

Conference review

What we heard at the Activist Investing in Canada Conference, held in Toronto on October 6, 2015.

With a general election fast approaching and the Toronto Blue Jays on the cusp of a historic World Series appearance, Canada could be forgiven for not giving a second thought to the activities of shareholder activists. The attendance at ArrowCon Partners' second annual Activist Investing in Canada Conference suggests the opposite is true, with a healthy debate taking place about the state of the industry, the preparedness of Canadian boards and an opportunity set that may be set to expand rapidly in 2016.

A maturing market

In terms of activism, the first nine months of this year have proved relatively quiet ones for Canadian companies. With activism having first arrived in a big way in 2012, the year of Pershing Square Capital Management's proxy contest at Canadian Pacific, and activists publicly targeting a record 39 companies in 2014, the 29 mostly small companies publicly targeted by activists this year will inevitably be seen as something of a lull. Few participants at the conference were in doubt as to why that might be. Stephen Griggs, an activist at Smoothwater Capital, was among those to say that once energy and mining stocks (badly hurt by the commodity cycle), and Canada's large, heavily-regulated banks are excluded, the number of opportunities open to

an activist is sharply reduced. That said, constructive investments in Canadian multinationals Agrium (by ValueAct Capital Partners) and Valeant Pharmaceuticals International (again by ValueAct as well as by Pershing Square) show that the market remains on the radar of many US funds. According to Waleed Soliman, co-head of the Special Situations Group at Norton Rose Fulbright, "quiet agitation is a sign of maturity in activism."

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Corporate preparedness

Gilbert Palter, "Activist Investor, Board Member, Change Agent," put the challenge for directors feeling threatened by activist investors succinctly when he told the final panel of the day, "Good governance is not about covering your ass." On a day when directors were routinely abused for their apparently minimal investments in the stock of the companies they helped manage, "skin in the game" was an oft-repeated euphemism for thinking like an investor. Douglas Speers, an activist investor at

Ceres Global, told how the first board meeting following his appointment as a director had dragged from 8:00 am to 11:00 pm without agreement, and accused the former board of not even demanding monthly financial statements from management.

As in the US, settlements are becoming a common feature of the Canadian activism scene. Rob Zivnuska, of corporate advisory firm CamberView Partners, was stark in his warning to companies thinking of joining a public scrap with an activist. "The only thing an activist needs to do is field one person who is better than the worst member of your board," he said.

Energy

A panel chaired by Activist Insight's Josh Black looked at a topic close to Canada's wallet, discussing opportunities for activism in the energy sector. Chris Harrison, a Partner in the M&A practice at Schulte, Roth & Zabel, noted that the sustained downturn in commodity prices was starting to drive some companies into doing deals. "Some companies are finally starting to come to the end of their energy price hedges, and are running out of excess capital," he added, before warning, "Other companies are waiting on the sidelines despite the opportunities, more concerned today that energy and other commodity prices are not going to bounce back anytime soon."

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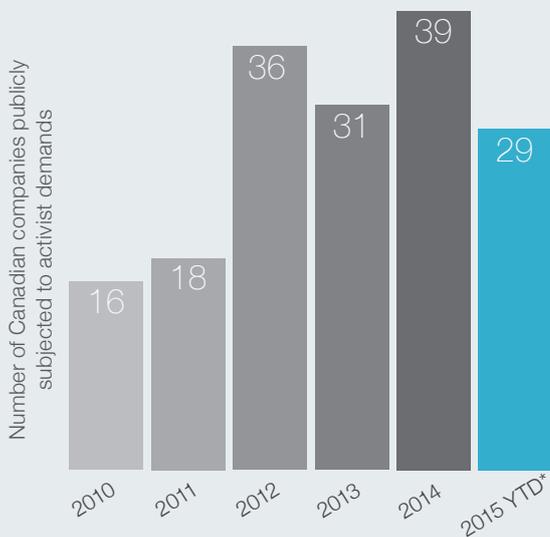
Driven by the announcement at the beginning of the week of Suncorp Energy’s almost C\$4 billion hostile bid for Canadian Oil Sands, the discussion turned to the likelihood of consolidation opportunities. Zach George, Principal

at activist investor FrontFour Capital Management and son of former Suncorp CEO Rick George, expressed his view that there were too many exploration companies with too little management available to manage them effectively, but added that the outlook for oilfield services companies—a popular target for activists just a few years ago—was generally quite “grim.”

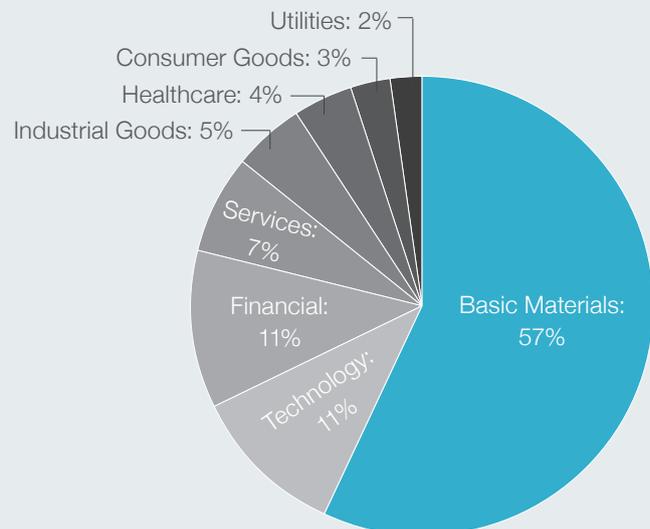
Also on the panel was Michael Galego, of Pacific Exploration and Development (formerly Pacific Rubiales), which reached an agreement with a dissident

shareholder that brought down a merger earlier this summer. That deal provoked a debate about the merits of proxy voting advisers weighing in on the financial merits of transactions, on both the energy and other panels. Alex Moore, a Partner at Davies Ward Phillips & Vineberg, noted on another panel the unusual nature of Institutional Shareholder Services recommending a vote against a deal that included a premium, highlighting the importance of due process. “If an activist’s agenda is validated by ISS, that can be hugely influential,” he said. ■

The number of Canadian companies targeted is relatively low this year.



Basic materials companies dominate activism in Canada**



Two of the three most prolific activists in Canada are of Canadian origin***

7
Jaguar Financial Corporation

6
West Face Capital

5
Orange Capital

**Sector target of companies publicly subjected to activist demands since 2010
***Number of Canadian companies publicly targeted by the most active activists since 2010