

GIBSON DUNN

2020 Mid-Year Activism Update

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Gibson Dunn
2020 Mid-Year Activism Update

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October 9, 2020

To Our Clients and Friends:

This Client Alert provides an update on shareholder activism activity involving NYSE- and Nasdaq-listed companies with equity market capitalizations in excess of \$1 billion and below \$100 billion (as of the close of trading on June 30, 2020) during the first half of 2020. As the markets weathered the dislocation caused by the novel coronavirus (COVID-19) pandemic, shareholder activist activity decreased dramatically. Relative to the first half of 2019, the number of public activist actions declined from 51 to 28, the number of activist investors taking actions declined from 33 to 10 and the number of companies targeted by such actions declined from 46 to 22.

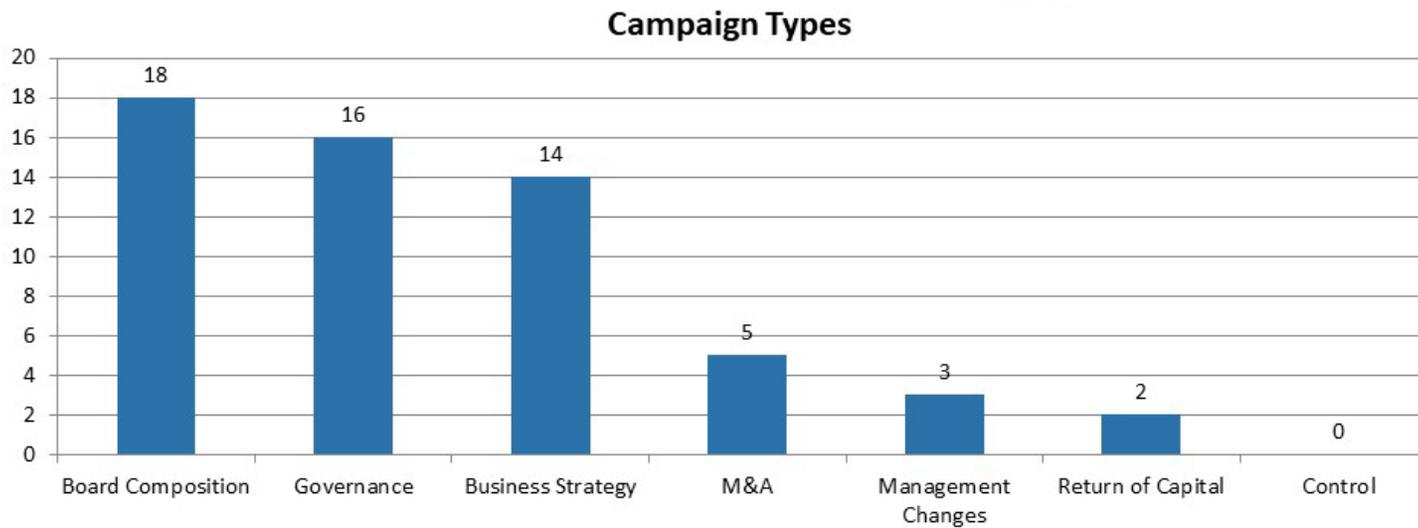
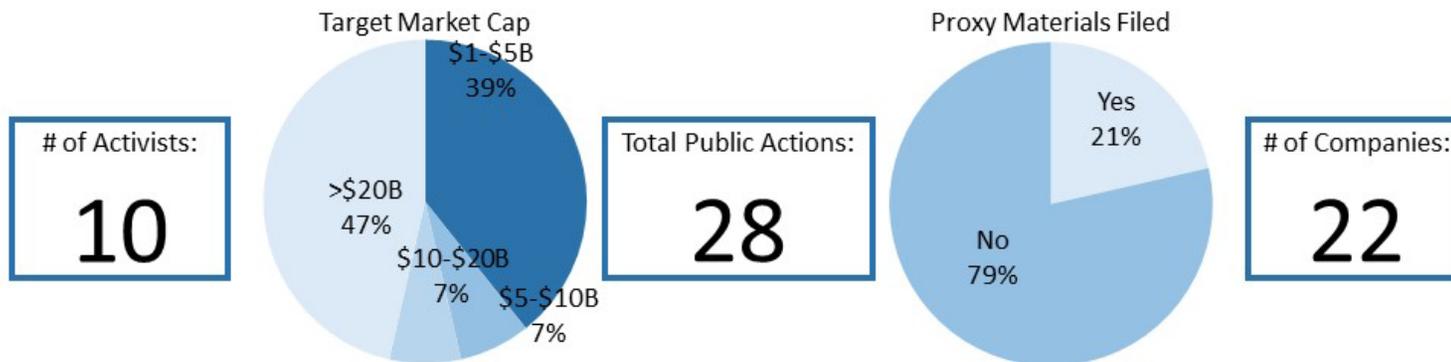
The decline in shareholder activism activity brought concentration among those investors engaged in activist activity during the first half of 2020. For example, during the first half of 2020, NorthStar Asset Management launched six campaigns and Starboard Value LP launched four campaigns. Three activists represented half of the total public activist actions that began during the first half of 2020.

In addition, as compared to the first half of 2019, activists turned their focus away from agitating for particular transactions as the animating rationale for the campaigns they launched. While changes in board composition remained the leading rationale for campaigns initiated in the first half of 2019 and the first half of 2020, M&A (which includes advocacy for or against spin-offs, acquisitions and sales) and acquisitions of control, which served as the rationale for 24% and 8%, respectively, of activist campaigns in the first half of 2019, declined to 9% and 0%, respectively, in the first half of 2020. By contrast, advocacy for changes in governance, which emerged in 6% of campaigns in the first half of 2019, became the principal rationale for 28% of campaigns in the first half of 2020. Business strategy also remained a high-priority area of focus for shareholder activists, representing the rationale for 22% of campaigns begun in the first half of 2019 and 24% of campaigns begun in the first half of 2020. The rate at which activists engaged in proxy solicitation remained consistent at 24% in the first half of 2019 and 21% in the first half of 2020. (Note that the percentages for campaign rationales described in this paragraph sum to over 100%, as certain activist campaigns had multiple rationales.)

Publicly filed settlement agreements declined alongside the decrease in shareholder activism activity. Nine settlement agreements were filed during the first half of 2020, as compared to 17 such agreements during the first half of 2019. Nonetheless, the settlement agreements into which activists and companies entered contained many of the same features noted in prior reviews, including voting agreements and standstill periods as well as non-disparagement covenants and minimum and/or maximum share ownership covenants. Expense reimbursement provisions appeared in two thirds of the settlement agreements reviewed, which represented an increase relative to historical trends. We delve further into the data and the details in the latter half of this Client Alert.

We hope you find Gibson Dunn's 2020 Mid-Year Activism Update informative. If you have any questions, please do not hesitate to reach out to a member of your Gibson Dunn team.

By the Numbers – H1 2020 Public Activism Trends



H1 2020 Activist Public Actions

Investor	Company Name*	Exchange: Ticker	Public Action Date	Market Cap (in billions as of 06/30/20)	Percentage Ownership**	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 6/30/20 unless noted)
Canyon Capital Advisors	Berry Global Group, Inc.	NYSE: BERY	2/23/20	\$5,872.40	7.0%	Business strategy; M&A	N	In 2/20, Canyon disclosed its acquisition of Company Stock and issued a press release containing a letter to Company asking Company to immediately take the following steps: (1) publicly announce that it had hired an investment bank or other financial advisor to develop a clear plan of action toward accelerated deleveraging; (2) commit to achieving an investment grade rating (and cease M&A activity other than deleveraging transactions); and (3) get in front of environmental, social and governance trends and correct market misperceptions about sustainability.
Carl Icahn	Delek US Holdings, Inc.	NYSE: DK	3/12/20	\$1,279.94	14.86%	M&A	N	In 3/20, Carl Icahn obtained a 14.86% stake in Company, and advocated for Company to be acquired by CVR Energy, Inc. Company adopted a limited duration shareholder rights agreement in response to Icahn's purchase.
Elliott Management	Nielsen Holdings plc	NYSE: NLSN	4/30/20	\$5,297.23	13.0%	Board composition; business strategy; governance	N	In 4/20, Elliott and Company entered into a cooperation agreement pursuant to which Company agreed to increase the size of its board and appoint an Elliott designee as a director and to form a finance committee

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**Ownership is highest reported ownership since the public action date and includes economic exposure to derivatives where applicable.

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								to oversee Company's strategic, capital and financial plans, including the separation of the Global Connect business and Company's go forward strategy. In exchange, Elliott agreed to standstill and voting provisions, including not acquiring more than 9.9% of Company's stock. Elliott and Company also entered into an Information Sharing Agreement pursuant to which Elliott is entitled to receive certain confidential information and has access to Company's senior executives and Board.
Elliott Management	Alexion Pharmaceuticals, Inc.	NASDAQ: ALXN	5/12/20	\$24,785.67	Not available	Business strategy; M&A; return of capital	N	In 5/20, Elliott sent a letter to Company's board detailing its perception of Company's persistent underperformance and undervaluation which has caused investor skepticism over the company's strategy and general longevity. Elliot expressed this letter was a result of several developments at Company, including an executive's abrupt departure and two acquisitions. Elliott proposed that Company explore several avenues to course correct, including exploring a sale of itself.

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Elliott Management	Twitter, Inc.	NYSE: TWTR	3/9/20	\$23,374.10	4.0%	Board composition; governance	N	In 03/20, Elliott, Silver Lake Partners and Company entered into a cooperation agreement pursuant to which Company agreed to appoint Elliott partner, Jesse Cohn and Silver Lake co-CEO and managing partner, Egon Durban to its board. Company agreed to form an independent five-person committee, the Management Structure Committee, that will build on the board's regular evaluation of Company's leadership structure. The Management Structure Committee would be chaired by Company's Lead Independent director and would include Durban and Cohn, as well as two additional independent directors. In exchange, Elliott agreed to voting and standstill provisions, including not acquiring any securities or rights to securities of Company that would result in Elliott having aggregate beneficial ownership in excess of 4.9% of any class of Company's outstanding voting securities or aggregate economic exposure to more than 7.5% of such voting securities outstanding at such time.

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Elliott Management	Evergy, Inc.	NYSE: EVRG	1/21/20	\$13,438.61	4.4%	Board composition; business strategy; governance; M&A	N	In 01/20, Elliott sent a letter to Company's board which asserted that a renewed focus on improving core utility operations and investing in Company's critical system infrastructure can rectify its prolonged underperformance, discounted valuation and associated increased cost of capital. In 02/20, Elliott and Company entered into an agreement pursuant to which Company agreed to temporarily expand the size of its board and nominate two independent directors and committed to decrease the board to maximum 12 directors by the 2022 general shareholder meeting. Company also agreed to form a Strategic Review & Operations Committee to explore ways to increase shareholder value that were proposed in Elliott's letter from 01/20. In exchange, Elliott agreed to standstill and voting provisions. In 03/20, Elliott and Company entered into an amended agreement to extend certain deadlines in light of the COVID-19 pandemic. In 05/12, media reports indicated Company had plans to kick off a formal sale process following pressure from Elliott and to commence a strategic review pursuant to its agreement with Elliott. In 08/12, Company announced a new five-year strategic plan designed to speed its transition to cleaner energy as a standalone company, which plan resulted from a review completed by the Strategic Review & Operations Committee.

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H Partners	Six Flags Entertainment Corporation	NYSE: SIX	1/14/20	\$1,626.83	6.5%	Board composition; governance	N	In 1/20, H Partners voiced concerns over Company's operational and stock price performance. H Partners urged Company to improve its governance and recommended the addition of a designee of H Partners to Company's board. In 1/20, Company entered into a cooperation agreement with H Partners, pursuant to which, a designee of H Partners was appointed to Company's board, and in exchange, H Partners agreed to abide by customary standstill terms, including not acquiring more than 14.9% of Company's stock.
Land and Buildings	American Homes 4 Rent	NYSE: AMH	2/11/20	\$8,100.88	Not available	Board composition; governance	Y	In 2/20, Land & Buildings filed proxy soliciting materials in which it disclosed that it believed Company was substantially undervalued relative to its peer company, Invitation Homes Inc. and encouraged shareholders to vote in favor of its slate of director nominees at the upcoming annual meeting of the Company. In 3/20, Land & Buildings withdrew its director nomination for the 2020 annual meeting in light of Company's COVID-related business challenges, but stated it would continue to closely monitor Company's board and management to ensure interests of all shareholders are appropriately represented in the boardroom.

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Macellum Advisors	Big Lots, Inc.	NYSE: BIG	3/6/20	\$1,647.71	7.5%	Board composition; business strategy	Y	In 3/20, Macellum Advisors, together with Ancora Advisors, filed proxy soliciting materials nominating nine independent candidates to Company's board. A few days later, Ancora and Macellum Advisors wrote a letter to shareholders advocating their belief that substantial value could be created if the Company pursued a sale and leaseback transaction for its real estate assets. Ancora and Macellum Advisors further advocated for a meaningful change to Company's board of directors. In 4/20, Ancora and Macellum Advisors and their affiliates entered into a settlement agreement with Company, pursuant to which Company agreed to increase the size of its board from nine to 11 members and fill the resulting vacancies with Ancora and Macellum Advisors designees. In 6/10, Company announced the closing of its previously announced sale and leaseback transactions with affiliates of Oak Street Real Estate Capital, LLC relating to its four Company-owned distribution centers.
NorthStar Asset Management	Alphabet Inc.	NASDAQ: GOOGL	5/29/20	\$966,394.01	<1%	Governance	N	In 5/20, NorthStar filed a rebuttal to Company's opposition statement regarding a stockholder proposal to recapitalize shares of Company to eliminate special voting rights with respect to its Class B shares, which are held by Company insiders. This stockholder proposal regarding equal shareholder voting was not approved at Company's annual meeting in 6/20.

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NorthStar Asset Management	Facebook, Inc.	NASDAQ: FB	5/18/20	\$647,452.82	Not available	Governance	N	In 5/20, NorthStar filed a rebuttal to Company's opposition statement regarding a stockholder proposal to recapitalize shares of Company to eliminate special voting rights with respect to its Class B shares, which are held by Company insiders. This stockholder proposal regarding equal shareholder voting was not approved at Company's annual meeting in 5/20.
NorthStar Asset Management	Square Inc.	NYSE: SQ	4/24/20	\$46,105.52	Not available	Board composition; governance	N	In 4/20, NorthStar notified Company that it intended to present a proposal at the annual meeting which would require the board to prepare a report to shareholders describing opportunities for Company to facilitate the representation of non-management employees on the Board. In 6/20 North Star's proposal was defeated at the Company shareholder meeting.
NorthStar Asset Management	Badger Meter, Inc.	NYSE: BMI	4/8/20	\$1,832.07	Not available	Board composition; governance	N	In 4/20, NorthStar filed a rebuttal to Company's opposition statement to the proposal that would require the board to prepare a report to shareholders describing opportunities for Company to facilitate the representation of non-management employees on the Board. In 4/20 the proposal was defeated at the Company shareholder meeting.

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NorthStar Asset Management	Stryker Corporation	NYSE: SYK	3/24/20	\$67,639.45	<1%	Board composition; governance	N	In 4/20, NorthStar notified Company that it intended to present a proposal at the annual meeting which would require the board to prepare a report to shareholders describing opportunities for Company to facilitate the representation of non-management employees on the Board. In 5/20 the proposal was defeated at the Company shareholder meeting.
NorthStar Asset Management	IDEX Corporation	NYSE: IEX	3/20/20	\$11,914.93	Not available	Board composition; governance	N	In 3/20, NorthStar notified Company that it intended to present a proposal at the annual meeting which would require the board to prepare a report to shareholders describing opportunities for Company to facilitate the representation of non-management employees on the Board. In 5/20 NorthStar's proposal was defeated at the Company shareholder meeting.

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Oaktree Capital Management	Infinera Corporation	NASDAQ: INFN	3/19/20	\$1,106.43	13.5%	Board composition	N	In 10/18, Oaktree obtained 12.1% of Company stock in connection with the sale of Coriant to Company. In 3/20, Oaktree increased its ownership stake in Company and called for Company to immediately appoint a direct representative of Oaktree to the board as well as an independent director designated by Oaktree. Oaktree threatened to take action at the upcoming 2020 annual meeting if it was not able to reach a resolution. In 4/20, Oaktree and Company reached a settlement agreement pursuant to which Company nominated an Oaktree representative to the board as well as an Oaktree designated independent director and in exchange Oaktree agreed to abide by customary standstill terms, including not acquiring more than 19.9% of Company's stock.

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Pershing Square Capital Management	Agilent Technologies, Inc.	NYSE: A	9/30/19	\$27,286.66	4.1%	Business strategy	N	In 12/19 Pershing Square publicly announced its initial purchase of shares in Company, holding approximately 1% of outstanding shares. In 2/20, within Pershing Square's annual investor presentation, it stated that Company had room to increase margins and leverage. By 5/20 Pershing Square increased its holding in Company to approximately 4.1%. Pershing Square has continued to engage with Company and has not announced any further public actions.
Sachem Head Capital Management	Olin Corporation	NYSE: OLN	2/24/20	\$1,813.71	9.4%	Board composition; business strategy; governance; management changes	N	In 1/20, Sachem Head submitted formal notice to Company of its intent to present a shareholder proposal and nominate four directors at Company's 2020 annual meeting. In 2/20, Sachem Head disclosed it had accumulated 9.4% of Company and intended to solicit proxies to elect its director nominees. In 3/20, Sachem Head reached a settlement with Company in which Company increased the size of the board to 14, adding two of Sachem Head's nominees to the board. Company also agreed to declassify its board at the 2020 annual meeting and Sachem Head agreed to customary standstill provisions.

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Starboard Value	Commvault Systems, Inc.	NASDAQ: CVLT	3/20/20	\$1,786.79	9.9%	Board composition	Y	In 3/20, Starboard announced that it held 9.3% of Company stock and stated that Company was undervalued. In 4/20, Starboard filed proxy soliciting material in order to nominate and elect six directors to Company's board. In 6/20, Company announced it had reached a settlement with Starboard. Company agreed to add three Starboard designated independent directors to Company's board, Starboard agreed to customary standstill provisions. Company also agreed to form a new Operating Committee which will oversee Company's budgeting, capital allocation, and margin targets.
Starboard Value	Box, Inc.	NYSE: BOX	8/29/19	\$3,185.68	7.7%	Board composition	N	In 8/19, Starboard disclosed it obtained a 7.5% stake in Company. In 9/19 Company's CEO publicly stated that he would work collaboratively with Starboard. In 3/20, Company announced it had reached an agreement with Starboard in which company would add three Starboard designated directors to the board at the 2020 annual meeting and agreed to customary standstill provisions.

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Starboard Value	eBay Inc.	NASDAQ: EBAY	2/4/20	\$36,855.50	1.1%	Board composition; business strategy; management changes	Y	In 2/20 Starboard sent an open letter to Company's board announcing its intent to nominate four directors to Company's board and emphasized Company's need to fill the CEO vacancy with an outside candidate, in light of Starboard's perceived failure of Company to act on the results of its operating and strategic reviews. Company's board responded that Company's board includes a director jointly nominated and agreed upon with Starboard and Elliott and that the board and Company's management team are aligned in their commitment to taking all appropriate steps to drive value of Company. In 3/20, Starboard filed proxy soliciting material to nominate four directors at Company's 2020 annual meeting. Immediately, following the filing of such materials, eBay responded that the actions by Starboard were unwarranted and unreasonable. In 4/20, Company appointed an outside CEO and agreed to nominate an additional independent director at Company's 2020 annual meeting with Starboard providing input on the nominee. As a result, Starboard withdrew its slate of four director candidates.

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Starboard Value	Merit Medical Systems, Inc.	NASDAQ: MMSI	1/3/20	\$2,528.28	9.0%	Board composition; business strategy	Y	In 1/20, Starboard disclosed it held a 9% stake in Company and filed proxy soliciting materials to nominate seven directors to stand for election at Company's 2020 annual meeting. In 5/20, Company and Starboard reached an agreement pursuant to which Starboard agreed to approve three new independent director nominations to Company's board and abide by customary standstill provisions. Company's board agreed to form a new operating committee to establish margin targets.
Starboard Value	GCP Applied Technologies Inc.	NYSE: GCP	1/13/20	\$1,354.88	9.0%	Board composition; business strategy; governance	Y	In 1/20, Starboard delivered a letter to Company's board announcing its plan to nominate nine directors to Company's Board in light of Starboard's perceived view that Company has had a prolonged period of disappointing operating and financial results, poor corporate governance and excessive compensation at Company. In 2/20, Starboard filed proxy soliciting materials naming nine director nominees and its intention to take control of Company's board. In 4/20, Starboard filed amended proxy materials seeking election of eight directors to Company's board and began soliciting proxies from shareholders for the 2020 annual meeting. In 5/20, Starboard announced that proxy advisors Glass Lewis, ISS, and Egan-Jones supported Starboard's slate of directors and sent a letter to stockholders encouraging them to vote for Starboard's slate. In late 5/20, at Company's annual meeting,

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								Company's stockholders elected all eight Starboard nominees to Company's board.
Trillium Asset Management Corp.	The TJX Companies, Inc.	NYSE: TJX	4/28/20	\$60,564.67	Not available	Business strategy; governance	N	In 04/20, Trillium sent a letter to shareholders urging them to vote for a proposal for Company to issue a formal chemical management report on plans to reduce its chemical footprint given the risk of toxic chemicals to human health, the environment, and companies. In 05/20, Trillium sent another letter to shareholders urging them to vote for a proposal in Company's 2020 proxy, which requests the Executive Compensation Committee take into consideration the pay grades and/or salary ranges of all classifications of Company employees when setting target amounts for CEO compensation. Company recommended shareholders vote against both of Trillium's proposals in its proxy statement. Both of Trillium's proposals failed, however, approximately 44% of shareholders voted in favor of the proposal requesting a report on reduction in Company's chemical footprint.
Trillium Asset Management Corp.	Facebook, Inc.	NASDAQ: FB	4/19/20	\$647,452.82	Not available	Business strategy; governance	N	In 04/20, Trillium sent a letter to shareholders urging them to vote for a proposal for Company to remove Mark Zuckerberg from his position as chairman of the board and appoint an independent board member as board chair. Company recommended shareholders vote against Trillium's proposal in its proxy statement.

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								Trillium's proposal was defeated at the Company shareholder meeting.
Trillium Asset Management Corp.	Johnson & Johnson	NYSE: JNJ	3/16/20	\$370,503.03	Not available	Business strategy; governance	N	In 03/20, Trillium sent a letter to shareholders urging them to vote for two proposals (i) calling for an independent board chair and (ii) production of a report that discloses and documents the board's oversight responsibilities for opioid-related risks and the governance reforms the company has implemented to more effectively manage financial, legal and reputational risks related to the opioid crisis. Company recommended shareholders vote against both of Trillium's proposals in its proxy statement. Trillium's proposals for an independent board chair was not approved; however, the proposal for a report on governance of opioid-related risks was approved.
ValueAct Capital Partners	Nikola Corporation	NASDAQ: NKLA	6/3/20	\$24,371.88	5.60%	Business strategy; M&A; return of capital	N	In 6/20, the Company entered into a Business Combination Agreement pursuant to which, among other transactions ValueAct Spring Fund received a number of shares of Company common stock. ValueAct increased its position in Company based on the belief that the securities were undervalued and represented an attractive investment opportunity.

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ValueAct Capital Partners	Argo Group International Holdings, Ltd.	NYSE: ARGO	11/26/19	\$3,935.79	2.97%	Board composition; management changes	N	In 11/19 ValueAct published a letter directed to Hawaiian stakeholders urging Company to look outside the organization for a successor to Company's CEO to help Company accelerate its renewable energy goals. Company sent a response letter to shareholders stating it found ValueAct's letter to be misguided, factually inaccurate and a misleading attack on Company and its commitment to renewable energy, the state of Hawaii and Company's customers and investors. In 2/20 Company announced the appointment of a ValueAct representative to its board, and such director's addition to the Compensation Committee.

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By the Numbers – Trends in Settlement Agreements (2014 to H1 2020)

H1 2020 Board Representation Analysis

Category	Average
Board Seats Granted	2.4
Total Board Size*	11.5
Percent of Board*	24.2%

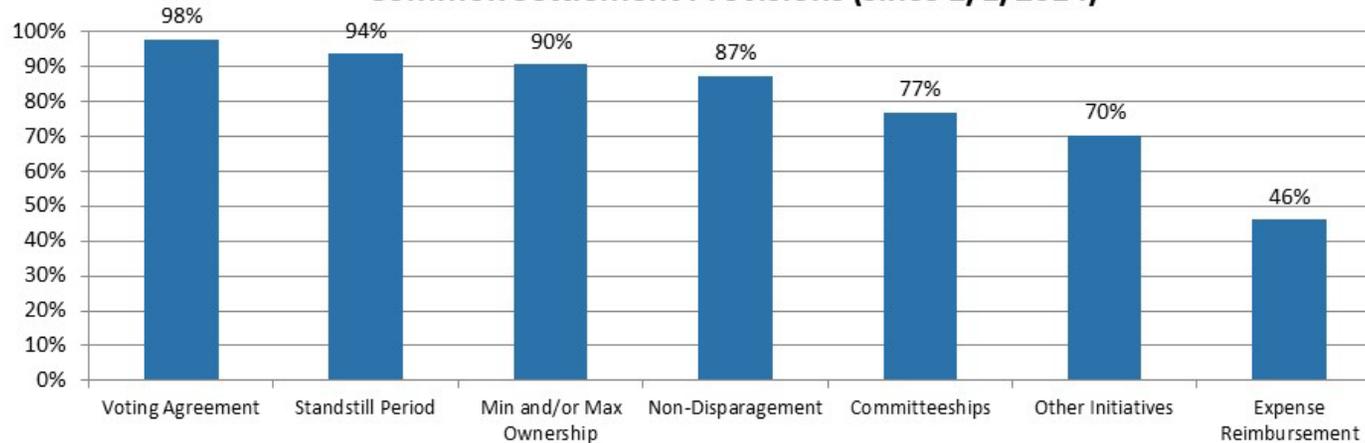
*Following settlement agreement

2014-H1 2020 Board Representation Analysis

Category	Average
Board Seats Granted	2.2
Total Board Size*	11.0
Percent of Board*	20.2%

*Following settlement agreement

Common Settlement Provisions (since 1/1/2014)



H1 2020 Settlement Agreement Key Terms

	Elliott Management	Elliott Management
Company	Evergy, Inc.	Nielsen Holdings plc
Agreement Date	February 28, 2020, as amended on March 25, 2020	April 29, 2020
Board Seats	2/17	1/13
Standstill (including term)	Yes; until November 2, 2020; however, if the Company enters into a definitive merger agreement prior to such time, then the standstill period shall automatically extend to the earlier of (i) 400 days after the date the Company entered into such merger agreement, (ii) the closing of the transaction contemplated by such agreement, (iii) the termination or expiration of the merger agreement and (iv) any formal denial of a proposed merger transaction issued by either the Kansas Cooperation Commission or the Missouri Public Service Commission.	Yes; until the close of business on the earlier of (i) the date of consummation of the separation of Nielsen’s Global Connect business and (ii) December 31, 2020.
Committee Membership	<ul style="list-style-type: none"> • The Elliott director designees will be appointed to a newly formed Strategic Review & Operations Committee, and one of the Elliott directors will be co-chair of the committee • One Elliott representative will be appointed to the Compensation and Leadership Committee • One Elliott representative will be appointed to the Finance Committee • One Elliott representative will be appointed to the Audit Committee 	The Elliott director designee will be appointed to a newly formed Finance Committee.

H1 2020 Settlement Agreement Key Terms *(continued)*

	Elliott Management	Elliott Management
	<ul style="list-style-type: none"> One Elliott representative will be appointed to the Nuclear, Operations and Environmental Oversight Committee If the Company pursues a long-term standalone operating plan and strategy, then an Elliott director will be named co-chair of the Finance Committee 	
Other Strategic Initiatives	<ul style="list-style-type: none"> The Evergy Board will form a Strategic Review & Operations Committee and the charter of such committee will be in a form mutually agreed between the Company and Elliott and any amendment thereto will require Elliott's consent. This committee will explore ways to enhance long-term shareholder value through a potential strategic combination or an enhanced long-term standalone operating plan and strategy Evergy will reduce the size of its Board to no more than 13 directors from the conclusion of the 2020 annual meeting until the 2021 annual meeting and then to 12 directors from the conclusion of the 2021 annual meeting until the 2022 annual meeting 	The Board will form a new Finance Committee and any amendment to the charter of such committee, which is in the form attached to the cooperation agreement, requires Elliott's consent and such committee must stay in place at least until the date of consummation of the separation of Nielsen's Global Connect business.
Voting	During the cooperation period, Elliott shall cause all of its shares to be voted on Evergy's proxy card at any annual or special meeting (i) in favor of each director nominated and recommended by the Evergy Board at the 2020 annual meeting; (ii) against any proposals or resolutions to remove any member of the Evergy Board; and (iii) in accordance with the Evergy Board's recommendation on any proposals not related to an extraordinary transaction.	During the cooperation period, Elliott shall cause all of the ordinary shares it holds to be voted on Nielsen's proxy card at any annual or special meeting (i) in favor of each director nominated and recommended by the Nielsen Board for election at the 2020 annual meeting; (ii) against any shareholder nominations for director that are not approved and recommended by the Nielsen Board; (iii) against any proposals or resolutions to remove any member of the Nielsen Board; and (iv) in accordance with the Nielsen Board's

H1 2020 Settlement Agreement Key Terms *(continued)*

	Elliott Management	Elliott Management
		recommendation on any proposals not related to an extraordinary transaction.
Min/Max Ownership	<p>Min: Aggregate economic exposure of at least 2% of common stock.</p> <p>Max: 9.9% of the then-outstanding shares of common stock.</p>	<p>Min: Aggregate economic exposure of at least 3% of common stock.</p> <p>Max: 9.9% of the then-outstanding shares of common stock.</p>
Expense Reimbursement	None.	None.
Non-Disparagement	Yes.	Yes.

H1 2020 Settlement Agreement Key Terms *(continued)*

	Elliott Management (with Silver Lake Partners)	H Partners
Company	Twitter, Inc.	Six Flags Entertainment Corporation
Agreement Date	March 9, 2020	January 30, 2020
Board Seats	3/11 (one Elliott director, one Silver Lake director and one independent director)	4/7 (one H Partners director and three independent directors)
Standstill (including term)	Yes; until the date that is 30 days prior to the deadline for the submission of stockholder nominations for the 2021 annual meeting.	Yes; until the later of (i) the earlier of (A) the date that is 30 days prior to the deadline for the submission of stockholder nominations for the 2021 annual meeting and (B) the date that is 100 days prior to the first anniversary of the 2020 annual meeting and (ii) 10 days after the H Partners director designee is no longer on the Six Flags Board.
Committee Membership	The Elliott director designee and the Silver Lake director designee will each be appointed to a newly formed Management Structure Committee.	The H Partners director designee will be appointed to the Nominating and Corporate Governance Committee and the Compensation Committee.
Other Strategic Initiatives	The Board will form a Management Structure Committee and such committee must remain in place until it has satisfied its responsibilities in accordance with the Management Structure Committee charter, which is in the form attached to the cooperation agreement.	One director (not including the H Partners director designee) will resign from the Board and all committees thereof, concurrent with or before the appointment of the third new independent director.
Voting	During the cooperation period, Elliott shall cause all of the voting securities it holds to be voted on Twitter's proxy card at any annual or special meeting (i) in favor of each director nominated by the Twitter Board for election; (ii) against the election as a director of any person that is not approved and recommended by the Twitter Board; (iii) against any proposals or resolutions to remove	During the cooperation period, H Partners shall cause all of the voting securities it holds to be voted on Six Flag's proxy card at any annual or special meeting (i) in favor of the slate of directors recommended by the Six Flags Board; (ii) against the election of any nominee for director not approved, recommended and nominated by the Six Flags Board; and (iii) in accordance with the Six

H1 2020 Settlement Agreement Key Terms *(continued)*

	Elliott Management (with Silver Lake Partners)	H Partners
	any member of the Twitter Board; and (iv) in accordance with the Twitter Board's recommendation on any proposals not related to an extraordinary transaction.	Flags Board's recommendation on any proposals not related to an extraordinary transaction.
Min/Max Ownership	<p>Min: 2% "net long position" the then-outstanding shares of common stock.</p> <p>Max: 4.9% beneficial ownership of any class of voting securities outstanding at such time or aggregate economic exposure of more than 7.5% of the voting securities outstanding at such time.</p>	<p>Min: The lesser of (i) 3.0% of the Company's then-outstanding common stock and (ii) 2,535,734 shares of common stock (subject to adjustment) in the aggregate.</p> <p>Max: 19% of the then-outstanding shares of common stock in the aggregate.</p>
Expense Reimbursement	No.	Yes, up to \$100,000.
Non-Disparagement	Yes.	Yes.

H1 2020 Settlement Agreement Key Terms *(continued)*

	Macellum Advisors (with Ancora Advisors)	Oaktree
Company	Big Lots, Inc.	Infinera Corporation
Agreement Date	April 22, 2020	April 13, 2020
Board Seats	2/11 (one Macellum director and one independent director)	2/6 (one Oaktree director and one independent director)
Standstill (including term)	Yes; until the earlier of (i) February 28, 2021 and (ii) the date that is 30 days prior to the nomination deadline for the Company's 2021 annual meeting.	Yes; until the later of (i) the date that is 30 days prior to the deadline for the submission of stockholder nominations for the 2021 annual meeting or (ii) 10 days after the Oaktree director designee is no longer serving on the Infinera Board.
Committee Membership	<ul style="list-style-type: none"> Each of the Macellum director designee and the independent director designee shall be seated on at least one standing committee of the Board Each of the Macellum director designee and the independent director designee will be appointed to a newly formed Capital Allocation Planning Committee 	<ul style="list-style-type: none"> The Oaktree director designee will be appointed to the Nomination and Governance Committee and any new committee that may be formed by the Infinera Board from time to time The independent director designee will be appointed to at least one standing committee of the Infinera Board
Other Strategic Initiatives	<ul style="list-style-type: none"> The Board will form a Capital Allocation Planning Committee The Company will hold its 2020 annual meeting by June 15, 2020 and its 2021 annual meeting by May 31, 2021 	None.
Voting	During the standstill period, Macellum Advisors and Ancora Advisors shall each cause all of the common shares they hold to	During the standstill period, Oaktree shall cause all of the voting securities it holds to be voted on Infinera's proxy card at any annual or

H1 2020 Settlement Agreement Key Terms *(continued)*

	Macellum Advisors (with Ancora Advisors)	Oaktree
	be voted on Big Lots' proxy card at any annual or special meeting in accordance with the Big Lots Board's recommendations with respect to (i) the election, removal and/or replacement of directors and (ii) any proposals not related to an extraordinary transaction unless either ISS or Glass Lewis have recommended against such proposal (other than any proposals relating to director elections, director removals and other similar proposals).	special meeting (i) in favor of the election of each person nominated by the Infinera Board for election as a director; (ii) against any proposals or resolutions to remove any member of the Board; and (iii) in accordance with the Infinera Board's recommendation on any proposals not related to an extraordinary transaction unless either ISS or Glass Lewis have recommended against such proposal (other than any proposals relating to director elections, director removals and other similar proposals).
Min/Max Ownership	<p>Min: 3% beneficial ownership in the aggregate of the Company's then-outstanding shares of common stock.</p> <p>Max: 12.5% beneficial ownership in the aggregate of the Company's then-outstanding shares of common stock.</p>	<p>Min: 5% "net long position" the then-outstanding shares of common stock.</p> <p>Max: 19.9% of the then-outstanding voting securities of the Company</p>
Expense Reimbursement	Yes, up to \$475,000.	Yes, up to \$75,000.
Non-Disparagement	Yes.	Yes.

H1 2020 Settlement Agreement Key Terms *(continued)*

	Sachem Head Capital	Starboard Value
Company	Olin Corporation	Box Inc.
Agreement Date	February 29, 2020	March 22, 2020
Board Seats	2/14 (one Sachem Head director and one independent director)	3/12 (one independent director named in the settlement agreement, an additional independent director selected from a list of candidates mutually agreed to by the Company and Starboard and a third independent director)
Standstill (including term)	Yes; until the earlier of (i) December 31, 2020 and (ii) the date that is 60 days prior to the nomination deadline for the Company's 2021 annual meeting.	Yes; until the earlier of (i) the date that is 15 business days prior to the deadline for the submission of stockholder nominations for the 2021 annual meeting and (ii) 100 days prior to the first anniversary of the 2020 annual meeting.
Committee Membership	<ul style="list-style-type: none"> Each of the Sachem Head director designee and the new independent director designee will be appointed to a newly formed Operating Improvements Committee The new independent director designee will be appointed to the Corporate Governance Committee The Sachem Head director designee will serve on the Compensation Committee 	<ul style="list-style-type: none"> Both of the new independent director designees will be appointed to a newly formed Operating Committee Each of the new independent director designees will be appointed to at least one standing committee of the Box Board (in addition to the Operating Committee), and at least one of the independent director designees will be appointed to each committee of the Box Board
Other Strategic Initiatives	<ul style="list-style-type: none"> Prior to the 2020 annual meeting, the size of the Olin Board will not be more than 14 directors, and during the period between the 2020 annual meeting and the 	<ul style="list-style-type: none"> The Company will decrease the size of the Board to nine directors following the 2020 annual meeting and will not increase the size without Starboard's consent

H1 2020 Settlement Agreement Key Terms *(continued)*

	Sachem Head Capital	Starboard Value
	<p>2021 annual meeting, the size of the Board will not be more than 13 directors</p> <ul style="list-style-type: none"> The Board will form an Operating Improvements Committee and the Company cannot, until the earlier of the 2021 annual meeting and the determination that the terms of the cooperation agreement are no longer in effect, unless it has Sachem Head's prior written consent, (i) remove either the Sachem director designee or the independent director designee from this committee (unless either director designee ceases to be an independent director); (ii) amend the charter of the committee, which Sachem Head had received a copy of; or (iii) disband the committee Olin will submit a resolution to its stockholders in connection with the 2020 annual meeting to approve an amendment to Olin's charter to declassify the Olin Board 	<ul style="list-style-type: none"> The Company will identify and appoint an additional independent director prior Box's 2020 annual meeting Two current Box directors will not stand for reelection as directors at the Company's 2020 annual meeting and a third current director will resign from the Box Board effective as of the conclusion of the 2020 annual meeting The Board will form an Operating Committee to work with Box's CEO and management team to identify and recommend opportunities for future growth and margin performance All employee directors must resign
Voting	<p>During the standstill period, Sachem Head shall cause all of its shares to be voted on Olin's proxy card at each shareholder meeting in accordance with the Olin Board's recommendations with respect to (i) the removal or election of directors; (ii) any advisory vote on executive compensation; (iii) any proposal to amend the Company's charter to provide for declassification of the Olin Board; (iv) ratification of the appointment of KPMG LLP as Olin's independent registered public accounting firm for the year ending December 31, 2020; and (v) the shareholder proposal to be presented at the 2020 annual</p>	<p>At the 2020 annual meeting, Starboard shall cause all of its shares to be voted on Box's proxy card (i) in favor of all directors nominated by the Box Board for election; (ii) in favor of the ratification of Box's registered public accounting firm for the fiscal year ended January 31, 2021; (iii) in accordance with the Box Board's recommendation with respect to Box's "say-on-pay" proposal; and (iv) in accordance with Box's recommendation with respect to any other proposal submitted to shareholders; however, if ISS or Glass Lewis recommends otherwise with respect to (i), (ii) or (iv) above, then, in each case,</p>

H1 2020 Settlement Agreement Key Terms *(continued)*

	Sachem Head Capital	Starboard Value
	meeting, a copy of which was provided to Sachem Head.	Starboard may vote in accordance with the ISS or Glass Lewis recommendation.
Min/Max Ownership	<p>Min: 3% beneficial ownership in the aggregate of the Company's then-outstanding shares of common stock.</p> <p>Max: 5% beneficial ownership of, or aggregate economic exposure to, the Company's then-outstanding shares of common stock.</p>	Min: 3% of the then-outstanding shares of common stock.
Expense Reimbursement	Yes.	Yes, up to \$200,000.
Non-Disparagement	Yes.	Yes.

H1 2020 Settlement Agreement Key Terms *(continued)*

	Starboard Value
Company	Merit Medical Systems, Inc.
Agreement Date	May 26, 2020
Board Seats	3/13 (two Starboard directors and one independent director)
Standstill (including term)	Yes; until the earlier of (i) the date that is 15 business days prior to the deadline for the submission of stockholder nominations for the 2021 annual meeting and (ii) 100 days prior to the first anniversary of the 2020 annual meeting.
Committee Membership	<ul style="list-style-type: none"> • Each of the Starboard director designees and the independent director designee will be appointed to a newly formed Operating Committee, with one of the Starboard director designees serving as chair • One Starboard director designee will be appointed to the Audit Committee and the Governance Committee • The other Starboard director designee will be appointed to the Compensation Committee and the Finance Committee • During the standstill period, each committee of the Merit Medical Board shall contain at least one Starboard director designee

H1 2020 Settlement Agreement Key Terms *(continued)*

	Starboard Value
Other Strategic Initiatives	<ul style="list-style-type: none"> • One current Merit Medical director will resign effective as of the 2020 annual meeting • The 2020 annual meeting will conclude by June 30, 2020, and if it does not, three additional directors will resign from the Merit Medical Board • Through the conclusion of the 2020 annual meeting the size of the Merit Medical Board will not be more than 10 directors, and from that point through the end of the standstill period, the size of the Board will not be more than nine directors • No later than 15 days following the 2020 annual meeting, the Board will appoint a new Lead Independent Director and certain members of the Merit Medical Board will abstain from such appointment process • The Board will form an Operating Committee to work with management to establish operating targets for the business and to recommend such targets to the Board for approval, which targets (following approval by the Board) will be publicly announced in conjunction with the Company's Q3 2020 results, and which shall be in existence until at least the 2021 annual meeting.
Voting	<p>At the 2020 annual meeting, Starboard shall cause all of its shares to be voted on Merit Medical's proxy card (i) in favor of all directors nominated by the Merit Medical Board for election; (ii) in favor of the ratification of Deloitte & Touche LLP as Merit Medical's</p>

H1 2020 Settlement Agreement Key Terms *(continued)*

	Starboard Value
	<p>registered public accounting firm for the fiscal year ended December 31, 2020; (iii) in accordance with the Merit Medical Board's recommendation with respect to Merit Medical's "say-on-pay" proposal; and (iv) in accordance with Merit Medical's recommendation with respect to any other proposal submitted to shareholders; however, if ISS or Glass Lewis recommends otherwise with respect to any proposal (other than proposals relating to the election of directors), Starboard may vote in accordance with the ISS or Glass Lewis recommendation.</p> <p>Starboard also agreed to cause all of its shares to be voted at any special meeting in accordance with the Merit Medical Board's recommendation on any proposal relating to the appointment, election or removal of directors.</p>
Min/Max Ownership	Min: 3% of the then-outstanding shares of common stock.
Expense Reimbursement	Yes, up to \$575,000.
Non-Disparagement	Yes.