

Activist Shareholders: More and More Active

NIRI Capital Area Chapter

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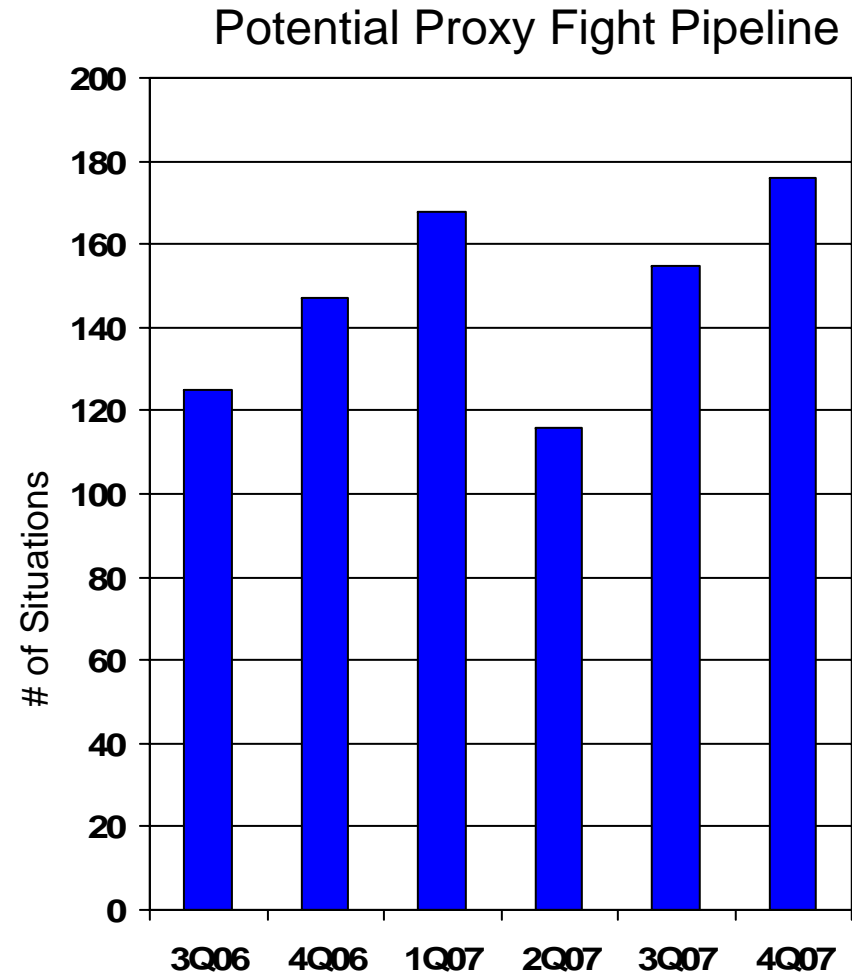
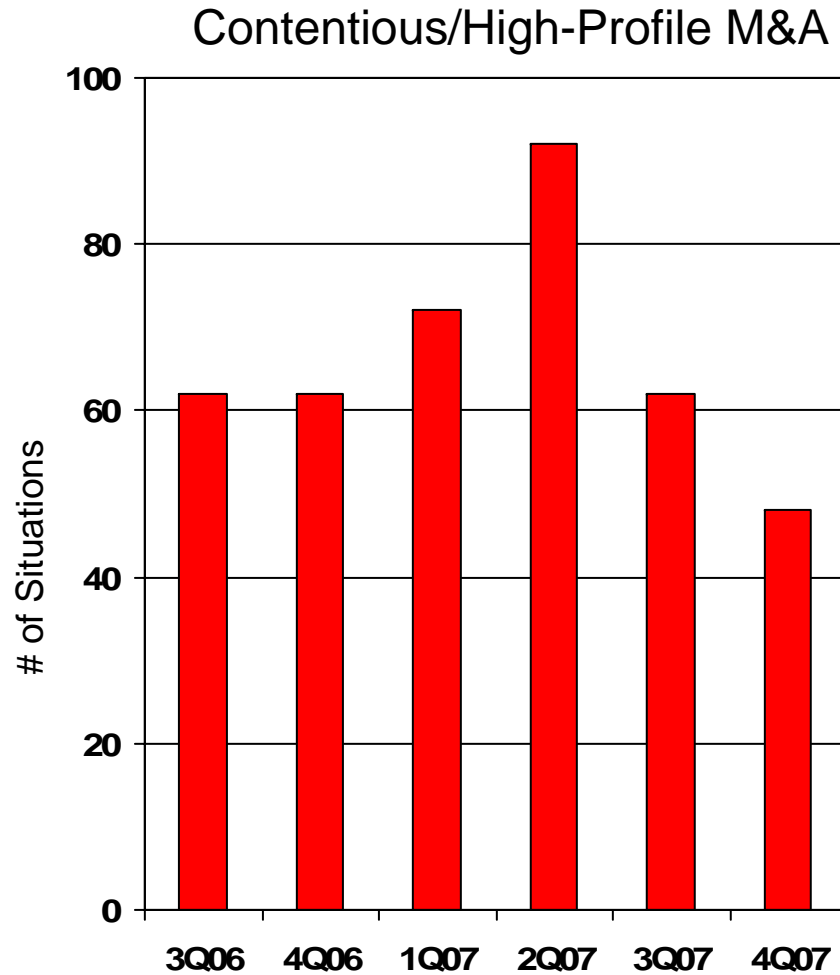
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Outlook for 2008

- Activism will continue and likely surpass 250 battles with issuers
- Boards will continue to be more involved and independent from management
- Advisory firms will have an ever more important role and will continue to support activists, dissidents and third parties
- Tender and Exchange Offers may become a more attractive means to complete merger transactions

Pipeline of Contentious Mergers and Proxy Fights Remains Strong



Data source: RiskMetrics

Activism Will Continue to Increase

- Know who the activists are and who their friends are
- Know your shareholder base
- Develop a core team to include: management, lawyers, bankers, proxy solicitor and media advisor
- Develop and implement a communications plan to deal with all constituents
 - Shareholders, Regulators, Analysts, Proxy Advisory firms, Customers, Competitors, Employees and Media
- Use your proxy solicitor to :
 - Analyze the shareholder base and trading patterns
 - Develop strategies for dealing with activists
 - Develop voting estimates
 - Contact institutions, retail holders, insiders to deliver the vote

Activists Use a Number of Tactics

- Proxy contests with short slates
- Proxy contest with full slates for board control
- Vote “No” campaigns against a merger
 - To force the bidder to pay more, or
 - To keep company as a stand alone business
- Agitation campaigns among shareholders
 - Pushing for sale of the entire or portions of the company
 - Recommending changes in strategy
 - Requesting removal of key officers

Some Well Known Activists

- Appaloosa
- Accipiter
- Atticus Capital
- Barington Capital
- Blue Harbour Group
- Breeden Partners
- Bulldog Investors
- Cannell Capital
- Chapman Capital
- Crescendo Partners
- CtW (Change to Win)
- Dolphin Partners
- Elliott Associates
- ESL Partners
- Harbinger Capital
- Henry Partners
- Highfields Capital
- Icahn Partners
- JANA Partners
- Mason Capital
- MMI Investments
- Oliver Press
- Pershing Square
- Pirate Capital
- Ramius Capital
- Relational Advisors
- SAC Capital
- Sandell Asset Management
- Shamrock
- Southeastern Capital Management
- Steel Partners
- Third Point
- The Children's Investment Fund (TCI)
- TPG-Axon
- Tracinda / Kerkorian
- Trian / Peltz
- ValueAct Capital

Hedge Fund Influence Continues

- There are over 10,000 Hedge Funds world wide with nearly \$1.5 trillion under management
- Activism is an investment style
 - CalPERS plans to invest more than \$10 billion with activist hedge funds – more than double its current allocation
 - Nearly 200 Activist campaigns were conducted in 2007
 - Contested mergers / MBOs / private equity transactions
 - Success in more than 80% of short slate contests
- Shareholder activism is more effective when a company is forced into a sale
- Others have jumped on the Activist and hold up bandwagon
 - Corporate governance activists, Unions, State pension funds, Mutual funds (Fidelity, Franklin Mutual, Morgan Stanley Investment Management, T Rowe Price, Lord Abbott, Pzena and Oppenheimer to name a few)

What Should Companies Do When an Activist Approaches

- Know the opposition and their issues
- Know the company's strengths / weaknesses
- Scout your vulnerabilities in advance (performance, corporate governance)
- Develop detailed plan for each constituency:
 - Large institutions
 - Balance of institutions
 - Large retail holders
 - Small retail holders
- Clearly articulate the company's value creation strategy
- Make sure your investors know and understand the strategy
- Play straight with activists
- Avoid mud-slinging contests
- Execute/Perform
- Don't panic

Communicating with Activists and the Market

Communicating with Activists

- In today's environment, activists have the upper hand
- Maintain a dialogue with all investors, including activist hedge funds
- Monitor shareholder lists for accumulation of shares by hedge funds
- Be proactive with your largest investors and know what they are thinking
- Remember, a high corporate governance score doesn't guarantee a positive recommendation from proxy advisors

Communicating with the Market

- Letters
- Press releases / interviews
- Road shows / one on one meetings
- Conferences
- Earnings releases and other events
- Sell side analyst communications/meetings
- Employee issues and communications
- Customer, community and supplier issues

Tender and Exchange Offers Should Make a Strong Comeback

- Tender offers should return as an often used method in friendly and unsolicited transactions for all cash deals
- Due in part to the change in the “All Holders Rule”
- Advantages include:
 - the ability to close in as little as 20 business days from date of announcement
 - it is much harder for hedge fund or activist shareholders to hold up the transaction
 - short form mergers can follow right after tender offer closing
- Financing remains a gating factor
- Subsequent offering periods can play a role in bridging the gap between 75% and 90%

Mackenzie Partners

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- We are the leading proxy and tender offer advisor in control contests and information agent in friendly and hostile tender and exchange offers for equity and debt
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