

# REMATCH!

ACTIVIST INVESTORS DON'T ALWAYS GET IT RIGHT THE FIRST TIME. SOMETIMES, THEY COME BACK FOR ROUND TWO, WRITES JOSH BLACK.

Two years after winning a board seat in a proxy contest at **Citi Trends**, activist investor **Macellum Advisors** signaled in March that it was ready for a second round. After skipping a proxy season, Macellum said it was now “deeply concerned by the board’s lack of urgency in addressing many of the issues facing the company,” and had no choice but to make its case for changes public.

New York-based Macellum settled with the Savannah, Georgia-based retailer less than a month later. Despite a bitter exchange of public letters, it won another seat on the temporarily enlarged board, a change in the chairman, and the reimbursement of its fees from the first round.



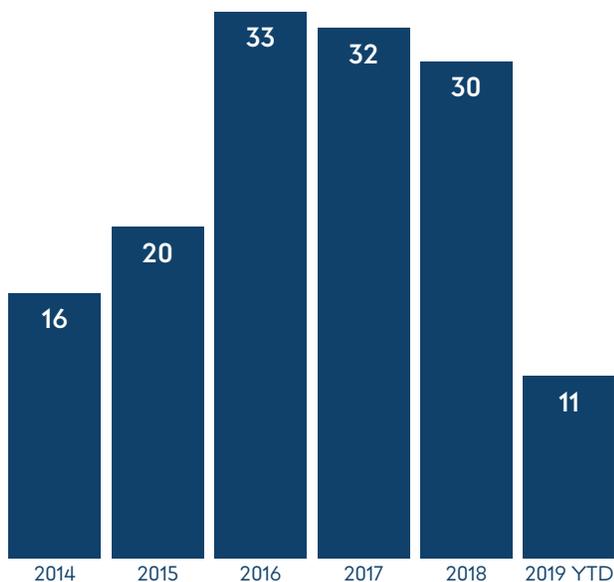
“WE FEEL A MORAL OBLIGATION FOR OUR CLIENTS TO HAVE THE MANAGEMENT STAY FOCUSED ON THINGS WE THINK ARE IMPORTANT FOR SHAREHOLDERS.”

## RETURN TO BOIL

Activists have always been prepared to make fresh demands on a company if unsatisfied with the way a stock has been trading. According to *Activist Insight Online*, the number of companies subjected to repeated demands for board representation rose from 16 in 2014 to a peak of 33 in 2016. Last year witnessed a leveling off at 30 companies.

By another measure, the temperature is still at boiling point. The 12-months ending April 28, 2018 saw a record number of publicly contested board seat campaigns by activists that had already fought one contest at the same company, according to data from *Activist Insight Online*. And, for the first time, most of the repeat contests were brought by primary-focus activists.

### COMPANIES FACING REOCCURRING PUBLIC DEMANDS FOR BOARD REPRESENTATION



U.S.-BASED COMPANIES FACING REOCCURRING DEMANDS FROM THE SAME INVESTOR FOR BOARD REPRESENTATION BY YEAR.

SOURCE: ACTIVIST INSIGHT ONLINE

“Activists don’t want to have to agitate two years in a row,” Andrew Freedman, co-chair of law firm **Olshan Frome Wolosky**’s shareholder activism practice, said in an interview with *Activist Insight Monthly*. “Activists walk away from settlements in the hope and expectation that their work is done.”

## ON TREND

Sometimes needs must. One activist who left a one-year gap between proxy contests said he tried to make the situation work.

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Advisers to activist investors say the reason for a second contest is usually a function of mathematics. Aneliya Crawford, a partner at law firm **Schulte Roth & Zabel**, said second proxy contests “demonstrate that shareholders are right when they say that there is at least a certain minimum number of directors to drive the needed change.”

“It’s almost always the case that additional representatives are required,” added Bruce Goldfarb, CEO of proxy solicitor **Okapi Partners**. “But the reason for them could be different from case to case. It could be there is a need for additional financial or industry expertise.”

But there are other reasons. “It’s a reputational issue,” Crawford added; activists want to prove they can make changes.

Others said these fights are an outgrowth of early settlement agreements. “The idea that you have these follow-on campaigns is none-too-surprising,” Freedman said. “Campaigns have generally been settling earlier and more often but sometimes as an investor you don’t obtain a public mandate.”

## SOFTENED UP

Most advisers also say that second contests are easier for activists, who can put the onus on boards by pointing to broken promises, “scorched-earth” tactics, or continued underperformance. At **Taubman Centers, Land and Buildings** narrowly lost its first contest after the real estate investment trust promised governance changes. It came back a year later and won a board seat. **Sessa Capital**

“I WOULD NOT BE SURPRISED IF A FEW MORE COMPANIES WERE RE-TARGETED BEFORE THE YEAR-END.”

settled with **Ashford Hospitality Prime** a year after the activist had its nominations deemed invalid. This year, **Blue Lion Capital** has returned with nominations at **HomeStreet**, a Washington-based bank, despite running into regulatory issues last year.

The main recourse for companies is to reiterate arguments from round one: namely, that activists are disruptive or restless influences. Citi Trends argued that Macellum was motivated by selfish financial reasons: outstanding fees from its first contest.

The results are mixed. Between 2014 and 2018, activists won at least one board seat in six out of 14 rematches that went to a vote in all rounds, according to *Activist Insight Online*. However, that rate was slightly lower than proxy contests with no prior round, with 56% of the 102 other contests seeing activists win at least one board seat during that period.

#### A MORAL OBLIGATION

“My experience is that investors will certainly ask how the parties got to the stage where there’s a second campaign, but it doesn’t mean they won’t be supportive,” Goldfarb said.

Winning is only part of the equation. Mario Gabelli’s **Gamco Investors** has run multiple board campaigns at five companies, with mixed success. “We feel a moral obligation for our clients to have the management stay focused on things we think are important for shareholders,” Gabelli told *Activist Insight Monthly* in an interview. “We don’t need to put pressure on companies when they’re doing it right.”

Although some dedicated activists like **Starboard Value** have put second contests behind them in favor of conditional settlement agreements, including margin improvement targets or corporate actions like buybacks, the unpredictability of board dynamics means that no situation is fully settled.

“I would not be surprised if a few more companies were re-targeted before the year-end,” Goldfarb concluded. 📌

## 3 COMPANIES

GAMCO INVESTORS  
STILWELL VALUE

## 1 COMPANY

BRIGADE CAPITAL MANAGEMENT  
BULLDOG INVESTORS  
CLOVER PARTNERS  
LAND AND BUILDINGS  
WINTERGREEN ADVISERS

NUMBER OF COMPANIES EACH ACTIVIST HAS PUBLICLY SUBJECTED TO BOARD CAMPAIGNS THAT HAVE ENDED IN A CONTESTED VOTE MULTIPLE TIMES, SINCE 2014.

SOURCE: ACTIVIST INSIGHT ONLINE

#### PAST CAMPAIGNS THAT TOOK MULTIPLE ROUNDS

**Starboard Value** used successive nomination windows to pressure **Wausau Paper**, which settled three times, and **DSP Group**, which coughed up two board seats in a settlement in 2012 and two in a contested vote the next year.

**Gamco Investors** remains the most prolific proponent, however. It has waged five repeated board campaigns, at **Myers Industries** (settled twice, won two of four contested votes), **Sevcon** (settled twice), **Telephone & Data Systems** (unsuccessful from three attempts), **Diebold Nixdorf** (settled twice), and **Superior Industries International** (unsuccessful from four attempts).

In the U.K., **Sherborne Investors** took two attempts and a larger stake to win at **Electra Private Equity** – a feat that may be harder to pull off at current target **Barclays** after its defeat earlier this month.