

DANCING WITH ACTIVISTS

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Data Appendix

Appendix B-1

List of settlement agreements involving large companies.

This table reports sample settlement agreements reached during campaigns that were launched between 2000 and 2013 involving target companies with at least \$7bn market capitalization. Market capitalization is expressed in millions of dollars. Time refers to the month and year the settlement agreement was reached.

Company	Market Cap	Activist	Time	Main changes obtained by activists
Microsoft	228,220	ValueAct	Aug 2013	- One new director added who is affiliated with the activist
PepsiCo	140,680	Triam	Jan 2015	- One new director added who is affiliated with the activist
Home Depot	81,635	Relational	Feb 2007	- One new director added who is affiliated with the activist
Time Warner	76,432	Icahn	Feb 2006	- Two new directors, both not identified as favored by activist - Increase of share buyback activity - Intention to explore strategic alternatives
Mondelez	55,724	Triam	Jan 2014	- One new director added who is affiliated with the activist
Hewlett-Packard	55,635	Relational	Nov 2012	- One new director added who is affiliated with the activist
Motorola Inc	36,300	Icahn	April 2008	- One incumbent director resigns - Two new directors, one affiliated with the activist, one favored by the activist but unaffiliated
Illinois Tool Works	22,570	Relational	Jan 2012	- One new director added who is affiliated with the activist
Williams Companies	22,069	Corvex	Feb 2014	- One new director added who is affiliated with the activist
Motorola Solutions	21,309	ValueAct	Oct 2012	- Two new directors added, one affiliated with the activist, one not identified to be favored by the activist
Yahoo	19,195	Third Point	May 2012	- Six incumbent directors resign - Four new directors are added, three affiliated with the activist, one favored by the activist but unaffiliated
Hess Corp	18,088	Elliott	May 2013	- Three incumbent directors resign - Three new directors, all favored by the activist but unaffiliated
Genzyme	17,967	Relational	Apr 2010	- Two new directors added, one favored by the activist but unaffiliated - Establishment of board committee to evaluate strategic alternatives
Air Products & Chemicals	17,508	Pershing Square	Sep 2013	- One incumbent director resigns - Three new directors are added, two favored by the activist but unaffiliated, one not identified to be favored by the activist - The CEO resigns

Appendix B-1 (continued)

Clear Channel Com.	17,188	Highfields Capital	May 2008	<ul style="list-style-type: none">- Two incumbent directors resign- Two new directors are added, one favored by the activist but unaffiliated, one not identified to be favored by the activist
Yahoo	16,977	Icahn	July 2008	<ul style="list-style-type: none">- One incumbent director resigns- Three new directors are added, one affiliated with the activist, two favored by the activist but unaffiliated
Transocean	16052	Icahn	Nov 2013	<ul style="list-style-type: none">- Two new directors are added, both affiliated with the activist
Biogen Idec	14,705	Icahn	Mar 2010	<ul style="list-style-type: none">- One incumbent director resigns- Two new directors added, one favored by the activist but unaffiliated, one not identified to be favored by the activist
Chesapeake Energy	14,695	Icahn	July 2012	<ul style="list-style-type: none">- Five incumbent directors resign- Five new directors are added, one affiliated with the activist, four not identified to be favored by the activist
Adobe Systems	13,460	ValueAct	Dec 2012	<ul style="list-style-type: none">- One new director added who is affiliated with the activist
Genzyme	13042	Icahn	June 2010	<ul style="list-style-type: none">- Two new directors, who are both favored by the activist but unaffiliated
Sara Lee	12,782	ValueAct	Aug 2008	<ul style="list-style-type: none">- One new director added who is affiliated with the activist
Intuit	9586	Relational	Oct 2009	<ul style="list-style-type: none">- One incumbent director resigns- One new director added who is affiliated with the activist- The CEO resigns
ITT Corp	9567	Relational	Jan 2012	<ul style="list-style-type: none">- One new director added who is affiliated with the activist
Ingersoll Rand	9512	Triam	Aug 2012	<ul style="list-style-type: none">- One new director added who is affiliated with the activist
Forest Laboratories	9,241	Icahn	June 2013	<ul style="list-style-type: none">- One new director added who is affiliated with the activist
Kerr McGee	8766	Jana Partners	April 2005	<ul style="list-style-type: none">- Divestiture of part of the firm's assets- Increase in share buyback volume
Sun Microsystems	8182	Southeastern Asset Mgmt.	Dec 2008	<ul style="list-style-type: none">- Two new directors, who are both favored by the activist but unaffiliated
Sovereign Bancorp	7784	Relational	Mar 2006	<ul style="list-style-type: none">- Two new directors are added, one affiliated with the activist, one favored by the activist but unaffiliated
Nuance Communications	7767	Icahn	Oct 2013	<ul style="list-style-type: none">- Two new directors are added, both affiliated with the activist

Appendix B-2

Activists with three or more settlements.

This table reports the names of activists who reached four or more settlements for interventions launched between 2000 and 2013. Number of settlements refers to the number of settlements the activist reached during the sample period. Number of Interventions refers to the number of interventions launched by the activist during the sample period. % Settlements refers to the percentage of interventions that resulted in a settlement agreement.

Activist Name	Number of settlements	Number of interventions	% Settlements
Carl Icahn	20	61	33
Ramius Capital Group	14	31	45
ValueAct	13	74	18
Barington Capital Group	12	26	46
SRB Management / Becker Drapkin	12	19	63
Relational Investors	12	28	43
Clinton Group	11	31	35
Steel Partners	10	50	20
Financial Edge Fund / PL Capital	9	29	31
Elliott Associates	8	29	28
Starboard Value	8	36	22
SACC Partners	7	32	22
Crescendo Partners	6	12	50
Red Oak Partners	6	11	55
Stillwell Partners	6	40	15
Third Point	6	40	15
Jana Partners	5	30	17
MMI Investments	5	24	21
Pershing Square	5	16	31
Pirate Capital	5	19	26
Trian Partners	5	12	42
Bulldog Capital Management	4	17	24
Seth Hamot	4	12	33
Lawrence Seidman	4	27	15
Oliver Press Partners	4	7	57
Raging Capital Management	4	11	36
RMCP GP	4	12	33
Sandell Asset Management	4	15	27
Southeastern Capital Management	4	15	27
Wynnefield Capital	4	36	11

Appendix B-3

Covariate balance.

This table presents descriptive statistics on selected firm size and firm performance for target firms that reached a settlement (Panel A), target firms that experiences a proxy fight that went to a vote (Panel B), all other target firms (Panel C), as well as the matched control groups of these three types of target firms. The firm characteristics are measured prior to the year of settlement (Panel A), prior to the year of proxy fight announcement (Panel B), or prior to the year of the initial intervention (Panel C), respectively. P-values for differences in means between treated and control firms evaluates whether the matching procedure was successful in selecting control firms that are similar to target firms on observable firm characteristics. All variables are defined in Appendix A-3.

Panel A: Propensity-score matching on the year of the settlement (for settled campaigns)

	Target firms (n=285)			Control firms (n=1,382)			P-value for difference in means
	Mean	Median	SD	Mean	Median	SD	
Market Cap _{t-1}	2750.061	294.960	6791.195	3209.980	454.699	7072.831	0.482
ROA _{t-1}	0.056	0.073	0.159	0.072	0.100	0.182	0.181
ROA _{t-2}	0.074	0.096	0.168	0.087	0.107	0.177	0.269
ROA _{t-3}	0.081	0.093	0.172	0.095	0.109	0.179	0.260
Tobin's Q _{t-1}	1.645	1.270	1.330	1.691	1.362	1.401	0.576
Tobin's Q _{t-2}	1.859	1.364	1.676	1.926	1.440	1.947	0.564
Tobin's Q _{t-3}	1.898	1.491	1.658	2.046	1.552	1.986	0.171

Panel B: Propensity-score matching on the year of proxy contest announcement (for voted contests)

	Target firms (n=106)			Control firms (n=509)			P-value for difference in means
	Mean	Median	SD	Mean	Median	SD	
Market Cap _{t-1}	1555.371	394.575	4093.265	1667.273	317.185	4274.404	0.380
ROA _{t-1}	0.029	0.064	0.189	0.045	0.096	0.227	0.508
ROA _{t-2}	0.058	0.074	0.192	0.058	0.098	0.228	0.996
ROA _{t-3}	0.066	0.081	0.168	0.068	0.098	0.211	0.920
Tobin's Q _{t-1}	1.941	1.361	2.061	1.995	1.550	1.543	0.846
Tobin's Q _{t-2}	2.078	1.561	2.116	2.379	1.563	2.740	0.302
Tobin's Q _{t-3}	2.440	1.474	2.962	2.679	1.626	3.211	0.484

Panel C: Propensity-score matching on the year of the initial activist intervention (for other campaigns)

	Target firms (n=1,461)			Control firms (n=6,996)			P-value for difference in means
	Mean	Median	SD	Mean	Median	SD	
Market Cap _{t-1}	1282.688	198.613	3986.801	1539.532	240.943	4303.394	0.395
ROA _{t-1}	0.064	0.084	0.188	0.072	0.098	0.189	0.261
ROA _{t-2}	0.076	0.091	0.183	0.078	0.100	0.186	0.699
ROA _{t-3}	0.083	0.093	0.179	0.083	0.102	0.185	0.943
Tobin's Q _{t-1}	1.866	1.339	1.860	1.924	1.427	1.726	0.344
Tobin's Q _{t-2}	1.994	1.426	1.949	2.046	1.467	1.992	0.399
Tobin's Q _{t-3}	2.030	1.466	1.864	2.073	1.506	1.869	0.472

Appendix B-4

Example of a settlement agreement.

The text below provides the central parts of the settlement agreement between Charming Shoppes, Inc. and Crescendo Partners, dated as of May 8, 2008 (The entire text with more details of the agreement is available online at: https://www.sec.gov/Archives/edgar/data/19353/000092189508001394/ex991to13da407148002_051208.htm).

This Settlement Agreement, dated as of May 8, 2008 (the "Agreement"), is by and among Charming Shoppes, Inc., a Pennsylvania corporation (the "Company"), and the other parties signatory hereto (collectively, the "Committee," and individually, a "member of the Committee").

WHEREAS, the Committee beneficially owns (as defined below) shares of Common Stock, \$0.10 par value, of the Company (the "Common Stock") as specified on Schedule A of this Agreement (the "Shares");

WHEREAS, prior to the date hereof the Committee (i) delivered a letter (the "Nomination Letter") to the Company, dated as of January 14, 2008, stating its intention to nominate (the "Committee Nomination") three individuals for election to the Board of Directors of the Company (the "Board") by the shareholders of the Company (the "Shareholders") and (ii) filed a definitive proxy statement on Schedule 14A with the Securities and Exchange Commission (the "SEC") related to the matters set forth in the Nomination Letter;

WHEREAS, the Company and the Committee have agreed that it is in their mutual interests to enter into this Agreement, which, among other things, terminates the pending proxy contest for the election of directors at the 2008 Annual Meeting (as defined below);

WHEREAS, the Company has agreed that the size of the Board will be increased from eight to eleven members as permitted by the Company's Articles of Incorporation, such increase to be effective as of the 2008 Annual Meeting;

WHEREAS, the Company has agreed that, in connection with the Company's 2008 Annual Meeting of Shareholders (including any adjournment or postponement thereof in accordance with this Agreement, the "2008 Annual Meeting"), the Board will include in its nominations for election as members of the Board, and recommend that the shareholders vote to elect as directors of the Company, Michael Appel and Arnaud Ajdler (each, a "Committee Nominee"); and

WHEREAS, the Company has agreed to submit a proposal at the 2008 Annual Meeting for the declassification of the Company's Board.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Board of Directors, Annual Meeting and Related Matters.

- (a) **Board Expansion.** As promptly as practicable following the date of this Agreement, the Company shall increase the size of the Board from eight to eleven directors, such increase to be effective as of the date hereafter that the Company's Proxy Statement and proxy card are first sent to shareholders.
 - (b) **2008 Annual Meeting.** The Company shall adjourn the 2008 Annual Meeting until June 26, 2008 for purposes of the election of directors and the declassification of the Board as contemplated herein.
 - (c) **Nomination of New Directors.** The Company agrees that at the 2008 Annual Meeting, the Board will:
 - (1) nominate each of Michael Appel, Arnaud Ajdler, Dorrit J. Bern and Alan Rosskamm for election as a director of the Company at the 2008 Annual Meeting to serve as Class C directors with terms scheduled to end in 2011;
 - (2) nominate each of Michael Goldstein and Richard W. Bennet III for election as directors of the Company at the 2008 Annual Meeting to serve as Class B directors with terms schedule to end in 2010; and
 - (3) cause all proxies received by the Company to be voted in the manner specified by such proxies.
 - (d) **Board Declassification.** In accordance with the Company's Restated Articles of Incorporation, Amended and Restated Bylaws and applicable state law, the Company will submit, recommend and actively solicit proxies in favor of a resolution for approval by its shareholders at the 2008 Annual Meeting to declassify the Company's Board to provide for the annual election of all directors (the "Declassification Proposal"). The Company will seek to have such Declassification Proposal classified as a "routine matter" under New York Stock Exchange rules. Under such proposal, if approved by the Company's shareholders, the first of such annual elections would take place at the Company's 2009 Annual Meeting. The members of the Board will vote all of their shares in favor of the Declassification Proposal.
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Appendix B-4. (continued)

- (e) **Proxy Solicitation Materials.** The Company and the Board agree that the Company's Proxy Statement and proxy cards for the 2008 Annual Meeting and all other solicitation materials to be delivered to shareholders in connection with the 2008 Annual Meeting (in each case excepting any materials delivered prior to the date hereof) shall be prepared in accordance with, and in furtherance of, this Agreement. The Company will provide the Committee with copies of any portion of proxy materials or other solicitation materials that contain statements relating to the Committee, the Committee Nominees or this Agreement a reasonable period in advance of filing such materials with the SEC or disseminating the same in order to permit the Committee a reasonable opportunity to review and comment on such materials. The Committee will provide, as promptly as reasonably practicable, all information relating to the Committee Nominees (and other information, if any) to the extent required under applicable law to be included in the Company's Proxy Statement and any other solicitation materials to be delivered to shareholders in connection with the 2008 Annual Meeting.
- (f) **Committees.** At the first meeting of the Board following the 2008 Annual Meeting, the Company shall cause at least one Committee Nominee, such Committee Nominee to be selected by the Company, to be a member of each committee of the Board and each committee of the Board which is created after the date of this Agreement.
- (g) **Expenses.** Within fifteen business days from the date of this Agreement, the Company shall reimburse the Committee an amount equal to the Committee's actual out-of-pocket expenses incurred in connection with the Committee Nomination (the Committee shall provide reasonable documentation with respect to such expenses), including the preparation of related filings with the SEC, the fees and disbursements of counsel and other advisors, and expenses incurred in connection with the litigation between the Company and the Committee, up to a maximum reimbursement of \$1,000,000, and the Committee hereby agrees that such payment shall be in full satisfaction of any claims or rights it may have as of the date hereof for reimbursement of fees, expenses or costs in connection with the Committee Nomination.

Voting Provisions.

The Committee, together with its Affiliates, will cause all shares of Common Stock for which they have the right to vote as of the record date for the 2008 Annual Meeting to be present for quorum purposes and to be voted at such meeting or at any adjournments or postponements thereof, (a) in favor of each director nominated and recommended by the Board for election at such meeting, (b) in favor of the Declassification Proposal and each other matter recommended by the Board at such meeting, and (c) against any shareholder nominations for director which are not approved and recommended by the Board for election at such meeting.

Additional Undertakings by the Committee.

By executing this Agreement and in consideration of the agreements contained herein, the Committee hereby irrevocably withdraws its Nomination Letter and any nominations to the Board made prior to the date hereof and agrees to terminate the pending proxy contest with respect to the election of directors at the 2008 Annual Meeting. Within two business days of the date of this Agreement, the Committee shall file, or cause to be filed on its behalf, with the SEC an amendment to its Schedule 13D with respect to the Company disclosing the material contents of this Agreement.

Publicity.

Promptly after the execution of this Agreement, the Company and the Committee will issue a press release in the form attached hereto as Schedule B. Any press release to be issued by the Committee relating to the matter covered by this Agreement shall be provided prior to issuance to the Company for the Company's review and approval, such approval not to be unreasonably withheld.

Dismissal of Claims.

Promptly after the execution of this Agreement, the Company and the Committee shall stipulate to the voluntary dismissal with prejudice and without costs the action entitled *Charming Shoppes v. Crescendo Partners II, L.P., et al.*, No. 08-CV-1156-AB, pending in the United States District Court for the Eastern District of Pennsylvania, and file with the Court a stipulation of dismissal.

Mutual Releases.

Promptly after the execution of this Agreement, the Company and the Committee shall provide mutual releases in the forms annexed hereto as Schedule C.
