

Boardroom Perspectives™

Three Practical Steps to Stay Ahead of Shareholder Activism

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Activist investors continue to shape corporate governance. Last year saw more than 300 activist proxy campaigns, proposals and contests. Activism-focused funds manage over \$100 billion in assets.

In this climate, no company is too large to avoid activists' influence. There is no guaranteed safety — not corporate governance, share price appreciation or outperforming peers. All companies should remain prepared for engagement.

Experience shows that preparation can make a decisive difference. Companies that establish and maintain a good reputation with institutional investors will have an advantage when interacting with activists.

To prepare effectively, we recommend three broad ongoing practices:

- monitoring exposure to activists;
- communicating with shareholders and analysts; and
- planning for activist campaigns.

Monitoring exposure to activists

Companies should continually monitor available information to assess their exposure to activists:

- Monitor outside groups, including the company's peer group, sell-side analysts, proxy advisors, pension funds, activist investors, print media and online sources.
- Understand institutional holdings and the relationships among the holders, especially those who may team up with others, by monitoring Schedule 13G, 13D, 13F and Hart-Scott-Rodino filings, parallel (wolf pack) trading and debt trading patterns.
- Watch the proxy advisory firms and institutional investor groups, such as Institutional Shareholder Services (ISS), Glass, Lewis & Co., the Council of Institutional Investors and TIAA-CREF. Although ISS can influence up to 30% of the vote, some investors use ISS's position only as a starting point. For example, institutional investors such as Fidelity and BlackRock have their own internal proxy departments.
- Review corporate governance ratings, correct any inaccuracies and identify potential changes that could improve the company's governance rating.
- Maintain a feedback loop by monitoring earnings call participants, conference attendees, follow-up requests and other investor contacts, always seeking candid feedback and facilitating open communication.

Communicating with shareholders and analysts

Use inbound and outbound communication to build key relationships:

- Use relationship building to keep your friends close and your major institutional investors closer. Engage regularly with both portfolio managers and proxy departments. Know institutional investors' guidelines, key decision makers and how to reach them. Establish credibility with shareholders and analysts in advance.
 - Seek out inbound communication and candid feedback. Use ongoing dialogue to ensure that management and the board of directors understand investor sentiment.
 - Use outbound communication as part of a concerted communications strategy. Ensure that communications consistently describe the basic strategic message. Focus especially on relative performance, proactively addressing any shortfalls as compared to peers.
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Planning for activist campaigns

Formulate a plan to prepare for an activism crisis:

- Evaluate protections in the company's charter, bylaws and applicable laws for potential measures that could be used in response to an activist campaign.
- Develop and maintain a public communications plan, which should include steps for strategic outreach to the media, regulators, political groups and others. Keep these relationships current to facilitate public messaging.
- Identify team members and have key players ready in advance to assist quickly in response to emergencies. Identify your lineup of counsel, investment bankers, proxy solicitors and public relations specialists.

Taken together, these three steps — monitoring, communicating and planning — offer concrete actions that companies can use to ensure their preparedness for an activist campaign. **LW**



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