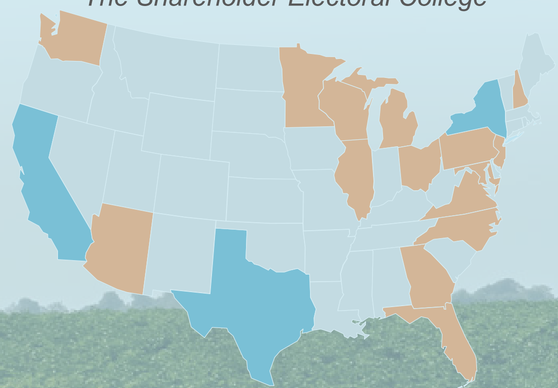
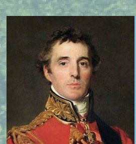
KING & SPALDING

Wake-Up Call: Wellington's Public Vote on Bristol-Myers / Celgene Transaction

March 2019

The Shareholder Electoral College





"I attribute my success on the battlefield to always being on the spot to see and do everything for myself."

– Arthur Wellesley, Duke of Wellington (1769-1852)

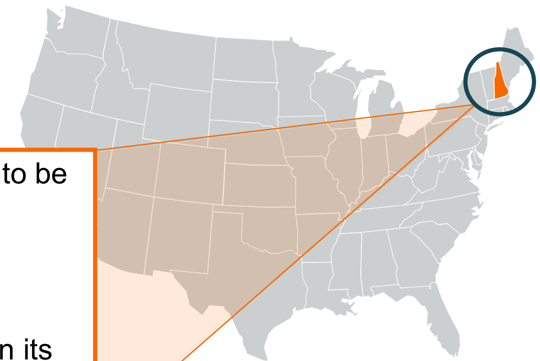
Wellington's Public Opposition to the BMY / CELG Transaction Represents a Major Development

This is about more than the BMY / CELG transaction

Bristol-Myers Squibb | Celgene | WELLINGTON MANAGEMENT

- ***Virtually unprecedented for an institutional holder of this size to publicly intervene at this stage in the process***
  - Wellington – in a four sentence press release – first came out publicly **6 Weeks** in advance of BMY's April 12th shareholder meeting (See Annex)
- Wellington's public opposition represents a significant investment of time and personnel, meaning this is not a step it took lightly and is indicative of future public interventions

Wellington's Actions are a Preemptive Strategy to Optimize its Influence



Wellington is seeking to be **the New Hampshire primary** of the BMY / CELG campaign – a constituent can have outsize influence when its voice is heard **early** in the campaign

- ***We believe this is going to happen more often, and not just with Wellington, but with many of the major active long shareholders***
- Wellington's actions are a wake-up call for corporate America – **companies should expect more interventions** on large M&A transactions, CEO succession, proxy contests/director elections, executive compensation and corporate governance

GH GORDON HASKETT RESEARCH ADVISORS

*"Make NO mistake about it, Wellington's decision to lead the fight against Bristol's acquisition of Celgene is a historic moment in the annals of activism and **Corporate America had better take note because the folks who actually pick stocks have finally decided to flex their muscles**."*

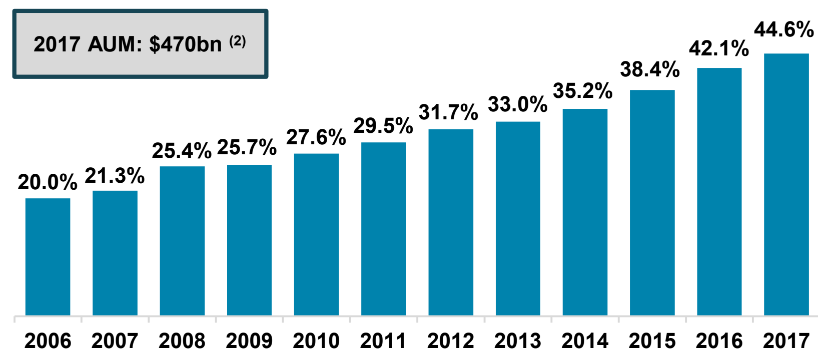
– Don Bilson, Head of Event-Driven Research, 03/01/2019

Why Wellington is Acting Publicly and Why Other Active Managers Will Follow Suit…

Wellington's actions are driven by <u>the economic realities of its business model</u>

- Since the Financial Crisis, the **<u>U.S. public investing landscape has shifted dramatically</u>** away from traditional "active stock picking"
- Capital is increasingly allocated toward low-cost Index Funds
- *Actively-managed funds, particularly large-cap focused funds, are struggling to survive and outperform benchmarks long-term*
  - **<u>Just 41% of Active Large-Cap Funds survived</u>** to the end of the 15-year period ended Dec. 31, 2018 [(1)]
- **<u>Stock picking is no longer enough</u> –** Active managers are now competing with Passive managers for influence and must be publicly seen to be vocal in order to defend their funds' AUM

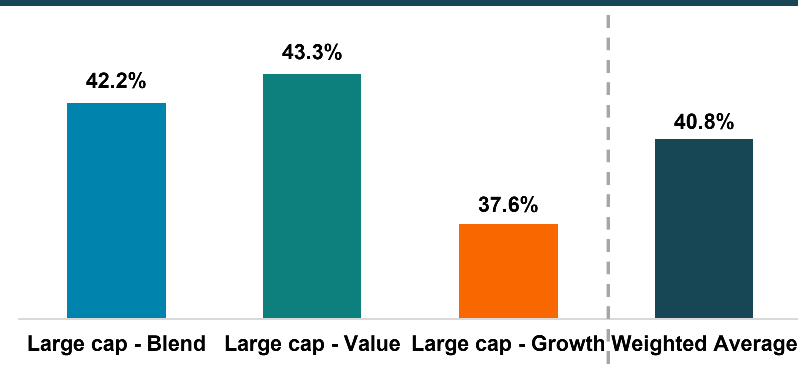
Growth of Passive Funds – % of Equity Assets Invested in Passive Funds [(2)]



% of Active Funds Underperforming Benchmarks [(3)]

	1-Year	3-Year	5-Year
Large-Cap (S&P 500®)	63.5%	78.6%	76.5%
Mid-Cap (S&P MidCap 400®)	54.2%	83.3%	81.7%
Small-Cap (S&P SmallCap 600®)	72.9%	93.6%	92.9%
Multi-Cap (S&P Composite 1500®)	60.8%	82.4%	81.0%
Domestic Equity (S&P Composite 1500®)	58.0%	82.1%	80.1%

Active Large-Cap Funds Struggle to Stay Alive – % of Funds Surviving 15 Years Ending 12/31/2018 [(1)]



1) Morningstar.
2) Morningstar Direct Fund Flows.
3) S&P Dow Jones Indices SPIVA report 6/30/2018.

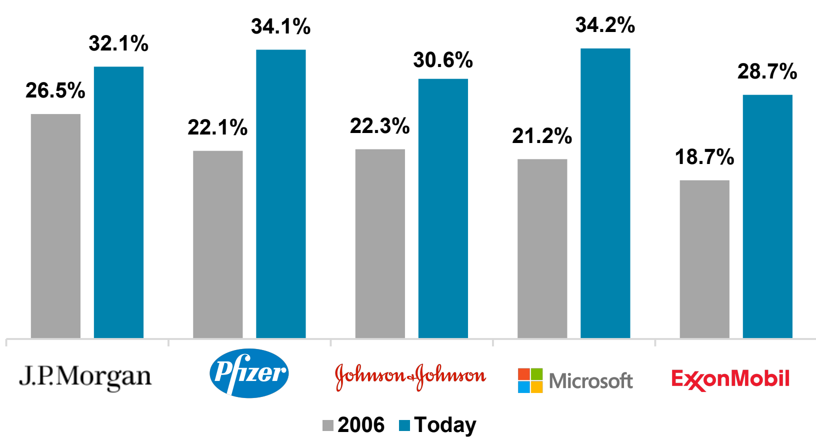
Why Wellington is Acting Publicly and Why Other Active Managers Will Follow Suit

The U.S. equity voting system has changed dramatically since the Financial Crisis – there is greater concentration of ownership and passive funds have gained substantial market share at the expense of active funds, creating a contest for influence across the system

The "New Normal" Shareholder Landscape – Greater Concentration and Less Liquidity

- Public company ownership has become concentrated with Index Funds owning **<u>~18%</u>** and the top 10 shareholders (including Index Funds) owning **<u>~30%</u>** of the S&P 500
- High frequency, algorithmic and passive traders account for ~85-90% of trading volume (1)
- The fight for influence between Actives and Passives was on full display in the Ashland/Cruiser proxy contest (See bottom right)

Ownership Concentration by Top 10 Shareholders Has Increased Since 2006 (2)

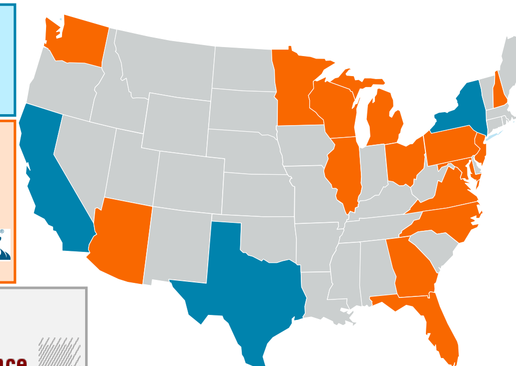


U.S. Shareholder Electoral College – Three Distinct Investor Groups with Differing Business Models and Priorities

Index Funds/ETFs
Vanguard · BlackRock · State Street

Active Investors
Wellington Management · Neuberger Berman · Capital Group · Fidelity Investments · T. Rowe Price

Hedge Funds & Event-Driven Investors
Two Sigma · Renaissance



AGENDA
FINANCIAL TIMES

Kantor [Neuberger Senior Portfolio Manager] says he realized that [Ashland and Cruiser] were headed for a contested proxy, which more than likely would be decided by votes from large index funds. If so, ***<u>Kantor lamented, the index funds would vote according to proxy advisors' suggestions</u>****….* ***<u>Kantor says actives spend the time and resources to intimately understand details at their portfolio companies that passives cannot</u>****…* ***<u>By asserting Neuberger's own power as a large shareholder, he says, his firm prevented the risk of a vote that would have left "our fate in the hands of the proxy firms."</u>***

-03/01/19

1) Zuckerman, Gregory, et al. "Behind the Market Swoon: The Herdlike Behavior of Computerized Trading." *The Wall Street Journal*, Dow Jones & Company, 26 Dec. 2018.
2) Bloomberg, Capital IQ.

SEC Rules Are a Contributing Factor

The SEC rules that govern the U.S. proxy and voting system are woefully out of date – they were written to deal with 1980s "corporate raiders"

- The **system is asymmetric:**
  - Companies bear the burden of disclosure and must provide extensive information to shareholders – very time consuming and expensive
  - Meanwhile, **companies are largely in the dark as to how their shareholders make voting decisions** – a result of minimal enforced disclosure
  - Often companies are unaware who at a particular Fund to contact and who makes the voting decisions
  - Funds — both Actives and Passives — say they want to improve engagement but have not articulated a complete or transparent method for doing so
- The current SEC regime unnecessarily restricts dialogue in many cases and does not encourage transparency regarding voting

What Should the SEC Do?

- **Impose more frequent disclosure regarding ownership**
  - *Who owns what shares? How? Who has the vote? How are voting decisions made?*
- **Revise existing communication regulations**
  - 13D, 13G, 13F, etc. should facilitate, not restrict, conversations between companies and shareholders
- **Demand transparency from both parties**
  - Large Active and Passive Managers wield tremendous influence, and their actions can meaningfully impact a company's future direction

Bloomberg

*"Investors **do not get nearly enough usable information** about how their money is being voted, and because of that, they **cannot adequately hold those fund managers accountable** for how they vote in those elections. It's time for that to change."*

-SEC Commissioner Robert Jackson, 12/06/18

Symmetry must be restored to the system. Both Active and Passive Significant Equity Institutions (SEIs) who seek to, or are otherwise of a size that will, materially influence the voting process for U.S. public companies should be required to fully disclose how they make voting decisions relative to their constituents and other investors, with due process and access for companies

Key Takeaways

The SEC needs to fix the system and restore symmetry

Both Active and Passive Significant Equity Institutions (SEIs) have tremendous influence and, through transparency and disclosure, should be willing to accept due process in exchange for their substantial role in U.S. shareholder voting

Companies and Advisors:

1. Recognize this unprecedented environment is likely to be sustained, creating the need for strategic and bilateral relationships with SEIs, as well as other shareholders; and
2. While surprises are always difficult to manage, “known” surprises require greater engagement with SEIs and a strong pre-existing foundation

Annex

Wellington’s Press Release

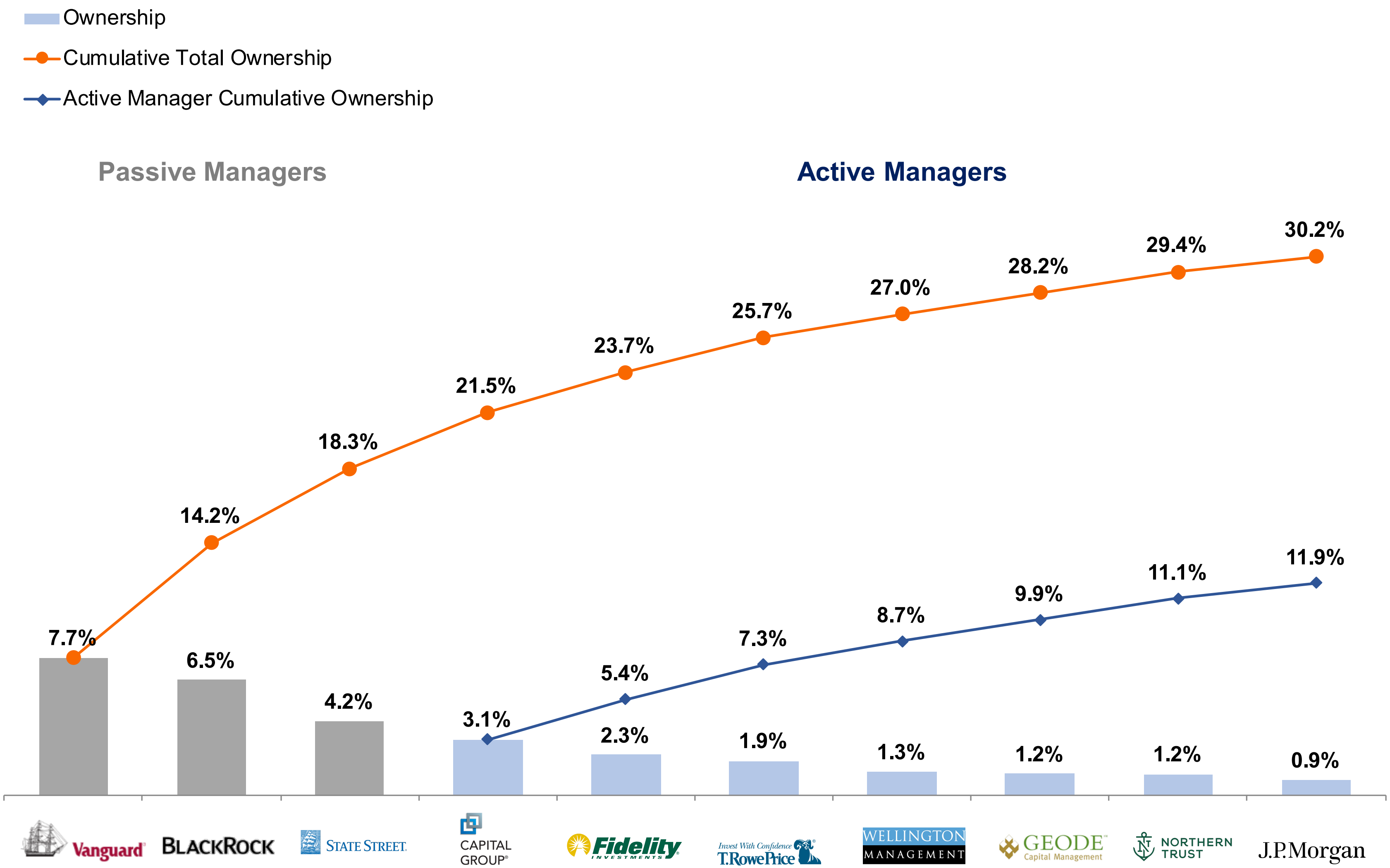
Wellington Management Does Not Support
Bristol-Myers Squibb’s Acquisition of Celgene Corporation

Boston, MA – February 27, 2019 – Wellington Management Company LLP (“Wellington”), one of the world’s largest independent investment management firms, managing approximately $1 trillion in assets on behalf of its clients worldwide, recently informed the Board of Directors of Bristol-Myers Squibb (“Bristol-Myers” or the “Company”) (NYSE: BMY) that it is not supportive of the Company’s proposed acquisition of Celgene Corporation (“Celgene”) (NASDAQ: CELG). Wellington Management, which exercises investment discretion for clients with respect to approximately 8% of the Company and, as of February 25, 2019, was the largest institutional holder of BMY’s common stock, issued the following rationale for its decision.

While Wellington agrees that Bristol-Myers should be active in business development that secures differentiated science and broadens the future revenue base, Wellington does not believe that the Celgene transaction is an attractive path towards accomplishing this goal. Wellington’s conclusion is based upon three tenets: 1) the transaction asks BMY shareholders to accept too much risk and the terms offer BMY shares to CELG shareholders at a price well below implied asset value; 2) execution success could be more difficult to achieve than depicted by Company management; and 3) alternative paths to create value for BMY shareholders could be more attractive.

Source: Capital IQ.

S&P 500 Top 10 Shareholders



Source: Capital IQ as of 03/04/2019.

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- Former co-head of Investment Banking Mergers & Acquisitions at J.P. Morgan
- Founder of Hudson Executive Capital, a CEO-driven white hat hedge fund
- Extensive experience successfully advising boards in takeover and activist situations over scores of contests and transactions
- Advised on over $1 trillion in M&A transactions
- Fellow – American College of Governance Counsel

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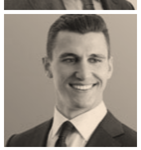

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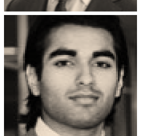

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King & Spalding Corporate Monitoring Program

- Financial analysts at King & Spalding constantly monitor subscription-based publications and stock trading activity to flag relevant events for clients
- Extensive analyst training from investment banking backgrounds allows for effective identification of notable events for timely notice to clients
- Potential events span the range of unusual trading activity, relevant news articles, equity research reports and third-party financial analyses
- Aim to keep recipient informed of latest events and allow clients a free hand in the performance of day-to-day operations

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