

GIBSON DUNN

Activism Update
2014 Year in Review

www.gibsondunn.com

The page features a dark grey background with a lighter grey vertical bar on the left. A prominent blue vertical bar is positioned on the right side, extending from the top of the page down to the bottom. The text is white and positioned in the upper left quadrant.

Gibson Dunn Activism Update

2014 Year in Review

CONTENTS

Letter: Activism Update.....	2
Part I	
By the Numbers: 2014 Campaign Trends.....	4
Table: Selected 2014 Activist Campaigns	5
In-Depth Case Studies: Notable 2014 Campaigns.....	16
Part II	
By the Numbers: Trends in 2014 Settlement Agreements.....	25
Table: 2014 Settlement Agreement Key Terms.....	26

To Our Clients and Friends:

Gibson, Dunn & Crutcher LLP is pleased to present its first year-end Activism Update reviewing shareholder activism involving U.S. public companies during 2014. 2014 was a busy year for activist investors – our survey covers 64 activist campaigns involving U.S.-listed companies with equity market capitalizations of greater than \$1 billion.

The Market Environment

The 2014 market environment provided fertile ground for activists to push for companies to engage in acquisitions, divestitures, spinoffs, and other strategic transactions, to return capital, and to consummate other common activist initiatives, such as management changes:

- Global M&A volume was approximately \$3.5 trillion for 2014, versus approximately \$2.2 trillion for 2013. Of the campaigns studied in this Activism Update, approximately 61% pushed for acquisitions, divestitures, spinoffs, and other strategic transactions; and
- Corporate cash balances remained stable in 2014, with an aggregate estimated cash balance of \$1.37 trillion for U.S. public companies at September 30, 2014. Of the campaigns studied in this Activism Update, approximately 22% pushed for return of capital.

Against this backdrop, activist funds are now reported to manage approximately \$200 billion. With more capital, activists can accumulate larger positions and are able to bear the costs of expensive proxy campaigns and litigation. In light of the ability of investors to sustain proxy contests and litigation and the increasing tendency of proxy advisory firms, long-only institutional investors, and research analysts to challenge company management and strategy, many companies are choosing to settle formally with activists or adopt positions consistent with activist demands. Of the campaigns studied in this Activism Update, 19% included formal settlement agreements granting board representation to activists. In many other cases, companies, whether as a result of the activist campaign or otherwise, took some action consistent with positions advocated by the activist investor. Only 11% of the campaigns studied in this Activism Update proceeded with a proxy campaign through the conclusion of a special or annual meeting.

Other Interesting Trends

The 64 activist campaigns covered by our survey demonstrate several other interesting trends:

- Activists are frequently launching activist campaigns with less than 5% equity stakes in companies and, relatedly, are doing so at companies with larger market capitalizations. Of the campaigns studied in this Activism Update, 39% commenced with activists holding less than 5% equity stakes and 22% involved companies with equity market capitalizations of greater than \$20 billion;
- We are seeing more instances of multiple activists targeting the same companies, whether concurrently or sequentially. Approximately 15% of the companies in our survey faced separate activist campaigns from multiple activists and 7% faced campaigns from multiple activists working in coordination with one another; and
- Of those campaigns in which an activist sought board representation, at least some change in the board composition occurred nearly 77% of the time.

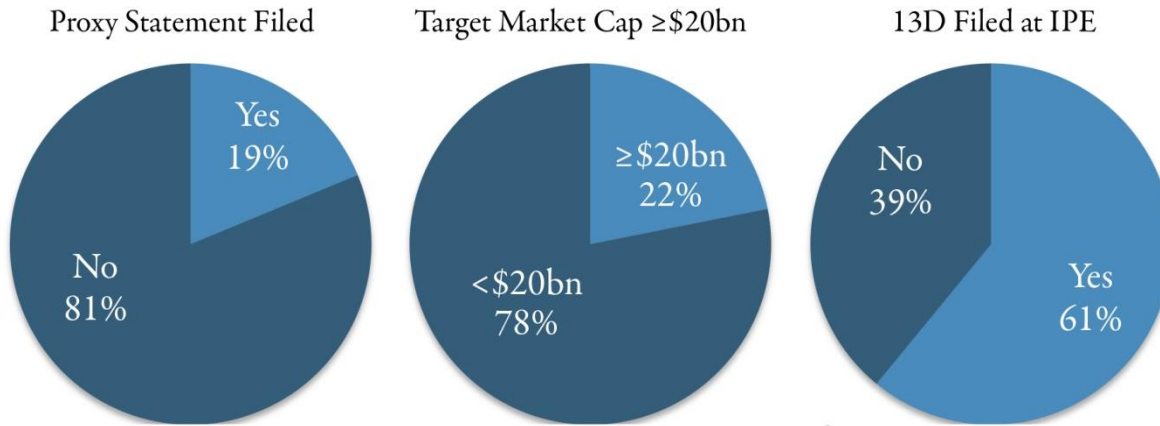
Two other noteworthy practice observations: first, despite the general publicity garnered by activist investors in 2014, we are still finding that activists and companies more often than not engage privately, with public communication only after private efforts at resolving matters amicably have failed; and second, investors are increasingly employing derivatives to build stakes rapidly without triggering certain reporting requirements, including reporting requirements under The Hart-Scott-Rodino Antitrust Improvements Act and Schedule 13D.

* * *

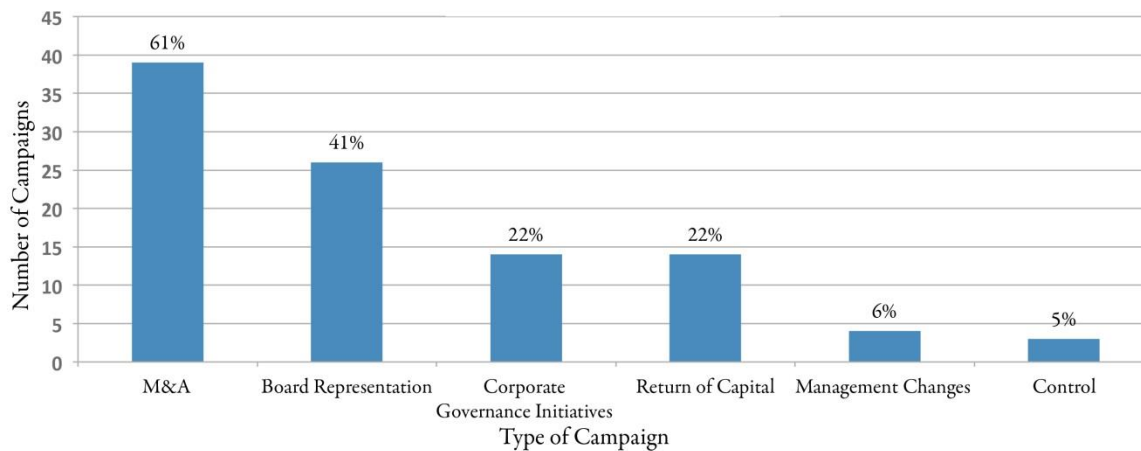
Activist investing in 2014 was marked by an increasingly dynamic, sophisticated and well-capitalized activist investor base. Our inaugural Activism Update is aimed at assisting clients seeking to better understand activism by remaining current on activist developments and trends. We look forward to providing you with our mid-year update later this year.

Part I of this Activism Update includes a chart of key data from the activist campaigns surveyed and provides an in-depth review of three activist campaigns of note (Starboard at Darden, Icahn at eBay, and Third Point at Sotheby's). Part II of this Activism Update studies the key terms of publicly filed settlement agreements entered into in 2014 in connection with the activist campaigns surveyed.

By the Numbers – 2014 Campaign Trends



Frequency of Campaign Types



Legend

- **IPE** – date of initial public engagement between the investor and the Company
- **M&A** – sought for the Company to engage in a M&A transaction, including sales, acquisitions, divestitures, spinoffs, and other strategic transactions
- **Board Representation** – sought seat(s) on the Company’s board
- **Corporate Governance Initiatives** – sought governance changes, including bylaw amendments
- **Return of Capital** – sought dividend and/or buybacks
- **Management Changes** – sought leadership changes at the executive and/or board level
- **Control** – sought control of the board

*Study covers selected activist campaigns involving U.S. publicly traded companies with equity market capitalizations of greater than \$1 billion at the time of initial public engagement by the investor, as compiled from publicly available sources.

**All data represented here is derived from the data compiled from the campaigns studied in this Activism Update.

Selected 2014 Activist Campaigns

Investor*	Company	Date of Initial Public Engagement (“IPE”)	Equity Market Cap at IPE (in billions)	% Ownership at IPE**	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Apex Capital	MicroStrategy Inc.	2/4/14	\$1.4	5.2%	Corporate governance initiatives; return of capital	N	In July 2014, MicroStrategy announced an improved investor communication program, but has neither separated the roles of chairman and CEO nor initiated a buyback as requested by Apex
Barington	Darden	10/17/13	\$6.8	~2.0%	Board representation; M&A	N	Barington supported Starboard’s slate of nominees, all of whom were elected at the 2014 annual meeting (see below)
Blue Harbour	Rackspace Hosting	6/18/14	\$4.6	6.4%	Return of capital	N	In September 2014, Rackspace announced that it was abandoning both a potential sale of itself and a previously announced buyback in order to remain “flexible and independent”
Casablanca Capital	Cliffs Natural Resources	1/28/14	\$3.0	5.2%	Board representation; return of capital; M&A	Y	In July 2014, Casablanca’s six nominees were elected to the Cliffs board (11 total directors) following a proxy contest

*Study covers selected activist campaigns involving U.S. publicly traded companies with equity market capitalizations of greater than \$1 billion at the time of initial public engagement (“IPE”) by the investor, as compiled from publicly available sources.

**Ownership includes economic exposure to derivatives where applicable.

Investor	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Coppersmith Capital	ConMed Corp.	2/6/14	\$1.1	5.9%	Board representation; corporate governance initiatives	N	In February 2014, Coppersmith received two board seats in a settlement agreement and ConMed agreed to select an additional independent designee proposed by Coppersmith
Corvex	CommonWealth REIT	2/26/13	\$2.0	9.8%	Board representation; corporate governance initiatives; management changes	Y	CommonWealth's entire board was removed in March 2014 and replaced in May 2014 following litigation and a proxy contest
Corvex	Crown Castle	10/14/14	\$27.0	<5%	Return of capital	N	On October 30, Crown Castle increased its annual dividend from \$1.40 per share to \$3.28 per share
Corvex	Fidelity National	10/31/13	\$5.8	7.0%	M&A	N	In June 2014, Fidelity created a tracking stock for non-real estate investments
Corvex	Signet Jewelers	1/24/14	\$6.1	7.8%	M&A	N	Signet acquired Zale in February 2014
Corvex / Soroban	The Williams Companies	12/16/13	\$24.2	5.3%	Board representation; corporate governance initiatives; return of capital	N	In February 2014, Corvex and Soroban received two board seats in a settlement agreement

Investor	Company	Date of Initial Public Engagement (“IPE”)	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Elliott	EMC Corp.	7/21/14	\$58.0	2.2%	Board representation; M&A	N	On January 12, 2015, EMC agreed to appoint two independent designees to the board in consultation with Elliott and Elliott agreed to a nine month standstill
Elliott	Interpublic Group	7/24/14	\$8.5	6.7%	M&A	N	Elliott has not taken any public action
Elliott	Juniper Networks	1/13/14	\$12.5	6.2%	Board representation; return of capital	N	In February 2014, the Juniper board added two new directors proposed by Elliott pursuant to a settlement agreement and Juniper announced its intent to return a minimum of \$3 billion through buybacks and dividends
Elliott	Riverbed Technology	11/8/13	\$2.8	10.5%	Control	N	On December 15, Riverbed agreed to be sold to Thoma Bravo with the support of Elliott
Eminence Capital	Men’s Warehouse / Jos. A. Bank	11/7/13	\$2.2	9.8%	M&A	Y	In March 2014, Men’s Warehouse agreed to acquire Jos. A. Bank
Engaged Capital	Abercrombie & Fitch	12/3/13	\$2.8	0.5%	Board representation; management changes	N	In April 2014, Engaged and A&F executed a settlement agreement for the appointment of four new independent directors
Fir Tree	Noble Corp.	9/3/14	\$7.3	9.6%	Corporate governance initiatives	N	As of December 24, Fir Tree reduced its stake to 2.4%

Investor	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
FrontFour Capital Group	Innophos Holdings	10/7/14	\$1.2	3.3%	M&A; return of capital	N	Innophos acknowledged FrontFour's letter in October 2014, but neither party has taken any further public action subsequent to October 2014
FrontFour Capital Group	Sensient Technologies	2/19/14	\$2.6	1.4%	Board representation	Y	In March 2014, Sensient publicly announced a dividend increase, a share buyback plan, and a restructuring program; a proxy fight ensued and, in May 2014, the nine incumbent directors were reelected at the 2014 annual meeting
GAMCO Investors	National Fuel Gas	4/22/14	\$6.1	9.2%	M&A	N	GAMCO's precatory spinoff proposal is included in National's preliminary proxy statement filed on December 29
GAMCO Investors	Telephone & Data Systems	2/20/14	\$2.7	8.1%	Board representation	Y	In March 2014, the twelve incumbent directors were reelected at the 2014 annual meeting
Highland Capital	Loral Space & Communications	8/4/14	\$2.3	9.9%	Corporate governance initiatives	N	In August 2014, Highland expressed concerns regarding the proposed sale of Loral; no sale has been announced

Investor	Company	Date of Initial Public Engagement (“IPE”)	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Icahn	eBay	1/22/14	\$70.4	0.8%	Board representation; M&A	Y	In April 2014, eBay agreed to appoint one independent designee pursuant to a settlement agreement with Icahn; in September 2014, eBay announced its intent to spinoff PayPal in 2015; on January 21, 2015, eBay agreed with Icahn to add an Icahn designee to the board pursuant to a second settlement agreement
Icahn	Family Dollar	6/6/14	\$6.9	9.4%	M&A	N	Icahn sold his entire interest in Family Dollar in September 2014 after Family Dollar announced it had entered into a merger agreement with Dollar Tree Inc., which was approved by shareholders on January 22, 2015
Icahn	Gannett	8/14/14	\$7.7	6.6%	M&A	N	Gannett is in the process of carrying out a spinoff as announced in August 2014 (prior to Icahn’s disclosure); on January 22, 2015, Icahn released a letter saying he intends to nominate two candidates for election to the board and urging the board to adopt a charter amendment preventing them from installing a poison pill without shareholder approval
Icahn	Hertz	8/20/14	\$13.6	8.5%	Board representation; management changes	N	In September 2014, Icahn received three seats on the Hertz board and Hertz agreed to increase its poison pill trigger from 10% to 20% in a settlement agreement

Investor	Company	Date of Initial Public Engagement (“IPE”)	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
JANA Partners	Apache Corp.	7/21/14	\$37.7	~2.5%	M&A	N	In August 2014, Apache announced it was exiting certain projects in Canada and Australia; on January 20, 2015, Apache’s CEO resigned
JANA Partners	Hertz	10/20/14	\$9.6	7.0%	Management changes	N	In November 2014, Hertz named John P. Tague as CEO (JANA had recommended a different candidate); no further public action taken by JANA
JANA Partners	Juniper Networks	1/23/14	\$13.1	2.7%	M&A; return of capital	N	In February 2014, Juniper announced its intent to return a minimum of \$3 billion through buybacks and dividends
JANA Partners	PetSmart	7/3/14	\$6.7	9.9%	M&A	N	In December 2014, PetSmart agreed to be acquired by BC Partners
JANA Partners	URS	2/14/14	\$3.3	9.6%	Board representation; M&A	N	In March 2014, JANA received four board seats in a settlement agreement; in July 2014, URS agreed to be sold to AECOM
JANA Partners	Walgreen Co.	5/14/14	\$65.5	~1.5%	Board representation	N	In September 2014, JANA received two board seats in a settlement agreement
JAT Capital	Madison Square Garden	8/22/14	\$5.0	6.7%	Board representation; M&A	N	In October 2014, MSG announced plans regarding a possible spinoff that would separate its entertainment business from its sports and media business and MSG’s board nominated two new independent directors to the board unrelated to JAT, including Triun’s Nelson Peltz

Investor*	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Land & Buildings Investment	Associated Estates Realty Corp.	6/3/14	\$1.1	2.9%	Board representation; corporate governance initiatives; M&A	Y	L&B announced its intent to nominate seven director candidates; on December 29, AEC announced that it had engaged a financial adviser, made certain governance changes, and attempted to settle with L&B for two board seats; no public action has occurred subsequent to AEC's announcement
Longview Asset Management	PetSmart	7/7/14	\$6.8	9.0%	M&A	N	Longview publicly supported JANA's efforts (see above); in December 2014, PetSmart agreed to be acquired by BC Partners
Marathon Partners	Shutterfly	7/8/14	\$1.8	5.1%	M&A	N	In September 2014, Marathon notified the Shutterfly board that Marathon would be willing to support a sale, but at well above \$52 per share; Shutterfly subsequently abandoned its sale plans and Marathon sent a letter advocating various initiatives in light of Shutterfly's decision to remain independent
Marcato	Dillard's, Inc.	11/20/14	\$5.2	4.9%	M&A	N	Dillard's has not announced a spinoff transaction

Investor	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Marcato	InterContinental Hotels Group	5/29/14	\$10.0	3.8%	M&A	N	InterContinental has not announced a sale or other transaction and Marcato has made no further public comment
Marcato	Life Time Fitness	5/21/14	\$2.2	7.2%	M&A	N	Life Time Fitness has not engaged in a spinoff into a REIT
Marcato	NCR	10/21/14	\$4.1	6.5%	Board representation	N	In November 2014, Marcato received one seat on the NCR board in a settlement agreement
Orange Capital	Pinnacle Entertainment	4/21/14	\$1.4	6.7%	M&A	N	In November 2014, Pinnacle announced its intention to convert its real estate assets into a REIT
Pershing Square	Allergan	4/22/14	\$42.3	9.7%	M&A (sale to Valeant)	Y	In November 2014, Allergan agreed to be sold to Actavis
Pershing Square	Fannie Mae / Freddie Mac	11/15/13	\$3.8 / \$2.0	9.9% / 9.8%	Return of capital	N	Pershing Square filed suit claiming the government's diversion of profits was an unconstitutional taking; the case has not been decided
Pershing Square / Sachem Head Capital	Zoetis Inc.	11/12/14	\$21.4	8.5% / 1.6%	M&A	N	Neither party has taken any further public action
Red Alder / Engine Capital	Ann Inc.	8/25/14	\$1.8	~1.0%	M&A	N	No sale has been announced

Investor	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Red Alder / ADW Capital	ClubCorp Holdings	9/29/14	\$1.3	<5%	Corporate governance initiatives	N	On December 8, ClubCorp stated that it had concluded that REIT conversion is not a viable option
Relational	Clean Harbors, Inc.	4/24/14	\$3.5	9.1%	Corporate governance initiatives; return of capital	N	Relational is currently winding down its fund and it is unclear whether it will sell its current holdings
Relational	The Manitowoc Company	6/26/14	\$4.0	8.5%	M&A	N	No spinoff has occurred, but, on December 29, Icahn disclosed a 7.7% and advocated for the same spinoffs of the construction-cranes and commercial food service segments as has Relational; Relational is currently winding down its fund and it is unclear whether it will sell its current holdings
Sachem Head Capital	Helen of Troy	2/4/14	\$1.8	3.7%	M&A; return of capital	N	In February 2014, Helen of Troy instituted a \$550 million buyback program
Sandell Asset Mgmt.	Bob Evans	9/24/13	\$1.6	5.1%	Board representation; corporate governance initiatives; M&A	Y	Sandell won four of 12 board seats and passed governance-related bylaw amendments through a proxy contest at the 2014 annual meeting
Sandell Asset Mgmt.	JDS Uniphase	10/1/14	\$3.0	1.6%	Corporate governance initiatives; spinoff	N	JDSU shareholders reelected all six of JDSU's director nominees at the 2014 annual meeting, despite opposition by Sandell; on January 13, 2015, Sandell sent a letter to the JDSU board calling for bylaw amendments
Sandell Asset Mgmt.	Meritor Inc.	6/9/14	\$1.4	5.1%	Return of capital	N	Sandell has made no further public comments regarding Meritor, but Sandell filed a 13D disclosing a reduced 3.9% stake in November 2014

Investor	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Starboard	Darden	12/23/13	\$7.1	5.6%	Board representation; control; corporate governance initiatives; M&A	Y	Starboard won all 12 seats on the board at the 2014 annual meeting following a proxy contest
Starboard	MeadWestvaco Corp.	5/22/14	\$6.7	5.6%	M&A	N	On January 8, 2015, MeadWestvaco announced that its board had approved a spinoff of its specialty chemicals business
Starboard	Yahoo	9/26/14	\$40.4	0.8%	M&A; return of capital	N	On January 27, 2015, Yahoo announced plans to spin-off its stake in Alibaba as a separate publicly traded investment company. Starboard has encouraged a spinoff, among other things
Third Point	Amgen	9/30/14	\$106.7	<1.0%	M&A	N	In October 2014, Third Point suggested Amgen split into two companies; neither party has made any further public comment subsequent to October 2014
Third Point	Dow Chemical	1/21/14	\$55.7	1.9%	Board representation; M&A; return of capital	N	In November 2014, Dow announced a \$5 billion buyback program; Dow and Third Point agreed in a settlement agreement to add two Third Point designees and two new independent directors to the board in November 2014; and, in December 2014, Dow announced spinoffs of two chemical plants

Investor	Company	Date of Initial Public Engagement ("IPE")	Equity Market Cap at IPE (in billions)	% Ownership at IPE	Type of Campaign	Proxy Solicitation (Y/N)	Latest News (as of 1/23/15, unless otherwise noted)
Third Point	Sotheby's	8/26/13	\$3.2	5.7%	Board representation; corporate governance initiatives	Y	In May 2014, Third Point received three board seats in a settlement agreement
Trian	BNY Mellon	6/30/14	\$42.7	2.5%	Board representation; M&A	N	In December 2014, Trian received one seat on the BNY Mellon board
Trian	DuPont	9/16/14	\$60.3	~2.7%	Board representation; M&A	N	On January 8, 2015, Trian announced its nomination of four candidates, including Nelson Peltz, for election to the DuPont board
Trian	PepsiCo	2/19/14	\$117.4	<1.0%	Board representation; M&A	N	PepsiCo has not engaged in a spinoff transaction; on January 18, 2015, PepsiCo agreed to appoint an independent designee to its board chosen in consultation with Trian
ValueAct	Agrium	10/24/14	\$13.3	5.7%	Corporate governance initiatives	N	The parties have engaged in friendly discussions, but no further public comments have been made
Vintage Capital	Aaron's Inc.	2/7/14	\$2.2	9.5%	Board representation; control	N	In May 2014, Vintage received two Aaron's board seats in a settlement agreement
Voce Capital Mgmt.	ConMed Corp.	2/11/14	\$1.2	<1.0%	Board representation; M&A	Y	Voce did not win any seats on the board at the 2014 annual meeting following a proxy contest

Notable 2014 Campaigns

Case Study – Icahn / eBay

General:

Investor	Carl C. Icahn
Company	eBay, Inc.
Date of IPE¹	January 22, 2014
Market Cap at IPE	\$70.4 billion
Stake at IPE	0.8%
Investor Goal(s)	Board representation; M&A

Summary:

Carl Icahn’s campaign at eBay was just one of a series of high-profile campaigns run by activists against companies with mega market capitalizations. In connection with the eBay campaign, Icahn demonstrated his willingness to use social media, including Twitter, a personal website and Facebook, to release statements. Icahn and eBay ultimately entered into a settlement agreement with Icahn providing for the appointment of a mutually agreed upon independent director to the board and eBay subsequently announced plans to spin-off its PayPal business. In January 2015, eBay and Icahn reached a second agreement pursuant to which an Icahn designee was appointed to the board.

On January 22, 2014, eBay announced that Icahn had nominated two candidates for the board and had submitted a non-binding proposal for a spinoff of eBay’s PayPal business (eBay’s disclosure also stated that Icahn’s notice indicated that companies controlled by Icahn had acquired shares and derivative securities representing an economic interest of approximately 0.82% in eBay). The January 22 announcement from eBay noted that “eBay’s Board of Directors has concluded that [eBay] and its shareholders are best served by the current strategic direction...and does not believe that breaking up [eBay] is the best way to maximize shareholder value.” Following eBay’s disclosure of Icahn’s stake and intentions, Icahn also publicly discussed his plans, arguing that PayPal “would be much better” as an independent company.

¹ Initial Public Engagement (“IPE”) reflects the first date of public engagement between the Investor and the Company.

On February 24, Icahn published an open letter to eBay shareholders, in which Icahn criticized the eBay board. Icahn's February 24 letter claimed a number of lapses in corporate governance, including with respect to eBay's 2009 sale of Skype to an investor group that included Marc Andreessen (an eBay independent director). Mr. Icahn also made claims with respect to Scott Cook (also an eBay independent board member), a representative of (and a significant owner of) Intuit. The back and forth continued between eBay and Icahn with public interviews, numerous statements and open letters, including eBay founder and chairman Pierre Omidyar publicly disparaging Icahn's attacks and plan for PayPal. Marc Andreessen retweeted Mr. Omidyar's statement.

On March 10, eBay filed its preliminary proxy statement. The following day, Icahn filed his preliminary proxy statement. eBay's board recommended against Icahn's two nominees (Daniel Ninivaggi, CEO of Federal Mogul Corp. and former President of Icahn Enterprises L.P., and Jonathan Christodoro, Managing Director of Icahn Capital) and against Icahn's proposal recommending that eBay act expeditiously to engage an investment banking firm to effectuate a spinoff of the PayPal business.

Over the following weeks, Icahn maintained his campaign against the eBay board, continuing to allege that conflicts of interest and other improprieties plagued the eBay board. eBay criticized the qualifications of the Icahn nominees, including a tweet comparing the qualifications of eBay's directors against Icahn's nominees. On March 19, Icahn suggested eBay sell a 20% stake in PayPal as a "partial IPO," allowing for an alternative to his full spinoff proposal, though eBay rejected the idea. The parties continued to use Twitter as a means of disseminating information, including news articles. On March 21, Icahn tweeted a CNN article criticizing eBay's corporate governance and eBay tweeted a Forbes article documenting reasons why a spinoff may not be a good idea.

Following an additional letter sent by Icahn on March 26, Icahn did not comment publicly again until April 10 when eBay and Icahn announced a settlement agreement. Pursuant to the agreement, David Dorman, founding partner of Centerview Capital Technology and former CEO of AT&T would be appointed as an independent director on the eBay board and Icahn agreed to terminate his proxy fight, including the solicitation regarding the spinoff proposal. On June 17, 2014, eBay appointed Mr. Dorman to the board.

Subsequently, on September 30, eBay announced that it would spinoff PayPal in 2015, citing a change in thought following a strategic review by the eBay board. Following the announcement, Icahn publicly stated his support for the decision.

On January 21, 2015, eBay and Icahn announced an agreement pursuant to which Jonathan Christodoro, who Icahn had previously nominated for the board, was appointed to the board of eBay.

Key Dates & Filings:

- On January 22, eBay issued its Q4 2013 earnings report, which included a statement that Icahn had nominated two candidates for election to the eBay board and submitted a non-binding proposal for a spinoff of PayPal. ([1/22 Press Release](#))
- On February 24, Icahn released a letter to eBay shareholders advocating for his nominees to the board. ([2/24 DFAN14A](#))
- On April 10, Icahn and eBay executed an agreement pursuant to which eBay added one independent designee, chosen in consultation with Icahn, to the board and Icahn agreed to end his proxy contest and withdraw his proposal. ([4/10 Agreement](#))
- On September 30, eBay announced that it would spinoff PayPal as a separate publicly traded entity in 2015. ([10/3 8-K](#))
- On January 21, 2015, eBay and Icahn announced an agreement pursuant to which an Icahn designee, Jonathan Christodoro, was appointed to the board. ([1/21 Press Release](#))

Notable 2014 Campaigns

Case Study – Starboard / Darden

General:

Investor	Starboard Value LP
Company	Darden Restaurants, Inc.
Date of IPE	December 23, 2013
Market Cap at IPE	\$7.1 billion
Stake at IPE	5.6%
Investor Goal(s)	Board representation; control; corporate governance initiatives; M&A

Summary:

The nearly year-long campaign by Starboard at Darden was one of the most publicized activist campaigns of 2014 and culminated in the entire Darden board being replaced by Starboard’s full slate at the 2014 annual meeting.

On December 23, 2013, Starboard disclosed a 5.6% stake in Darden, joining Barington Capital as the second major activist to push for change at the restaurant company. Starboard advocated for creating a REIT for Darden’s property holdings and then engaging in a spinoff whereby Darden would separate a group of its mature restaurant chains, including Red Lobster and Olive Garden, from its fast-growing restaurant chains, including Capital Grille and Bahama Breeze. Despite Barington’s disclosed interest, Starboard stated that it did not intend to coordinate with Barington. Only days earlier, on December 19, Darden had announced plans to separate the Red Lobster business. In mid-January 2014, Starboard founder Jeffrey Smith published a letter to Darden opposing the proposed sale of Red Lobster, a move Starboard believed would “ultimately prove to be value destructive.”

On February 10, as Darden continued to work toward the sale of Red Lobster, Starboard published a letter stating its intention to nominate a majority slate for election to the Darden board if Darden went forward with a Red Lobster sale. Later in February, Starboard hired the former president of Olive Garden, Bradley Blum, as an adviser to its Darden campaign. By mid-March, Starboard hired three additional industry expert advisers: Charles Sonstebly, Robert Mock and Craig Miller. All four advisers made considerable purchases of Darden stock in the days after each of their respective hiring.

On February 25, Starboard began soliciting proxies of Darden stockholders in an effort to reach the 50% necessary to call a special meeting at which stockholders could hold a non-binding vote on the proposed Red Lobster sale. On March 20, Darden sent a letter to stockholders arguing against Starboard's special meeting solicitation and urging stockholders to withhold their support.

On April 1, Starboard published two presentations to stockholders in support of its plan. At the core of Starboard's argument was that the sale of Red Lobster would destroy potential stockholder value that could be created through a separation of Darden's real estate and restaurant businesses given Darden's greater than \$4 billion real estate portfolio.

In mid-April, both ISS and Glass Lewis stated their support of Starboard's special meeting solicitation, though Egan Jones advised stockholders to reject the request. On April 25, Starboard delivered a letter to Darden with written requests to call a special meeting. On May 2, Starboard announced that an independent inspector of elections confirmed that Starboard had delivered valid written requests to call a special meeting from the requisite number of holders. Darden later confirmed the same on May 7. On May 2, Starboard filed its preliminary proxy statement for the special meeting, soliciting proxies to approve a non-binding resolution urging the board not to approve any agreement or proposed transaction involving a separation or spinoff of the Red Lobster business prior to the 2014 annual meeting unless such agreement or transaction would require stockholder approval.

On May 16, Darden announced that it had entered into an agreement to sell Red Lobster for \$2.1 billion to Golden Gate Capital. Following such announcement, Starboard published an 18-page letter criticizing the sale and stating its intention to nominate a full slate of directors for election to the Darden board at the annual meeting, withdrawing its request for a special meeting.

On July 28, Darden announced the closing of the Red Lobster transaction, that Chairman and CEO Clarence Otis would step down from both of his positions on December 31, and that Darden would only nominate nine directors, leaving three seats for Starboard nominees.

On July 29, following Darden's announcement of Otis's impending resignation and Darden's willingness to give Starboard three board seats, Starboard filed its preliminary proxy statement for the election of a full slate of nominees.

As the proxy contest ramped up, on August 5, Starboard announced its plan to focus on the revitalization of Olive Garden while also pursuing a possible spinoff of Darden's Specialty Restaurant Group, comprising

Bahama Breeze and the Capital Grille, amongst other brands. By August 8, Starboard's reported stake stood at 8.8%.

Darden touted the success of the Red Lobster transaction and initiated an accelerated stock buyback program and debt retirement. Darden also retained a search firm for a replacement CEO.

On August 28, Darden delayed its annual meeting from September 30 to October 10. The same day, Starboard filed its definitive proxy statement. On September 2, Darden altered its slate for the board by nominating four new directors and shortening its slate again to eight directors, leaving four seats open for Starboard nominees. The Darden slate consisted of four then-current members of the board and four new nominees.

Throughout September, Starboard published soliciting materials espousing its plan and reached out to Darden stockholders, gathering the public backing of Barington along the way. On September 25, ISS and Glass Lewis recommended Starboard's full slate of nominees to stockholders, though Egan Jones again supported Darden.

On October 10, at the Darden 2014 annual meeting, Starboard's nominees won all 12 seats on the Darden board. Following the loss, Otis resigned effective immediately, with Starboard's Jeffrey Smith becoming interim chairman and Darden COO Gene Lee becoming interim CEO.

Key Dates & Filings:

- On December 23, 2013, Starboard filed a 13D disclosing a 5.6% ownership stake in Darden. ([12/23 13D](#))
- On May 22, a week after Darden announced the sale of Red Lobster, Starboard announced a proxy campaign to remove the entire twelve-person Darden board. ([5/22 Press Release](#))
- On July 15, Starboard issued a letter to Darden further criticizing the Red Lobster sale, noting its increased ownership of 7.6%. ([7/15 Letter](#))
- On July 28, Starboard filed a preliminary proxy statement nominating 12 new candidates for election to the Darden board. ([7/28 PREC14A](#))
- On October 10, at the 2014 annual meeting, Starboard's full slate of 12 nominees was elected to the board. ([10/10 Press Release](#))

Notable 2014 Campaigns

Case Study – Third Point / Sotheby's

General:

Investor	Third Point LLC
Company	Sotheby's
Date of IPE	August 26, 2013
Market Cap at IPE	\$3.2 billion
Stake at IPE	5.7%
Investor Goal(s)	Board representation; corporate governance initiatives

Summary:

Third Point's campaign at Sotheby's included a prolonged proxy fight, as well as litigation regarding Sotheby's use of a two-tiered shareholder rights plan. The proxy fight settled less than 48 hours before the scheduled annual meeting and demonstrates that activists are willing to endure prolonged campaigns and costly litigation.

Additionally, the materials uncovered during discovery in connection with such litigation serve as a cautious reminder to directors regarding the perils of email communication.

On August 26, 2013, Third Point filed a 13D disclosing a 5.7% stake in Sotheby's and announcing its intent to engage in a dialogue with Sotheby's management. By mid-September 2013, Third Point was one of three activist funds with an ownership stake in Sotheby's. Between Marcato Capital Management, Trian Fund Management and Third Point, activists held a publicly disclosed 15.4% of Sotheby's outstanding stock. On September 11, 2013, Sotheby's CEO William Ruprecht publicly stated Sotheby's intention to review its capital allocation and to pursue return of capital alternatives, including potential share repurchases and/or an increase in dividends.

On October 2, 2013, Third Point disclosed an increased 9.3% stake and a letter it had sent to the CEO. The letter called for the CEO to step down and for Daniel Loeb, founder of Third Point, to be appointed to Sotheby's board. On October 4, 2013, Sotheby's adopted a shareholder rights plan with a two-tiered trigger: 10% for activist investors and 20% for passive investors.

On December 17, 2013, Sotheby's announced the appointment of Domenico De Sole as Lead Independent Director, replacing Steven Dodge in the position.

On February 27, 2014, Third Point announced its nomination of Daniel Loeb, Harry Wilson, and Olivier Reza for election to the Sotheby's board at the upcoming 2014 annual meeting. Sotheby's announced the following day that Loeb had, earlier in the week, rejected an offer of one seat on the Sotheby's board. Third Point responded on March 3, stating that it did not believe that a single board seat would be sufficient to bring the necessary change and that it had consistently requested multiple seats.

On March 13, Third Point filed its preliminary proxy statement. The same day, Sotheby's announced that it would be nominating two new independent directors, Jessica Bibliowicz and Kevin Conroy, to replace two longer-tenured directors.

On March 25, Third Point filed suit in the Delaware Court of Chancery seeking to enjoin Sotheby's use of the two-tiered poison pill it had adopted. Third Point argued that the rights plan was being used to entrench management, rather than as a reasonable response to a takeover threat. On April 2, the case was fast-tracked such that it would be heard in advance of the annual meeting scheduled for May 6. Third Point's discovery surfaced a number of Sotheby's emails that did not reflect well on the directors of Sotheby's. For example, emails between directors stated "[t]he board is too comfortable, too chummy and not doing its job" and another director told the CEO he was "neither capable nor strong enough to do the work at hand." On May 2, the Court of Chancery upheld Sotheby's shareholder rights plan; however, multiple news sources had been running articles regarding the damaging emails between Sotheby's directors.

Through this period, the parties continued to trade letters and public statements regarding the state of Sotheby's and the best path forward for Sotheby's. On April 10, Third Point launched a website espousing its position. On April 24, ISS announced its support for Loeb and Reza for election to the Sotheby's board.

On May 4, two days before the scheduled annual meeting, Third Point and Sotheby's executed a settlement agreement, pursuant to which all three Third Point nominees were added to the board (temporarily expanding the board to fifteen members), Third Point was permitted to increase its stake up to 15%, and Sotheby's agreed to reimburse Third Point for expenses.

Key Dates & Filings:

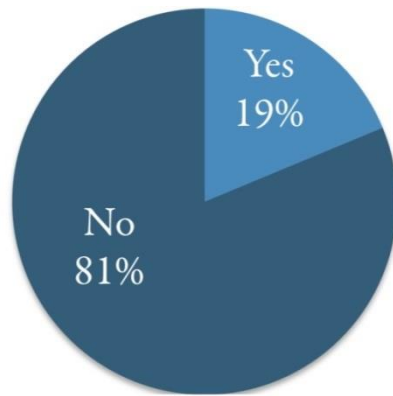
- On August 26, 2013, Third Point filed a 13D disclosing a 5.7% stake in Sotheby's. ([8/26 13D](#))
- On October 2, 2013, Third Point filed a letter it sent to Sotheby's Chairman, President and CEO William Ruprecht, announcing it held a 9.3% interest in Sotheby's and had become Sotheby's largest shareholder.

The letter called for Ruprecht, to step down, and to place Third Point founder, Daniel Loeb, on the board. ([10/2 Letter](#))

- On October 4, 2013, Sotheby's adopted a poison pill with a 10% trigger for active investors and a 20% trigger for passive investors. ([10/4 Rights Agreement](#))
- On February 27, Third Point announced that it would be nominating three candidates, including Daniel Loeb, for election to the Sotheby's board. ([2/27 13D/A](#))
- On March 13, Third Point filed a preliminary proxy statement seeking to elect its three nominees to the board. ([3/13 PREN14A](#))
- On March 25, Third Point filed suit seeking to enjoin Sotheby's use of the two-tiered poison pill.
- On May 2, the Delaware Court of Chancery issued a decision refusing to grant the injunction against the use of the two-tiered poison pill. ([5/2 Holding](#))
- On May 4, in advance of the annual meeting scheduled for May 6, Sotheby's and Third Point entered into a settlement agreement, pursuant to which Sotheby's agreed to appoint Daniel Loeb and two other Third Point nominees to its board and to reimburse Third Point's expenses and Third Point agreed to customary standstill provisions. The parties also agreed to accelerate the termination of Sotheby's shareholder rights plan and cap Third Point's stake at 15%. ([5/4 Support Agreement](#))
- On November 20, Sotheby's announced that William Ruprecht would step down as Chairman, President and CEO of Sotheby's. ([11/20 Press Release](#))

By the Numbers – Trends in 2014 Settlement Agreements

Publicly Filed Settlement Agreements

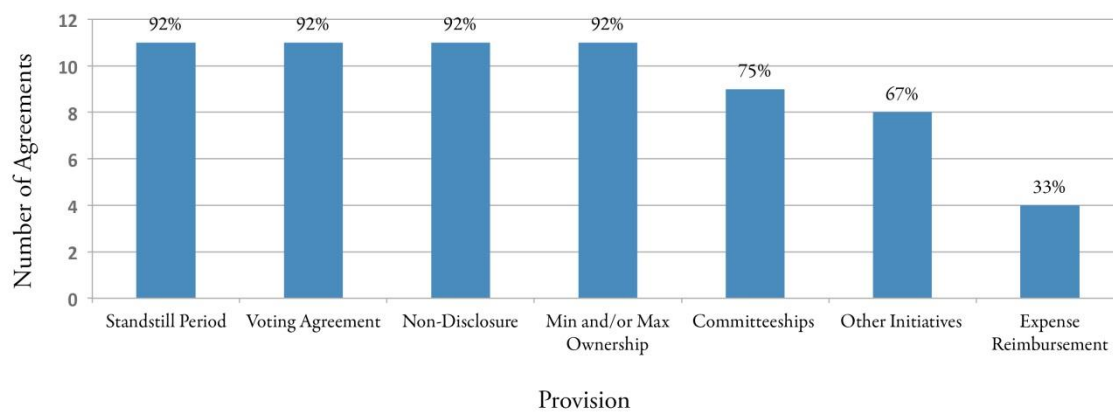


Board Representation Analysis

Category	Average
Board Seats Granted	2.4
Total Board Size*	11.5
Percent of Board*	21.3%

*Following settlement agreement

Frequency of Common Settlement Provisions



*All data represented here is derived from the data compiled from the campaigns studied in this Activism Update.

Activist Update – 2014 Settlement Agreement Key Terms*

	Coppersmith	Corvex / Soroban
Company	ConMed Corp.	The Williams Companies
Agreement Date	February 25, 2014	February 25, 2014
Board Seats	3/10 (2 Coppersmith designees & 1 independent designee)	2/13 (1 Corvex designee & 1 Soroban designee)
Standstill (including term)	Yes; until the date that is 30 days prior to the expiration of the notice period specified in the Company’s advance notice bylaws relating to nominations of directors at the 2016 annual meeting.	Yes; until the earlier of (i) the date that is seven days prior to the expiration of the notice period specified in the Company’s advance notice bylaws relating to nomination of directors at the 2015 annual meeting and (ii) the date of resignation of the Soroban designee from the board.
Committee Membership	Yes; one designee appointed to both the Nominating and Governance Committee and the Compensation Committee and one designee appointed to the Audit Committee.	None.
Other Strategic Initiatives	Chairman of the board to resign and not stand for reelection at the 2015 annual meeting.	None.
Voting	At the 2014 and 2015 annual meetings, Coppersmith agrees to vote all shares in favor of the Company’s slate and in accordance with the Company’s recommendations in all proposals for which a Coppersmith designee voted.	Corvex/Soroban agree to vote all shares in accordance with the Company’s recommendations at all meetings unless (with respect to proposals other than the nomination of directors) the Corvex designee has voted against such matter on the board.
Min/Max Ownership	None.	<ul style="list-style-type: none"> • Minimum of 40 million shares held collectively by Corvex and Soroban, of which Soroban must hold no less than 12.5 million shares and Corvex must hold no less than 21 million shares. • Maximum of 15% of the outstanding stock held collectively by Corvex/Soroban.
Expense Reimbursement	Yes; up to \$30,000.	None.
Non-Disparagement	Yes.	Yes.

*Includes all publicly filed settlement agreements executed in 2014 relating to campaigns studied in this Activism Update.

	Elliott	Engaged
Company	Juniper Networks	Abercrombie & Fitch
Agreement Date	February 20, 2014	April 30, 2014
Board Seats	2/9 (2 independent designees)	4/12 (4 independent designees)
Standstill (including term)	Yes; until the earliest of (i) the announcement of a transaction that would result in an acquisition of more than 50% of the Company, (ii) the commencement of a tender or exchange offer that, if consummated, would result in an acquisition of more than 50% of the Company, and (iii) any amendment to the charter or bylaws that would substantially impair the ability of stockholders to nominate directors or make proposals for the 2015 annual meeting.	Yes; until the earlier of (i) the date that is 10 business days prior to the deadline for the submission of stockholder director nominations for the 2015 annual meeting pursuant to the Company's bylaws and (ii) the date that is 13 months after the date of the 2014 annual meeting.
Committee Membership	None.	Yes; one designee appointed to the Compensation Committee.
Other Strategic Initiatives	None.	None.
Voting	Elliott will vote all shares in favor of the Company's nominees at the 2014 annual meeting.	Engaged will vote all shares in favor of the Company's nominees at the 2014 annual meeting.
Min/Max Ownership	Maximum of (i) 9.99% of the voting power or (ii) economic exposure to 14.99% of the voting stock.	Minimum of 1% of the outstanding stock.
Expense Reimbursement	None.	Yes; up to \$325,000.
Non-Disparagement	Yes.	Yes.

	Icahn	Icahn
Company	eBay	Hertz
Agreement Date	April 10, 2014	September 15, 2014
Board Seats	1/11 (1 independent designee)	3/9 (3 Icahn designees)
Standstill (including term)	No.	Yes; until the later of (i) the 2015 annual meeting and (ii) the date on which Icahn no longer has any designees on the board.
Committee Membership	None.	Yes; one designee appointed to each of (i) the Nominating and Governance Committee, (ii) the Compensation Committee, and (iii) the Audit Committee.
Other Strategic Initiatives	None.	<ul style="list-style-type: none"> • Board (i) to dissolve Executive Committee and Finance Committee, (ii) will not create any new committees without giving Icahn designees the opportunity to participate, and (iii) ensure that all extraordinary transactions are considered by the board. • Board to create CEO Succession Committee comprising five directors, at least two of which are Icahn designees. • Rights plan to be amended to increase trigger from 10% to 20%.
Voting	None.	Icahn agrees to vote all shares at all annual and special meetings (i) in favor of the Company's director nominees, (ii) against other nominees, and (iii) in favor of auditors.
Min/Max Ownership	Minimum of 13,901,507 shares.	<ul style="list-style-type: none"> • Less than 28.5 million shares, drops to two designees; less than 22.8 million shares, drops to one designee; and less than 19 million shares, drops to no designees. • Maximum of 20% or such greater percentage that the Company has allowed any other holder to obtain in accordance with the rights plan.
Expense Reimbursement	None.	None.
Non-Disparagement	Yes.	Yes.

	JANA	JANA
Company	URS	Walgreen Co.
Agreement Date	March 13, 2014	September 5, 2014
Board Seats	4/12 (4 JANA designees)	1/15 (1 JANA designee)
Standstill (including term)	Yes; until the earliest of (i) the date that is 30 days prior to any applicable deadline by which a shareholder must give notice to the Company of its intention to nominate a director for election at or bring other business before the 2015 annual meeting under the Company's bylaws and (ii) any material breach of the agreement by the Company.	Yes; until the earliest of (i) 12:01 a.m. on the 45 th day prior to the advance notice deadline for the 2016 annual meeting, (ii) if the JANA designee is still on the board, the 45 th day prior to the advance notice deadline for the next applicable meeting following the time the JANA designee is off of the board, (iii) 15 days after the JANA designee is no longer on the board, and (iv) an uncured material breach of the agreement by the Company.
Committee Membership	Yes; two designees appointed to the CEO Succession Committee and one designee appointed to the Compensation Committee.	Yes; JANA designee appointed to the Finance Committee and the Strategy Committee.
Other Strategic Initiatives	<ul style="list-style-type: none"> Two existing board members will not seek re-election, including the CEO. Board to create Value Creation Committee, including two JANA designees, which shall explore strategic alternatives and engage a financial advisor and a cost consultant. Company will not make any acquisitions in excess of \$10 million without the approval of a majority of JANA designees. 	The Company agrees to appoint an additional independent director and appoint such director to the Nominating and Governance Committee.
Voting	JANA agrees to vote all shares in favor of the Company's nominees at the 2014 annual meeting.	JANA agrees to vote all shares in favor of the Company's nominees and in accordance with the board's other recommendations, except with respect to implementation of takeover defenses, charter or bylaw amendments that diminish shareholder rights, compensation plans, and strategic transactions other than acquisition of the remaining interest in Alliance Boots.
Min/Max Ownership	Maximum of 14.9% of outstanding stock.	<ul style="list-style-type: none"> Minimum of 6,250,000 shares. Maximum of 4.9% of outstanding stock.
Expense Reimbursement	None.	None.
Non-Disparagement	Yes.	Yes.

	Marcato	Vintage Capital
Company	NCR	Aaron's
Agreement Date	November 10, 2014	May 13, 2014
Board Seats	1/9 (1 Marcato designee)	2/10 (1 Vintage designee & 1 independent designee)
Standstill (including term)	Yes; until the earlier of (i) seven business days prior to the nomination deadline under the bylaws for the 2016 annual meeting and (ii) the date the Marcato designee ceases to serve as a director.	Limited; Vintage agrees not to seek to call a special meeting until following the conclusion of the 2015 annual meeting.
Committee Membership	Yes; designee appointed to both the Executive Committee and the Compensation and HR Committee.	Yes; one designee appointed to the Operating and Financial Advisory Committee.
Other Strategic Initiatives	All extraordinary and capital transactions to be considered by the full board or by committees of which the designee is a member.	<ul style="list-style-type: none"> • Company to hold a shareholder vote to declassify board. • Board to form Operating and Financial Advisory Committee, which is to include one Vintage designee.
Voting	Marcato agrees to vote all shares (i) in favor of board nominees, (ii) against other nominees, (iii) in favor of say on pay proposals approved by the Compensation and HR Committee, and (iv) in favor of auditors.	Vintage agrees to vote all shares in favor of all board recommendations at the 2014 annual meeting and at any special meeting prior to the 2015 annual meeting.
Min/Max Ownership	<ul style="list-style-type: none"> • Minimum of 60% of current ownership (10,850,488 shares). • Maximum of 10% of outstanding stock. 	Minimum of 5% of outstanding stock.
Expense Reimbursement	None.	Yes; up to \$1.5 million.
Non-Disparagement	Yes.	Yes.

	Third Point	Third Point
Company	DOW Chemical	Sotheby's
Agreement Date	November 20, 2014	May 4, 2014
Board Seats	4/13 (2 Third Point designees & 2 independent designees)	3/15 (3 Third Point designees)
Standstill (including term)	Yes; until 45 days prior to the advance notice deadline for making director nominations at the Company's 2016 annual meeting.	Yes; until the later of (i) 60 days prior to the advance notice deadline for making director nominations at the Company's 2015 annual meeting and (ii) 30 days after such time as none of the Third Point designees are members of the board.
Committee Membership	Yes; one designee appointed to the Governance Committee and one designee appointed to the Compensation and Leadership Development Committee.	Yes; one designee appointed to the Nominating and Corporate Governance Committee, the Business Strategy Committee, and the Executive Committee; one designee appointed to the Finance Committee, the Business Strategy Committee, and the Compensation Committee; and one designee appointed to the Finance Committee and the Business Strategy Committee.
Other Strategic Initiatives	The Company will reduce the size of the board to 12 by the 2016 annual meeting.	<ul style="list-style-type: none"> The Company will reduce the size of the board to 13 by the 2015 annual meeting and to 12 by the 2016 annual meeting. The Company will create a Business Strategy Committee, including all three Third Point designees. The Company accelerates the rights plan to expire as of the completion of the 2014 annual meeting.
Voting	Third Point agrees to vote all shares (i) for all directors nominated by the board for election at any meeting of shareholders and (ii) in accordance with the recommendation of the board on any precatory or non-binding proposals and any non-transaction-related proposals that come before any shareholder meeting.	Third Point agrees to vote all shares (i) for all directors nominated by the board for election at any meeting of shareholders and (ii) in accordance with the recommendation of the board on any other proposals or other business that comes before any shareholder meeting.
Min/Max Ownership	Maximum of 9.9% of the outstanding stock.	Minimum of 3,324,999 shares.
Expense Reimbursement	None.	Yes; up to \$10 million.
Non-Disparagement	Yes.	No.