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http://www.wsj.com/articles/dont-make-me-do-this-rise-of-the-reluctant-activist-1455814599

MARKETS

Don't Make Me Do This: Rise of the Reluctant Activist

Some typically passive investors are adopting the tactics of activists

Daniel O'Keefe's investment firm Artisan Partners earlier this month publicly urged Johnson & Johnson to separate its three main businesses. Above, Mr. O'Keefe attended a conference in Sun Valley, Idaho, in 2013.
PHOTO: BLOOMBERG

By **DAVID BENOIT**
Updated Feb. 18, 2016 7:41 p.m. ET

Investor Jeffrey Osher sat on his holdings in prepaid-debit-card issuer Green Dot Corp. for three years before he lost his patience.

In December, after a string of disappointing earnings reports that left the company's shares down sharply, the hedge-fund manager met with the board and asked directors to fire founder and Chief Executive Steven Streit, according to people familiar with the meeting. When the board refused, Mr. Osher's Harvest Capital Strategies LLC did something it had never done before: It publicly threatened to run a campaign to oust the company's directors.

Those moves put Mr. Osher into a newly emerging class of shareholders: Typically passive investors who are adopting, sometimes reluctantly, the tactics of activists.

The rise of these "reluctavists" or "suggestivists," as they are sometimes called, reflects the success of vocal shareholders in forcing corporate change, as well as broader shifts in the investing world. Changes in securities laws and an expansion of investor rights have encouraged shareholders who once deferred to management to speak up when they are unhappy.

First-time activists ran 49 campaigns against U.S. companies last year, up from 36 in 2014 and 15 in 2011, according to Activist Insight. Some 54% of all campaigns were launched by what the researcher deems "occasional" activists, up from 30% in 2011.

Two longtime airline shareholders recently changed their status to active investors from passive at United Continental Holdings Inc., the parent of United Airlines, indicating they plan to raise their voices on strategy and management. Canyon Capital Advisors LLC has joined a chorus of activists pushing Yahoo Inc. to change direction, a rare move for the $24 billion fund.

Harry Wilson last year led several large investors in a successful push to get General Motors Co. to buy back more shares. *PHOTO: MICHAEL NAGLE/BLOOMBERG NEWS*

Harry Wilson, an architect of the Obama administration's restructuring of General Motors Co., last year led several large investors in a successful push to get GM to buy back more shares. Angie's List Inc., meanwhile, is facing a possible fight for board seats after resisting a sale backed by TCS Capital Management LLC, an investor that first took a stake in the consumer-review website before its 2011 initial public offering.

"These are long-term investors who have reached a point where they see opportunities for value that the company isn't pursuing and after years of underperformance they are putting themselves out there," said Andrew Freedman of law firm Olshan Frome Wolosky LLP, which represents activist investors, including some first-timers. "They aren't just short-term value seekers. They are the long-suffering shareholder."

Whether this new crop of investors will find the same success as dedicated activists remains to be seen. While there are notable exceptions, such as John

Paulson's Paulson & Co., most occasional activists lack the name recognition and track record of established activists like Carl Icahn or William Ackman.

Furthermore, these investors often have smaller stakes in the companies they target.

Daniel O'Keefe's $32 billion investment firm Artisan Partners earlier this month publicly urged Johnson & Johnson to separate its three main businesses. Artisan has a 0.2% stake in the health-care company, which has a market value of $284 billion.

'Like most people, I don't welcome battles.'

—George Young, chief compliance officer at Villere

J&J has met with Mr. O'Keefe several times, but it is standing by its corporate structure.

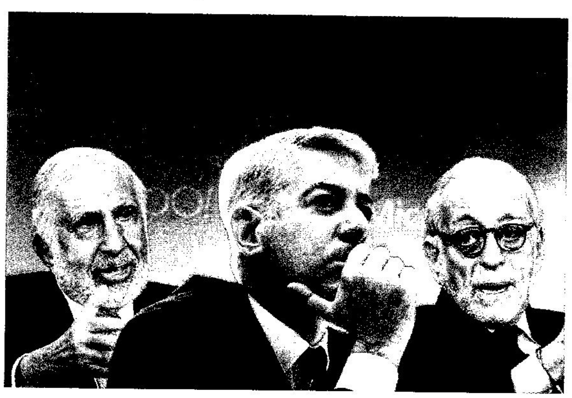
"These are not decisions that I came to on a whim," Mr. O'Keefe said. "These are conclusions that I came to after years of following the company and considering counterpoints."

Funds wading into activism for the first time say the experience can be eye-opening.

Take St. Denis J. Villere & Co., a 105-year-old New Orleans investment firm whose first foray into activism landed it in court. The family-run firm in 2014 raised concerns about legal-software company Epiq Systems Inc. after 11 years of investing in the stock. The two sides later reached an agreement to put a Villere ally on the board as Epiq launched a strategic review.

But a year later, that process had stalled, and Epiq's results disappointed the investor. Villere nominated six directors to the company's nine-member board in December.

Activist Investor Report Card



Epiq, while saying it's open to shareholder input, said the nominations violated the earlier settlement. Epiq and Villere have traded lawsuits. The company recently named a new lead independent director and replaced two board members.

George Young, Villere's chief compliance officer and a member of its founding family, said a long-running evolution of U.S. securities law has spurred Villere to think more about how it votes its shares. That, in turn, has led it to get more aggressive with management teams.

But future public campaigns are a different story. Mr. Young, who often carpools to work with his uncles and cousins, said he was unaccustomed to the round-the-clock demands of an activist fight.

"Like most people, I don't welcome battles," he said.

Mr. Osher said he, too, would rather operate behind the scenes. But he felt Harvest, one of Green Dot's largest shareholders, needed to publicly state its case. On Jan. 25, the 16-year-old San Francisco investment firm released a 93-page presentation criticizing Green Dot's performance. It also directed shareholders to a website, www.fixgdot.com, that urged the company to immediately remove Mr. Streit.

Green Dot said its board and management held "numerous" calls and meetings with Harvest and would "carefully review" the investor's suggestions.

"I prefer to operate out of the public eye," Mr. Osher said. "I'm very disappointed this is the avenue we had to pursue."

Write to David Benoit at david.benoit@wsj.com

Holding Activists and Proxy Advisory Firms Accountable?

Posted by David A. Katz and Laura A. McIntosh, Wachtell, Lipton, Rosen & Katz, on Tuesday, May 31, 2016

Tags: Accountability, Bebchuk-Brav-Jiang study, Brokaw Act, Disclosure, Hedge funds, Lobbying, Long-Term value, Oversight, Proxy advisors, Reporting regulation, Schedule 13D, SEC, Shareholder activism, Shareholder proposals, Shareholder rights, Shareholder value, Short-termism, Transparency
More from: David Katz, Laura McIntosh, Wachtell Lipton

Editor's Note: **David A. Katz** is a partner and Laura A. McIntosh is a consulting attorney at Wachtell, Lipton, Rosen & Katz. The following post is based on an article by Mr. Katz and Ms. McIntosh that first appeared in the *New York Law Journal.* Related research from the Program on Corporate Governance includes **The Long-Term Effects of Hedge Fund Activism** by Lucian Bebchuk, Alon Brav, and Wei Jiang (discussed on the Forum **here**); **The Myth that Insulating Boards Serves Long-Term Value** by Lucian Bebchuk (discussed on the Forum **here**); **The Law and Economics of Blockholder Disclosure** by Lucian Bebchuk and Robert J. Jackson Jr. (discussed on the Forum **here**); and **Pre-Disclosure Accumulations by Activist Investors: Evidence and Policy** by Lucian Bebchuk, Alon Brav, Robert J. Jackson Jr., and Wei Jiang.

The nation's capital is center stage for the latest round of debates as to the impact of shareholder activism on American business. With the introduction of the Brokaw Act by four Democratic senators in March, followed by the announcement in May of a new D.C.-based lobbying organization formed by a bipartisan group of prominent activists, the long-running controversy over the unprecedented influence of shareholder activism has officially reached Washington. The activist agenda now includes public policy, and it appears that the influence of these powerful investors is to be wielded on K Street as it has been on Wall Street. By raising their own profile via a Washington-based lobbying entity, activists will place themselves and their business practices squarely in the spotlight. Perhaps a more significant public presence will engender a more favorable reputation for activists, or perhaps it will increase activist accountability to lawmakers and public shareholders; or, perhaps, it will do both.

At the same time, lawmakers are taking significant steps toward much-needed regulation of proxy advisory firms. With a bipartisan bill introduced this week, Congress outlined a comprehensive oversight framework for increasing the transparency and accountability of proxy advisory firms.

Rising Activism Concern

The immense financial power of activist investors and their aggressive attacks on corporations have caused concern on Capitol Hill. Last month, Pershing Square's William Ackman was called to testify before a Senate committee regarding his investments in Valeant Pharmaceuticals International, as well as his involvement in Fannie Mae, Freddie Mac, and Herbalife. Valeant's notorious strategy of drug acquisitions and massive price increases had yielded higher shareholder value (for a time) but inflicted extortionate costs on hospitals and patients. During the high-profile hearings, both Democratic and Republican senators expressed outrage at the practices, which were disavowed by Ackman and outgoing Valeant CEO Mike Pearson. [1]

The Valeant hearings took place just one month after the Brokaw Act was introduced in the Senate to curb abuses of outdated disclosure laws by activist investors. Co-sponsoring Senator Tammy Baldwin (D-Wis.) had strong words directed at activists: "We cannot allow our economy to be hijacked by a small group of investors who seek only to enrich themselves at the expense of workers, taxpayers and communities." [2] Named after a small town in Wisconsin that was bankrupted by the closing of a plant after activists targeted the company, the Brokaw Act is intended to expedite and broaden required disclosures of activity in target company stock. [3]

The Brokaw Act would direct the U.S. Securities and Exchange Commission to amend the §13(d) reporting rules in several key ways. First, the Brokaw Act would reduce the 10-day filing window for an initial Schedule 13D filing to two business days. Second, it would require the disclosure of short positions over 5 percent on Schedule 13D. Third, it would expand the definition of beneficial ownership to include a direct or indirect pecuniary interest, in addition to voting or dispositive power. Investors would therefore have to include shares held in swaps and other cash-settled derivatives, not merely equity securities or securities convertible into equity securities. Fourth, the Brokaw Act would specifically require the disclosure of activity by hedge funds and groups of hedge funds under §13(d). The explicit inclusion of hedge funds in the definition of "persons" is a signal that the SEC is directed to pay close attention to activists and to "wolf pack" activity intended to evade the disclosure requirements. These four amendments would significantly increase the transparency and fairness of the disclosure rules, closing loopholes that are routinely exploited by activists and other sophisticated investors. The proposed revisions would result in higher quality information released in a timelier fashion, to the benefit of the public equity markets. [4] Although the Brokaw Act does not go far enough to close all of the loopholes available to activists, it would be a significant step forward.

The Brokaw Act was introduced by Sen. Baldwin along with Sen. Jeff Merkley (D-Ore.) and co-sponsored by fellow Senators Elizabeth Warren (D-Mass.) and Bernie Sanders (D-Vt.). As election-year legislation sponsored by Democrats in the Republican-controlled Senate, the Brokaw Act is unlikely to be enacted in the foreseeable future. Yet the benefits of the proposed reforms would be wide-ranging and nonpartisan. Just as senators on both sides of the aisle joined to condemn Valeant's business practices in the April hearings, Republicans and Democrats should unite to support this modernizing legislation.

Activists Respond

Earlier this month, a new lobbying effort was announced by a group of activist investors. The Council for Investor Rights and Corporate Accountability (CIRCA) is "committed to promoting the actions of shareholder activists, and their positive impact on corporate governance and business policies at publicly traded companies." [5] In other words, the organization will advocate for activists' interests in Washington and generally seek to further the activist agenda, including by making the case that shareholder activism benefits publicly traded companies, their shareholders, and by extension, the economy in general. CIRCA reportedly is a coordinated effort by Ackman, Carl Icahn, Daniel Loeb of Third Point, Paul Singer of Elliott Associates, and Barry Rosenstein of Jana Partners. [6] These investors manage roughly $90 billion of assets and have publicly targeted a wide range of well-known companies, with varying results.

CIRCA clearly is intended to counter the anti-activist momentum that has been gathering among lawmakers and market participants alike. This is not the first such effort; in 2008, Carl Icahn established the United Shareholders of America group, which was intended to be "a voice for large and small shareholders ... in Washington to combat pro-management forces." [7] The "U.S.A." as it was known, seems to have been a relatively short-lived effort that has been subsumed into Icahn's personal endeavors. CIRCA, by contrast, appears to be a higher-profile and more ambitious effort.

In Washington, the Valeant hearings, the proposed Brokaw Act, and the presidential campaign rhetoric in this election cycle no doubt have left activists feeling increasingly vulnerable to the possibility of legislation unfavorable to their interests. On Wall Street, criticism from prominent institutional investors of activists' "short-termism" and collusive tactics have put activists on the defensive. Last year, BlackRock chairman and chief executive Larry Fink pointed to "the proliferation of activist shareholders seeking immediate returns" as a significant concern for companies trying to build long-term value. [8] The activists behind CIRCA had been discussing for several years the possibility of forming an organization, reportedly prompted by the formal petition for amendments to the §13(d) disclosure requirements submitted to the SEC by Wachtell, Lipton, Rosen & Katz in 2011, and with CIRCA they have now formalized their efforts. [9] According to news reports, the organization intends to eschew political action and focus on convincing policy makers and the public that their activities create value for shareholders generally.

Activists and Accountability

Shareholder activists often claim to be a countervailing force against the power of entrenched boards of directors. According to a CIRCA representative, "CIRCA was founded on the widely accepted idea that a well-functioning system of checks and balances between boards of directors and shareholders is fundamental to long term economic growth and U.S. prosperity." [10] Activists assert that their demands for change in corporate strategy, management, board composition, and other elements of corporate governance serve to hold boards accountable for their decisions and performance. CIRCA's mission appears to be to convince lawmakers and the public that activists serve the public good.

The activist lobby is likely to have something of an uphill battle. In the populist, anti-financial-industry mood of the moment, exacerbated by the rhetoric of presidential candidates, sophisticated investors are viewed as predators rather than protectors of the investing public. Moreover, thoughtful and influential leaders continue to point to activists as inimical to worthwhile corporate goals. Larry Fink's February 2016 letter to S&P 500 chief executives encouraged companies to clearly articulate long-term plans for value creation as a defense against the superficially attractive but typically short-term visions of activists. [11] In the same vein, Leo E. Strine, chief justice of the Delaware Supreme Court, observed in March 2016 that, all too frequently, companies faced with activist attacks suddenly change their corporate strategy rather than staying with a pre-existing business plan that has been regularly and deeply reviewed by the board and senior management. [12] Chief Justice Strine has written in recent years about the dangers of short-term investors' dominating corporate decisionmaking and has advocated for the creation of a system that will employ shareholders' rights in a way "that is more beneficial to the creation of durable wealth for them and for society as a whole." [13]

Taking an optimistic look ahead, it is just possible that activist lobbying may end up creating a situation in which activists are compelled to change their practices for the better. Making the public case for activism runs the risk of drawing more negative attention to activists' enormous financial power, unscrupulous tactics, and mixed records of successes and failures. In trying to demonstrate that they hold boards accountable and benefit the American economy, activists may find that they themselves are held more accountable than ever before. And, just as Ackman found himself repudiating the controversial business practices of Valeant under the glare of the Senate hearings, activists engaged in public dialogue with lawmakers and other leaders may find themselves renouncing some of their more egregious, short-termist tactics. To the extent that activists attempt to style themselves the champions of Main Street investors, they will feel pressure to defend, mitigate, or abandon their obviously self-serving activities.

The dynamics of a meaningful activist lobbying effort will be interesting to observe. It certainly could be a welcome development if it leads somehow to a greater focus by activists, other investors, and corporations alike on strategic planning and meaningful long-term value creation. Perhaps unlikely, nonetheless such an outcome would indeed represent a "positive impact" of activist efforts on Wall Street, Main Street, and the American economy.

Proxy Advisory Firm Reform Act

Another bill, introduced in the House of Representatives on May 24, 2016, aims to create an oversight framework for proxy advisory firms such as ISS and Glass Lewis. [14] The Proxy Advisor Firm Reform Act of 2016, introduced by Rep. Sean Duffy (R-Wis.) and Rep. John Carney (D-Del.), would require proxy advisory firms to register with the SEC. As part of the registration process, a firm would have to provide information regarding its procedures and methodologies, its organizational structure and whether it has a code of ethics. In addition, addressing a widespread concern, a proxy advisory firm would have to disclose any potential or actual conflicts of interest created by its ownership structure and the services it provides to clients, including whether it engages in consulting services for companies, its largest clients (which can be disclosed confidentially to the SEC), and the policies and procedures in place to manage conflicts that may arise in this context.

Under the proposed legislation, registered proxy advisory firms would have to file an annual report with the SEC containing information on the number of shareholder proposals reviewed in the past year, the number of recommendations that were made, how many employees reviewed the proposals, and how many of the proposals were sponsored by clients of the proxy advisory firm. Proxy advisory firms also would be required to file and make publicly available their policies regarding the formulation of their proxy voting policies and voting recommendations. The bill would give corporations the right to review and comment on a proposed recommendation by a proxy advisory firm before the recommendation is provided to investors. Corporations would have a private right of action against a proxy advisory firm that did not provide this opportunity. Finally, registered proxy advisory firms would be required to appoint an internal compliance officer.

This bill would represent a significant step toward much-needed oversight of unduly influential proxy advisory firms. It would dramatically increase transparency and improve accountability, going well beyond the scope of the SEC's 2014 Staff Legal Bulletin No. 20. The issuance of SLB 20 followed a concept release and roundtable by the SEC and addressed several important issues relating to proxy advisory firms. SLB 20 clarified the duties and obligations of proxy advisors and of investment advisors that rely on proxy advisors' services. Still, more is needed, and as former SEC Commissioner Daniel Gallagher noted in his testimony before the House Financial Services Committee on May 17, the proposed legislation "would pick up where SLB 20 left off by providing a comprehensive regulatory regime to address many of the fundamental concerns that still remain regarding the activities of proxy advisers." [15]

Increased accountability for activists and for proxy advisory firms would be highly beneficial to corporate America. It is to be hoped that Congress will give the Brokaw Act and the Proxy Advisory Firm Reform Act full and fair hearings and that, ultimately, bipartisan support for both bills will result in a significantly improved regulatory environment for both investors and public companies.

Endnotes:

[1] See Cynthia Koons & Anna Edney, "Ackman, Valeant Offer Apologies, Concessions at Drug Hearing," Bloomberg.com, April 27, 2016, available **here**.
(go back)

[2] See Donna Borak & David Benoit, "Democrats Take Aim at Activist Investors," WSJ.com, March 17, 2016, available **here**.
(go back)

[3] The text of the proposed legislation is available **here**.
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[4] Wachtell, Lipton, Rosen & Katz has consistently advocated for modernization of the reporting regime. See Theodore N. Mirvis, et al., "Legislation Calls for Important Revisions to 13(d) Beneficial Ownership Reporting Rules," WLR&K Memorandum, March 18, 2016, and citations linked therein. The memorandum is available **here**.
(go back)

[5] See Reuters, "Activist Investor Heavyweights Form New Lobbying Arm," May 18, 2016, available **here**.
(go back)

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http://www.wsj.com/articles/salesforces-marc-benioff-has-kicked-off-new-era-of-corporate-social-activism-1462201172

BUSINESS

Salesforce's Marc Benioff Has Kicked Off New Era of Corporate Social Activism

On social issues such as gay rights, Mr. Benioff is pushing companies to speak out, drawing brickbats from local lawmakers; 'a corporate bully'

Salesforce CEO Marc Benioff *PHOTO: JASON HENRY FOR THE WALL STREET JOURNAL*

By **MONICA LANGLEY**
Updated May 2, 2016 8:57 p.m. ET

When North Carolina passed its law in March restricting certain gay rights, Marc Benioff was ready with his rapid-deployment response.

The Salesforce.com Inc. chief executive blasted out tweets criticizing the law. He called on other CEOs to speak out and dispatched staff to work with state officials and rights groups. Under pressure from many quarters, Gov. Pat McCrory soon sought to pare the law's scope.

It was the kind of show of force that has made Mr. Benioff a master promoter in the movement toward social activism among American chief executives, one that's increasingly influential despite resistance from those in its focus and some disquiet from Salesforce's investors and directors.

"Marc rallies CEOs when business and trade groups are much slower to act, particularly on noneconomic issues," says Dow Chemical Co. chief Andrew Liveris, who weighed in against the North Carolina law and says Mr. Benioff's influence led him to get personally engaged in social activism.

The 51-year-old Mr. Benioff earlier this year helped push Georgia's governor into vetoing that state's bill that would have let faith-based organizations decline services or fire employees over religious beliefs after the U.S. Supreme Court ruling that backed same-sex marriage. Last year, he and other CEOs were instrumental in persuading Indiana's governor to revise a similar law. He is now pressing cohorts to back measures to close the gender pay gap.

Mr. Benioff is among CEOs of companies, including Apple Inc., Bank of America Corp., Walt Disney Co., Intel Corp. and International Business Machines Corp., that have begun pressuring lawmakers on social issues, often with a warning: Change laws or risk losing business.


Dow Chemical Co. CEO Andrew Liveris *PHOTO: MATTHEW BUSCH/BLOOMBERG NEWS*

That is a departure from the past, when U.S. CEOs often avoided weighing in on social issues lest they incur backlash from shareholders, customers and other constituents.

'Marc rallies CEOs when business and trade groups are much slower to act, particularly on noneconomic issues.'

—Dow Chemical Co. CEO Andrew Liveris

Now, the risk may be in not speaking up. "Our jobs as CEOs now include driving what we think is right," says Bank of America CEO Brian Moynihan. "It's not exactly political activism, but it is action on issues beyond business."

Critics of the new outspokenness include North Carolina Lt. Gov. Dan Forest. "The Salesforce CEO is a corporate bully," says Mr. Forest, who vows to stand with his governor against business backlash. "One or two executives from San Francisco call their buddies, and then we've got leftist groupthink tarnishing North Carolina."

Mr. Benioff says he was once a Republican and now doesn't formally affiliate with either party. While some in his camp are liberal-leaning, others aren't. They have pitted themselves largely against GOP legislators.

Some CEOs have told Mr. Benioff they can't join the cause, with one saying it would put "a target on my back."

At Salesforce's annual shareholder meeting last year, an investor criticized Mr. Benioff's public posture as polarizing and time-consuming. Retired Gen. Colin Powell, a Salesforce director, says he recently advised Mr. Benioff that his advocate persona may subject him and Salesforce to unwanted scrutiny.

"Be careful how far you climb up the tree," he says he told Mr. Benioff, "it will expose your backside."

CEOs have long sought to influence policy broadly through campaign contributions. Mr. Benioff and his wife have made $1.3 million in political

Marc Benioff Follow
@Benioff

Ask your CEO to follow @Microsoft @ibm @PayPal @DeutscheBank @springsteen standing against anti-gay @PatMcCroryNC. nbcnews.to/1SkxZ12

12:16 AM - 18 Apr 2016

Full Interview: ...
Gov. Pat McCrory (R-NC) sat down with nbcnews.com

contributions over the past decade to Democrats and Republicans, according to the Center for Responsive Politics. They gave to George W. Bush's presidential campaigns and recently held a fundraiser for Hillary Clinton.

Starbucks Corp.'s Howard Schultz has advocated for tougher gun control. Koch Industries' Charles Koch supports free-market causes, deregulation and criminal-justice overhaul.

What sets apart the new activist CEOs is how they use their names and corporate muscle to campaign directly against specific laws governing social issues, often on short notice, sometimes by threatening to withhold business. These days, a principal cause is gay and transgender rights.

The move took off early in Silicon Valley, where there has long been a mix of liberal and libertarian leanings. Millennial employees "don't want to focus just on making great technology," says Susan Wojcicki, CEO of Alphabet Inc.'s YouTube and a Salesforce director, "but also on making the world a better place."

To attract promising young employees in many parts of America and to woo today's customers, the argument goes, companies must project a corporate ethos that goes beyond profit. "The next generation of CEOs must advocate for all stakeholders—employees, customers, community, the environment, everybody," Mr. Benioff says, "not just for shareholders."

Bully pulpit

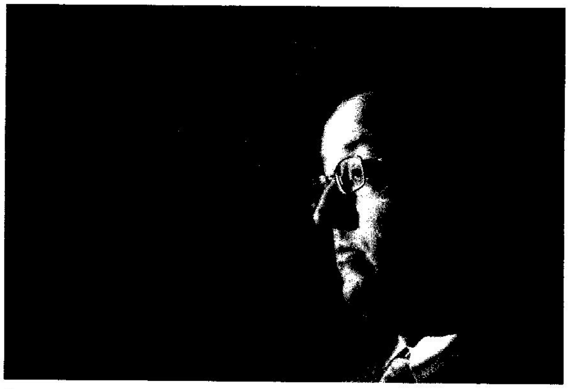
Mr. Benioff's corporate bully pulpit is enabled by company results that keep most investors from questioning his extracurricular activities. Salesforce shares have risen roughly ninefold in the past decade.

"Marc may be distracted on Twitter or at charity functions," says UBS Group AG software analyst Brent Thill, "but it comes back as a halo around Salesforce, and he's built a strong team so he's no longer needed for operational details."

A San Francisco native, Mr. Benioff worked at Oracle Corp. In 1999, he co-founded Salesforce, a pioneer in selling subscriptions to software that businesses can run online rather than storing it on their own computers, part of what came to be called cloud computing. His Salesforce stock is valued at about $3 billion.

An imposing 6' 5", he favors bespoke Berluti suits or custom Christian Louboutin "Cloud Walkers" sneakers with his Tommy Bahama floral shirts. At their three San Francisco houses and Hawaiian estate, he and his wife, Lynne, have hosted friends to private concerts by Stevie Wonder, Neil Young and Lenny Kravitz. He housed 30 Buddhist monks from France recently while their spiritual leader, Thich Nhat Hanh, received medical care at Mr. Benioff's expense.

He is a prominent presence in the Bay Area, contributing nearly $300 million to University of California San Francisco, including to the UCSF Benioff Children's


Georgia State Sen. Josh McKoon *PHOTO: BRANDEN CAMP/ASSOCIATED PRESS*

Hospitals. He touts his new headquarters, under construction, as the tallest building west of the Mississippi.

Mr. Benioff used this year's World Economic Forum in Davos, Switzerland, as an advocacy venue, holding a

> *'Marc Benioff is the ringleader for big-business CEOs...who use economic threats to exercise more power over public policy than the voters who use the democratic process.'*
>
> —Georgia State Sen. Josh McKoon

gathering in a dome overlooking the Alps featuring musicians Bono and will.i.am. "Marc wanted to fertilize the interest of CEOs in the U.S., where this kind of political involvement is much newer" than in Europe, says Unilever PLC chief Paul Polman, who met with him there and favors having companies focus on social issues such as food security.

Mr. Benioff honed his activist tactics last year when Indiana's legislature passed its "Religious Freedom Restoration Act" permitting businesses to discriminate against gay and transgender people. Salesforce is a large employer in Indiana, where its workers demanded Mr. Benioff act. "Initially, I was very hesitant," he says. "What do I know about this?"

He identified one weapon in Twitter, which he had used mainly to tweet about Salesforce's business. When Indiana Gov. Mike Pence signed the measure, he sent tweets saying Salesforce would reduce investments in the state and offering to relocate Indiana employees.

Marc Benioff @Benioff Follow

We are forced to dramatically reduce our investment in IN based on our employee's & customer's outrage over the Religious Freedom Bill.
9:32 PM - 25 Mar 2015

Another weapon was his client list. Not only did he have CEO friends but he also could reach his 150,000 business customers. He emailed dozens of CEOs and lobbied others over dinner, including Yelp Inc.'s Jeremy Stoppelman, who says Mr. Benioff helped persuade him to come out against the law.

"He creates air cover for the rest of us," Mr. Stoppelman says, "so we feel OK about speaking out."

Eventually, CEOs he contacted—and others at companies such as Wal-Mart Stores Inc. and Nascar—came out against antigay discrimination. Mr. Benioff personally phoned Mr. Pence. After widespread national backlash, the governor revised the bill. Mr. Pence declined to comment.

He applied his newfound tactics early this year on Georgia, whose general assembly approved its bill that let organizations discriminate against same-sex couples on religious grounds. Mr. Benioff tweeted suggesting he might cancel his huge marketing conference in Atlanta and dispatched legal and government-relations staff to lobby Gov. Nathan Deal's aides.

> **Marc Benioff** @Benioff Follow
>
> Should Salesforce move salesforce.com/connections/ if @JoshMcKoon's anti gay bill 757 passes the Georgia legislator?
>
> 2:52 PM - 26 Feb 2016
>
> **80%** Yes divest from GA
>
> **20%** No keep it in GA
>
> 6,354 votes • Final results

And he began the CEO-arm twisting.

He invited chiefs in March to a six-course sushi dinner at his house overlooking San Francisco Bay, interspersing them with tech billionaires and celebrities including magician David Blaine, to urge them to act against the Georgia law. He emailed corporate chiefs asking them to tweet that "There is an economic consequence to discrimination."

He buttonholed Apple CEO Tim Cook at Vanity Fair's Academy Awards party, asking him to discuss the Georgia law, which Apple later criticized publicly. He emailed Disney CEO Robert Iger, who had notified the governor his company was considering not filming in the state, says a Disney spokeswoman.

When Gov. Deal vetoed the bill, Mr. Benioff committed to keeping his conference in Atlanta. A spokeswoman for Gov. Deal, without saying whether Mr. Benioff influenced the decision, says "the governor heard opinions from those on all sides of the issue."

'Economic threats'

Mr. Benioff's rapid-response strategy irked Josh McKoon, the state senator who sponsored the original bill. "Marc Benioff is the ringleader for big-business CEOs," he says, "who use economic threats to exercise more power over public policy than the voters who use the democratic process."

Mr. Benioff then turned his guns on North Carolina's law that limits antidiscrimination protections for lesbians, gays and transgender people and includes provisions requiring everyone to use public bathrooms based on birth sex.

This time, he wasn't doing all the calling. Companies approached him and his staff for advice. North Carolina's Democratic Attorney General Roy Cooper called Salesforce to discuss the law, which had drawn lawsuits against the state. Mr. Cooper "looked to Salesforce because he wanted them to know that this is not who North Carolina is, and that we are fighting against this discriminatory law," says Megan Jacobs, deputy campaign manager for Mr. Cooper, who is challenging Gov. McCrory for the governorship.

Mr. Cooper on March 29 refused to defend the state law, saying in a news conference that it "will set North Carolina's economy back."

Salesforce had little presence in North Carolina, so Mr. Benioff turned to Mr. Moynihan, CEO of Charlotte-based Bank of America, the state's biggest employer. Mr. Moynihan then weighed in against the law. "I respect Marc," Mr. Moynihan says, "but it was our headquarters, and we did it for our teammates."

In an early-April business meeting with Salesforce customer Deutsche Bank AG, which has a 900-person North Carolina office, Mr. Benioff discussed the law with its co-chief executive, John Cryan.


North Carolina Gov. Pat McCrory *PHOTO: GERRY BROOME/ASSOCIATED PRESS*

On April 12, Deutsche Bank announced it would freeze plans to add 250 North Carolina jobs while any of the law stayed intact. Later that day, Gov. McCrory sought to modify some of the law's components but not the bathroom provision. Deutsche Bank hasn't changed

'It's high risk for CEOs to show selective outrage against North Carolina...They will soon recognize the complexity of wading in too quickly into social issues where a great disconnect exists between the corporate suites and Main Street.'

—North Carolina Gov. Pat McCrory

its plans.

In April, more than 100 chief executives had signed a letter by Human Rights Campaign, the civil-rights organization, and Equality North Carolina, an LGBT advocacy group, protesting the law, including Mr. Benioff, Intel's Brian Krzanich, IBM's Ginni Rometty and Facebook Inc.'s Mark Zuckerberg.

Some CEOs wouldn't weigh in, Mr. Benioff says. "I've received some very heated emails that joining the cause would be disastrous for their companies."

The law remains in flux. Gov. McCrory says "it's high risk for CEOs to show selective outrage against North Carolina" when they operate in states and countries with similar laws. "They will soon recognize the complexity of wading in too quickly into social issues where a great disconnect exists between the corporate suites and Main Street."

"We're not attacking Gov. McCrory or any other politician," Mr. Benioff says. "We're protecting our employees from being unfairly discriminated against."

Mr. Benioff is now also targeting gender-pay equality, an issue that confronted him when Salesforce executives told him many of his female employees were paid less than male peers. He didn't believe them, he says, but an employee survey showed "I was wrong." He spent $3 million on salary bumps for about 1,000 employees.

This spring, Mr. Benioff hosted a dinner at the Los Angeles home of actress

Patricia Arquette—who urged wage equality during her Oscar-acceptance speech last year—featuring Hollywood stars, women's-rights advocates and corporate executives. Mr. Benioff, who footed the $100,000 bill, says he told CEOs there that correcting pay disparity is "so easy."

Some disagreed, he says, privately telling him pay was determined by free-market forces. Mr. Benioff surprised Tesla Motors Inc. founder Elon Musk by asking him for a pay-equality commitment, then handed a microphone to him. "I'll look into it," Mr. Musk said, agreeing to consider an audit of salaries.

Mr. Benioff says he isn't interested in entering politics. At a company meeting last month, an employee asked: "Are you running for office?"

He replied: "I'd be a terrible politician."

Write to Monica Langley at monica.langley@wsj.com

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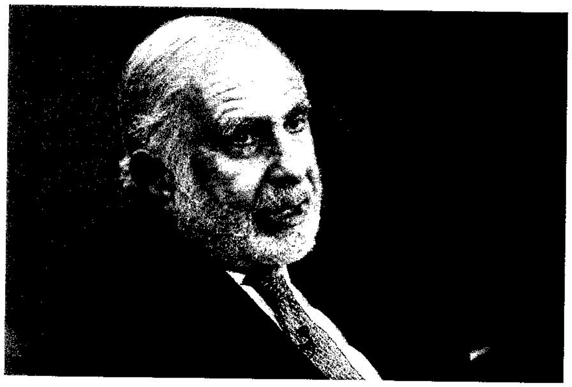
MARKETS

Activist Investors Have a New Target: Washington

Circa will make case in Washington that activism is good for companies, economy



Carl Icahn says activists who keep an eye on management are a counterbalance to poor corporate performance.
PHOTO: GETTY IMAGES

By **DAVID BENOIT**
May 18, 2016 4:52 p.m. ET

The activists are taking on Washington.

Billionaire investors Paul Singer, Carl Icahn, Barry Rosenstein, William Ackman and Daniel Loeb are setting aside their political differences to launch a Washington-based lobbying group to fight mounting attacks on shareholder activism.

Dubbed the Council for Investor Rights and Corporate Accountability, or Circa, it is the first coordinated effort by activists to make their case to lawmakers and the American public that their investment strategy helps, rather than harms, companies and the U.S. economy.

The lobbying push comes as debate over the merits of activist investing spills over into the presidential campaign. Hillary Clinton last year proposed changing the tax code to crack down on "hit and run" activists. In March, Bernie Sanders, Mrs. Clinton's rival for the Democratic presidential nomination, co-signed legislation aimed at their ability to buy stakes and influence companies.

Activist investors have targeted some of the biggest companies in the U.S., from Apple Inc. to Procter & Gamble Co. to Dow Chemical Co., agitating for an array of changes designed to boost shareholder value.

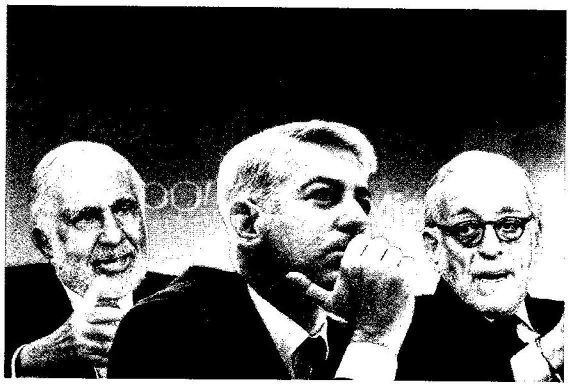
Circa's five backers together manage about $90 billion. The group's message to lawmakers: Activist investors, as owners of the companies they target, are spurring a debate about corporate decision making that has the potential to benefit all shareholders and, by extension, the broader economy.

"We're telling a story about an ecosystem and how they help America and make it a competitive system," said Rob Collins, a political strategist who is advising Circa.

Mr. Icahn, a veteran activist who has targeted a wide swath of companies including Apple, Xerox Corp. and eBay Inc., said poor corporate performance is dragging down the U.S. economy. Activists that keep a watchful eye on management serve as a counterbalance, he said.

The Activist Report Card

A WSJ analysis of what happened at large U.S. companies targeted by activist investors



"It's the opposite of short term. You need to nurture," Mr. Icahn said in an interview. "This is what the country needs right now."

Activist investors' stature has risen in recent years as they have racked up wins at major U.S. companies and won the support of some big institutional shareholders. But concerns about their aggressive tactics have grown along with their influence.

Poor performance, meanwhile, has hampered some activists this year. Mr. Ackman was brought before Congress last month to answer for his investment in Valeant Pharmaceuticals International Inc., which has weighed heavily on his Pershing Square Capital Management LP.

Circa's backers say the spark for their effort came in 2011, when one of activism's most strident critics, Wachtell, Lipton, Rosen & Katz, proposed changing the rules on when activists must publicly disclose their stakes. The law firm and its co-founder, Martin Lipton, led an effort to shorten the 10-day period during which activists can keep secret a more than 5% stake before they must disclose it to the Securities and Exchange Commission.

The SEC hasn't taken action on the disclosure period, but activists and their detractors are still fighting over the rule. The Brokaw Act, the March legislation co-sponsored by Mr. Sanders and other Senate Democrats, would cut the disclosure period to two days and toughen rules to prevent activist "wolf packs" from evading securities laws.

"Hollowing out longstanding companies so that a small group of the wealthy and well-connected can reap a short-term profit is not the path to a strong and sustainable economy for our nation," Sen. Jeff Merkley (D., Ore.), one of the bill's sponsors, said at the time.

While Circa wasn't formed in response to the legislation, the proposed law underscored the activists' need for a Washington presence. Until now, the activists backing the group have mostly concentrated their efforts on increasing their influence by winning campaigns at the companies they target.

Circa's backers have been meeting in recent years to determine the appetite for a more organized response but were slow to reach an agreement, in part because of their differing political views, according to people familiar with the group. Mr. Singer leans right, for example, while Mr. Rosenstein leans left.

Members of the group also have sparred over the years. Messrs. Icahn and Ackman, most notably, publicly warred over nutritional-products company Herbalife Ltd. They later patched up their differences.

Mr. Singer runs Elliott Management Corp., which has called for change at companies from EMC Corp. to Cabela's Inc. Mr. Loeb's Third Point LLC has pushed for changes at Yahoo Inc. and Dow Chemical, among others, while Mr. Rosenstein's Jana Partners LLC has targeted PetSmart Inc. and Safeway Inc., to name a few.

Circa doesn't plan to wade into the presidential election or other political contests; nor does it plan to form a political action committee to fund individual candidates or issue campaigns, the people said.

Instead, the group will seek to educate policy makers and the American public. Activists point to data that show stocks targeted by activists outperform, on average, in three- and five-year periods. They say their proposals create value for pensioners and other investors and reduce corporate waste.

A Wall Street Journal study last year of the biggest 71 campaigns from 2009 through 2014 found that it is difficult to quantify the broader impact of activist investors on companies. Activist-targeted companies outperformed peers in total shareholder return about 50% of the time.

Write to David Benoit at david.benoit@wsj.com

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Money | Wed May 18, 2016 7:02pm EDT

Relate

Activist investor heavyweights form new lobbying arm

NEW YORK | BY MICHAEL FLAHERTY

William Ackman, founder and CEO of hedge fund Pershing Square Capital Management, speaks during the Sohn Investment Conference in New York May 4, 2015.
REUTERS/BRENDAN MCDERMID

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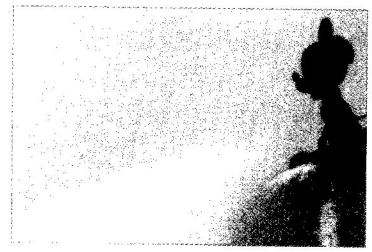

Disney deal finally puts ESPN on offense

A group of hedge funds have formed a new lobbying arm to promote the benefits of shareholder activism across the U.S. economy, as U.S. politicians turn up the heat on activist investors.

The Council for Investor Rights and Corporate Accountability (CIRCA) announced its formation on Wednesday, saying it is committed to promoting the actions of shareholder activists, and their positive impact on corporate governance and business policies at publicly traded companies.

The Washington D.C.-based trade association said it is backed by a consortium of activist firms, but does not name them in the press release. According to a person with direct knowledge of the matter, the group's backers are: William Ackman of Pershing Square, Carl Icahn, Daniel Loeb of Third Point, Paul Singer of Elliott Associates and Barry Rosenstein of Jana Partners.

Activist investors buy minority stakes in what they believe are under-valued and poorly managed companies and then quickly agitate for changes. Activists often push for overhauls in corporate strategy, cash management, management team and board composition - sometimes under the threat of a proxy fight if the company does not meet their demands.

Activist investors launched a record 508 campaigns against U.S. companies last year, according to Thomson Reuters data, targeting names such as DuPont (DD.N), General Electric (GE.N), and AIG (AIG.N).

The actions of certain activist hedge funds, however, has also attracted the attention of politicians, including Democratic presidential candidates Hilary Clinton and Bernie Sanders.

Ackman was one of the Valeant Pharmaceuticals International Inc (VRX.TO) officials who recently appeared in front of a Congressional committee to address the massive price hikes Valeant issued on some of its drugs.

Valeant, a drug company whose creation was led by activist hedge fund ValueAct Partners, is under federal investigation for its use of specialty pharmacy companies.

Politicians have targeted activists for being short term investors, at the expense of longer term shareholders.

"CIRCA was founded on the widely accepted idea that a well-functioning system of checks and balances between boards of directors and shareholders is fundamental to long term economic

growth and U.S. prosperity," CIRCA Senior Advisor Rob

Collins said in the press release.

The page and a half announcement does not detail specific actions the group plans to takes, but rather outlines its core principles, which include effective engagement between boards and investors and ensuring that regulations to not allow board entrenchment.

(Reporting by Michael Flaherty; Editing by Chris Reese, Bernard Orr)