

# AN ACTIVIST INVESTOR'S SUCCESSFUL CORPORATE GOVERNANCE AND STRATEGIC MANAGEMENT IMPACTS: AN UPDATED L BRANDS CASE STUDY

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## Abstract

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The key research aim of this paper is to analyze whether an activist investor's recommendations for financial, corporate governance, and strategic management performances were successful or not. This paper updates the initial case study of the activist investor, Barington Capital Group, in analyzing the performance of a public company, L Brands, which had lost \$20 billion in market capitalization in the last three years prior to the public letter from Barington to the L Brands CEO in March 2019. This updated case study analyzes whether Barington's initial recommendations worked as operational guidelines for improving L Brands' financial, corporate governance, and strategic management performances. From its financial analysis, Barington recommended either an initial public offering of the superior performing Bath & Body Works brand or a spinoff of the weak performing Victoria's Secret brand. From its corporate governance and strategic management analysis, Barington recommended that L Brands improve the composition of its board of directors whose deficiencies in director independence, industry experience, and diversity hindered its ability to effectively oversee and advise strategic management. It is important to note that this paper was prepared exclusively with public information.

**Keywords:** Activist Investors, Corporate Governance, Barington, L Brands

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## 1. INTRODUCTION

The activist investor, Barington Capital Group, initially analyzed L Brands, Inc. in its March 5, 2019, eight-page public letter to Leslie Wexner, the Chief Executive Officer (CEO) and Chairman of the Board (COB) of L Brands, Inc., which he started in 1963. It recommended that L Brands separate its Victoria's Secret brand from its Bath & Body Works brand

(*Investor pushes L Brands to spin off Victoria's Secret*, 2019; Haigh, 2019; McIntyre, 2019). Barington concluded that L Brands had significant value potential that was not being realized. It shared its recommendations with the CEO/COB on how L Brands could address major current challenges and meaningfully improve its long-term value for shareholders. L Brands with core brands of Victoria's Secret, PINK, and Bath & Body Works had previously

created value for its shareholders, but its performance had been disappointing over the past several years (Barington Capital Group, L.P., 2019).

Barington had analyzed L Brands' common stock price performance and found that the common stocks in L Brands' industry peer group had outperformed L Brands over the last one, three, and five-year periods by 52.0%, 98.7%, and 108.4%, respectively. L Brands had selected this industry peer group per its 2018 Proxy Statement as Abercrombie & Fitch, American Eagle Outfitters, Avon Products, Bed Bath & Beyond, The Estee Lauder Companies, The Gap, JC Penny, Kohl's, NIKE, Nordstrom, Ralph Lauren, Ross Stores, Starbucks, Tapestry, The TJX Companies, and Williams-Sonoma. Also, L Brands' stock price performance was lower than the market S&P 500 and Russell 2000 indexes by a substantial margin over the same one, three, and five-year periods, being negative at 32.1%, 63.1%, and 36.7%, respectively, versus positive returns for both major indexes over all three periods. Furthermore, L Brand's common stock price plummeted from an all-time high of \$100.22 on November 4, 2015, to \$26.81 on March 5, 2019, the date of Barington's letter. L Brand's total market capitalization loss was almost \$20 billion and about half of that loss occurred in 2018 (Grove & Clouse, 2019).

The key research aim of this updated case study is whether the initial L Brands case study recommendations by Barington Capital Group for financial, corporate governance, and strategic management performance were successful or not. The major sections of this updated L Brands case study are literature review of shareholder activism (Section 2), Barington's initial corporate governance and strategic management recommendations for L Brands (Section 3), resulting corporate governance and strategic management changes by L Brands (Section 4), recommendations for both demographic and cognitive diversity in boards (Section 5), a change in corporate focus (Section 6), corporate governance and strategic management success reflected in stock price performances (Section 7), subsequent events (Section 8) and conclusion (Section 9). It is important to note that this paper was prepared exclusively with public information.

## 2. LITERATURE REVIEW OF SHAREHOLDER ACTIVISM

Other than the Grove and Clouse's (2019) L Brands case study, none of the following research studies investigated the ways activist investors could influence financial, corporate governance, and strategic management performances of a public company. A few of those studies just discussed the circumstances and profiles of activist investors.

The key research aim in the original L Brands case study (Grove & Clouse, 2019) was to explore the implications for financial, corporate governance, and strategic management performances from the emergence of activist investors. The case study focused on one specific activist investor, Barington Capital Group, in analyzing the performance of a public company, L Brands, which lost \$20 billion in market capitalization in the last three years while the U.S. stock market was going up significantly. This activist investor's approach and recommendations were recommended to be used as operational

guidelines by boards of directors and corporate executives for improving their financial, corporate governance, and strategic management performances. From its financial analysis, Barington recommended either an initial public offering of the superior performing Bath & Body Works brand or a spinoff of the weak performing Victoria's Secret brand. From its corporate governance and strategic management analysis, Barington recommended that L Brands improve the composition of its board of directors whose deficiencies in director independence, industry experience, and diversity hindered its ability to effectively oversee and advise management and strategy. Both the original and updated case studies were prepared exclusively with public information, so no insider trading issues are involved.

The public Barington's letter to the L Brand CEO recommended that his dual roles as COB and CEO be held by separate individuals to improve corporate governance and operating execution. In summary, this Barington's letter stated that CEO duality should be eliminated for a more modern management and strategy focus (Grove & Clouse, 2019). In another CEO duality issue, Institutional Shareholder Services (ISS) and Glass Lewis, shareholder proxy advisers, both pushed Boeing to separate the CEO and COB roles after the two fatal crashes of its 737 Max airplanes. They argued that the separation of these roles eliminates the conflict of interest that inevitably occurs when a CEO is responsible for self-oversight. This duality problem is slowly being overcome in European Union public companies where over 50% have separated these two roles and in the U.S. where about 30% have separated such jobs (Thomas, 2019).

A research paper used data to re-examine the relationship between CEO duality and firm performance, controlling for other important variables, such as firm characteristics, ownership structure, CEO compensation, and agency costs. The empirical results did not show a significant relationship between CEO duality and firm performance (Chen, Barry Lin, & Yi, 2008). A study examined the impact of CEO duality on corporate social responsibility (CSR) reporting by public companies listed in Malaysia. The study found no significant association between CEO duality and CSR reporting (Ju Ahmad, Rashid, & Gow, 2017). Another study of public companies in Sri Lanka found there was no optimal board leadership structure, including CEO duality. It concluded that firms need to recognize that firm characteristics and contingency perspective boost the impact of board leadership structure on corporate financial performance (Wellalage & Locke, 2011).

Recent board of directors' studies found similar results to the recommendations by Barington to improve L Brands' corporate governance and related financial performance. One board benchmarking study compared a financially successful U.S. company to a financially non-successful U.S. company and found the following key success factors for boards: specific industry knowledge, younger directors, coaching/nurturing, involved roles, long-term compensation of directors, no board entrenchment, annual board assessment, and board committee rotation (Grove, Clouse, & Xu, 2020). A study of UK FTSE non-financial companies found

positive correlations of firm performance with board independence, board size, and board remuneration (Alqatan, Chbib, & Hussainey, 2019). A study of Ghana board practices companies found positive impacts on firm performance with good use of non-executive directors' time in the board decision process and a board size of eight and nine but a negative impact on firm performance with CEO duality (Owusu, 2021). A study of Greek companies found opposite results for the board factors of CEO duality, non-executive directors, and women directors (Rompotis, 2020).

Raja and Kostyuk (2015) outlined shareholder activism development in common law (the U.S. and the UK) countries and civil law (Germany and Ukraine) countries. They concluded that the type of legal system was not the chief determinant of shareholder activism. Their comparative analysis showed that the system of domestic corporate regulation, development of the stock market, companies' capitalization, and corporate governance influenced the development of shareholder activism in equal measure. Belcredi, Bozzi, Ciavarella, and Novembre (2017) found that specific classes of institutional investors actively monitored investee firms under concentrated ownership and that proxy advisors (PA) performed an informational role as voting by institutional investors was strongly correlated with PA recommendations even though institutional investors did not follow PA recommendations blindly but looked at specific reasons of concern in PA reports.

De Falco, Cucari, and Sorrentino (2016) looked at 120 firms in three different contexts (Italy, Australia, and the U.S.) between 2012 and 2014. They found that factors affecting dissent depend on the context of analysis. In an insider system context, like Italy, dissent was positively correlated with the concentration of ownership but in an outsider system context, like the U.S., the variable of remuneration was positively correlated to the dissent. In the Australian context, any variable was significant. Jansson (2014) examined the issue of what motivates shareholder activism. The standard explanation portrayed shareholder activism as a response to poor corporate performance, but the empirical literature had only inconclusive support. As a complementary explanation, this paper found that shareholder activism can also be a response to increasing costs for exiting an investment, making outside shareholders increasingly exposed to expropriation risks. Van der Elst (2011) assessed trends in shareholder activists, how shareholders responded to the fall in profits, and how they exercised influence in the turbulent times between 2007 and 2010 in four European countries after the global economic crisis of 2008. He concluded that shareholder activism depended on the identity of large individual shareholders shedding doubts on the effectiveness of one size fits all (mandatory) corporate governance measures.

Concerning shareholder activism, an activist investor or shareholder uses an equity investment in a corporation to put pressure on its management. Major activist investors include private equity firms, hedge funds, and wealthy individuals. The goals of activist investors have generally been financial to increase shareholder value through changes in corporate policy, financing structure, revenue

enhancement, cost cutting, and corporate governance improvements. Once criticized as corporate raiders, shareholder activists are now admired for sparking change in corporate boardrooms and leading corporate boards in developing best practices for responding to shareholder activism. Activists increasingly are transitioning from outside agitators to influential insiders. For example, the non-financial form of shareholder activism is affecting companies in a range of areas, such as environmental and social performances (Kenton, 2021).

### 3. BARINGTON'S INITIAL CORPORATE GOVERNANCE RECOMMENDATIONS FOR L BRANDS

The 2019 Barington's letter to the L Brand CEO Leslie Wexler recommended that his dual roles as CEO and COB be held by separate individuals to improve corporate governance, strategic management, and operating execution (Barington Capital Group, L.P., 2019). In another example, ISS and Glass Lewis, proxy advisers, have argued that the separation of these roles eliminates the conflict of interest that inevitably occurs when a CEO is responsible for self-oversight (Thomas, 2019). This duality problem is slowly being overcome in European Union public companies where over 50% have separated these two roles and in the U.S. where 30% have separated such jobs.

This 2019 Barington's letter politely did not mention that Wexler had been the only CEO since he founded L Brands in 1963, or 56 years ago. He has had the dual positions of CEO and COB for 50 years and is now 80 years old. How can he deal effectively with the zeitgeist problem of knowing the spirit of the times or the spirit characteristic of an age or generation? His children would be Gen X, his grandchildren would be millennials, and his great-grandchildren would be Gen Z. The twelve L Brands board of directors have similar zeitgeist problems as their average age is 70 years old, and none of them have fashion retail backgrounds or experience.

Jim Chanos, the billionaire short seller, has a corporate governance red flag in deciding whether to short a stock: many senior executives leave the company over a short period of time, inferring company survival problems (Chanos, 2017). Barington noted that L Brands had endured multiple, recent changes to its senior management team. The woman who successfully ran the Victoria's Secret brand for ten years resigned as Victoria's Secret CEO in February 2016. L Brands appointed a new CEO of Victoria's Secret Lingerie in May 2016, only to have her resign in November 2018. During the 2016-2018 period, numerous other senior executives also departed Victoria's Secret.

Barington had significant concerns about the L Brands board being weak. It observed that the board lacked the composition and independence necessary to perform its strategic management oversight functions on behalf of shareholders. Concerning board composition, Barington also believed that the board lacked directors with a diversity of backgrounds, skills, and perspectives sufficient to meet the strategic needs of the company and ensure that it remains competitive in today's challenging marketplace. Concerning board independence, L Brands had self-determined

that eight of its twelve directors were independent per the New York Stock Exchange limited standards. However, Barington found a majority of these directors had strong ties to the CEO Wexner, to his wife, and each other through the Columbus, Ohio community where the company has always been headquartered for 56 years. The board also had ties to The Ohio State University in Columbus, which is home to the Wexner Center for the Arts and the Wexner Medical Center. Barington commented that the existence of these business and social relationships raised serious questions as to the true independence of these directors. Furthermore, three of these so-called “independent” directors had a lengthy average tenure of 36 years, which also raised concerns about their actual independence.

Barington observed that both the demographic and cognitive diversity of the L Brands board needed meaningful improvement. Even though the company’s products cater primarily to women, nine of the twelve board members were men. The board also had limited age diversity with the average age of the directors being 70 and the median being 71, which is a concern as the company is currently having zeitgeist challenges connecting with younger customers for its Victoria’s Secret brand. Furthermore, the board lacked directors with a recent operating background in fashion branded products that cater to women. As a result, Barington believed that a more demographic and cognitive diverse board in terms of age, gender, and professional experience would be more effective in providing advice to the management team and ensuring that important strategic and operating decisions are soundly made. Barington recommended that the effectiveness of the board would be greatly enhanced if it looked outside of its current members’ personal and professional networks to identify new director candidates.

Barington recommended that the board consider replacing Leslie Wexler and his wife Abigail Wexler’s personal business advisor, Dennis Hersch,

as well as Abigail Wexner, both of whom were on the board with no fashion business experience. Also, Barington recommended that all directors with a tenure greater than 30 years be replaced and new directors be recruited from outside Columbus, Ohio, the home office of L Brands for all 56 years of its existence. Such new board directors would help improve gender and age diversity of the board and add valuable experience in fashion retail merchandising, marketing, and international business development. As a frequent activist investor in retail and apparel companies, Barington offered to recommend several highly qualified individuals who would help improve the composition and diversity of the L Brands board.

To improve corporate governance, strategic management, and operating execution, Barington recommended the company have annual re-elections of the entire board, not its traditional annual re-elections of just three out of 12 directors. Such annual re-elections help avoid board entrenchment where directors may be out of touch with current, changing business operations. Barington cited such problems, especially the zeitgeist problem, with the current board.

#### 4. RESULTING CORPORATE GOVERNANCE AND STRATEGIC MANAGEMENT CHANGES BY L BRANDS

From its 2019 corporate governance and strategic management analysis, Barington recommended that L Brands improve the composition and operation of its board of directors on the following items, which are listed in order of importance in Table 1. L Brands DEF 14 A, a proxy statement for public companies required by the Securities and Exchange Commission (SEC), was filed on April 8, 2021, and had the following updates related to Barington’s corporate governance and strategic management recommendations (SEC, 2021b), as shown in Table 1.

**Table 1.** Corporate governance recommendations (Part 1)

| <i>Recommendation</i>                           | <i>Description</i>   |
|---|--|
| No CEO duality and a more modern, strategic CEO | The new female COB Sarah Nash is independent with 30 years of investment banking experience and is the current CEO of Novagard Solutions, an innovator and manufacturer of silicone sealants and foam solutions. The new CEO Andrew Meslow was the CEO of the successful Bath & Body Works brand for the last eight years. Leslie Wexler, the founder of L Brands who was the CEO and COB for 50 years, retired from the company and the Board, effective May 20, 2021, as did his wife, Abigail Wexler. Thus, the Board size is now reduced from 12 to 10 members. The Board oversees L Brands’ strategic plans, capital structure, assessment and management of enterprise risk, cybersecurity, and data security policies, and environmental, social, and governance (ESG) matters. The Board and its Nominating & Governance Committee have developed policies and principles governing succession planning with respect to the CEO and senior management. The Board and its Human Capital and Composition Committee have evaluated the Company’s compensation structures from the perspective of enterprise risk and believe that they are appropriate and do not incentivize inappropriate taking of business risks. |
| Director independence                           | The Board has determined that each of the individuals on the Board, except for the new CEO, has no material relationship with the Company other than in her/his capacity as a director and that each is independent in accordance with applicable NYSE standards. There are now nine independent directors, constituting 90% of the L Brands board.  |
| Industry experience                             | L Brands believes its directors, as a whole, possess the right mix of qualifications, skills, and experience to oversee and address the key issues facing it now, and the commitment to Board refreshment to ensure this moving forward. It has summarized such characteristics for each Board member in the following DEF 14 A table.   |
| Age   | The ages of the Board range from 45 to 74 with an average of 61 and a median of 62.5. Five (50%) of the ten directors have been appointed since the 2019 Barington’s letter to L Brands. Two others were appointed in 2017, one in 2014, one in 2012, and one in 2003.   |

**Table 1.** Corporate governance recommendations (Part 2)

| <i>Recommendation</i>  | <i>Description</i>  |
|--|---|
| Diversity  | Six (60%) of the ten directors are women, including the COB, four of whom are ethnically diverse. There is an enterprise strategy for diversity, equity, and inclusion.   |
| Annual re-election of the entire board versus board entrenchment | The Board was declassified in 2020 and all directors are now elected annually. All supermajority voting requirements were removed in L Brands certificate of incorporation in 2020. Also, proxy access was adopted to permit up to 20 stockholders, owning 3% or more of the outstanding shares for at least three years, to nominate the greater of two directors or up to 20% of the L Brand Board and include those nominees in the proxy materials. In uncontested director elections, directors are elected by a majority of votes cast. No “poison pill” is in effect.                              |
| More frequent board meetings                                     | The Board held 23 meetings in the fiscal year 2020. All the current directors attended 75% or more of the total meetings of the Board and of the committees of the Board on which they served. The non-management independent directors of the Board meet in regular executive sessions. The COB serves as chair of those meetings. Stockholders who own at least 25% of the outstanding shares may call a special meeting of stockholders but none occurred in 2020.   |
| Audit Committee financial accounting expert                      | The Board has determined that each of the four Audit Committee members meets the independence, expertise, and experience standards established by the NYSE and the SEC for service on the Audit Committee of the Board and for designation as an “audit financial expert” within the meaning of the regulations promulgated by the SEC. The Audit Committee held 13 meetings in fiscal 2020.  |
| Board member term limits   | The Nominating & Governance Committee oversees a robust annual evaluation of the Board, each Board committee, and each individual director and recommends ways to improve performance. This committee also develops and recommends to the Board, and regularly reviews, a set of corporate governance principles for the Company to ensure they reflect evolving best practices, monitors compliance with those principles and stays abreast of developments in corporate governance. There are no term limits for Board members.   |
| Board environmental, social, and governance (ESG) expertise      | Reduction of environmental impacts by use of sustainably managed materials and partnerships with environmentally responsible suppliers are now goals of L Brands. There is a commitment to improving the communities where L Brands does business, including investing more than \$8 million in non-profit organizations in L Brands’ home office communities through the L Brands Foundation. The goals for reducing environmental impact are driving toward sustainable materials, minimizing the use of hazardous chemicals, and reducing energy consumption, water use, and greenhouse gas emissions. |

L Brands believes that its directors possess the right mix of qualifications, skills, and experience to oversee and address the key issues facing the Company now, and the commitment to Board refreshment to ensure this moving forward. The directors also reflect the diversity of the Company’s

workforce, communities it serves, its customers, and other key stakeholders. The L Brand DEF 14 A proxy statement summarized the ten directors’ experience, qualifications, attributes, and skills, which are also listed in order of importance in Table 2 (SEC, 2021b).

**Table 2.** Qualifications, skill, and experience recommendations

| <i>Qualifications, skill, and experience</i>  | <i>Number of board members</i> |
|---|--------------------------------|
| <i>Consumer technology:</i><br>Knowledge of or experience with technology-enabled customer solutions  | three                          |
| <i>Digital marketing:</i><br>Experience in digital marketing, branding, analytics, and product development  | two                            |
| <i>Executive business experience:</i><br>Experience serving in an executive capacity in a public company or regulatory environment                            | ten                            |
| <i>Finance expertise:</i><br>Knowledge of or experience in capital markets, corporate finance, or accounting  | nine                           |
| <i>Governance:</i><br>Experience serving on the board of a public company or developing corporate governance policies for public companies                    | eight                          |
| <i>Marketing &amp; consumer insights:</i><br>Experience in marketing, branding, customer analytics, and customer loyalty                                      | six                            |
| <i>Operations/Supply chain:</i><br>Experience with multi-site operational management, including logistics and distribution                                    | three                          |
| <i>Public company CEO/Senior leadership experience:</i><br>Experience serving as a chief executive officer or similar leadership position of a public company | five                           |
| <i>Retail:</i><br>Experience in the retail sector or consumer products  | three                          |

ISS has established a governance quality score system to evaluate the corporate governance of public companies. Its summary score is based on four pillar scores. ISS rated L Brands with a summary score of 7 (out of a maximum summary score of 10), as of July 1, 2021, based on the four pillar scores of 10 for audit, 9 for board, 4 for shareholder rights, and 6 for compensation.

## 5. RECOMMENDATIONS FOR BOTH DEMOGRAPHIC AND COGNITIVE DIVERSITY IN BOARDS

Barington’s board diversity recommendations are based on being an investor in eight underperforming companies, which were subject to past shareholder activism by Barington. The following recommendations are based on an article “Maximizing the Benefits of Board Diversity” by Jared Landaw, former CEO,

General Council, and partner of Barington Capital Group (Landaw, 2020). The previous changes and improvements cited for the L Brands (now Bath & Body Works) board, as well as the new Victoria's Secret board, appear to follow these recommendations for both demographic and cognitive diversity in boards. Cognitive diversity pertains to differences in people's knowledge, views, and perspectives, as well as in how they approach problems and perceive, process, and interpret information.

*1) Key findings:*

Boards can maximize the benefits of board diversity by recruiting demographically diverse directors who not only improve gender, racial, and ethnic diversity in the boardroom but also bring needed backgrounds, skills, and experiences as well as new views, perspectives, and approaches to problem solving. Overall, we believe that a cognitively and demographically diverse board is best equipped to perform its obligations and help a company compete, innovate, and respond to the disruption in today's challenging international markets.

*2) Benefits of adding cognitively diverse directors to a board:*

Barington has found that adding new, cognitively diverse directors to the board of an underperforming company with board composition concerns can meaningfully improve board performance by:

- expanding its knowledge base;
- increasing director independence and engagement;
- improving board culture and decision making;
- enhancing a board's ability to advise and oversee management; and
- serving as a catalyst for positive change, such as the implementation of measures to redress the company's challenges.

*3) Recommendations to help boards recruit directors who are both demographically and cognitively diverse:*

- Focus on recruiting demographically diverse director candidates who have strong business backgrounds and experience in areas that are required on the board to meet the company's current and anticipated needs.
- Utilize board and director-level assessments to determine what professional backgrounds, skills, and experiences are needed in the boardroom and whether such needs are being adequately met by the board's current members.
- Recruit from new talent pools and venture beyond using board networks and historical recruitment practices to help identify diverse director candidates who lack ties to incumbent directors and the senior management team.
- Carefully review a candidate's background and life experiences and have in-depth discussions with the candidate and the candidate's references to determine whether he or she is cognitively diverse from other members of the board.
- Ask questions to determine whether the candidate readily shares unique perspectives and new approaches to problem solving.
- Involve multiple directors in the interview process and conduct interviews in a variety of settings to get an accurate read of the candidate.
- The goal of a board should be to recruit directors who are both demographically and

cognitively different from its incumbent directors and therefore maximize the diversity they bring to the boardroom.

*4) Insights for what is ahead:*

- more carefully curated boards;
- use of outside advisors and sophisticated board and director-level evaluations to guide board recruiting and refreshment;
- increased focus on board culture;
- techniques to ensure that diverse views are shared and incorporated into a board's decision-making process;
- director education programs designed to help board and committee chairs improve board culture and oversee deliberations more effectively.

Cognitive and demographic diversity can also help deal with the emerging investor focus on risk management beyond just financial risk, such as competitive, political, environmental, climate, governance, litigation, regulatory, product integrity, disaster, cybersecurity, and global terror risks (Holcomb, 2017). Recent examples of market capitalization reduction from non-financial risks include (Holcomb, Grove, Clouse, & Klaw, 2019):

- Volkswagen (\$30 billion) where the board of directors was just an "echo chamber" for top management decisions, i.e., the emissions cheating;
- Wells Fargo (\$13 billion) where each customer was supposed to have eight separate (and unneeded) accounts, i.e., "8 is great" was the customer department slogan;
- Equifax (\$6 billion) where the data hack was not disclosed until after top executives had sold their Equifax stock, i.e., illegal insider trading;
- Walmart (\$30 billion) did not respond on a timely basis to the threat of online shopping and competitors like Amazon and Alibaba;
- ExxonMobil (\$29 billion) refused to acknowledge the environmental risks of vehicle emissions for many years and from 1998-2006 had funded \$33 million of "junk science" reports denying climate change and global warming.

## 6. A CHANGE IN CORPORATE FOCUS

On June 16, 2021, in response to much of the criticism it had received, Victoria's Secret announced that it was replacing its "Angels", the female models who gave Victoria's Secret its identity and image. For many years, Victoria's Secret's products for women had been designed more for men. The company decided to stop being about what men want and to become what women want, acknowledging the zeitgeist challenge to be more in line with the spirit of the times, the age, and the generation. Included in this change in corporate focus and culture is the movement towards a more diverse and inclusive image after much criticism over the lack of body and ethnic diversity in the brand's campaigns (Victoria's Secret, 2021).

Replacing the "Angels" is a VS Collective group of accomplished women with unique backgrounds, interests, and passions who share a common passion to drive positive change. The VS Collective goal is to build new, deeper relationships with all women. This ever-growing group will collaborate with Victoria's Secret to make revolutionary product collections with competing and inspiring content, create new internal associate programs, and rally support for causes vital to women. This group will

appeal to women worldwide and should provide credibility to Victoria's Secret new corporate focus (Victoria's Secret, 2021). The initial seven members of the VS Collective are:

- Adut Akech — refugee, mental wellness supporter, model;
- Amanda de Cadanet — journalist, photographer, Girl Gaze founder, equality advocate;
- Eileen Gu — world champion free skier, Youth & Women's sport advocate, model;
- Megan Rapinoe — LGBTQIA+ activist, pay equity crusader, professional soccer player;
- Paloma Elsesser — body advocate, community creator, model;
- Priyanka Chopra Jonas — actor, producer, entrepreneur;
- Valentina Sampiao — LGBTQIA+ activist, actor, model.

Among the first initiatives, these founding members will share their stories in a recurring podcast. Each episode will showcase the remarkable experiences and perspectives of one VS Collective member as well as reveal further details of their partnership with the brand. For example, Megan Rapinoe, the pink-haired soccer star, and gender equity campaigner said: *"I am humbled to join this group of incredible women to drive change within the Victoria's Secret brand and beyond. So often I felt myself on the outside looking in with brands in the beauty and fashion industry, and I'm thrilled to be creating a space that sees the true spectrum of ALL women. I believe in the power of authenticity and community and am excited to show what can be done through the VS Collective"* (Victoria's Secret, 2021).

On July 30, 2021, another change in corporate focus with a significant board of director implications came with the settlement of a lawsuit against L Brands. The lawsuit focused on allegations from shareholders, including the Oregon Public Employees Retirement Fund that L Brands' officers and directors breached their fiduciary duties by fostering a culture of misogyny at the company, including around models, and by maintaining ties with Jeffrey Epstein, the sex criminal, who was close to Leslie Wexner, the former CEO and COB of L Brands. Ellen Rosenblum, Oregon's attorney general, said: *"When our state invests public retirement dollars in a company, we have a duty to make sure our investments are sound — and the board acts in our best interest. There was a clear pattern at L Brands of a board that allowed key executives to use their power to promote a culture of fear, discrimination, and harassment"* (Maheshwari, 2021).

Wexner's close ties to Epstein came to light in 2019 and a *New York Times* investigation showed that Wexler and his former chief marketing officer, Ed Razek, presided over an entrenched culture of misogyny, bullying, and harassment. As part of the lawsuit settlement, L Brands will release current and former employees from non-disclosure agreements tied to sexual harassment claims and take steps to promote diversity, equity, and inclusion (DEI). Victoria's Secret and Bath & Body Works each will spend \$45 million in the next five years to fund new policies. Other changes include the establishment of a DEI council and an overhaul of internal policies and training for sexual harassment and discrimination (Maheshwari, 2021).

## 7. CORPORATE GOVERNANCE SUCCESS REFLECTED IN STOCK PRICE PERFORMANCES

The resulting successful stock price performances relate to Barington's initial 2019 letter whose recommendations served as a catalyst for changes and improvements in management, strategy, board members, operational execution, and corporate culture. Corporate governance by itself does not create value but as shown in this updated case, led to improved strategic management, planning, and operational execution. The subsequent success in the company's financial and stock price performances reflects this increase in value.

L Brand's common stock price had plummeted from an all-time high of \$100.22 on November 4, 2015, to \$26.81 on March 5, 2019, the date of Barington's letter. L Brand's total market capitalization loss had been \$20 billion and about half of that loss occurred in 2018 (Grove & Clouse, 2019). From that March 5, 2019, a stock price of \$26.81 to a stock price of \$74.05 as of June 30, 2021, L Brands' market capitalization of \$7.3 billion almost tripled to \$20.5 billion, an increase of \$13.2 billion. With the 2020 earnings per share of \$4.93, the price earnings ratio was 15 at mid-year 2021, versus a negative 13.4 at year-end 2018. Of the 21 stock analysts rating L Brands, there were 9 buys, 12 holds, and 1 strong buy recommendation. L Brands has been reinstating its dividend, repurchasing its stock, reducing its debt, issuing senior notes, and establishing a term loan. These concurrent, aggressive financing decisions were reflected in the positive ratings by 21 financial analysts (L Brands, 2021c).

On March 9, 2021, in its Form 10-K, the annual report required by the SEC for public companies, L Brands announced that its board had authorized the following financing decisions (SEC, 2021a):

- A reduction in the company's debt that will be affected by a make-whole call to repurchase the remaining \$285 million of outstanding 2022 Notes and the \$750 million of outstanding 2025 Secured Notes. This make-whole call was issued on March 12, 2021, and the company anticipates using approximately \$1.1 billion in cash to complete the debt repurchase.

- A new \$500 million share repurchase plan, which replaces the \$79 million remaining under the March 2018 repurchase program. Pursuant to the board's authorization, the company entered into a rule 1065-1 purchase plan to effectuate share repurchases up to \$250 million.

- A reinstatement of the company's annual dividend at \$0.60 per share, beginning with the quarterly dividend to be paid in June 2021.

- On May 11, 2021, L Brands announced a spinoff plan to separate itself into two independent, publicly traded companies, Bath & Body Works and Victoria's Secret (L Brands, 2021a). On July 1, 2021, L Brands announced additional financing decisions: the pricing of an upsized \$600 million offering of 4.625% Senior Notes due 2029 and a \$400 million Term Loan Credit Facility for Victoria's Secret (L Brands, 2021b).

On August 3, 2021, L Brands (now known as Bath & Body Works, Inc.) completed a tax-free spinoff of Victoria's Secret to Bath & Body Works shareholders who then can decide whether to continue to hold or sell their Victoria's Secret stock

for capital gains or losses. This spin-off was like Barington's recommendations and had unanimous board approval. The largest institutional owners are Lone Pine Capital (9.5%), The Vanguard Group (8.6%), Egerton Capital in the UK (5.7%), BlackRock Institutional Trust Company (3.9%), PRIMECAP Management (3.3%), State Street Global Advisors (2.9%), Melvin Capital Management (2.9%), Steadfast Capital Management (2.1%) and Goldman Sachs Asset Management (1.7%). This tax-free spinoff was achieved through the distribution of all the common shares of Victoria's Secret (VSCO) to holders of Bath & Body Works (BBWI) common stock after the market closed on August 2, 2021. The Bath & Body Works stockholders received one share of Victoria's Secret common stock for every three shares of Bath & Body Works common stock, held at the close of business on the record date of July 22, 2021 (Bath & Body Works, 2021).

For an example of a return-on-investment calculation for these shareholders, their investment in one share of L Brands (now BBWI) was \$74.05 on June 30, 2021. Multiplying this price by the spinoff requirement of 3 BBWI shares to receive one VSCO share is a total market value of \$222.15. As of October 26, 2021, the BBWI stock price of \$71.13.16 times the three required BBWI shares are a market value of \$213.39 plus one share of VSCO at \$53.77 on the same date for a total market value of \$267.16. The total gain is \$27.48 (\$267.16-\$222.15) for a 20.3% return on investment for these shareholders over just 118 days from June 30, 2021. Barington is still a very successful investor in both companies.

There has been a significant price increase in Victoria's Secret shares from the spinoff price on August 3 of \$45.99 to the August 10 closing price of \$74. On August 9, JP Morgan set a December 2022 price target of \$100 which pointed to a 70% upside. Bank of America had previously set a \$75 price objective and Morgan Stanley had called Victoria's Secret a "credible turnaround" with a 65% upside. For the analysts currently following Victoria's Secret, there are two strong buys and six buys with no sell recommendations (Schultz, 2021). As of August 10, 2021, Victoria's Secret stock is very close to both the \$75 price objective and the 65% upside prediction by the two major global banks and already about halfway to the December 2022 price target of \$100 by the third major global bank.

Both male CEOs of L Brands and Victoria's Secret will continue to hold their positions and seats on the boards. The new Victoria's Secret board consists of seven directors, six of whom are independent women, and the Bath & Body Works board has six of ten independent female directors. Both companies have female COBs. Both companies have new CFOs, a female for Bath & Body Works and a male for Victoria's Secret (Bath & Body Works, 2021).

The Barington activist investor's successful corporate governance and strategic management impacts are also reflected in Table 3. This successful L Brand turnaround is shown in both the 2020 and 2021 stock price performances. This common stock price success started after the 2019 Barington's letter to the L Brands CEO. The stock price more than doubled from \$18.12 at year end 2019 to \$37.19 at year end 2020 and doubled again to \$74.05 by mid-year 2021 versus the S&P 500 stock price increases of 16.3% in 2020 and 9.8% by mid-year 2021.

Table 3 also shows the additional stock valuation metrics of price to earnings, price to sales, and price to cash flow. All these metrics for the year-end time frames of 2018, 2019, and 2020 were below the corresponding S&P 500 benchmarks. The performance metrics of profit margin, revenue growth, and return on assets had mixed results versus the S&P 500 benchmarks. The profit margin exceeded the S&P 500 benchmark in 2020 and almost tripled (2.8) from 2.8% in 2019 to 7.7% in 2020, reflecting the success of the L Brands turnaround. A major part of this turnaround strategy was to close underperforming retail stores and brands and introduce new zeitgeist brands in line with the spirit of the times and generations. Consequently, there was no revenue growth during the 2018-2020 period. However, as L Brands operations were being streamlined, the return on assets exceeded the S&P 500 benchmarks in each of these three years. Return on equity was a meaningless negative value in all three years, due to the cumulative retained earnings losses from prior management who had ignored the zeitgeist trends for their Victoria's Secret brands.

**Table 3.** L Brands valuation metrics

| L Brands<br>Three year trends: 2018-2020 |               |          |          |          |
|--|---------------|----------|----------|----------|
| Valuation metrics                        | Year end      |          |          |          |
|  | June 30, 2021 | 2020     | 2019     | 2018     |
| Common stock price                       | \$74.05       | \$37.19  | \$18.12  | \$25.67  |
| YTY performance % change                 | 99.1%         | 105.2%   | -29.4%   | -57.4%   |
| S&P 500 YTY performance % change         | 9.8%*         | 16.3%*   | 29.2%*** | -6.2%*** |
| Price/Earnings                           |               | 12.4     | -13.4    | 11.1     |
| S&P 500 benchmark                        |               | 40.3**   | 24.9**   | 19.6**   |
| Price/Sales                              |               | 0.9      | 0.4      | 0.5      |
| S&P 500 benchmark                        |               | 10.7**   | 9.9**    | 6.7**    |
| Price/Cash flow                          |               | 5.1      | 4.1      | 5.1      |
| S&P 500 benchmark                        |               | 22.7**   | 25.0**   | 21.6**   |
| Performance metrics                      |               |          |          |          |
| Profit margin                            |               | 7.7%     | 2.8%     | 4.9%     |
| S&P 500 benchmark                        |               | 5.6%*    | 9.4%***  | 8.7%***  |
| Revenue growth                           |               | -8.3%    | -2.4%    | 5.3%     |
| S&P 500 benchmark                        |               | -3.1%*** | 2.6%***  | 11.8%*** |
| Return on assets                         |               | 7.3%     | 3.6%     | 7.9%     |
| S&P 500 benchmark                        |               | 1.8%*    | 2.6%*    | 2.7%*    |

Notes: \* higher than benchmark; \*\* lower than benchmark.

## 8. SUBSEQUENT EVENTS

Barington had suggested many necessary changes to solve L Brands' major problems and to create additional shareholder value in its March 5, 2019, letter to the L Brands CEO Leslie Wexler. Many of the problems were due to bad corporate governance. After the initial case study paper was published (Grove & Clouse, 2019), things got even worse for L Brands when it was revealed that Leslie Wexler's long-time financial adviser was Jeffrey Epstein. Wexler had allegedly sold Epstein an eight-story mansion for only one dollar. Epstein was well known and was friends with many high-level people. His closest friends were Prince Andrew, Bill Clinton, and Leslie Wexler (Wade, 2020). On August 9, 2021, Prince Andrew was sued by a woman who claims she was recruited by Epstein as a teenager and "lent out" to powerful men, including Prince Andrew, for sexual purposes (Van Voris, 2021). Epstein was arrested for his dealings with underage girls and was



put in jail where he mysteriously died before there was a trial. Wexler and his wife both resigned from the company on May 20, 2021.

On July 6, 2021, the authors of the original L Brands case study had a Zoom call with James Mitarotonda, the founder and CEO of Barington after his June 25, 2021, request for a meeting. He became aware of this case study when he was contacted by Hulu, a video subscription service owned by the Walt Disney Company. Hulu is planning to do a documentary on L Brands to be completed in early 2022. Mitarotonda thinks the original case study was very well done and thought a follow-up case study could show all the positive results that can come from an activist investor involvement as a catalyst for a corporate turnaround.

On July 13, 2021, the spinoff of Victoria's Secret was approved by the board and implemented on August 3, 2021, reflecting the recommendations of Barington Capital Group being effectively implemented. Such Barington recommendations were also reflected in the very successful turnaround of L Brands (now renamed Bath & Body Works after the Victoria's Secret spinoff). The company is in the process of reinstating its dividend, repurchasing its stock, reducing its debt, issuing senior notes, and establishing a term loan. All these contemporary, aggressive financing strategies show successful business operations with improved corporate governance.

On July 30, 2021, there was another major corporate governance impact on L Brands from a lawsuit settlement with shareholders, including the Oregon Public Employees Retirement Fund. There were significant board of director implications from this settlement. The lawsuit focused on allegations from shareholders that L Brand officers and directors breached their fiduciary duties by fostering a culture of misogyny at the company. As part of the lawsuit settlement, L Brands will release current and former employees from nondisclosure agreements tied to sexual harassment claims, and each brand, Victoria's Secret and Bath & Body Works, will spend \$45 million in the next five years to fund new diversity, equity, and inclusion policies.

Additional recent successes by activist investors were related to the oil industry and climate change challenges. A lawsuit by *Milieudefensie*, the Dutch arm of Friends of the Earth, along with Greenpeace and 17,000 Dutch residents as co-plaintiffs, was filed against Royal Dutch Shell. On May 26, 2021, a Dutch court in The Hague ruled the company has to slash emissions 45% by 2030 and 72% by 2040 with a series of interim targets along the way, as opposed to the company's vague goal of zero net emissions by 2050. Such deep cuts include Shell's scope 3 emissions, a category that includes vehicle drivers burning Shell's signature gas product and would require a rapid transformation of the company (Baazil, Miller, & Hurst, 2021; Wagner, 2021). The symbolism was inescapable. The Netherlands, famously built on land reclaimed from the sea, faces the immediate threat from a warming climate with rising ocean levels, caused by the burning of Shell's own oil and gas products (Sengupta, 2021).

Activist shareholder proposals at companies' annual meetings can also have risks like climate

lawsuits for management and boards of directors. On May 26, 2021, Chevron shareholders voted for a proposal to compel the company to reduce pollution by its customers, i.e., another challenging scope 3 emissions reduction directive, like the Shell court ruling. On May 27, 2021, ExxonMobil shareholders ousted three of the twelve board directors, seen as insufficiently attuned to the threat of climate change, and replaced them with three directors demanding climate action. This proxy fight campaign was led by Engine No. 1, a small activist hedge fund, which stated: "A refusal to accept that fossil fuel may decline in decades to come has led to a failure to take even initial steps towards evolution, and to obfuscating, rather than addressing long-term business risk". Although opposed by ExxonMobil which spent \$35 million against these board elections in a six-month proxy fight, this \$30 million campaign was successful because it was supported by the following large ExxonMobil activist shareholders: BlackRock, Vanguard, and State Street, which are the world's three biggest fund managers, and California State Teachers' Retirement System, California Public Employees' Retirement System, and New York State Common Retirement Fund, which are three of the four biggest U.S. pension funds, as well as BNP Paribas Asset Management, Fidelity Mutual Funds, and the two leading shareholder advisory firms, Institutional Shareholder Services and Glass Lewis (Crowley, 2021).

## 9. CONCLUSION

Concerning major results, the Bath & Body Works company (formerly known as L Brands) and the Victoria's Secret spinoff company had very successful stock price performances (20.3% return in just the last 118 days) after their reorganization. Such success relates to the corporate governance and strategic management recommendations by the activist investor Barington in its initial 2019 letter. These recommendations served as a catalyst for these companies to make changes and improvements in management, strategy, board members, operational execution, and corporate culture. The Barington recommendations for both boards were based on its experience as an activist investor in eight underperforming companies. Corporate governance by itself does not create value but did lead to improved strategic management, planning, and operational execution. The subsequent increase in value was reflected by both the financial and stock price performances of these two evolving companies.

Barington's corporate governance recommendations were adopted by both companies. Key management recommendations were no CEO duality and a more modern, strategic CEO. For the board of directors, key recommendations were independence, industry experience, younger ages, more diversity, annual reelections of all board members, term limits, and an accounting expert on the audit committee. Barington's recommendations for board qualifications, skill, and experience were also implemented. Key ones were consumer technology, digital marketing, executive business experience, finance expertise, marketing insights, and experience in the retail clothing sector.

The major limitation of this research was the focus on just one activist investor, Barington Capital Group, in just one case study. Concerning future research, additional case studies could develop a comparative perspective on the operations

and success of various activist investors. Also, long-term stock price performance could provide additional perspectives in comparison to this very successful, ongoing investment by this activist investor, Barington.

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