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Published: June 2009

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STRATEGIC RESEARCH

SHAREHOLDER ACTIVISM – UPDATED FOR Q1 2009

EXECUTIVE SUMMARY

- In the first quarter of 2009 Healthcare companies were the top targets for activist firms. This is a change from prior quarters where Consumer Discretionary companies had ruled the roost.
- The average target company in the first quarter of 2009 had a market capitalization of roughly \$3.7 billion. That was a significant increase from the average target in the fourth quarter of 2008, which was just \$28.2 million. It is notable that the big jump in market cap coincides with a rebound in the equity markets. Might activists be more flush with cash and willing to target larger companies?
- The most common demand that activists made were for board seats. Board seats have consistently been a top demand according to our prior research.
- Some compromise situations were recorded in the first quarter of 2009. Going forward we expect the number of compromises to rise as companies learn to better address and communicate with activists.
- Big name activists such as Carl Icahn and Pershing Square were notably absent in the fourth quarter of 2008, however, both were active and making headlines during the first quarter of 2009.
- If historical patterns hold true, look for the number of cases of activism to trend downward for the remainder of the year.

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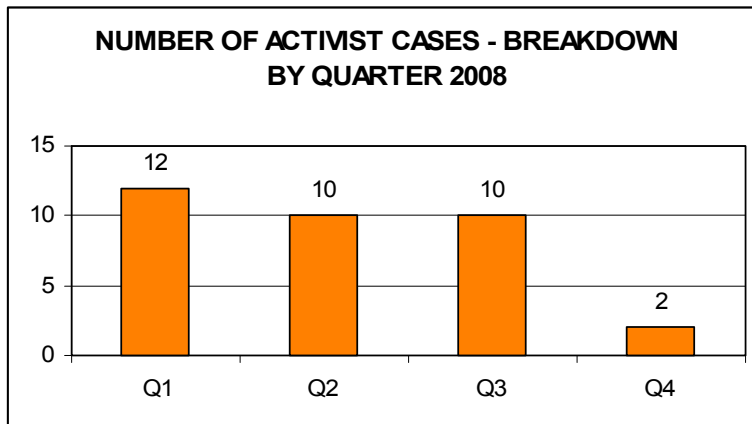
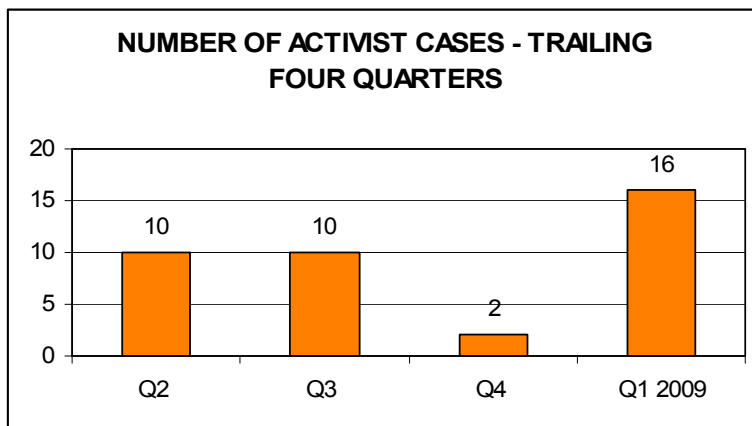


The following report focuses on activist situations that occurred from January through March 2009. It also details success and failure rates and other data pertaining to activist situations in 2008. The source for this data was Thomson's SDC Platinum™ database, the SEC, and various press releases.

A total of 16 activist situations occurred in the first quarter. In Q1 2009 the average target had a market capitalization of \$3.7 billion. That was a marked increase from the \$28.2 million that was recorded in Q4 2008. The Q1 target size was more on par with the \$4.93 billion market cap that was record in Q3 2008.

Over the last four (trailing) quarters there were a total of 38 activist situations. Note that for all of 2008 there were a total of 34 cases of activism and in 2007 there were a total of 61 cases of activism. The 16 cases in Q1 2009 were a sequential increase from the 2 cases recorded in the fourth quarter of 2008 and a year-over-year increase from the 12 cases that were recorded in Q1 2008.

The following is a quarterly breakdown of cases:





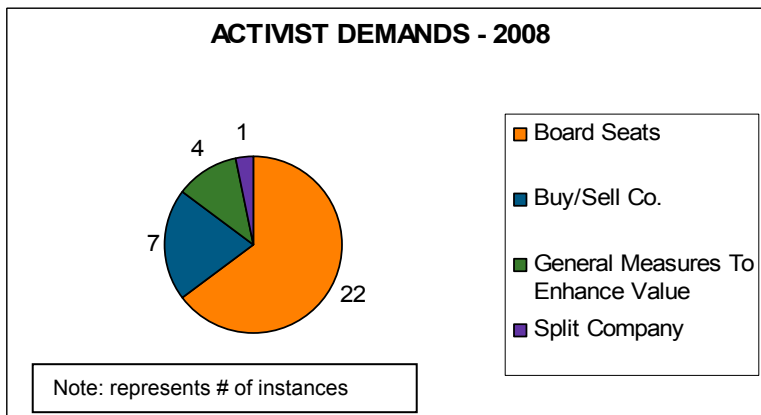
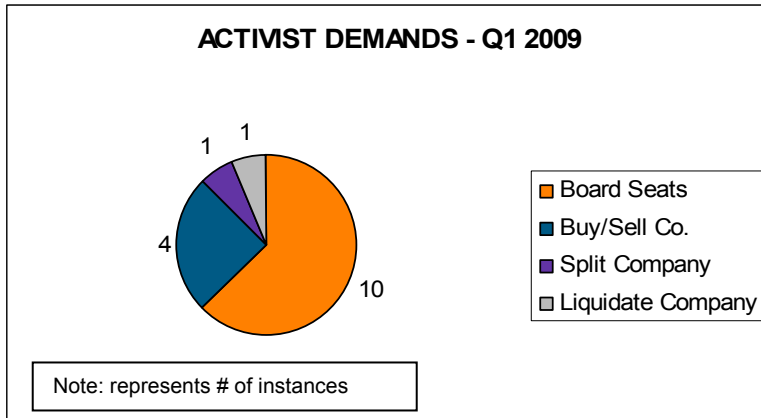
It is important to note that the sequential increase in the number of cases of activism from Q4 2008 to Q1 2009 is consistent with what took place in the fourth quarter of 2007 to the first quarter of 2008. Activists are typically aggressive in the first quarter time frame, trying to push their agendas and win the hearts and minds of possibly sympathetic shareholders ahead of the company's annual meeting. However, if recent history is any indicator the number of new cases of activism should begin to trail off as the year progresses, with the fourth quarter traditionally being the low point.

Note that the appetite for activism could be altered by adverse market and/or macroeconomic conditions. The reason: In a down market or economy activists may prefer to focus on their existing positions and not to open another front and/or to engage in a potentially time consuming and costly proxy battle. Also, the inability to obtain financing and/or the inability to find a willing buyer for a company's assets (if that is the intention of the activist) may affect their willingness to get involved. As a reference in Q4 2008, when the equity markets were under severe pressure, just two cases of activism were recorded.

ACTIVIST DEMANDS:

In the past, activist investors have aggressively sought board seats as a means of exerting their influence. This trend continued in the first quarter of 2009. In fact, of the 16 instances of activism in the period board seats were the top demand in 10 instances. The reason board seats are typically in hot demand is simple. It is because it is often the best way for an activist firm to exert their influence and/or to forward their agenda. Other demands both in the most recent quarter include: The split of the target company, the liquidation of the target company, and to acquire or sell the target company. Again however, even those cases where the activist seeks to buy or sell the company or split the company, they also tend to seek board seats, perhaps as a means of obtaining leverage.

Consider the following graphical representations:





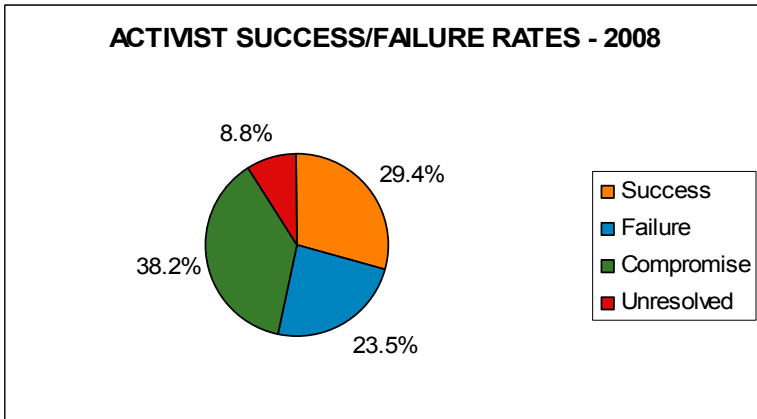
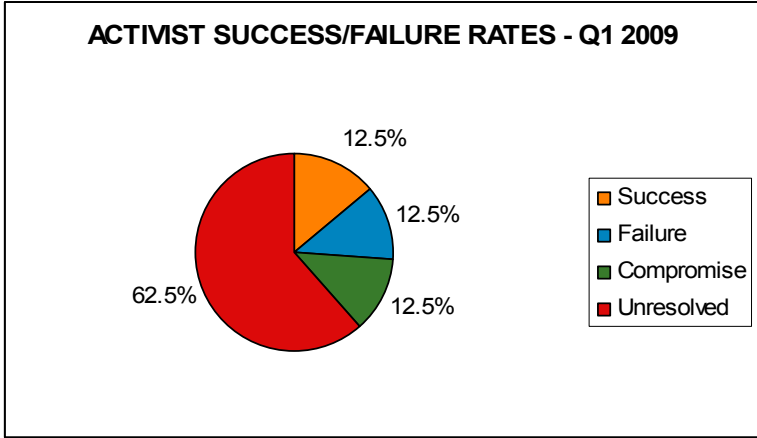
SUCCESS/FAILURE DATA:

Of the 16 cases of activism in the first quarter of 2009 two have been resolved in the activist’s favor, two have been resolved in the target company’s favor, and there were two compromise situations. Finally, of the 16 cases a total of 10 remain unresolved at the time of writing.

Breaking these numbers down into percentages, in the first quarter of 2009 activists were successful 12.5% percent of the time. Meanwhile the activist “failed” and the target company fended off the activist 12.5% of the time. Another 12.5% of cases thus far have ended in compromise, and 62.5% of Q1 2009 activism cases remain unresolved.

One might look at these results and wonder if activists have lost their ability to influence boards of publicly traded companies. This is unlikely. Keep in mind that in the recent past activists have been highly successful in their efforts. Also, there are a high number of unresolved cases in the period, many of which could ultimately be settled in the activist’s favor. With all of that in mind, it is important to understand that publicly traded companies have become more savvy in dealing with activists and more willing to approach and converse with them. This in turn could lead to a larger number of compromise situations in this and future quarters.

Below is a graphical representation of the trends in the first quarter of 2009 and for all of 2008.



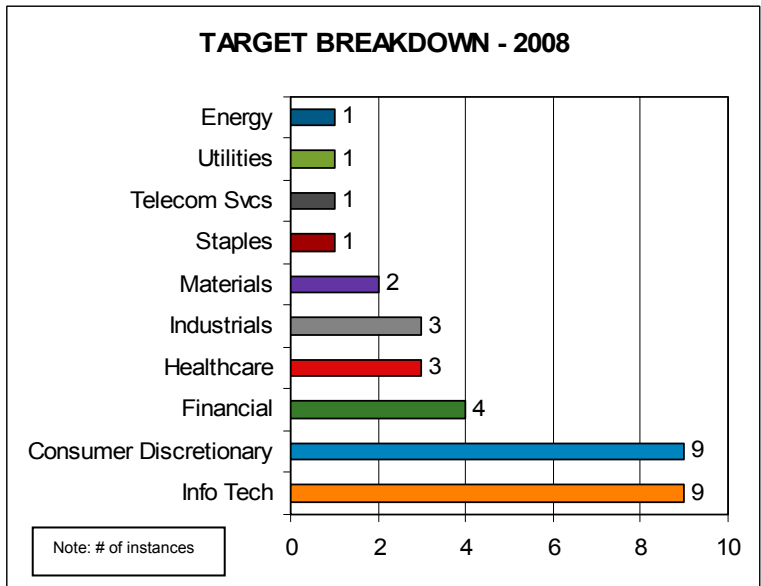
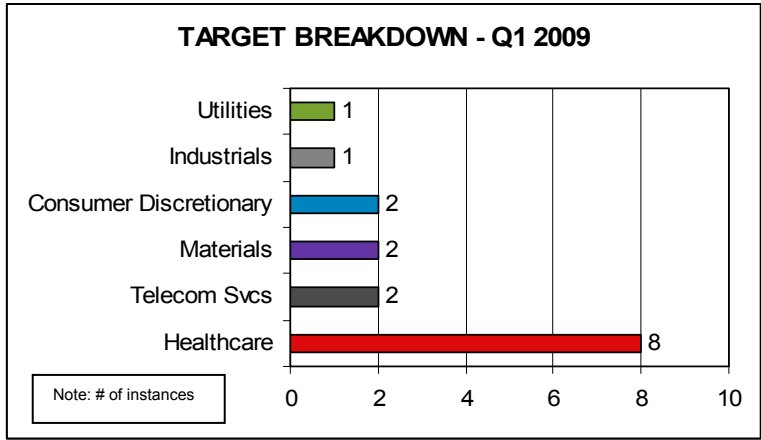


TARGET INFORMATION:

The following charts break down the number of companies in each sector that were targeted in the first quarter and in 2008. Healthcare companies were among the top targets in Q1 2009. This is in stark contrast to prior periods where Consumer Discretionary companies have traditionally been the apple of activist's eyes. Why Healthcare?

The sector's prospects for future earnings and/or cash flow growth may be a lure for activist firms. In addition, the fact that many companies within the sector are trading well off their 52-week highs, and in some cases have an anxious shareholder base may embolden activist firms as well. Finally, it is important to note that some Healthcare targets have been quite small (in terms of market cap) and as such they may be an easy target for activists. Top Healthcare targets during the quarter included: Amylin Pharmaceuticals, Biogen, CV Therapeutics, Chemed Corp, Vanda Pharmaceuticals, Avigen Inc, and Penwest Pharmaceuticals.

Industrial and Utilities targets were near the bottom of the list. Perhaps this is because activists didn't see as many opportunities to unlock additional value. Again note that in 2008 Consumer Discretionary companies and IT Companies were top targets. Healthcare companies ranked fourth in terms of top targets.





STANDOUT ACTIVISTS:

Well-known activist Carl Icahn made headlines routinely in the second and third quarters of 2008, but was for the most part absent from the scene in the fourth quarter. However, he reappeared in Q1 2009 in both Biogen and Amylin Pharmaceuticals. Note also that Eastbourne Capital Management was active with Amylin.

Meanwhile Pershing Square, another large, well-known activist firm that, for lack of a better term had been in hibernation in the fourth quarter of 2008, made headlines again in the first quarter as it pushed for board seats at Target Corporation. In fact, on May 11th, manager William Ackman introduced shareholders to his five nominees for the board, promising their expertise could make the retailer a better company. "There is a lot to like, but that doesn't mean it can't be optimized," Ackman said at a town hall-style meeting in mid-town Manhattan. It is unclear if Ackman will ultimately be successful in his efforts. However, some feel that his involvement and position may motivate the existing board to do a better job.

In other news, Riley Investment Management was active with Ohio based Regent Communications, a broadcasting company. The two parties reached a compromise or settlement. In the past Riley had sought board seats at Zilog, a technology concern. Zilog ultimately announced that it would appoint a member of the Riley team to its board.

CONCLUSIONS:

It is possible that the number of activist cases could be higher in the second quarter of 2009 than in the second quarter of 2008, particularly if the equity markets continue to rebound. However, as mentioned previously, if history is any indicator there is typically a sequential slowdown from the first to the second quarter.

Also, as banks become more willing to lend money, the number of activist cases could increase. Remember activists are often attracted to situations where value might be unlocked by an asset sale or through the purchase of another entity. And so money or the ability to access it is often crucial.

Going forward we continue to believe that Consumer Discretionary will be among the top targets. Our logic is simple. Consumer Discretionary companies continue to have generally good longer-term earnings and cash flow generation potential. In addition, low stock prices (compared to historical levels) may make accumulating stakes in these types of companies favorable.

Healthcare companies may continue to be large targets. Low share prices coupled with anxious shareholders may embolden activist firms to play in this sandbox.

Finally, we believe that the demand for board seats is likely to continue for the foreseeable future. This is because this has tended to be the best way for the activist to obtain leverage and to push their agenda.



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