

Corporate Governance

1:40 – 2:40 p.m.

Panelists

Thomas Moore, Ameriprise Financial, Inc.

Stacy Lindstedt, Oppenheimer Wolff & Donnelly

Jen Randolph Reise, Briggs and Morgan, PA

Moderated by Professor Carol Swanson



PRESENTATION FOR THE BUSINESS LAW
INSTITUTE OF THE HAMLINE UNIVERSITY
SCHOOL OF LAW

TRENDS IN SHAREHOLDER ACTIVISM

SEPTEMBER 27, 2013

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SHAREHOLDER ACTIVISM DEFINED

Shareholder activism has been described as “the exercise and enforcement of rights by minority shareholders with the objective of enhancing shareholder value over the long term.”

Can be seen as a continuum: from the “Wall Street Walk” (selling a disappointing investment) all the way to corporate takeovers of companies seen as undervalued.

GENERALLY, “SHAREHOLDER ACTIVISM” AT PUBLIC COMPANIES MEANS:

- 1) The shareholder proposal process; or
- 2) Challenges brought by activist investors, especially activist hedge funds.

SHAREHOLDER PROPOSALS

- Securities and Exchange Commission (“SEC”) rules allow shareholders meeting certain conditions to submit proposals for shareholder vote. (Rule 14a-8)
- Low stock ownership requirement (\$2,000 or 1%)
- Companies can exclude proposals on certain grounds, including both procedural grounds and other bases, including that the proposal has been “substantially implemented.”

SHAREHOLDER PROPOSALS, CON.

- Proposals can be grouped into three categories:
 - 1) Executive Compensation (seek to give shareholders more control over executive pay)
 - 2) Social and Political Issues (e.g., related to environmental concerns, human rights, or political spending)
 - 3) Corporate Governance (seek to make processes more shareholder-friendly, e.g., by requiring that directors be elected by majority vote or to separate the positions of chairman and chief executive officer)

SHAREHOLDER PROPOSALS, CON.

- If the company is required to include the proposal under SEC rules, it is included in the proxy statement that is sent to all shareholders, and the shareholders vote on it along with other annual meeting proposals (such as the election of directors).
- The proxy statement also includes the proponent's statement in support of its proposal, and a statement from the Board of Directors responding to the proposal and recommending to the shareholders how to vote.

SHAREHOLDER PROPOSALS, CON.

- Generally proposed by labor-union pension funds, individuals active on governance issues, issue-based organizations, or socially-responsible investment funds.
- Shareholder proposals are much more common at larger companies.
- Interestingly, this has resulted in the governance changes that are often advocated (e.g., declassified board, majority voting) becoming much more common at larger companies than smaller ones.

EXAMPLE: TARGET CORPORATION'S PROXY STATEMENT FOR ITS JUNE 2013 ANNUAL MEETING INCLUDED TWO SHAREHOLDER PROPOSALS

ITEM FOUR—SHAREHOLDER PROPOSAL TO ADOPT A POLICY FOR AN INDEPENDENT CHAIRMAN

ITEM FOUR—SHAREHOLDER PROPOSAL TO ADOPT A POLICY FOR AN INDEPENDENT CHAIRMAN

Confederation of State, County and Municipal Employees, AFL-CIO (AFSCME), 1625 L Street, NW, Washington, DC 20036-5687, which held more than \$2,000 of shares of common stock on December 14, 2012, and the following resolution to shareholders for approval at the 2013 annual meeting:

The shareholders of Target Corporation ("Target") request the Board of Directors to adopt a policy, and amend the bylaws as necessary to reflect that policy, to require the Chair of the Board of Directors to be an independent member of the Board. This independence requirement shall apply prospectively so as not to violate any contractual obligation at the time this resolution is adopted. Compliance with this policy is waived if no independent director is available and willing to serve as Chair.

Shareholder's Supporting Rationale

CEO Gregg Steinhafel also serves as a director of Target Corporation. In a single person who serves as both CEO and director, the former Chair Andrew Groves of Target Corporation. Is a company where the CEO and that boss is the board.

In our view, shareholder view is to oversee the management of the company. Chair creates a conflict of interest between the CEO and the Board's oversight of management.

An independent Board Chair study by 2007 Booz & Co. study found that tenured CEOs lacked an independent Board Chair. A more recent study by 2007 CEO: in 2009 less than 12% of CEOs had an independent Board Chair. (CEO Succession 2000-2009)

We believe that independent Board Chair Steinhafel's "all other companies" Fortune 100 CEOs ("100 CEOs") received more than three times as much pay as the average CEO of a company. Studies show that independent Board Chair and a higher cost of capital.

(Lucian Bebchuk, "Pay Distribution in the Top Executive Team," February 2007, Zhihong Chen, "Executive Pay Disparity and the Cost of Equity Capital," May 2011).

We urge shareholders to vote for this proposal.

Position of the Board of Directors

The Board of Directors has considered this proposal and believes that its adoption at this time is not in the best interests of Target Corporation.

RESOLVED: The shareholders of Target Corporation ("Target") request the Board of Directors to adopt a policy, and amend the bylaws as necessary to reflect that policy, to require the Chair of the Board of Directors to be an independent member of the Board. This independence requirement shall apply prospectively so as not to violate any contractual obligation at the time this resolution is adopted. Compliance with this policy is waived if no independent director is available and willing to serve as Chair.

THE BOARD OF DIRECTORS RECOMMENDS THAT SHAREHOLDERS VOTE "AGAINST" THE SHAREHOLDER PROPOSAL TO ADOPT A POLICY FOR AN INDEPENDENT CHAIRMAN.

We have a lead independent director with significant responsibilities that are described in detail on page 17 of this proxy statement.

• Independent directors meet frequently in executive sessions that are presided over by our lead director with no members of management or Chairman of the Board present. Independent directors use these executive sessions

ITEM FIVE—SHAREHOLDER PROPOSAL ON ELECTRONICS RECYCLING

As You Sow, 1611 Telegraph Ave., Suite 1450, Oakland, CA 94612, on behalf of shareholder Wallace Global Fund, which held more than \$2,000 of shares of common stock on December 21, 2012, intends to submit the following resolution to shareholders for approval at the 2013 annual meeting:

Resolution

RESOLVED that Target Corp.'s board of directors prepare a report, at reasonable cost and excluding confidential information, on policy options, above and beyond legal compliance, to minimize the environmental impacts of its electronics recycling activities by providing mechanisms for take back of all electronics sold, promoting reuse of working equipment and preventing export to non-OECD countries of hazardous e-waste and untested or non-working equipment or components.

Shareholder's Supporting Statement

WHEREAS Target Corp. is the fourth largest U.S. retailer of consumer electronics, and such devices contain toxic materials such as lead, mercury, cadmium, brominated flame retardants, polyvinyl chloride, and are difficult to recycle.

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ITEM FIVE—SHAREHOLDER PROPOSAL ON ELECTRONICS RECYCLING

collected for recycling, according to the U.S. Environmental Protection Agency, is the most hazardous component of the municipal waste stream, comprising 10% of the waste stream. The U.S. recovery rate for municipal waste of 34%.

Electronic waste poses serious public health and environmental impacts. Analog TV sets and large amounts of lead, flat screen monitors contain mercury switches, and these can be harmful to human health if released to the environment.

Electronic waste in the U.S. are often shipped by recyclers to developing countries where Reports by Basel Action Network have revealed appalling conditions in which they break apart and process old electronic equipment under primitive conditions. They strip plastics and wires, and melt soldered circuit boards to extract gold, silver and other metals, which then pollute land and water.

Target's report states "being a responsible steward of the environment is one of the company's core corporate reputation," yet the company does not offer take back for its electronics. Target lacks adequate certification policies to ensure safe disposal of electronics. It takes back small devices such as music players and mobile phones but does not offer take back for other electronics it collects, or information about whether waste is properly disposed of. Target has set. Recent instances of fraudulent recycling demonstrate the need for more stringent standards for how collected goods are processed.

Proponents believe our company should develop a nationwide return program for all electronic devices it sells using stores or nearby locations convenient for customers. All electronics collected should be recycled or refurbished by responsible electronics recyclers who are independently verified to meet a superior standard such as the e-Stewards standard. Best Buy takes back a wide range of electronics for free and bars downstream service providers from exporting non-working equipment or components to developing countries, and requires third party provider audits. Staples and Office Depot also offer take back for large electronics.

Position of the Board of Directors

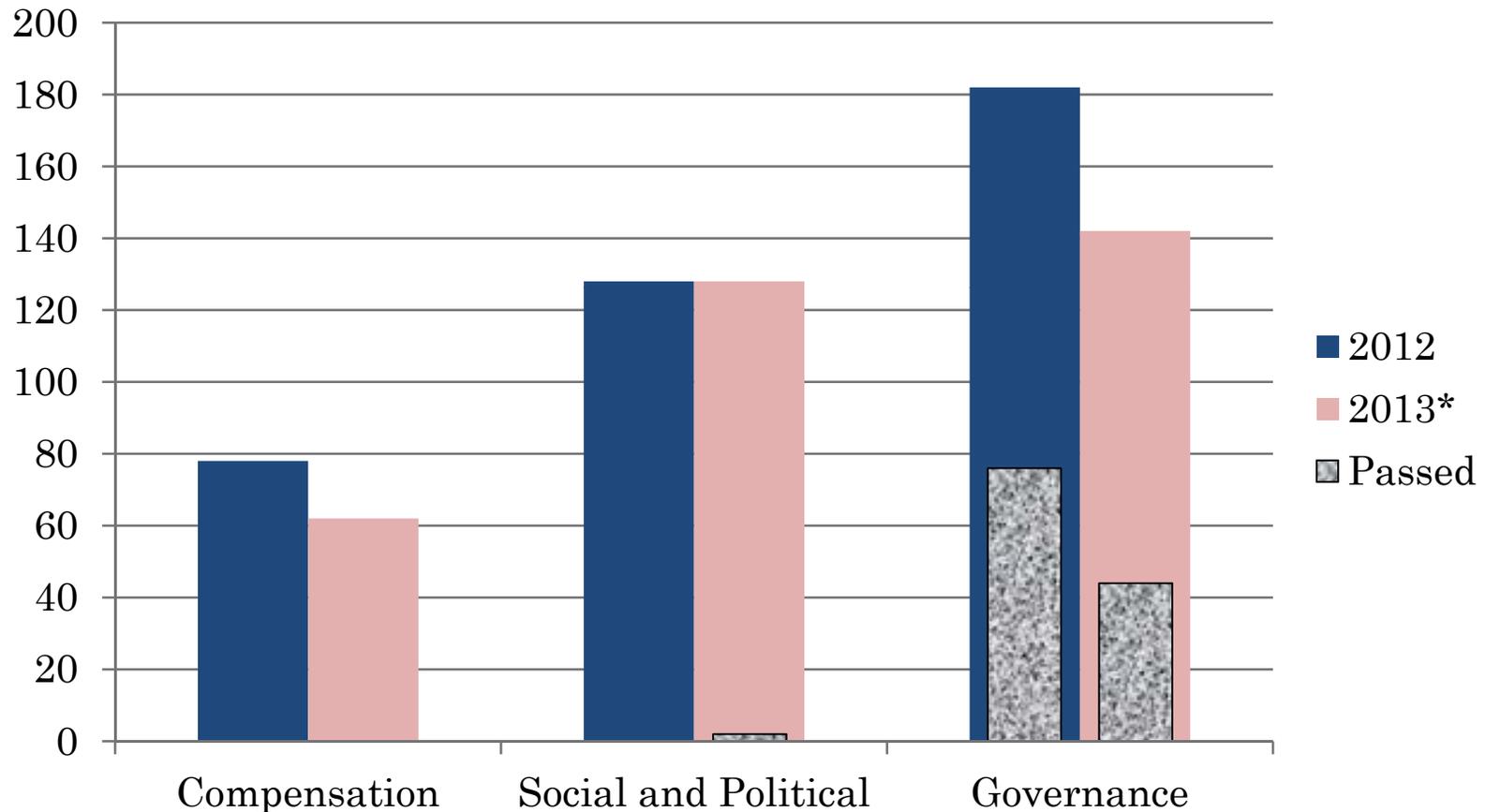
THE BOARD OF DIRECTORS RECOMMENDS THAT SHAREHOLDERS VOTE "AGAINST" THE SHAREHOLDER PROPOSAL ON ELECTRONICS RECYCLING.

• Ensuring that all items are refurbished, broken down and recycled or marketed for re-use.

• Processing all e-waste items domestically, and preventing e-waste materials from being sent to landfills anywhere in the world.

Source: Target Corp. DEF14A filed April 29,

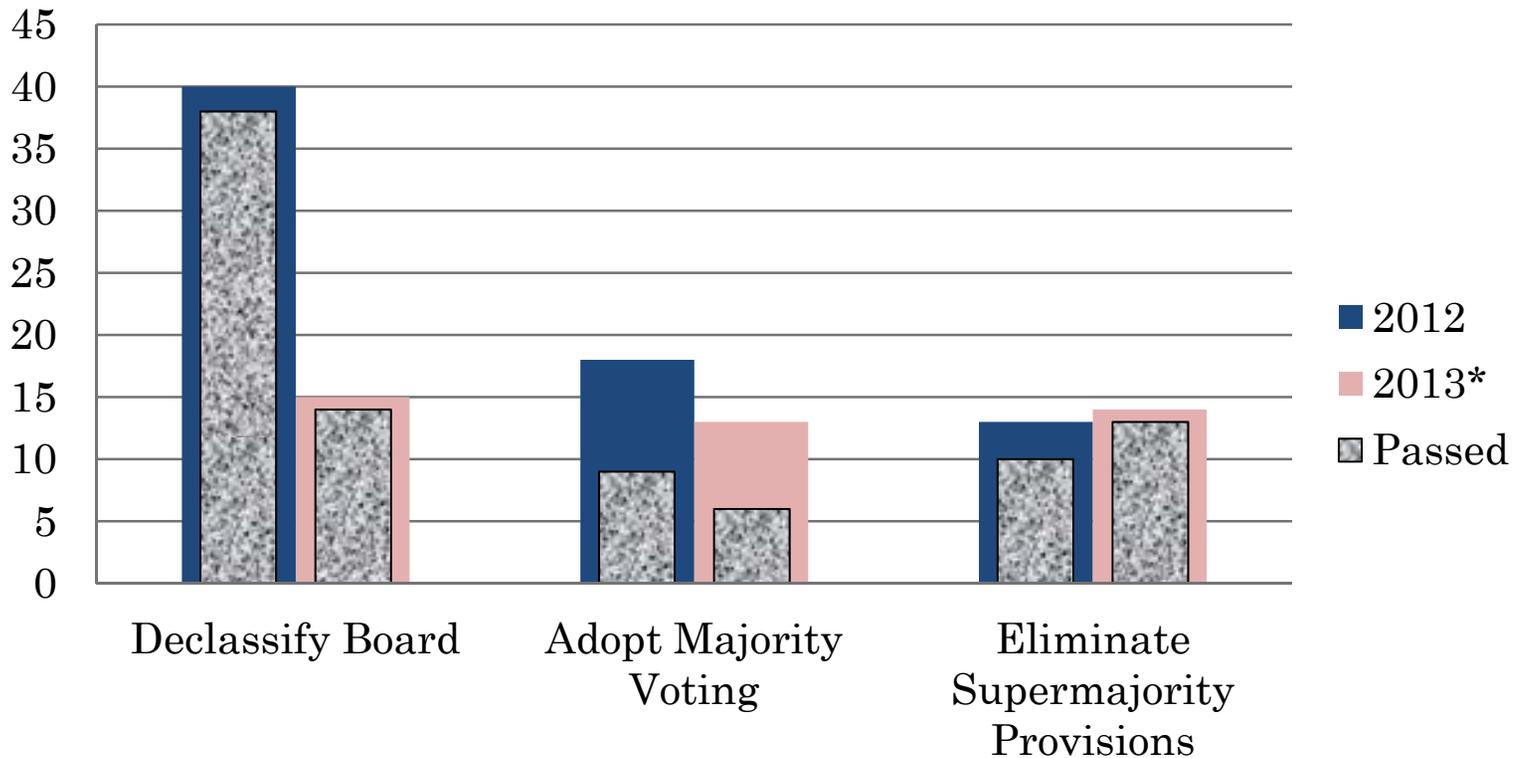
The only proposals that have consistently received majority shareholder support are the governance proposals. Among the S&P 500:



***2013 data current through mid-June 2013**

Source: Sullivan and Cromwell LLP, 2013 Proxy Season Review, citing sharkrepellent.net

Among governance proposals, hot topics in 2012-2013 were proposals to declassify a staggered board, adopt majority voting for directors, and eliminate supermajority voting requirements in bylaws.



*2013 data current through mid-June 2013

Source: Sullivan and Cromwell LLP, 2013 Proxy Season Review, citing sharkrepellent.net

TARGET'S 2013 SHAREHOLDER PROPOSALS: RESULTS

- The independent chairman proposal did not pass, with 37.3% of the vote For, 61.9% Against, and 0.8% Abstaining.
- The electronic recycling proposal did not pass, with 7.8% of the vote For, 72.9% Against, and 19.2% Abstaining.

Source: Form 8-K filed by Target on June 14, 2013

CHALLENGES BY ACTIVIST HEDGE FUNDS

- While shareholder proposals have been around since 1942, activist hedge funds are relatively new, coming to prominence in the mid-2000s.
- Unlike the “corporate raiders” of the 1980s, they seek to influence public companies after acquiring a minority stake, rather than trying to gain control of the company.
- These funds are seeking to maximize return for their shareholders by not only investing in companies, but pressuring those companies to adopt targeted strategies the investor believes will increase the value of their shares, such as a sale or break-up of the company, management changes, or share buybacks.

TACTICS

- The most common way to exert control on the direction of a company is to seek board representation, which may require a proxy fight.
- Often investors start with a private letter to the board, and may go public later. Public letters put a great deal of pressure on the board and are often very strongly worded.
- A settlement agreement is often negotiated so that the board can avoid a public proxy fight.

EXAMPLES OF PUBLIC LETTERS

From Barrington Capital Group and Clinton Capital Group to the independent directors of Dillard's, Inc.:

“It is clear to us that the Company's management team led by Mr. Dillard and his siblings must be replaced. In our opinion, a management team with a comparable record of poor performance at any other company would have been fired long ago. As significant shareholders of Dillard's, we therefore call upon you to work with the Board's Class A directors to IMMEDIATELY begin the process of looking for a new chief executive officer.”

Source: Schedule 13D/A, Oct. 27, 2008 (sec.gov)

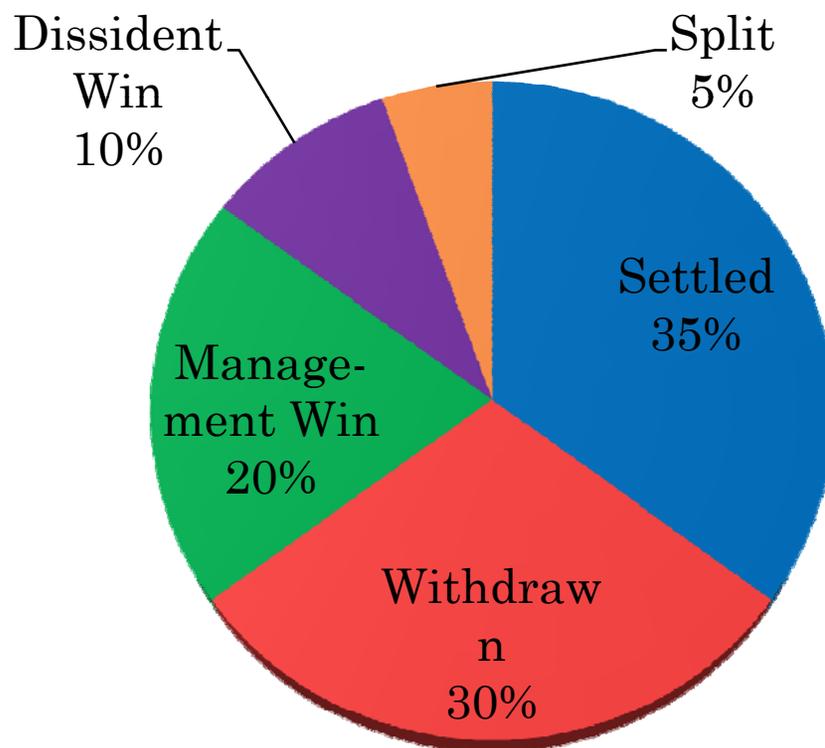
From legendary activist investor Carl Icahn to the Yahoo! board:

“[w]hy don't you stop dancing around the subject and publicly offer to sell the company to Microsoft for \$34.375 per share and promise to cooperate completely?”

Source: DFAN14A filed June 6, 2008 (sec.gov)

If such letters fail, however, an activist may choose to bring a proxy fight.

OUTCOME OF PROXY CONTESTS FOR BOARD REPRESENTATION (2012):



EXAMPLE: TARGET'S 2009 PROXY CONTEST

- Pershing Square Capital Management, an activist hedge fund, announced its ownership (then 9.6%) on Schedule 13G in July 2007. Its initial investment is estimated at \$2 billion.
- Pershing Square's principal, Bill Ackman, began meeting with management and bringing forward various ideas.
- During 2008, management rejected Ackman's idea to put Target's real estate into a REIT, and his Target-specific fund reportedly lost more than 90% of its value.

TARGET-PERSHING SQUARE PROXY CONTEST, CON.

- On March 19, 2009, Ackman announced he would nominate himself and four other directors to Target's board for the annual meeting on May 28, 2009. At that time he owned approximately 7.8% of Target, more than half of which was in call options.
- Target nominated its incumbent directors for re-election and opposed Ackman's nominees.
- Target has a staggered board, so its remaining eight directors would keep their seats regardless of the outcome.

TARGET-PERSHING SQUARE PROXY CONTEST, CON.

- Target and Pershing Square spent a combined \$21 million trying to win over shareholder votes in the very public proxy fight.
- The parties made more than 60 SEC filings, including media interviews, letters to shareholders, and press releases.

FROM THE PROPONENT'S LETTERS TO TARGET'S SHAREHOLDERS:

We Believe That Target's Board Lacks Sufficient Relevant Experience in Retail, Credit Cards, and Real Estate

In contrast to the Nominees for Shareholder Choice, Target's board has no independent directors with CEO-level experience dedicated to its two principal business segments, retail and credit cards. Similarly, despite the fact that Target is one of the largest owners of retail real estate in the United States, it has no independent directors on the company's board with CEO-level real estate

We Believe That Target's Board Lacks Sufficient Relevant Experience in Retail, Credit Cards, and Real Estate

The deficit of relevant experience on Target's board has contributed to the company's underperformance during this recession. Since the fourth quarter of 2007, Target's stock price performance, same-store sales, and earnings-per-share growth have suffered while its

principal competitor, Wal-Mart, has substantially outperformed on these metrics. At the same time, Target's credit card segment has been declining 65% in 2008, predominantly due to increased credit risk.

Beginning August 2, 2007 and through the end of 2008, we endeavored to convince Target's management to partner with us on a credit card operation to a partnering with us to assume all of the credit risk and more responsibility because of its insistence on retaining the credit risk. We have advised, and shareholders have been advised, that this is not in their best interests.

Common sense dictates that Target's board should have more experience in retail, credit cards, and real estate. We believe that the Nominees for Shareholder Choice can help prevent future missteps, assist management in navigating through the current economic environment that may last for several years.

The Nominees for Shareholder Choice can help management navigate through the current economic environment that may last for several years.

We believe that the deficit of relevant experience on Target's board has contributed to the company's underperformance during this recession. Since the fourth quarter of 2007, Target's stock price performance, same-store sales, and earnings-per-share growth have suffered while its principal competitor, Wal-Mart, has substantially outperformed on these metrics.

Target's Board Has No Significant Shareholder Representation

Please vote your shares on the internet, over the phone, or by mail by completing, signing and returning the GOLD proxy card enclosed with our proxy materials so that your support for the Nominees for Shareholder Choice can be counted.

Pershing Square owns approximately 1.5% of Target's common stock and approximately \$280 million of stock options, based on recent market prices. By virtue of our common stock ownership alone, Pershing Square is Target's fourth largest shareholder. When our stock options are included, we rank as Target's third largest investor.

With more than a \$1.25 billion investment in Target, we believe that it is self-evident that Pershing Square has a greater economic motivation to create long-term shareholder value

Source: Target Corp. DFAN14A (Letter to Shareholders) filed by Pershing Square on April 24, 2013 (sec.gov)

FROM TARGET'S LETTERS TO ITS SHAREHOLDERS:

May 6, 2009

Dear Fellow Shareholder:

In contrast, we believe Pershing Square has presented no plan for Target other than the risky real estate proposals that our Board rejected after careful consideration. In fact, we believe that Pershing Square has changed its position and launched an attack on Target's strategy and our Board of Directors in an effort to divert attention from Pershing Square's risky real estate agenda.

Meeting on May 28, 2009, we elected independent nominees to our Board of Directors, and returning the proxy card to us. Please discard any gold proxy cards you receive today.

the strength, diversity, and experience of our Board and management team are the strength, diversity, and experience of our Board and management team are the strength, diversity, and experience of our Board and management team are

Directors unanimous approval of the Board of Directors, including George W. ... company.

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management team are

continues to deliver an exceptional guest experience and shareholder value. Our Board and management team are committed to our guests and our shareholders because of our focus on continuous improvement and innovation in our most recognized brands in the United States. We believe we will continue to generate superior results and service our guests and shareholders.

In contrast, we believe Pershing Square has presented no plan for Target other than the risky real estate proposals that our Board rejected after careful consideration. In fact, we believe that Pershing Square has changed its position and launched an attack on Target's strategy and our Board of Directors in an effort to divert attention from Pershing Square's risky real estate agenda.

Target's Annual Meeting on May 28, 2009, is fast approaching. You have the opportunity to vote now for Target's independent nominees using the WHITE proxy card by telephone or Internet, or by signing, dating, and returning the WHITE proxy card in the postage paid envelope provided. Please discard any gold proxy cards you receive from Pershing Square and vote the WHITE proxy card today.

Target's Board has the strength, diversity, experience and qualifications to provide effective and independent oversight and direction to the company. Each member of your Board is committed to delivering superior results and serving the best interests of ALL Target shareholders.

We urge you to vote FOR Target's nominees using the WHITE proxy card today.

Source: Target Corp. DEFA14A (Letter to Shareholders) filed by Target on May 6, 2009 (sec.gov)

TARGET-PERSHING SQUARE: RESULT

- Ultimately, Target prevailed, with more than 70% of the shareholder votes supporting re-election of Target's directors.
- Ackman liquidated his Target shares in early 2011.
- He was since engaged in a high-profile, and ultimately abandoned, effort to change the direction of JCPenney's.

TRENDS IN HEDGE FUND ACTIVISM

- Activists are targeting significantly larger companies.



Source:
sharkrepellent.net

- Increased support from institutional investors.
- Continued disagreement about value creation effect of shareholder activism.

ABOUT THE PRESENTER



Jen Randolph Reise is an associate in the firm of Briggs and Morgan, P.A., in Minneapolis, Minnesota, practicing principally in the areas of securities regulation, corporate governance and corporate law. She graduated from Hamline summa cum laude in 2007 and is currently Vice-President of the Hamline University School of Law Alumni Board.

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