



# STRATEGIC RESEARCH

## SHAREHOLDER ACTIVISM – UPDATED FOR Q4 2008

**Glenn S. Curtis**

Director, Thomson Reuters  
Strategic Research

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For questions about this report, please contact **Glenn S. Curtis** at: [glenn.curtis@thomsonreuters.com](mailto:glenn.curtis@thomsonreuters.com) or 646-822-2554.

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### EXECUTIVE SUMMARY

- For the full year 2008 Information Technology and Consumer Discretionary companies were among the top targets for activist firms. This is consistent with previous research. In fact, Consumer Discretionary companies have been among the top targets for the last two years.
- The average target company in the fourth quarter of 2008 had a market capitalization of just \$28.2 million. That was a significant decline from the \$4.93 billion that was recorded in the third quarter. A decline in the share prices of the targeted companies may be one reason for the low market cap. However, it is worth noting that the companies that were targeted were smaller cap companies to begin with.
- The most common demands that activists made for the year were for board seats and to buy/sell the target company. Board seats have consistently been a top demand according to our prior research.
- The number of cases where activists were successful in achieving their goals declined from 2007 to 2008, while the number of compromise situations increased. More specifically, for the full year 2008 activists achieved their goals 29% of the time and compromise was reached 38% of the time. In 2007 activists were successful 41% of the time and compromise was reached in 12% of cases.
- Big name activists such as Carl Icahn and Pershing Square and others were notably absent from new activity in the fourth quarter. However, both were active throughout 2008 in several high profile cases.
- If historical patterns hold true, look for an uptick in activism cases in Q1 2009. Companies should be on high alert!

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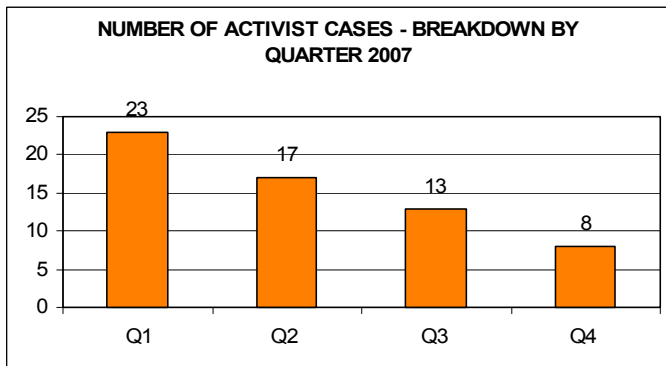
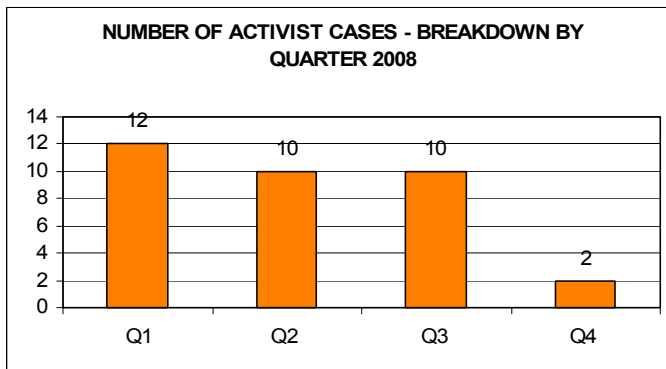


The following report focuses on activist situations that have taken place from October through December 2008. It also details success and failure rates and other data pertaining to activist situations in 2007 and 2008. The source for this data was Thomson's SDC Platinum™ database, the SEC, and various press releases.

A total of two activist situations occurred in the fourth quarter. In Q4 the average target had a market capitalization of just \$28.2 million. That was substantially lower than the roughly \$4.93 billion that was recorded in the third quarter of 2008, and also markedly lower than the \$1.22 billion market capitalization recorded in the fourth quarter of 2007, and the \$7.54 billion recorded for full year 2007.

Over the last four quarters there were a total of 34 activist situations. This compares to a total of 61 in 2007. While sluggish economic conditions may explain a decrease in activity toward the back half of the year in 2008, it is unclear what caused the total number of activism cases in the first half of the year to drop when compared to the first half of 2007. Might activists have foreseen trouble in advance of the marked economic decline?

The following is a quarterly breakdown of cases:



\* Note that the first quarter has been the busiest in terms of activism in both 2007 and 2008.



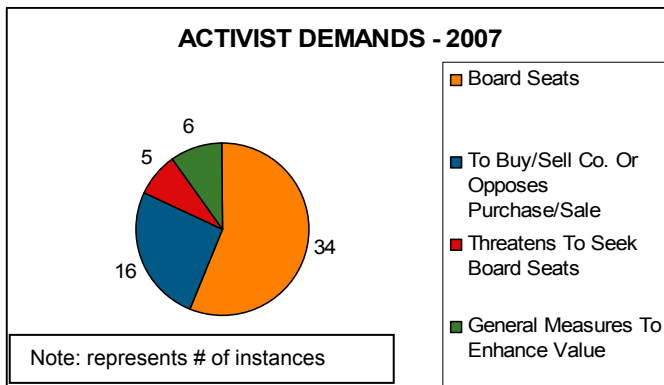
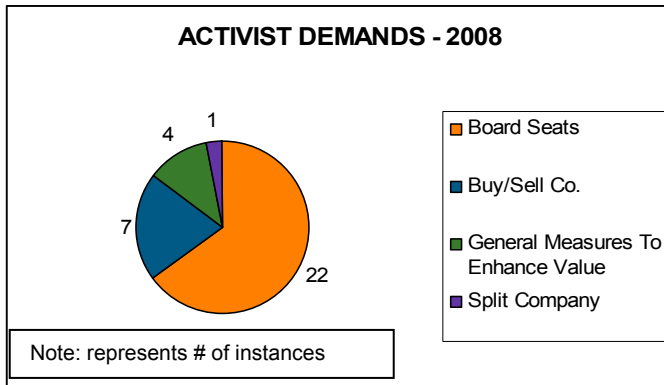
It is important to note that we essentially saw a deceleration in activity throughout 2008 much as we did in 2007. The extreme drop off in activity in the fourth quarter of 2008 naturally leads one to wonder whether or not that trend will spill over into the first quarter of 2009.

On the one hand one might argue that the severe sell-off in the equity markets might cause activists to focus more on investments they already have, rather than launching new battles. On the other hand, one might argue that the decline in share prices might exacerbate investor anxiousness and actually embolden activist type investors. Based upon the results in the fourth quarter and the lack of available financing in the marketplace (which might be used to fund acquisitions) our assumption is that the former argument will prove true. We anticipate that the number of activist cases, and perhaps the size of the targets will remain low in Q1 2009 when compared to the prior year.

**ACTIVIST DEMANDS:**

In the past, activist investors have aggressively sought board seats as a means of exerting their influence. This trend continued in the fourth quarter of 2008. In fact, in both instances of activism in the period board seats are/were sought. For the full year 2008 board seats were clearly the top demand as well. This is consistent with prior quarterly studies that we have conducted. Other demands included general measures to enhance shareholder value, and a split of the target company. Note however that even those cases where the activist sought to buy or sell the company they also tended to seek board seats, perhaps as a means of obtaining leverage.

Consider the following graphical representations:



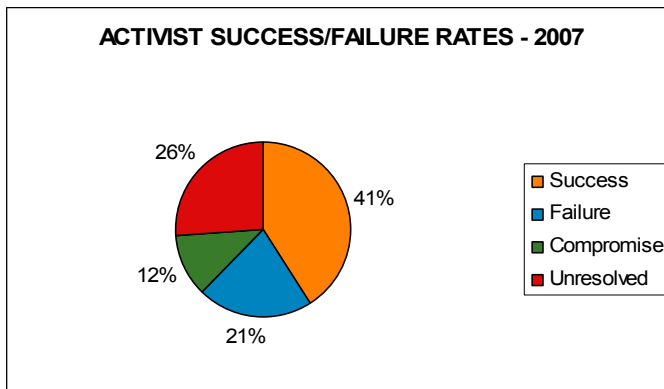
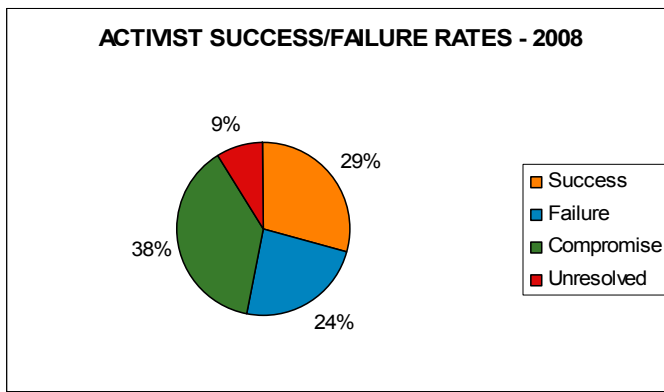


**SUCCESS/FAILURE DATA:**

Of the two cases of activism in the fourth quarter of 2008 one has been resolved in the activist's favor. (Sellers Capital won board seats at Premier Exhibitions.) However, one is still pending (ANS Investments vs. Magellan Petroleum). That is, no party has prevailed.

For the full year 2008 activists have been successful in achieving their goals 29% of the time. However, the target company has been successful in fending off the activist 24% of the time. Compromise was reached in 38% of the cases, and to date 9% have not been resolved. In short, we believe the trend toward compromise will continue going forward (there was an obvious bump up from 2007 to 2008). Our logic is that boards and activists realize that a protracted proxy battle can be time consuming, and cost a great deal of money. It also may have an adverse impact on the share price.

Below is a graphical representation of the trends from 2007 and 2008.

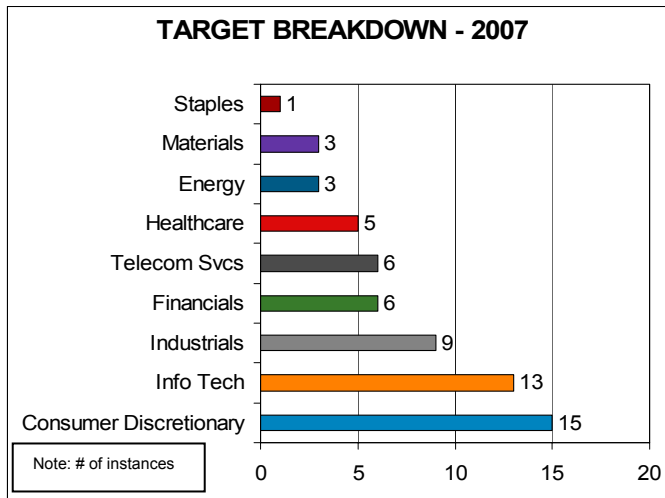
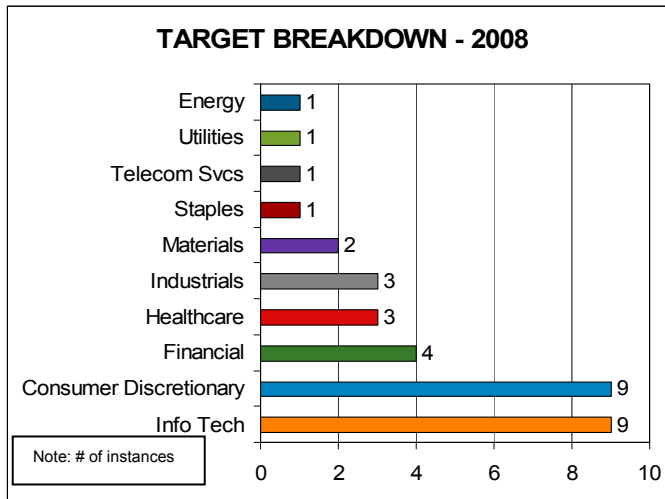




**TARGET INFORMATION:**

The following charts break down the number of companies in each sector that were targeted in 2007 and 2008. Consumer Discretionary and Information Technology companies were among the top targets. Consumer Discretionary companies have consistently been among the top targets during this time period. The sector's prospects for future earnings and/or cash flow growth may be a lure for activist firms. Energy related companies were near the bottom of the list. Perhaps this is because activists didn't see many opportunities to unlock additional value. With energy prices waning, however, perhaps this will change in 2009. Finally, it is important to note that there was a large drop off in the number of Telecom Services companies that were targeted from 2007 to 2008. The reason for this is unclear at this point.

Consider the following:





### STANDOUT ACTIVISTS:

Well-known activist Carl Icahn made headlines in the second and third quarter as he fought for seats on Yahoo's board. Icahn ultimately captured three board seats. Yahoo is in the midst of a turnaround and recently hired a new chief executive. Also early in the second quarter, Motorola said it will support two of Carl Icahn's four proposed board nominees, settling a proxy battle. Meanwhile, Wattles Capital Management reportedly pushed electronics retailer Circuit City to sell itself. Unfortunately Circuit City filed for bankruptcy late in the year.

In other activist news, Riley Investment Management sought board seats at Zilog, a technology concern. Zilog ultimately announced that it would appoint a member of the Riley team to its board. Also, JMB Capital Partners made headlines in its pursuit of board representation at Maguire, a California based Real Estate Investment Trust or REIT. Finally Pershing Square proposed that retailer Target spin off land it owns as a means of unlocking potential shareholder value. Target reportedly rejected the idea.

As previously mentioned, the number of battles lessened as the year passed, and Q4 was eerily quiet.

### CONCLUSIONS:

It is possible that there could be a sequential pickup in activity from Q4 2008 to Q1 2009. After all, the first quarter of 2007 and 2008 were the busiest in terms of sheer numbers of activism cases. However, based upon the marked drop-off in both the number of cases from Q3 to Q4 2008 and the decline in the size of the companies being targeted, it seems that the numbers could be muted when compared to last year.

If banks however, become more willing to lend money, the opposite could prove true. Remember that the ability to obtain funding is almost always crucial to completing acquisitions. When selling an asset as a means of unlocking value it is important that potential buyers have access to capital as well.

Going forward we continue to believe that Consumer Discretionary and IT companies 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, the dramatic sell-off in the market may make accumulating stakes in these types of companies favorable. With regard to IT companies, they too seem to have good longer-term earnings potential. In addition, they continue to have alluring stories that tend to attract activist and other types of investors.

We also believe that there could be a bump up in the number of oil production and/or services companies that are targeted. The logic: With oil prices well off their highs, share prices have contracted and anxious stakeholders may be eager for change. This in turn may embolden those with activist tendencies.

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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Contact us at:

[thomsonreuters.com](http://thomsonreuters.com)

[tfcorporate@thomson.com](mailto:tfcorporate@thomson.com)

North America: 866.915.9891

Europe: +44.207.369.7199

Asia: +852.2533.5564

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