With Huge War Chests, Activist Investors Tackle Big Companies

New York Times DealBook
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August 30, 2013

Microsoft executives faced an unusual challenge in April when a $12 billion hedge fund, ValueAct, announced that it had bought a nearly $2 billion stake in the company with the intention of shaking things up.

To many analysts, the possibility that ValueAct, with less than 1 percent of Microsoft's stock, could succeed seemed improbable at best. The firm buys shares in companies, hoping to fight for board seats and change the targets' corporate strategies.

But that small stake appears to have had outsize influence. On Friday, Microsoft agreed to let ValueAct meet regularly with some of its directors. And the hedge fund's president, Mason Morfit, could join the board within several months.

Once considered purveyors of a niche investment strategy, so-called activists like ValueAct have leapt onto the big stage as hedge funds wage bolder battles against ever-bigger corporate targets like Apple, leaving executives wondering if they could be next.

Unlike their predecessors who often pursued aggressive takeovers for quick gains, this latest generation of activists are largely agitating for some sort of long-term change — a shift in business strategy, a different use of cash, even a complete overhaul of a company's board.

Robust returns in recent years and new money racing into these funds at a rate not seen in seven years have given activist investors — as defined by industry experts like the firm Hedge Fund Research — a war chest of $84 billion, more than double the assets they oversaw just four years ago. That money has fueled activists' ambitions, with mixed results.

Over the last two years, activists have taken aim at a number of blue-chip companies, like Procter & Gamble and PepsiCo. And one of the best-known players, Daniel S. Loeb, has even gone abroad, pushing for change at Sony, an icon of Japanese business.

Some battles have led to big victories. This spring, the hedge fund TPG-Axon successfully pushed for the ouster of SandRidge Energy's chief executive, Tom Ward.

But others have led to tough losses: the billionaire William A. Ackman, who lost hundreds of millions of dollars in investor money in his campaign against Target, resigned from the board of J. C. Penney two weeks ago after unsuccessfully calling for the removal of its chairman; he sold his stake at a loss of nearly $500 million. And Mr. Loeb was unsuccessful in persuading Sony to partly spin off its huge entertainment arm.

This burst of activism is the latest evolution of efforts to push companies to change their behavior through investing.

In the 1980s, corporate raiders like T. Boone Pickens and Carl C. Icahn engaged in hostile takeovers or leveraged buyouts of companies, or sought to be bought out themselves at a profit. (Some of yesterday's raiders, like Mr. Icahn, are today's more public-relations-friendly "activists.") In the 1990s, big pension funds like the powerful California Public Employees' Retirement System took up the mantle, pressing for change not only in corporate governance but also on social issues like doing business in apartheid-era South Africa and protecting the environment.

Unlike the raiders, the current activists contends they are fighting for the interests of shareholders. To that end, the activists most often seek to appoint allies to board seats to help fight against what they see as complacent management and to bring more discipline to companies.

There is some evidence that the results bear that out. A study led by Lucian Bebchuk, a professor at Harvard Law School, published last month argues that companies singled out by these investors improved their operating performance within three years of an activist campaign.

Others are not so sure. Lawyers at Wachtell, Lipton, Rosen & Katz, one of the premier defenders against activists, said in a client note earlier this week that such campaigns had damaged American companies with an emphasis on the short term.

The hedge funds are financing activism with their healthy returns. Through the end of June, activist funds are up 9.6 percent, behind the 19.6 percent surge in the Standard & Poor's 500-stock index but ahead of the 7.7 percent gain by equity-focused hedge funds at the end of June, according to Hedge Fund Research. Activist funds returned on average nearly 13 percent between 2009 and last year.

In turn, investors have plowed nearly $4.7 billion so far this year into funds deemed activist by Hedge Fund Research, the highest inflows since 2006.

Analysts say that the environment is ripe for activists. The rebounding markets have opened the door for mergers, while companies continue to hoard cash. David Einhorn of Greenlight Capital and Mr. Icahn have each taken aim at Apple's reserves — more than $146 billion as of June 29 — pressing the company to return more cash to investors.

If Mr. Icahn is to be believed, Apple is willing to listen. "Spoke to Tim. Planning dinner in September," the septuagenarian activist wrote in a Twitter post last week, referring to Timothy D. Cook, Apple's chief executive. "Tim believes in buyback and is doing one. What will be discussed is magnitude."

And while the old guard, including Mr. Icahn, Mr. Ackman and Nelson Peltz remain active in numerous corporate battles, newcomers are trying their hands as well.

Earlier this summer, Larry Robbins's Glenview Capital Management fought and won its first public activist campaign, persuading shareholders of the hospital chain Health Management Associates to replace the entire sitting board with eight independent nominees.

And an investment firm founded by David Gottesman, a director of Warren E. Buffett's Berkshire Hathaway, shifted from its normal buy-and-hold strategy to wage war for control of the drug maker Vivus. In a letter sent to executives this spring, Mr. Gottesman's firm, First Manhattan, noted its five-year tenure as a shareholder, followed by its conclusion that the company needed a more experienced and independent board.

Last month, the two settled, with First Manhattan gaining a majority of board seats and its choice of chief executive.

Traditional mutual funds and asset managers have become more open in supporting activist campaigns as well, after years of shying away from the hedge funds as loudmouthed, bare-knuckled brawlers. Mr. Icahn's fight against the proposed takeover of Dell Inc. gained support from unlikely sources like T. Rowe Price and Franklin Mutual Advisers.

Corporate executives are taking activist investors more seriously than ever.

Companies monitor their shares for signs of an activist and are quick to hire advisers when an insurgent investor emerges. And more than ever, they are willing to offer a compromise — a board seat or two, an exploration of asset sales — to head off an all-out battle for control.

"Companies are trying to engage with the activists early, below the radar, so that things don't have to bubble up to the surface and become public, which is extremely disruptive to the company," said Damien Park, the founder of Hedge Fund Solutions, which consults with companies and hedge funds on activism.

Years of legal battles have also whittled away traditional corporate defenses against activists. Many companies now elect their boards annually, as opposed to "staggering" director elections every year, making it easier for dissidents to gain control.

Activists have grown up, too.

"Activism in general has become more sophisticated than it used to be," said David Rosewater, a partner at Schulte Roth & Zabel who regularly represents activist investors. "You need to have a real plan, an in-depth understanding of the company and a compelling argument to shareholders about how you're going to do it better."