation potential. The Company has consistently been cited as an attractive target for private equity investors, and Engaged believes a sale may be the best option for shareholders. Engaged is concerned that the Company has not identified any internal successors to Mr. Jefferies and believes the renewal of Jeffrie's employment contract would be a direct contradiction to what the Company needs and what shareholders want. Engaged points to the say-on-pay voting results of the Company's recent annual meetings as evidence of shareholder unrest. Shareholder support for ANF's say-on-pay proposals was 56%, 25%, and 20%, for 2011, 2012, and 2013, respectively, versus an average approval rating for say-on-pay proposals in the S&P 500 of approximately 90% in each of the past three years. Despite activist pleas to retain a new CEO, on December 9, 2013, the Company entered into a new and restructured employment agreement with Michael Jeffries. The new contract pays a base salary of $1.5 million a year, to be reviewed annually. He will have an annual target bonus opportunity of 150% of his base salary and a maximum bonus opportunity of up to 300% of his base salary. In the new agreement, he is eligible to receive long-term incentive awards each year with a target value of $6 million. Also, he will be entitled to use, for security purposes, the Company's aircraft for up to $200,000 of personal travel. On January 28, 2014, Abercrombie announced that it appointed Arthur C. Martinez (appointed as Non-Executive Chairman), Terry Burman, and Charles R. Perrin to its Board. Abercrombie also announced separating the roles of Chairman of the Board and CEO. Michael Jefferies, who served as Chairman since 1996, will continue to serve as a director and as the Company's CEO.

On February 20, 2014, Engaged Capital announced that it has nominated the following individuals for election to the Board of Abercrombie at the upcoming 2014 Annual Meeting: (i) Alexander P. Brick, former Chief Executive Officer of Specialty Retail Group; (ii) Robert D. Huth, former Chief Executive Officer of David's Bridal; (iii) Michael W. Kramer, former Chief Operating Officer of J.C. Penney; (iv) Diane L. Neal, former Chief Executive Officer of Bath & Body Works; and (v) Glenn W. Welling, CIO & Managing Member of Engaged Capital. Engaged states that despite governance improvements (instituted only after stockholder pressure), the Board still lacks a majority of qualified, independent voices. Engaged also notes that this public nomination follows the failure of weeks of private outreach to the Board to arrive at a negotiated settlement, which Engaged believes proves the incumbent directors' unwillingness to put the interests of the Company's stockholders ahead of their own interests.

On April 7, 2014, Abercrombie disclosed that the Compensation Committee of the Board made a number of significant changes to the structure of the 2014 equity awards, reflecting shareholder input and the Company's ongoing commitment to the best practices in executive compensation and corporate governance. The Committee believes this approach will support business objectives and will align with stockholders' interests. On April 30, 2014, Engaged Capital and the Company entered into a settlement agreement pursuant to which Engaged will withdraw its notice of nomination of directions and will vote in support of all the Company's nominees at the 2014 Annual Meeting. The Company agreed it will nominate four new independent director candidates. Engaged Capital will also abide by customary standstill provisions.

On December 9, 2014, Abercrombie & Fitch Co. announced that Michael Jeffries is retiring as CEO and as a member of the Board effective immediately.

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UNDER THE THRESHOLD - ONGOING SITUATIONS

In May 2013, **Coppersmith Capital Management** was a 13D filer on **Alere**, as part of a group with Scopia Capital Management. The Group nominated three individuals for election to Alere's Board and detailed a strategic plan to enhance value at the Company which included, among other things, divesting the Health Management division, while partnering to preserve any attractive product sales, commencing an aggressive de-leveraging program with divestitures of non-core businesses and rationalizing operations, focusing on cost reductions. At the 2013 Annual Meeting, Coppersmith and Scopia narrowly failed to get their nominees elected, and shortly thereafter, Coppersmith and Scopia terminated their group.

On June 19, 2014, Coppersmith (now as a less than 5% shareholder) sent a letter to the Company expressing its opinion that the Company could be sold at a significant premium. Coppersmith believes the Company's management and strategic plan appear to be failing and shares the following findings: (i) the CEO has created virtually no value and has failed; (ii) the Company does not have the personnel, assets or market positions to be a meaningful competitor; and (iii) even under new management, the Company's underperforming businesses and bloated capital structure will take significant time and risk to fix. Coppersmith believes it is time to engage a new investment to explore strategic alternatives including a sale of the Company.

On June 30, 2014, Ron Zwanziger resigned as CEO, President and director of Alere. Namal Nawana, COO, was appointed to serve as Interim CEO and President. Also, on the same day, Jerry McAleer, SVP - Research and Development and a member of the Board, and David Scott, Chief Scientific Officer, resigned their respective positions. On August 4, 2014, Alere stated that the second quarter was a period of significant transition and that the Company is now narrowing its focus on its rapid diagnostic business and pursuing opportunities with the highest potential for value creation.

On June 3, 2014, **Marcato (2.4%)** sent a letter to the Lead Independent Director of **American Realty Capital Properties, Inc.** outlining its concern with the Company's recent actions. Marcato stated its frustration with the Company's recent equity issuance at $12 per share, a price which Marcato believes undervalues the shares. Marcato highlights that the Company had publicly stated it had no intention to issue equity. Also, Marcato notes the fact that the Company upsized the offering by more than 20%. Marcato believes such willingness to destroy value, by issuing shares at an acknowledged discount to fair value, illustrates a disregard for existing shareholders that Marcato finds very problematic.

Marcato also believes the Company's recent acquisitions, sale of the multi-tenant retail portfolio and equity issuance, have made the Company's financials difficult to understand. Marcato emphasizes the fact that the Company has made two material disclosure errors recently, including overstating fees associated with a transaction by a factor of 10. Marcato believes a large part of the reason the share price has not recovered is because of widespread confusion, concern and doubt about the Company's numbers. Marcato thinks the Company should pause on large-scale transaction activity, give investors a chance to see multiple quarters of clean financial results and rebuild credibility. Marcato ends the letter by stating that if the Company continues to contradict its own statements, disregard shareholder interests and commit multiple reporting and disclosure errors, Marcato will consider actions that are necessary to protect its investment.

Third Point's 2014 third quarter investor letter revealed that Third Point is now one of **Amgen's** largest shareholders. In the letter, Third Point details its concerns with Amgen and suggests ways to enhance value, including by separating into two separate businesses. Third Point states that using nearly any valuation metric, Amgen trades at a substantial discount to peers, and it even trades at a discount to the US pharmaceutical sector, despite superior revenue and earnings growth rates. Third Point expresses that its conviction about Amgen's growth pipeline has been bolstered by its discussions with its newly created Scientific and Medical Advisory Board ("SMAB"), comprised of a world-class team of scientists and physicians to assist in Third Point's evaluation of therapeutic companies and their clinical assets.

Through Third Point's due diligence, it states that it's become clear that Amgen has been penalized by the market for several key reasons: (i) its historical lack of R&D productivity; (ii) more than a decade of flat operating margins; and (iii) the suspension of its share repurchase program in 2013 following its $9 billion acquisition of Onyx Pharmaceuticals. Third Point believes (also supported by SMAB), that given Amgen's sparse output versus to investment, improvements are needed in the Company's R&D evaluation process. Third Point also believes Amgen's cost structure is bloated and details that while the biotechnology industry has seen substantial improvements in manufacturing efficiency, the Company has not demonstrated any of the obvious economies of scale that

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should have been realized. Next, Third Point believes the Company's purchase of Onyx Pharmaceuticals was a questionable capital allocation decision, which halted its own share repurchase program. Instead of purchasing Onyx, Third Point states that the Company could have accretively repurchased over 10% of its shares outstanding, at the depressed valuation of just 4x sales.

Third Point recognizes that the Company has taken first steps to target its cost structure by rationalizing its US facilities footprint and creating centers of R&D excellence. However, Third Point believes much more should be done to create shareholder value, including: (i) focusing its R&D efforts; (ii) providing long-term margin guidance demonstrating a commitment to reducing a bloated cost structure; and (iii) creating clarity on additional shareholder returns. Third Point states that it also asked the Company to seriously consider a more radical option: separating into distinct operating units – i.e. MatureCo and a GrowthCo. Third Point explains that internally, each business would have different priorities: MatureCo would focus on efficiency and cash flow and GrowthCo would emphasize product development and innovation. Externally, Third Point elaborates, each business would be valued with different metrics: MatureCo on a dividend yield and GrowthCo on a peer-based sales or earnings multiple. Third Point believes this is a more effective way of running the business. Third Point sees the most upside in the scenario where Amgen separates into two standalone businesses – in two years, Third Point expects such a separation could create almost $249 per share in total value, over 80% upside to the current share price.

ANN TAYLOR

On August 25, 2014, it was reported that **Engine Capital LP** and **Red Alder LLC** sent a letter urging **Ann Inc.** (the owner of the Ann Taylor Chain) to sell itself. Engine and Red Alder stated that the Company would be worth $50-$55 per share to a private equity firm or even more to a "strategic buyer". Engine believes that the Company should conduct a strategic review. On October 14, 2014, ANN INC. announced that it entered into a non-disclosure agreement with Golden Gate Capital providing for the sharing of certain non-public information with Golden Gate.

Western Investment LLC solicited proxies to replace the Board of **Anworth Mortgage Asset Corp**. Western has nominated the following individuals for election to the Board: (i) Paul R. DeRosa, (ii) Gregory R. Dube, (iii) Kenneth B. Dunn, (iv) Ronald Mass and (v) Scott F. Richard. Western is also recommending against the advisory vote on executive compensation and against the 2014 Equity Compensation Plan. Western believes the Company's management has failed and it is time to replace the Board with directors who will take action and maximize value for shareholders. Western states shareholders have seen over a decade of investment declines, and Western does not see any indication that management has the necessary experience or competence to employ the new investment diversification strategy, announced by the Company. Western fears this strategy could be a repeat of past failed efforts.

At Anworth Mortage Asset Corporation's 2014 Annual Meeting, none of the five nominees proposed by Western were elected as directors. The advisory vote on executive compensation and the 2014 Equity Compensation Plan were both approved.

Apache
EXPLORING WHAT'S POSSIBLE

On July 21, 2014, **JANA** (who has approximately a $1 billion stake) sent a letter to investors of **Apache Corp.** and called on the Company to sell off its international holdings to drill exclusively on American soil. JANA pointed out that the Company had poor performance compared with rivals, several of which are pure-play companies that drill exclusively in the U.S. shale formations. JANA also called upon the Company to free up cash flow by exiting two projects in Canada and Australia that aim to export natural gas. JANA stated that the Company should consider selling itself if it does not take steps to increase its value. On July 31, 2014, the Company stated that it plans to sell interests in two liquefied natural gas projects in Australia and Canada. On October 14, 2014, Apache Corp. announced its CFO, Alfonso Leon, is leaving the Company eight months after he was appointed to the job.

On August 13, 2013, **Icahn** tweeted [@Carl_C_Icahn]: "We currently have a large position in **APPLE**. We believe the company to be extremely undervalued. Spoke to Tim Cook today. More to come." Icahn believes that the Company should buy back $150 billion of its common stock. Icahn says that they can do this by borrowing the money at less than 3%, a unique opportunity, and they would still have a ten times interest coverage ratio and $146 billion of cash on the balance sheet, a portion of which would have to be repatriated if necessary. Icahn believes that a tender offer at $525 per share could result in a $625 stock price if the P/E ratio remains the same and assuming earning do not increase, and he believes they will. In three years, Icahn expects shares to appreciate to $1,250, assuming the market rewards EBIT growth of 7.5% per year with a more normal market

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multiple of 11x EBIT. Icahn had dinner with Tim Cook and conveyed his recommendation to him. Icahn had since increased his position in Apple to $2.5 billion with intentions to buy more. To invalidate any criticism that he would not stand by his thesis in terms of its long term benefits to shareholders, he states that he would withhold his shares from the proposed $150 billion tender offer. Icahn also said that he would explore running a proxy fight if necessary. On December 4, 2013, Icahn announced that he will submit a precatory proposal to Apple's shareholders at the Annual Meeting, calling for a $50 million buy back in stock.

On January 23, 2014, Carl Icahn reported that he bought another $500 million of Apple's stock, bringing his total investment to $3.6 billion. Icahn also reported that he sent out a seven page letter to the Company's shareholders discussing why buyback should be markedly increased. In the letter, he states his belief that the combination of Apple's unprecedented net cash balance, robust annual earnings, and tremendous borrowing capacity provide more than enough excess liquidity to afford both the use of cash for any necessary ongoing business-related investments in addition to the cash used for the increased share repurchase proposed by Icahn. Icahn believes Apple will be able to participate in this growth without sacrificing pricing and gross margins, especially with its competitors, because of the continuing loyalty of Apple's growing customer base. He further states that as software and services improve and become even more important to consumers in the future, he thinks customer loyalty will strengthen even more. Icahn discusses the scale of opportunity that stems from new products in new categories (which he believes Wall Street analysts lack in their financial projections), including the possibility of an Apple TV, opportunities in hardware alone (i.e. rumors of a smartwatch) and a next generation payments solution. Icahn responds to a potential argument that with so much opportunity, the Company should maintain excess liquidity to increase R&D or make acquisitions, by stating that even after taking such factors into account, he believes tremendous excess liquidity remains. While comparing Apple to Microsoft, its next largest competitor, Icahn notes that Apple has $68 billion more net cash and is expected to generate $18 billion more in earnings during 2014. He also notes that since much of the Company's cash and earnings are international and subject to a repatriation tax if returned to the US to repurchase shares, Apple should simply borrow the money in the US to the extent it deems its domestic cash of $36 billion and domestic earnings are insufficient. Icahn believes this is one of the greatest examples of a "no brainer" he has seen in five decades.

On February 6, 2014, Tim Cook stated in an interview that Apple has recently bought $14 billion of its own shares. In a letter on February 10, 2014, Icahn stated that while he is disappointed that ISS recommended against his proposal, he does not altogether disagree with ISS's assessment and recommendation in light of the recent actions taken by the Company to repurchase shares. Icahn states that in light of these actions and ISS's recommendation, he seeks no reason to persist with his non-binding proposal, especially when the Company is so close to fulfilling his requested repurchase target.

On April 23, 2014, Apple unveiled a plan to increase its share repurchase authorization by $30 billion through December 2015. Additionally, the Board has approved an increase to the Company's quarterly dividend of approximately 8 percent and has declared a dividend of $3.29 per common share, payable on May 15, 2014 to shareholders of record as of the close of business on May 12, 2014. Icahn stated that he agrees with the Company's increased buyback and is extremely pleased with results. He also continues to believe the Company is meaningfully undervalued.

On October 9, 2014, Icahn sent a letter to Apple expressing his opinion that there is a massive undervaluation of Apple in today's market, which he believes will not last long. Also, given the excessive liquidity of $133 billion net cash on the Company's balance sheet, Icahn asks Tim Cook to present to the rest of the Board Icahn's request for the Company to make a tender offer, which would accelerate and increase the magnitude of share repurchases. Icahn commits not to tender any of his shares if the Company consummates any form of a tender offer at any price to preemptively diffuse any cynical criticism with respect to his request. Icahn would like to see the Board repurchase a lot more and sooner because given Apple's undervaluation, the more shares repurchased now, the more each remaining shareholder will benefit from that earnings growth.

On October 16, 2014, **Clinton Group Inc.** (note: On October 1, 2014, Greg Taxin resigned as President of Clinton Group) called on **Atlantic Power Corp.** to restart a sale process it abandoned last month. Clinton criticized the Company's recent decision to remain independent and called for a re-engagement of the sale process. On October 21, 2014, the Company stated that, in order to dispel Clinton's misconceptions about the results of the sale or merger process, the Company offered to share certain information from the process, provided that Clinton agreed to be bound by confidentiality obligations, which Clinton declined. In light of the letter and enquiries from investors, the Company provided additional detail concerning its process including that it did not receive any offers that the Board believed could be consummated at or above the closing share price of $3.04 on May 1, 2014, being the day

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prior to press rumors concerning a possible sale or merger of the Company. The Company stated that it will continue to assess other potential assets, including asset sales or the contribution of assets to a joint venture in order to raise additional capital for growth and/or debt reduction.

On November 25, 2014, Atlantic Power Corporation and Clinton entered into an agreement pursuant to which, among other things, the Board increased the size of the Board and appointed Teresa M. Ressel as a director and agreed to appoint an additional individual mutually agreed upon by December 19, 2014. Clinton agreed to customary standstill provisions including capping its ownership at 10% and not soliciting any proxies or consents.

On June 30, 2014, **Trian** unveiled a $1.05 billion position in **BNY Mellon**, representing a 2.5% state and plans to discuss ways of improving shareholder value with management.

On December 2, 2014, Bank of New York Mellon Corp. added Ed Garden, co-Founder of Trian Fund Management, to its Board. Mr. Garden will serve on the Company's Human Resources and Compensation and Risk Committees.

On December 4, 2014, **Clinton Group, Inc.** announced that it provided notice of its intention to nominate the following individuals for election to the Board of **Campus Crest Communities, Inc.**: (i) Scott Arnold, Senior Portfolio Manager, Private Equity and Asset Backed Securities at Clinton Group, Inc.; (ii) Randall H. Brown, former Executive Vice President, Chief Financial Officer and Treasurer of Education Realty Trust, Inc.; (iii) William A. Finelli, former Global Chief Operating Officer of the real estate platform of BlackRock Inc. and (iv) Raymond C. Mikulich, Managing Partner and Chief Investment Officer for Ridgeline Capital Group and former head of Apollo Global Real Estate Private Equity Investment. Clinton believes its nominees bring decades of real estate experience, financial acumen and a track record of equity creation. Clinton believes the Board of the Company should be held accountable for the prior years of underperformance and the Company lacks permanent top executive leadership today. Clinton believes that at today's comparable companies' FFO multiples, the implied stock price would be over $10.50 per share. As of Clinton's most recent 13F filing, Clinton reported beneficial ownership of 148,632 shares (0.23%) of the Company's outstanding shares.

On August 14, 2014, Ryan Drexler, President of **Consac, LLC**, sent a letter to the Board of **bebe stores, Inc.** expressing his conclusion that the Company needs to explore possibilities for maximizing value, including a sale of the Company, whether to a third party or through a going private transaction. Drexler questions Manny Mashouf's role as both a paid director and a consultant to the Board. Drexler also believes the Company has been unsuccessful in communicating a convincing strategy that addresses the core issues of declining sales, dwindling customer traffic and lack of fashion focus and imagination. He also notes that progress has been slow in developing an e-commerce offering that can offset the increasingly high cost of rent, personnel and the deleveraging of store infrastructure. He also states that the Board and management lack adequate fast fashion retail experience.

On June 21, 2014, **Harbinger** announced that it offered to acquire **Central Pet & Garden** for about $505 million ($10/share). Including the assumption of debt, the deal is valued at $1.1 billion. As an alternative to an acquisition of the Company, Harbinger also offered to buy its pet business for $750 million. Harbinger also stated it may be able to increase the value of the current proposals if the Company's Board engages in a constructive dialogue.

On October 14, 2014, Central Garden & Pet Company announced that after an extensive review, its Board unanimously concluded that it will not pursue two proposals received from Harbinger Group Inc. in June to acquire all of the Company's common stock at $10 per share in cash or, alternatively, to acquire the Company's Pet segment for $750 million in cash.

On April 3, 2014, **Wintergreen Advisers, LLC** reported that they believe **The Coca-Cola Company's** Compensation Plan is: (i) potentially highly dilutive to shareholders; (ii) unsupported by any strategic rationale; (iii) unnecessary, since adequate capacity exists under the Company's current plan; (iv) inadequately disclosed in the proxy materials; (v) grossly outsized for a company with earnings growth in the single digits; and (vi) a bad precedent for corporate America. On April 15, 2014, Wintergreen issued a letter to shareholders reiterating its belief that the

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2014 Equity Plan is deeply flawed and contrary to shareholder interests. In the letter, Wintergreen urged all institutional investors, as fiduciaries for many thousands of individuals, to review the Company's proposed plan for themselves before they decide how to vote. Wintergreen believes existing equity plans at the Company are more than adequate to meet the Company's needs.

Wintergreen also believes the methodology described in the ISS publicly available proxy guidelines understates the true cost to shareholders of the Company's equity plans, and that the 2014 Equity Plan appears to fall short of publicly available ISS guidelines in a number of areas. Specifically, Wintergreen believes: (a) the Company's plan fails to meet the ISS standard for linking pay for performance, because the Company has lowered its performance targets for management over the past two performance periods; (b) the fact that every named officer at the Company has received more equity option grants over each of the past two years, even as the Company's performance has failed to meet targets, demonstrates that the Company is not properly linking pay to performance; (c) the proposed plan fails to meet the publicly available ISS standard for investors that manage union pension plans under the Taft-Hartley Act; and (d) the proposed plan may also fall short of the Taft-Hartley guidelines that discourage excessive pay practices because it does not have a cap on the amount of equity that can be awarded to an individual. The Ontario Teachers' Pension Plan also planned to vote against the 2014 Equity Plan.

At the Annual Meeting held on April 23, 2014, the plan passed. In an interview on May 2, 2014, Warren Buffett told CNBC that he does not approve of the plan but out of respect for management abstained on the issue instead of voting against it, and that he believes the Company will be responsive to shareholder concerns and he wouldn't be surprised if the Company revised the plan before it goes into effect next year.

On July 8, 2014 David Winters sent a letter to the Board criticizing Coca-Cola's governance and operational performance. He also announced the launch of a dedicated website – Fixbigsoda.com – where he will provide his views and provide a forum for disgruntled investors. Winters also questioned the role of Howard Buffett, Warren Buffett's son, on the Company's Board. Winters said that he intends to "remain a long-term investor in the company," but that he had heard from too many investors that they remained concerned about Coca-Cola's poor margins, especially in comparison to other drinks manufacturers.

On October 1, 2014, Coca-Cola announced that the Board adopted Equity Stewardship Guidelines for the existing 2014 Equity Plan. The Guidelines will extend the years shares will last under the approved Equity Plan by using fewer shares each year, increase transparency about equity awards, formalize the Company's existing practice of share repurchases to minimize dilution, and renew commitments to continue an open dialogue with shareowners on compensation matters.

On November 13, 2014, David Winters stated that he is still pushing for changes to Coca-Cola's equity compensation plan. Winters stated that the new guidelines are "all fizz ... [and] don't address the fundamental problem that was raised that it was excessive, and we believe now is still excessive."

On December 15, 2014, Wintergreen issued a report on Coca-Cola (KO) and called on the Company to get rid of bad compensation plans, bring in new and more capable management, get expenses and overhead under control and replace the Board will shareholder-focused directors. Wintergreen estimates that the discount placed on the Company's shares because of its issues is between $30 and $38 per share and by removing these discounts, the Company's share price would be brought to $74 - $82 per share.

On August 14, 2014, **Voce Capital Management LLC** filed a definitive proxy statement for the nomination of the following three independent directors to **CONMED's** Board at the 2014 Annual Meeting: James W. Green, Joshua H. Levine and J. Daniel Plants. Voce also sent a letter to shareholders of the Company citing certain areas of ongoing concern: (i) the Company's legacy directors wield enormous power, holding two of the Board's four leadership positions, including Chairmanship; (ii) the Board recently appointed one of its own as "interim" CEO; (iii) the Board, in Voce's view, mishandled its effort to sell the Company; and (iv) according to Voce, the Board blatantly manipulated the electoral machinery, including a four-month delay in the annual meeting.

At the 2014 Annual Meeting, all of CONMED's nominees were elected to the Board, defeating Voce Capital Management LLC's three nominees. In a statement, Voce's managing partner, Dan Plants, said that recent board changes were "apparently sufficient to satisfy a plurality of ConMed's shareholders that enough change has occurred -- at least for now."

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On October 14, 2014, **Corvex Management** sent a letter to the shareholders of **Crown Castle International** expressing its belief that the Company's valuation can be improved dramatically and sustainably through changing the Company's capital allocation plan, reducing the Company's cost of capital and enhancing its ability to grow and compound shareholder value over the long term. Based on Corvex's own analysis, Corvex sees a near-term opportunity for the Company to drive a 27% re-rating in its equity, and the potential for over 60% upside in the next 15 months. Once the equity currency is strengthened, Corvex believes the Company can aggressively pursue a Verizon towers transaction, creating even greater value for shareholders over the long-term. Corvex's analysis also suggests a change in capital allocation could result in the Company's stock trading in excess of $100 per share in the near future, and compounding further from there. Corvex thinks that based on recent commentary by the Company's management, Company may be considering the same actions suggested by Corvex.

Corvex believes the Company must address its capital allocation plan and states that the Company's two clear options today are: (i) increasing its dividend payout ratio significantly or (ii) increasing and maintaining a higher leverage ratio. Specifically, Corvex believes increasing the Company's payout ratio to 80% - 90% of AFFO and paying a dividend of at least $4.00 per share, or increasing and maintaining leverage of approximately 7.0x net debt/EBITDA and buying back stock regularly to shrink the Company's float, will both create significant long-term value for shareholders. Corvex believes the Company will prefer increasing its payout ratio and urges the Company to immediately embrace the full payout structure it has publicly stated it will eventually adopt once its net operating losses expire in 2018-2020, rather than artificially deferring strong dividends until the end of the decade. Corvex also believes changing the Company's capital allocation strategy would attract a new class of yield-oriented investors.

In summary, Corvex recommends the following: (i) pay a dividend of at least $4.00 per share in 2015; (ii) guide to 10% or higher dividend per share growth over the next 3+ years; (iii) plan to maintain leverage of approximately 4.5x net debt/EBITDA on an ongoing basis and target an investment grade rating over time; (iv) flex leverage up to 6.0x net debt/EBITDA or higher for future M&A (including the Verizon towers), if the transaction is accretive to the standalone dividend per share plan described above; and (v) de-lever back to 4.5x following M&A through EBITDA growth (maintain 80%+ payout ratio over time).

At a Special Meeting held on November 19, 2014, shareholders voted to adopt the merger agreement with the Company's wholly-owned subsidiary, Crown Castle REIT Inc. The Company commenced operating as a REIT for U.S. federal income tax purposes effective January 1, 2014 and proposes to complete the merger to ensure the effective adoption of certain charter provisions that implement REIT-related ownership limitations and transfer restrictions related to its capital stock. The merger is expected to close no later than December 31, 2014.

On November 24, 2014, **Destination Maternity Corporation** entered into an agreement with **Voce Capital Management LLC** (an approximate 2% owner) pursuant to which J. Daniel Plants was appointed as a director and the Board will take all actions necessary to amend the Bylaws to provide for a majority voting standard in the election of directors, effective at the conclusion of the 2015 Annual Meeting. Voce agreed to customary standstill provisions.

On November 20, 2014, **Marcato Capital Management** released a presentation outlining opportunities it sees for increasing value at **Dillard's Inc**. Marcato's analysis highlighted the value of Dillard's underlying real estate assets and the "compelling" case for the creation of a stand-alone REIT. Marcato believes executing on this plan would value the companies at a combined $193 per share, representing a 75% increase from current prices.

On January 21, 2014, **Third Point** disclosed in an investor letter that its largest current investment is in **The Dow Chemical Company**, but did not disclose its stake. Third Point notes that the Company's shares have "underperformed over the last decade, generating a return of 46% (including dividends) compared to a 199% return for the S&P 500 Chemicals Index and a 101% return for the S&P500." Third Point believes these results reflect a poor operational track record across multiple business segments, a history of under-delivering relative to management's guidance and expectations, and the ill-timed acquisition of Rohm & Haas. Third Point states that the Company's lacking performance is even more surprising given that the North American shale gas revolution has been a powerful tailwind for the Company's largest business exposure – petrochemicals.

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Third Point believes the Company should engage outside advisors to conduct a formal assessment of whether the current petrochemical operational strategy maximizes profits and if these businesses align with the Company's goal of becoming a "specialty" chemicals company. Third Point also believes the Company should apply the "intelligent logic" of its recently announced chlor-alkali separation to the entirety of its petrochemical business by creating a standalone company housing the Company's commodity petrochemical segments.

On February 11, 2014, Dow Chemical filed an addendum to its fourth quarter and full-year 2013 earnings teleconference materials stating that it has conducted an evaluation as part of a review of the Company's strategic option. The review found that "a break-up of the Company in a significant manner (simplistically described as petrochemical and specialty chemical assets) created no productivity or capital allocation improvements, but rather negatively impacted Dow's value proposition which leverages scale, integration costs and technology benefits across multiple science-based, vertically integrated value chains." On February 12, 2014, Dan Loeb said that the Company's "lack of transparency" makes it difficult to determine whether the Company should be split up or kept together. In Third Point's statement, it said it has hired financial advisers of its own to look into the Company's options and is prepared to sign a non-disclosure agreement to see how the Company came to decide against Third Point's plan. On March 19, 2014, Dow Chemical told investors that it plans to sell an additional $1.5 billion to $2 billion of assets this year.

On November 21, 2014, The Dow Chemical Company announced that it entered into an agreement with Third Point to add four new, independent directors to the Company's Board, two of which were suggested by Third Point. The four independent directors will be included in the Company's nominees for election at the 2015 Annual Meeting. Third Point agreed to vote in favor of the Company's nominees at the 2015 Annual Meeting and to a one year customary standstill and voting agreement.

In August 2013, **Trian** disclosed that it owned 21 million shares of **DuPont Co.** (valued at $1.25 billion). Trian had met with Chairman/CEO Ellen Kullman and other senior managers to talk about their ideas outlined in a white paper. It was predicted that Trian was proposing breaking DuPont into two companies, one focused on its agriculture business and the other focused on materials. On October 24, it was announced that DuPont was splitting in two, spinning off its performance chemicals segment into a new publicly traded company. The unit — which makes a pigment that turns paints, paper and plastics white, as well as refrigerants and polymers for cables — generated about $7 billion in revenue in 2012. DuPont had announced in July, prior to Trian's involvement, that it would explore "strategic alternatives" for the unit and stated that its decision came after a thorough strategic review process over the last year. DuPont expects the spinoff to be completed in about 18 months, and said it would be tax-free to shareholders, who will receive stock in the new company. The DuPont that remains will have three main areas of focus, each trying to make products that address global population growth. Its agriculture business will develop and produce seeds and herbicides aimed at increasing crop yields around the globe. A bioindustrials unit will be involved in the production of biofuels in an effort to reduce the world's reliance on fossil fuels. And an advanced materials segment will make components for green buildings and solar panels, as well as products like Kevlar.

On September 16, 2014, Trian sent a letter to the Board of DuPont stating that the Company should implement the following strategic and operating initiatives to optimize long-term value for shareholders: (i) separate DuPont into GrowthCo (Agriculture, Nutrition and Health, Industrial Biosciences) and CyclicalCo/CashCo (Performance Materials, Safety and Protection, Electronics and Communications), in addition to the announced separation of Performance Chemicals; (ii) Commit to the elimination of unnecessary holding company costs, the implementation of zero-based budgeting, and a timeframe for best-in-class revenue growth and margins in each business, by segment; (iii) Commit to a shareholder-friendly capital allocation policy at the low-growth and highly cash generative CyclicalCo/CashCo and a prioritization of high return on invested capital (ROIC) organic growth initiatives at GrowthCo; and (iv) Implement the following corporate governance initiatives: (a) Put an end to extraordinary charges (or "significant items") and (b) Commit to best-in-class transparency and consistency of reporting. Trian believes its initiatives have the potential to double the value of the Company's stock over the next three years. Trian notes that it has discussed adding a Trian representative and an industry-insider to the Board to ensure shareholder perspectives are adequately represented, but states the idea has been summarily rejected. Therefore, Trian states, it will begin to meet with shareholders to present its White Paper and discuss its views. Also, Trian will closely monitor the Company's performance and recommends that instead of dismissing Trian's initiatives, the Board meets shareholders without management present to learn their views.

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On January 8, 2014, Trian nominated the following candidates for election to the Company's Board at the 2015 Annual Meeting: (i) Nelson Peltz, Chief Executive Officer and a Founding Partner of Trian and a director of Mondelēz International, Inc., The Wendy's Company and The Madison Square Garden Company; (ii) John H. Myers, former President and Chief Executive Officer of GE Asset Management and currently a director of Legg Mason, Inc., (iii) Arthur B. Winkleblack, former Executive Vice President and Chief Financial Officer of H.J. Heinz Company and currently a director of RTI International Metals, Inc. and Church & Dwight Co., Inc. and (iv) Robert J. Zatta, Acting Chief Executive Officer and long-time Chief Financial Officer of Rockwood Holdings, Inc., a leading global developer, manufacturer, and marketer of specialty chemicals.

Icahn has taken a stake in **eBay**, proposed a spin-off of eBay's PayPal division and nominated two directors to the Board of the Company. eBay indicated it does not agree with Icahn's plan to spinoff PayPal. On February 24, 2014, Icahn sent a letter to eBay's stockholders criticizing directors Marc Andressen and Scott Cook for, among other things, directly competing with the Company, funding competitors, and putting their own financial gain in ongoing conflict with their fiduciary responsibilities to stockholders. Icahn also states that the Company's CEO, John Donahoe, seems to be "completely asleep or, even worse, either naive or willfully blind to these grave lapses of accountability and stockholder value destruction." Icahn questions his judgment and ability to make decisions that must be made concerning the future of PayPal. Icahn believes separating eBay and PayPal will: (i) highlight the significant value of the disparate business currently shrouded by a conglomerate discount the market has afforded eBay; (ii) focus and empower independent management teams to most effectively build two very different business platforms, make economic decisions independent of each other, and, foster innovation; and (iii) provide an even more valuable currency for future bolt-on acquisition opportunities and for recruiting the top talent necessary for PayPal to remain the market leader in payment technology. Icahn urges shareholders to vote for his slate of directors and for his precatory proposal in order to send a clear message to the Company's Board that it should be separated from PayPal.

On February 27, 2014, Pierre Omidyar, eBay Founder and Chairman, rejected Icahn's call to separate the Company's PayPal unit, saying the businesses were better off together. On March 3, 2014, Icahn reiterated his view that Andressen has conflicts of interests. He also stated that he is in the process of demanding the Company's books and records. On March 5, 2014, Icahn stated that the corporate governance at the Company is the worst he's ever seen.

On March 19, 2014, Icahn called on eBay to sell 20% of PayPal in an initial public offering (even though he initially called for a complete spinoff). Icahn believes conducting a 20% IPO would provide the best opportunity for the businesses to remain competitive over the long-term. He also noted that the 20% IPO structure should alleviate any concern of lost synergies, could preserve all of the benefits of keeping PayPal in-house and could be structured to be tax free to shareholders.

On April 10, 2014, eBay and Carl Icahn entered into an agreement ending their proxy contest for the upcoming annual meeting. Pursuant to the agreement, Icahn is withdrawing both his proposal to separate PayPal and his two nominees to the Company's Board. eBay has agreed at Icahn's suggestion to appoint David Dorman as an independent director to its Board. Icahn has signed a confidentiality agreement covering any non-public information that directors or officers of eBay may share with him, and the Company agreed not to adopt a policy precluding such persons from speaking to Icahn.

On September 30, 2014, eBay announced that its Board approved a plan to separate into two independent publicly traded companies, by spinning off PayPal. The tax-free spin is expected to be completed in the second half of 2015, subject to market, regulatory and other conditions.

On October 19, 2014, Marc L. Andreessen, a director of eBay Inc. (the "Company"), notified the Company that he would resign from the Company's Board, effective immediately.

On November 26, 2014, **Ebix, Inc.** reported that it added **James A. Mitarotonda** and Joseph R. Wright to the Company's slate of nominees for election at the 2014 Annual Meeting. As part of the agreement reached with **Barington Capital Group** (which represents a group of investors that owns approximately 1.6%), Barington agreed to vote its shares in support of all nominees at the 2014 Annual Meeting, and has agreed to certain customary standstill provisions.

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On July 21, 2014, it was revealed that **Elliott** has taken a stake of more than $1 billion (about a 2% position) in **EMC Corp.** According to people familiar with the matter, Elliott plans to push the Company to break itself apart, specifically by spinning off VMware Inc., a publicly traded Company that EMC owns an approximately 80% stake in. Under the Company's federation model, it manages three businesses: EMC Information Infrastructure, VMware Virtual Infrastructure and Pivotal.

On October 8, 2014, Elliott sent a letter to EMC Corporation's Board detailing its recommendations for the Company. Elliott believes the Company's Federation structure obscures enormous value at the Company and management should pursue ways to recognize this value, including separating VMware from Core EMC and/or various M&A opportunities. Elliott efforts over the past year include, among other things, conducting extensive research to better understand the Company's operations and strategy and working with engineers to examine and assess the capabilities and competitive positioning of the Company's products and technologies across all of its offerings. Elliott believes the Federation structure, which may have served EMC well years ago, no longer does.

Elliott summarizes its thoughts as following : (i) the Company's stock price has underperformed its proxy peers and the market all relevant timeframes while this structure has been in place; (ii) the Federation structure has led to a widely-recognized undervaluation of "Core EMC" (EMC excluding VMware), while also adversely impacting VMware; (iii) Core EMC is deeply undervalued; (iv) EMC II (a vendor of storage hardware platforms and the software that runs on top of them) and VMware now compete; and (v) EMC II and Vmware hinder one another. Elliott states that although the Federation strategy for EMC and VMware does not work and cannot be continued, the two companies can easily continue their partnership after a separation. Also, Elliott believes this highly tenuous and unique structure is only tenable under Joe Tucci's leadership as CEO. Elliott believes it is critical for the Board to appreciate that it can't retain a structure that doesn't work without one specific individual.

Elliott believes the Company's alternatives fall in two categories. First, a tax-free spin-off of all of VMware from EMC would result in the Company distributing its VMshares to its current shareholders. Post-spin-off, shareholders would own both their existing EMC stock and stock in a newly independent VMware. Elliott believes this would create financial and operational benefits immediately and over the long-term. Elliott recognizes there are other mechanisms to accomplish a separation of Core EMC and VMware and believes that whatever the mechanism, both Core EMC and VMware would retain their significant strategic value. Second, Elliott believes the Company should fully explore acquisition interest in a way that preserves the option of a tax-free spinoff of VMware. Since Elliott's position, it has learned of acquisition interest in the Company's assets and Elliott believes an acquisition by any of these buyers would create the leading enterprise IT company in the world. Elliott believes now is the optimal time for the Company to establish a future structure that makes financial and strategic sense for the long term.

On March 18, 2014, **Voce Capital Management LLC** filed a preliminary proxy on **Intevac, Inc. (IVAC)** and nominated the following three individuals for election to the Board: (i) Marc T. Giles, (ii) Joseph V. Lash and (iii) J. Daniel Plants. Voce disclosed that it is concerned by the Company's long-term underperformance, capital allocation choices and strategic direction. Voce believes the Board faces many strategic decisions relating to the Company's current and future portfolio of businesses and does not believe the current Board has the ability to properly address these issues. On May 12, 2014, Voce and the Company reached a settlement agreement pursuant to which, among other things, Marc T. Giles was appointed to the Board and was included in the Company's slate of nominees at the 2014 Annual Meeting.

On May 29, 2014, **Marcato (3.8%)** urged **Intercontinental Hotels Group (IHG)** to pursue a merger after media reports in the UK that it had turned down an unknown American bidder. Marcato believes combining the Company with a larger hotel operator "represents a unique opportunity to reshape the global hospitality industry." On August 4, 2014, Marcato announced that it hired Houlihan Lokey as an advisor to help review various alternatives for InterContinental Hotels Group, including improving its capital structure and/or capital allocation and strategic transactions.

On November 11, 2014, Marcato sent a letter to shareholders stating that Marcato has concluded that Intercontinental Hotels Group will not be able to provide shareholder value on a standalone basis comparable to what could be achieved through a combination with another major hotel operator. Based on its assumptions, Marcato found that an equity combination could deliver a premium upwards of 100% over the Company's current share price. This would enhance the Company's value by: (i) increasing growth opportunities through expanding the scope and scale of the business; (ii) generating substantial business and financial synergies; and (iii) producing long-term pro forma earnings accretion and share price appreciation. Marcato states that in the event of a transaction, the

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Company's shareholders would likely maintain meaningful ownership of any combined entity, enabling shareholders to participate in the long-term upside of the larger, stronger company. Marcato believes the opportunities created by today's favorable market conditions may not be available in the future and therefore, urges the Board to immediately begin reviewing strategic alternatives, including engaging with synergistic partners, before the window of opportunity closes.

On December 15, 2014, **Clinton** revised a nomination notice previously sent in November to the Board of **Imation Corp. (IMN)**. Clinton's independent nominees for the Board are: (i) Joseph A. De Perio; (ii) Robert B. Fernander and (iii) Barry L. Kasoff. Clinton believes these individuals possess the domain expertise, operational capability, turnaround experience and financial acumen to move the Company forward. Clinton stated that upon a successful proxy contest and if mutually acceptable, Clinton would welcome the opportunity to invest in the Company at a premium to the prevailing market prices as Clinton believes under the right leadership the stock could at least triple in value from here. Clinton plans to elaborate on plans to achieve such reversal in performance in subsequent proxy filings. Clinton has spoken to a number of large shareholders and believes there is support for significant change at the Company's corporate leadership.

On September 10, 2014, **JDS Uniphase Corp.** announced its intention to separate into two publicly traded companies - an optical components and commercial lasers company and a network and service enablement company. Reportedly, **Sandell Asset Management** had been pressuring the Company in recent months to split up.

On October 1, 2014, Sandell sent a letter to the Board of JDS Uniphase Corporation expressing its belief that the Company should immediately commence a formal auction process for its CCOP business while it continues to prepare for the spin-off of CCOP. Furthermore, Sandell urged the Board to take prompt action to unlock the value that is associated the Company's tax assets in order to minimize the discount at which the Company's stock continues to trade. Sandell specifies that the Company's stock price reflects next to no value for its substantial tax assets – which as of June 28, includes federal, state and foreign tax net operating loss carryforwards (NOLs) of approximately $6.1, $1.8, and $1.0, respectively. Sandell estimates the potential value of the Company's tax assets yields potential values of between approximately $19 and $26 per share, which is between 47% and 101% higher than the Company's current stock price. Sandell also details its submission of a shareholder proposal formally requesting that the Board evaluate further strategic alternatives, in addition to the previously announced spin-off of its CCOP business, to maximize value. Sandell also notes that it has seen no disclosure detailing any plan to maximize value of the vast amount of tax assets. Sandell would like the Board to take prompt action to unlock the value associated with these assets in order to minimize the discount at which the Company's stock continues to trade.

On December 30, 2013, **Engine Capital** sent a letter to the Board of **LSB Industries, Inc. (LXU)** stating that the Company is undervalued and that Engine believes there are opportunities to increase value substantially. Specifically, Engine believes the Board should: (i) add a number of new members with relevant backgrounds in chemical asset operations, climate control, and corporate finance, and with no ties to the Golsen family, and (ii) establish a special committee of "truly independent directors" to analyze the Company's strategic alternatives to maximize value, including separating the climate control business from the chemical assets and converting certain of the chemical assets into an MLP structure.

Engine believes the Company's total inherent value is at least $1.5 billion (valuing the climate control business at around $300-$350 million and the chemical plant business at around $1.2 billion), implying a stock price between $65-$75 per share, compared to the Company's present stock price of approximately $38. Engine believes this value gap is caused by the Company's poor governance structure, poor corporate structure, history of poor communication with shareholders, and a recent history of over-promising and under-delivering on operational matters.

Engine points out that the Company has two very different businesses with no synergies. Engine believes the best course of action may be a sale or spinoff of the climate control business. Engine believes in general that the analyst community and investors in general focus on the chemical assets and value the Company using chemical assets multiples, therefore undervaluing the higher quality climate control business that deserves a higher multiple (climate control peers trade at significantly higher multiples than chemical peers). Within the chemical division, Engine believes the Company has an opportunity to improve the tax efficiency of its corporate structure by converting its agricultural-related assets into a publicly traded MLP, which trade at higher multiples than regular corpo-

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rations.

Engine also discusses the Company's capital allocation in the letter, and its 3-year capital expenditure program of around $600 million. Engine questions whether it is wise to start such a significant capex program and lever up the Company ahead of significant new production supply of ammonia coming on the market. Engine believes shareholders would have been better served by a large repurchase of undervalued stock. Engine also notes that it is difficult to evaluate the merits of this capex program because the Company refuses to share its assumptions and implied returns on investment, and Engine believes better communication with shareholders would improve the market perception of the Company and help close the value gap. Finally, Engine states that the recent operational challenges are too numerous to detail, but Engine is particularly concerned by the frequency of problems at a number of the chemical plants and management's pattern of over-promising and under-delivering when it comes to fixing these issues. Engine concludes its letter by stating that if significant progress is not achieved promptly, it is prepared to nominate five directors by the January 23, 2014 deadline.

Effective January 17, 2014, four of the six members of LSB Industries Board that were not deemed "independent" resigned as directors.

Starboard filed a 13D on LSB Industries Inc. on November 24, 2014 and reported that in connection with the Company's 2014 Annual Meeting, on April 3, 2014, Starboard had previously entered into a settlement agreement with the Company, pursuant to which, among other things, the Company (i) nominated each of Daniel D. Greenwell and William F. Murdy for election to the Board at the 2014 Annual Meeting and appointed each of Messrs. Greenwell and Murdy to the Audit and Compensation Committees, respectively and (ii) elected Mr. Richard S. Sanders, Jr. to the Board effective as of the 2014 Annual Meeting to fill a vacancy on the Board. Messrs. Greenwell and Murdy were also appointed to a newly created Strategic Committee to evaluate certain strategic proposals made to the Company by Starboard in its July 23, 2014 letter to Jack E. Golsen, the Company's Chairman/CEO, including opportunities to (i) improve the Company's operating performance, (ii) explore strategic separations of the Company's two disparate businesses, and (iii) evaluate alternative financial structures. Pursuant to the Agreement, effective as of the date of the Agreement through the earlier of fifteen business days prior to the deadline for the submission of stockholder nominations for the 2015 Annual Meeting or 135 days prior to the anniversary of the 2014 Annual Meeting, Starboard agreed to certain customary standstill provisions, including: (i) not soliciting or participating in the solicitation of proxies, (ii) not joining any "Group" or becoming party to any voting arrangement or agreement, (iii) not seeking or encouraging others to submit nominations for election or removal of directors, (iv) not making stockholder proposals or offers with respect to mergers, acquisitions and other combinations and (v) not seeking board representation other than as provided in the Agreement. Since entering into the Agreement, Starboard has maintained a constructive dialogue with management and Starboard continues to believe that the Company has several viable alternatives available to create substantial value for stockholders.

On April 22, 2013 at our Fourth Annual Active – Passive Investor Summit, **Jeff Ubben** of **ValueAct Capital** disclosed that ValueAct had made a $2 billion investment in **Microsoft Corporation**. Jeff made a very compelling and detailed presentation. He said that like Adobe, Microsoft suffered from a divergence of perception and reality. ValueAct thinks Microsoft is a company that is perceived to not be able to win consumers, dying with PCs, losing out to Google and irrelevant in the Cloud world. In reality, ValueAct believes Microsoft is an enterprise company with software businesses that users value, resulting in a growing recurring revenue base. Moreover, ValueAct believes that Office 365 may be a game changer and Microsoft is well positioned for the hybrid cloud world. On August 30, 2013, Microsoft and ValueAct entered into a cooperation agreement providing for regular meetings between Mason Morfit, President of ValueAct, and selected Microsoft directors and management to discuss a range of significant business issues. The agreement also gave ValueAct the option of having Morfit join the Microsoft board of directors beginning at the first quarterly board meeting after the 2013 Annual Meeting. On March 11, 2014, Microsoft Corp. appointed Mason Morfit of ValueAct Capital, as a board member.

A group of independent shareholders led by **Bristol Capital Advisors, LLC** and **Lone Star Value Management, LLC**, formed **Concerned Miller Shareholders ("CMS")** for the purpose of seeking to unlock value at the Company by reconstituting the Board and replacing senior management. CMS stated that while the Company has valuable assets and a strong operational team on the ground in Alaska, CMS believes the Company's shares are significantly undervalued due largely to the Company's management team's lack of experience and industry knowledge together with their excessive compensation and self-dealing. CMS notes that despite failure to achieve the performance targets

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upon which compensation awards were conditioned, CEO, Scott Boruff, and CFO, Voyticky, each received boosts in salaries by 59% and 58% respectively, bonuses of $500,000 and $475,000, respectively, and restricted stock grants of 100,000 shares of common stock for each.

On March 31, 2014, the Company and Concerned Miller Shareholders reached an agreement pursuant to which, Governor Bill Richardson, former Governor of New Mexico and U.S. Secretary of Energy has been nominated and recommended by the Board of the Company to stand for election as a director of the Company's upcoming Annual Meeting of Shareholders. Concerned Miller Shareholders will withdraw its proposed slate of director candidates and will vote all of its shares in favor of each of the nominees recommended by the Board. The Company also recently announced it has nominated two additional independent director candidates.

On April 19, 2013 **Trian** unveiled its stake in **Mondelez Int'l** Inc. in an amended 13F filing, along with a stake in PepsiCo. At a conference in July, Peltz said that Pepsi should acquire Mondelez and then spin off the soft drink business altogether. He also stated that Pepsi should spin off its Frito Lay unit, if it doesn't want to acquire Mondelez. On October 29, at a conference in Chicago, Peltz stated his belief that Mondelez is poorly run despite its catalog of great brands (i.e. Oreo, Trident and Cadbury). Peltz argued that the cost structure is inflated compared to peers and operating margins are not as high as they could be with a touch of operational improvements. Peltz would also like to see the Company shed its name because it sounds too much like a medicine. On January 21, 2014 Mondelez added Nelson Peltz to its Board. In return for a seat on the Board, Peltz dropped his push for a merger to PepsiCo Inc.

On April 14, 2014, **Nabors Industries Ltd.** announced additional changes to its corporate governance and compensation practices. Nabors stated that these changes reflect its ongoing dialogue with its shareholders, including **Blue Harbour** and **CalSTRS**. The changes include: (i) adopting a policy to separate the roles of Chairman of the Board and CEO following the tenure of the current Chairman and CEO, in accordance with shareholder requests, (ii) adopting a policy limiting severance payments to 2.99 times an executive's salary and bonus, formalizing an initiative already implemented in the employment agreements of the CEO and CFO, (iii) instituting a proxy access policy allowing eligible shareholders to include director nominees with those nominated by the Board in the Company's proxy materials (shareholders owning 5% of the Company's shares for at least three consecutive years following the Company's 2014 Annual Meeting are eligible, and Nabors will review this policy in three years and consider lowering the ownership threshold in light of prevailing practices of other S&P 500 companies and discussions with shareholders), (iv) planning to ask shareholders to approve an advisory vote to extend its shareholder rights plan at its 2014 Annual Meeting, (v) implementing a policy requiring public announcement of the Board's reasoning if any director resignations tendered pursuant to its director resignation policy are not accepted, and (vi) clarifying in its governance guidelines that the Lead Director may add agenda items for Board meetings and that the Board includes gender in its diversity considerations.

On June 26, 2014, Blue Harbour expressed its support for Nabors Industries Ltd. to merge its completion and production business with C&J Energy Services, Inc. Blue Harbour believes this transaction will allow the Company's shareholders to benefit from the significant growth potential and synergies in the completion and production business, and allow the Company to fully focus on delivering on the significant opportunity embedded in their domestic and international land drilling rig businesses.

On December 3, 2014, **Barington Capital Group** sent a letter to **Omnova Solutions Inc.** expressing its belief that the Company's poor share price reflects the market's dissatisfaction with the Company's lack of strategic focus, disappointing return on invested capital and organic growth, frequent earnings shortfalls and poor executive compensation and corporate governance practices. Barington does believe there is a clear path to improve value at the Company and also recommended seven individuals that Barington believes should be added to the Board. Barington believes in order to improve value, steps must promptly be taken to (a) rationalize the Company's portfolio of businesses by considering the sale of the Engineered Surfaces segment, (b) enhance organic growth by investing further in the Company's sales force, (c) make effective use of the Company's excess liquidity by increasing the size of its share repurchase program, and (d) improve OMNOVA's executive compensation and corporate governance practices by adding experienced directors to the Board that could help the Company effectively align executive pay with performance, revisit the "golden parachute" payments, implement a formal clawback policy regarding executive incentive pay, separate the roles of Chairman and CEO and implement a majority voting standard. On December 9, 2014, Barington nominated the following individuals for election to the Board: (i) Joseph Gingo, chief ex-

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ecutive of plastic compounds and resins maker A. Schulman Inc.; (ii) Javier Perez, former McKinsey & Company partner and (iii) James Mitarotonda, Barington Chief Executive.

On July 17, **Trian Fund Management's Nelson Peltz** said that **Pepsi** should acquire the snack maker Mondelez. Trian is a big shareholder of both companies. Peltz said Pepsi should buy Mondelez and then spin off the soft drink business altogether. He argued that consumer tastes are turning against soft drinks. Peltz also said that if Pepsi doesn't want to acquire Mondelez, it should spin off its Frito Lay unit. Peltz said that the problem with Pepsi has not been management, but structure and that he would be meeting with Pepsi's management to discuss the proposal "in the very near future." Following this disclosure, Pepsi said it had held talks with the hedge fund to "consider their ideas." A day after Peltz revealed his strategy, one of Pepsi's largest shareholder, Blackrock Inc., publicly stated that it opposed Nelson Peltz's proposal. A week later after announcing a better-than-expected second-quarter profit, Pepsi CEO Indra Nooyi effectively dismissed Peltz's idea. Pepsi CFO Hugh Johnston took it one step further, saying: "You'll hear people occasionally advocate for that type of transaction," Johnston said. "The thing that they really need to look at is what's their percentage holdings of Mondelez and what's their percentage holdings of PepsiCo."

On February 13, 2014, PepsiCo stated that it will keep trying to turn around its soft-drink sales instead of splitting up the Company. The Company also stated that it will increase the cash it returns to shareholders by 35% this year, raising its combined dividends and stock buybacks to $8.7 billion. Nelson Peltz of Trian sent a 37-page letter to the Company in which he said he was "highly disappointed" with the Company's decision not to heed his proposal. In his letter, Peltz cited deteriorating North American beverage trends, questionable quality of earnings in 2013 and a disappointing 2014 profit forecast as evidence that the Company needs to act. Peltz urged the Company to spin off its beverage business and focus on the snack business to create "two leaner and more entrepreneurial companies." On March 13, 2014, Trian sent a letter to Pepsi's Board calling on it to provide shareholders with analytical support for the Company's continued reliance on the "Power of One" strategy and its rejection of Trian's recommendation to separate global snacks and beverages into two independent public companies.

On July 16, 2014, Nelson Peltz said "there will be action" regarding his belief that PepsiCo Inc.'s snack division should be split from the Company's beverage business, stating a proxy fight as one possibility. Peltz said his firm, Trian Fund Management, has spoken with about 100 top PepsiCo shareholders, and some are coming around to his way of thinking. Also, it was recently reported that in late June, CalSTRS sent a letter to one of the Company's independent directors recommending Nelson Peltz as a candidate for the Board.

QUIKSILVER, INC | ZQK

On October 8, 2014, Ryan Drexler of **Consac LLC** called on the Board of **Quiksilver Inc.** to explore options to sell the Company. Drexler stated his belief that the Company's 17-month-old turnaround plan is a failure. Drexler also noted that the Company's stock price has fallen roughly 80% this year, and that the $42.2 million operating loss (excluding impairment losses) for the first three quarters of fiscal 2014 is a significant deterioration from the $11.4 million operating profit (excluding impairment losses) for the same period in fiscal year 2013.

Concerned Rentech Shareholders, a group led by **Engaged Capital, LLC** and **Lone Star Value Management, LLC**, that owns 4.6% of the Company's outstanding shares, announced on January 13, 2014 that it nominated the following four candidates for election to the Board at the upcoming 2014 Annual Meeting: (i) Jeffrey J. Brown, (ii) Jeffrey E. Eberwein, (iii) Larry Holley and (iv) Glenn W. Welling. Concerned Rentech Shareholders highlighted its frustration at the continued destruction of shareholder value at the Company and the persistent missteps and lapses in oversight that have caused the group to lose confidence in the Board's ability to oversee the Company. Concerned Rentech Shareholders stated that the most egregious of these missteps include: (a) a failed alternative energy business, (b) spending $158 million on a fertilizer plant with no real operating history to then write down the value of the asset by $30 million within a year of completing the transaction, (c) the Board approving expenditures with a total value of around $100 million in a business where the Company has no institutional expertise, (d) after failing to secure support from the Company's experienced joint venture partner, Graanul Invest AS, the Board approved using the Company's most valuable asset, RNF shares, as collateral in order to finance the Company's significantly increased capital investment and (e) maintaining an unjustifiably high cost structure built for a business seven times the Company's size. Concerned Rentech Shareholders concluded that immediate Board reconstitution, including through direct shareholder representation, is needed to ensure that all decisions are in the best interests of the Company's shareholders.

Also, on December 27, 2013, Concerned Rentech Shareholders submitted to the Board a formal request for exemption under the Company's Tax Benefit Preservation Plan to allow the group to acquire beneficial ownership in the aggregate of up to 7% of the out-

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standing shares of the Company's stock. To date, the Board has not responded to this request, and the Rights Plan prohibits any shareholder from acquiring in excess of 5% except in certain limited circumstances.

On April 10, 2014, Concerned Rentech Shareholders settled with the Company where an additional candidate approved by Concerned Rentech Shareholders will be nominated by the Company for election to the Board at the 2014 Annual Meeting. Concerned Rentech Shareholders agreed to withdraw its slate of nominees for the 2014 Annual Meeting and to vote in favor of the Board's slate of nominees.

Third Point has asked **Royal DSM NV (DSM)**, the Dutch chemical maker, to focus on nutritional additives. Third Point believes the Company's low valuation comes from the performance materials and polymer intermediates businesses and Third Point wants DSM to unlock value through asset sales.

On November 17, 2014, **Sandell** sent a letter to **TransCanada Corp.** expressing its disappointment that the Company has been slow to evolve – Sandell points out that the Company's peers have unlocked substantial value through fully utilizing the MLP structure and emphasizing Adjusted Funds From Operations ("AFFO") over EPS metrics to better highlight asset cash flow generation. Sandell believes it is imperative that the Company fully employ its MLP immediately to catch up with its North American infrastructure competitors who have already benefitted for years through maximizing the value of this structure. Also, Sandell believes AFFO/share is a more suitable metric than EPS to ascertain dividend payment capacity and potential dividend growth profile and therefore should be emphasized more to reduce the Company's valuation discount. Further, Sandell believes the spin-off of the Energy segment results in the best long term corporate structure for the Company to not only highlight the hidden value of the Pipeline segment, but also allow each individual company to attract world-class management. Sandell believes the proposed 'New' TransCanada would be a "near-perfect corporate structure for the Company as it would yield three nimbler, industry-leading entities led by world-class management teams. Sandell also believes the timing of the restructuring is ideal given the stabilization of the Company's core Pipeline assets, continued development of its Capital Program, the resolution of key issues in the Energy segment and open and available credit markets.

Blue Harbour disclosed its investment in **Tribune Co.** in February 2014 at the annual meeting of EnTrust Capital. Blue Harbour has urged the Company to take steps including selling its real-estate holdings and the spectrum its broadcast properties own.

At **ValueVision's** 2014 Annual Meeting, four of **Clinton's** nominees were elected to the Board. Clinton was previously part of a filing group with Cannell Capital, which was terminated on February 5, 2014. On June 23, 2014, the Company announced that it appointed Mark Bozek as its new CEO, which Clinton proposed the Company do in Fall 2013.

On September 8, 2014, **Walgreen Co. (WAG)** announced that it is giving **JANA Partners, LLC** (approx. a 1% holder) two Board seats. In connection with Barry Rosenstein's election to the Board, JANA and the Company entered into a Nomination and Support Agreement, which, among other things, provides for the appointment of an additional independent director recommend by JANA and agreed to by Walgreens. Also, if there is a vacancy which the Company's Board chooses to fill during the term of the agreement, such replacement director will be mutually agreed to by the Company and JANA.

On January 10, 2014, it was reported that **Elliott** and other activists have built up a stake in **Wm Morrison** and are pushing for it to spin-out the majority of its freehold property assets into another company that would then be floated. On January 18, 2014, it was revealed that the second activist investor involved in the Company is **Sandell Asset Management.** " I think we were in Morrisons before Elliott got involved," Mr Sandell said, when asked if there were any other British companies that were ripe for investor activism. He declined to comment on Elliott's proposals for the supermarket group.

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Clinton Group, Inc. is seeking to replace three of the nine directors at **Xenoport, Inc.** with its nominees, Kevin J. Cameron, Rael Mazansky, M.D. and Charles A. Rowland, Jr. Clinton believes the Company should adopt a new capital allocation strategy and focus its resources on the development of XP23829 ("829"), the Company's novel fumaric acid ester compound and pro-drug for monomethyl fumarate. Clinton also believes the Board should hire a new Chief Executive Officer. Clinton believes it is time for a change in the composition of the Board and management to help the Company re-orient its capital and efforts to emphasize 829 and the substantial commercial opportunities the compound affords to the Company's stockholders. Clinton also urges shareholders to vote against approving, on an advisory basis, executive compensation. At the 2014 Annual Meeting, none of Clinton's nominees were elected to the Board.

On September 26, 2014, **Starboard** sent a letter to Marissa Mayer, President and CEO of **Yahoo! Inc.**, highlighting several opportunities to unlock value for shareholders. While Starboard sent a detailed letter to the Company, their main recommendation is to separate the Alibaba and Yahoo Japan assets from the operating company in such a way that the Company could save approximately $17 billion in taxes. Starboard further believes that a combination of the Company with AOL could offer synergies of up to $1 billion by significantly reducing the cost overlaps in their Display advertising businesses as well as synergies in corporate overhead. Also, Starboard believes the combined entity would be able to more successfully navigate the ongoing industry changes, such as the growth of programmatic advertising and migration to mobile, which could lead to revenue growth opportunities, higher quality content, better technology assets and enhanced relationships with advertising agencies. Starboard believes the Company's recent strategy of focusing on acquisitions has only been buoyed by the strong growth in value of Alibaba. Starboard notes that the likely result of monetizing the Company's non-core minority investments in the most tax-efficient manner would likely mean the Company would not have access to the proceeds to be used towards acquisitions. Starboard explains that even if the Company were to deliver all of the value from its non-core minority investments directly to shareholders without receiving any additional cash proceeds, the Company would still have $7 billion in cash and cash equivalents (after returning to shareholders approximately 50% of the Alibaba IPO proceeds) and significant debt capacity which would be more than sufficient for any future capital needs for investments/acquisitions. Starboard clarifies that while the Company is trading at such a discount to the sum-of-its-parts, Starboard does not believe the Company should be pursuing acquisitions of companies at high multiples of revenue as it has done in the past.

On January 8, 2014, Starboard sent a letter to Yahoo expressing its concern over the growing number of media reports indicating the Company's interest in doing large-scale acquisitions, notably with Scripps Networks Interactive and Time Warner's CNN. Starboard also stated its concerns are exacerbated as it has been more than 60 days since the IPO of Alibaba, and the Company is now free to disclose its intentions with regard to its shares of Alibaba. However, Starboard states, to date, no announcement has been made regarding the Company's plans for a tax-efficient separation of its non-core minority equity interests. Starboard reiterates its belief that a cash-rich split-off to separate the Company's non-core minority equity interest has serious shortcomings: (i) the market value of the 'active trade or businesses' the Company would receive as part of the consideration in exchange for its interests in Alibaba or Yahoo Japan would be difficult to ascertain objectively, and could be of questionable value to shareholders; (ii) the total consideration that the Company would receive in exchange for the Alibaba and Yahoo Japan stakes would likely be lower than the valuation that those assets would garner if they were traded as separate public entities; (iii) the Company would retain a substantial amount of cash which could then be used for large and potentially value destructive acquisitions, such as those speculated about in the media; and (iv) it would introduce unnecessary transaction complexities and execution risks given the required third party participation. Starboard believes separating the non-core minority equity interests in the most tax-efficient, value maximizing, and shareholder friendly manner must be the Company's top priority. In addition, Starboard continues to believe that the Company must significantly reduce costs to improve profitability in its core business and should also be considering a combination with AOL. Starboard states that a combination with AOL could accomplish all of these goals by allowing for: (a) a tax-efficient separation of the non-core minority equity investments; (b) tremendous cost synergies of between $1 billion and $1.5 billion; and (c) a strong growth platform given AOL's progress in mobile and video advertising. Starboard ends its letter by stating that should the Company proceed down a different path by pursuing large acquisitions and/or a cash-rich split, Starboard will take this as an indication that significant leadership change is required at the Company.

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