Shareholder Activism

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Shareholder Activism Overview
Shareholder Activism Highlights

• Shareholder activism is now part of the corporate governance landscape
  • Shareholder activism has become a prominent and ordinary course issue facing companies in the US and around the world – it is not a sporadic phenomenon
  • Assets managed by activist hedge funds have doubled over the past few years
  • The number of public companies known to be subject to activist campaigns has continued to increase year over year
  • Activist investors are gaining support and credibility from institutional investors

• It is important to proactively and preemptively address shareholder activism and be prepared at the board and management level
  • Preparation is part of good governance and enables a company to respond most effectively if and when an activist investor shows up at the door
  • Preparation dovetails with consistent shareholder engagement
Increasing Shareholder Power: Emerging Corporate Governance Best Practices

- Following a wave of corporate scandals in the early 2000s (Enron, WorldCom, Parmalat, etc.), there was a sea change in the corporate governance landscape

- New U.S. regulations, including Sarbanes-Oxley and the Dodd-Frank Act, have dramatically changed the face of U.S. corporate boards
  - Boards are majority independent and key committees are entirely independent
  - Many companies have a lead independent director and/or a separate chairman
  - Boards now meet more frequently – both as a whole and in executive session without the CEO
  - Director qualifications face more scrutiny with boards increasingly considering directors by category (i.e., shareholder/investor friendly, relevant industry or financial experience)

- Increased focus on year round shareholder engagement and outreach
  - Management, Corporate Secretary, Investor Relations attendance at investor conferences
  - Senior management focused on building relationships with both portfolio managers and proxy contacts at top shareholders; board members are also asked to engage with significant investors

- Other changes have increased shareholder power in the U.S.
  - Board members are purchasing shares to show alignment with shareholders
  - Improved compensation disclosures and incentive transparency
  - SEC rules have enabled shareholders to interact with each other more freely
  - Shareholder proposals have been effective in removing classified boards and other takeover defenses, and recently adopting proxy access, at many public companies
  - Proxy fights and withhold vote campaigns have increased exponentially
Overview of the Current Environment

Despite ongoing debate by academics and professionals regarding the “short-termism” of activist investors, shareholder activism continues to be a prominent feature of the corporate landscape.

- A large amount of capital has flowed into hedge funds pursuing activist strategies in recent years, resulting in hundreds of funds entering the fray.
  - Activists represent less than 1% of hedge funds but account for ~4% of fund assets under management.
  - However, in Q1 2016 funds suffered the worst outflows since 2009.
  - Also, activist-targeted U.S. stocks were down 7.7% in 2015.
- Success in raising funds and achieving activist objectives, and in taking board seats through proxy contests and settlements, has fueled increased activity.
  - The number of public companies known to be subject to activist demands in 2015 grew 16% over 2014.
  - Over 400 activist campaigns were initiated globally in the first half of 2016, with more than 269 in the U.S. alone by the end of May.
- With more capital and credibility, activists (even those with small positions) have targeted even the largest companies.
  - e.g., AIG, Apple, DuPont, General Electric, General Motors, Microsoft, PepsiCo, Procter & Gamble and Walgreens.
  - In 2015, 14% of companies targeted by an activist had a market cap of more than $10 billion.
  - 62 S&P 500 companies were targeted by an activist in 2015.

Chart Source: HFR Industry Reports

TOTAL ACTIVIST HEDGE FUND AUM ($bn)

- Sale, breakup, return of capital and operational activism increasingly common.
- Activists are developing more sophisticated theses, in-depth analyses and “high-quality” white papers.
- “Red flags” that attract activists include significant stock price underperformance, operational challenges relative to peers and earnings misses, as well as the perceived potential for better performance.
  - But recently companies that have performed in-line with or better than their peers have also become targets, due to activist hesitation to invest in companies with greater operational risk.

MORE CAPITAL AVAILABLE

FOCUS ON UNLOCKING VALUE
The number of activists subjecting a listed company to a public activist demand and the number of listed companies worldwide subject to activism is more pronounced than ever in the past two years. Public activist demands made in the first half of 2016 also exceeded the number of demands made in the first half of both 2014 and 2015.

<table>
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<tr>
<th>Number of Active Public Activists</th>
<th>Number of Listed Companies Publicly Subjected to Activist Demands</th>
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<tbody>
<tr>
<td>2014: 269</td>
<td>2014: 462</td>
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<tr>
<td>2015: 397</td>
<td>2015: 551</td>
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Public Activism Trend: Activist Campaigns Are More Successful

Activist demands achieved higher levels of success globally in 2015. Activists had the most success in the U.S. and made the most progress in Asia. Activists place a high value on the public perception of a successful campaign (i.e. partial victory or settlement), even without achieving an outright “win.”

Source: Activist Investing: an Annual Review of Trends in Shareholder Activism, 2016, Activist Insight
Public Activism Trend: Board and M&A Activism Most Popular in 2015

- Board-related activism continued to be the most popular activist tactic in 2015. Activist campaigns to appoint new directors, remove incumbent directors, de-classify director terms and separate the CEO/Chairman roles accounted for more than 50% of 2015 activist actions.

- Activists also engaged in more M&A activism in 2015, pushing for deals as well as higher valuations.

- Balance sheet activism, including calls for dividends and share buybacks, also increased, while operational demands declined.

- Activists also frequently pursue multiple objectives and demands in the same campaign, with governance activism often used as a means to achieve economic objectives.

Source: Activist Investing: an Annual Review of Trends in Shareholder Activism, 2016, Activist Insight
Who Are The Activists?

- Not all activists are the same – each has its own strategy and objectives
  - Some are long established
    - e.g., ValueAct, Pershing Square, Icahn, Elliot, Third Point
  - Others are quite new, often “second generation”
    - e.g., Engaged, Corvex, Marcato, Sarissa
    - In 2015, 51% of demands came from “occasional” activists, up from 37% on average from 2010-14
    - 49 funds with no previous record of activism made demands at U.S. public companies in 2015
    - Growth in activist activity in 2016 can be attributed to small- and mid-cap activism by new activists
  - Investment horizons can range from very short term to somewhat longer term
    - An activist hedge fund’s redemption policy (e.g., quarterly redemption vs. longer-term “lock-up” commitments) may also have an impact on its investment strategy
- Increasingly activists are teaming up with a partner (another activist, an institutional investor or a strategic acquiror) in a particular campaign
  - e.g., Pershing Square and Valeant paired up against Allergan
# Key Players Dominating the Headlines

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<tr>
<th>Activist</th>
<th>Selected Campaigns</th>
<th>“Playbook”</th>
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</table>
| Paul Singer (Elliot Management) | Samsung, Citrix, Energy, Alcoa, Qlik, Juniper, Alliance, Trust, EMC | • Extensive, respected activist track record (more than 90 campaigns to date)  
• Commonly seeks a break-up or sale of the company  
• Not afraid to launch proxy fights, but prefers to settle prior to the vote  
• Since 2012, only one campaign for board seats has failed  
• Average market cap of targets in 2015: ~$7.6 billion |
| Carl Icahn (Icahn Associates) | Netflix, Genzyme, Forest, Dell, Energy, Yahoo, NAVistar, AIG, Xerox, Hertz | • Typically “sell the company” activist  
• Begins with industry thesis, then identifies targets (e.g., natural gas, biotech)  
• Investors have mixed view of him; does not always choose strong slate  
• Secured board seats at AIG (2), Cheniere (2) and Xerox (3), among others  
• Average market cap of targets in 2015: ~$9.7 billion |
| Daniel Loeb (Third Point) | Sony, Murphy, Yahoo!, Sotheby’s | • Had been inactive for years before Yahoo! campaign  
• Known for his letters criticizing management  
• Tactics can be aggressive and personal  
• Received four board seats (two independent) at Dow Chemical  
• Average market cap of targets in 2015: ~$71.6 billion |
| Nelson Peltz (Trian Partners) | Ingersoll Rand, Sysco, Soquel, Pepsi, Heine, Dr Pepper, Snapple | • “Operational” activist known for identifying simple “fixes”  
• Prefers to be called a “highly engaged shareholder” rather than an activist  
• Highly respected for white papers and work done on portfolio companies  
• Inclined to work with management privately  
• Recently unsuccessful in very high-profile DuPont proxy contest  
• Recently took a $2.5 billion stake in General Electric  
• Average market cap of targets in 2015: ~$60.7 billion |
| Bill Ackman (Pershing Square) | Valeant, Target, Herbalife, Lululemon, JcPenney, Kraft, P&G, Mondelez, BNY Mellon, Qualcomm | • Inclined to private discussions; less likely to settle after public escalation  
• 8-10 investments represent 90% of AUM  
• Typically prepares sizeable report/analyses to support thesis  
• Average market cap of targets in 2015: ~$30.4 billion |
| Barry Rosenstein (JANA Partners) | Team Health, Ashland, Conagra Foods, Juniper, Agrium, Oil States, Qualcomm | • Liked by institutional investors and ISS; often partners with pension funds  
• Campaigns are always about ideas, never personal  
• Has only had to go to vote once (Agrium)  
• Recently received board seats at ConAgra (2) and Team Health (3)  
• Average market cap of targets in 2015: ~$46.7 billion |
Activists often follow a standard playbook of escalation tactics; key objective is to create an impression of inevitability

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<th>OVERVIEW OF TACTICS</th>
<th>SELECTED EXAMPLES</th>
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| **PRIVATE DISCUSSIONS** | • Activist engages in private dialogue with management/Board  
  • Activist conducts background checks on directors and management  
  • Management/Board often receptive, seeking to preempt public agitation  
  • Discussions can avoid further agitation or lead to settlement; if unsuccessful, activist could escalate  
  • Nothing is gained by refusing to meet with activists |
| **MEDIA AND PR CAMPAIGN** | • Activist files a Schedule 13D disclosing its stake and an intention to pursue activism  
  • But activists are also successfully using smaller stakes (~1%) to press for change  
  • Activist initiates a high-profile public campaign designed to put pressure on Board  
  • Tactics employed vary: public statements, letters to management and shareholders, presentations (white papers), etc. – activists increasingly adept at using media  
  • Typically attracts like-minded investors/other activist funds – “wolf pack” |
| **PROXY CONTEST** | • Activist threatens a proxy fight – activists sought board seats at 157 companies in 2015  
  • Activist may ultimately engage in a proxy contest, seeking to elect minority slate of directors or force/encourage specific action (shareholder proposal)  
  • Large percentage of proxy fights results in activist winning one or more board seats (or achieving settlement)  
  • 112 settlements between companies and activists for board seats in 2015  
  • 48% of proxy contests that went to a vote in 2015 resulted in at least 1 board seat  
  • Proxy advisory firms tend to support activist campaigns in proxy contests |
| **LAWSUIT** | • If activist is well-funded, activist commences lawsuit (sometimes in conjunction with other tactics) to obtain information, reverse board decision, redeem poison pill, etc. |
| **“HOSTILE OFFER”** | • With some notable exceptions (e.g., Icahn, Elliot, Pershing Square), an activist does not often make an offer for the entire company  
  • Hedge funds have made approximately 100 unsolicited bids since 2005 |
Influence of Institutional Investors has Grown Significantly

Commentary

- Assets under management of traditional institutional investors have grown significantly.
- Index funds have grown twice as fast as other asset managers over the past decade.
- Ownership of many U.S. companies is concentrated at a relatively small number of traditional institutional investors (index and mutual funds) e.g., BlackRock, Vanguard, State Street and Fidelity.
- On average, BlackRock, Vanguard, State Street and Fidelity hold a combined 19.5% stake in S&P 500 companies.

Key institutional investors

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<tr>
<th>Institutional investor</th>
<th>Average percent ownership of S&amp;P 500 companies</th>
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<tbody>
<tr>
<td>BlackRock</td>
<td>~5.24%</td>
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<tr>
<td>Vanguard</td>
<td>~7.59%</td>
</tr>
<tr>
<td>State Street</td>
<td>~4.42%</td>
</tr>
<tr>
<td>Fidelity Management &amp; Research</td>
<td>~2.66%</td>
</tr>
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</table>

Growth in equity index mutual funds


Note: equity fund index represents funds that invest in portfolios with focuses represented by lines.

Growth in AUM by BlackRock, Vanguard, State Street & Fidelity vs. growth of S&P 500


\(^1\) Includes BlackRock Financial Management, Inc., BlackRock Institutional Trust Company, N.A. and BlackRock Investment Management, LLC.
Influence of Institutional Investors has Grown Significantly

• Traditional institutional investors are displaying increased willingness to directly express their views on governance matters and support activism
  • Index funds are long-term investors – their inability to exit investments nimbly increases their incentive to care about good governance and governance changes that on average increase enterprise value
    • “As indexes, we are permanent shareholders ... that is precisely why we care so much about good governance.” – F. William McNabb III, Chairman and CEO of Vanguard
  • With the decline of traditional pension funds, management no longer plays a role in determining where pension funds get invested — increased pension funds’ willingness to criticize management
  • Large traditional institutional investors have developed in-house proxy advisory functions to make their own decisions in proxy contests and initiate their own governance initiatives
  • However, given that traditional institutional investors are long-term investors, they may be less supportive of short-term capital allocation strategies advocated by activist investors in the future
    • “Companies also expose themselves to the pressures of investors focused on maximizing near-term profit at the expense of long-term value ... [w]e believe that companies are usually better served when ideas for value creation are part of an overall framework developed and driven by the company, rather than forced upon them in a proxy fight.” – Laurence D. Fink, Chairman and CEO of BlackRock

• An activist’s success in a campaign depends on receiving institutional investor support
  • Concentrated institutional ownership enables activists to rapidly garner support from other shareholders
  • Increasing support from traditional institutional investors has further emboldened activists – even activists with much smaller ownership interests, who can represent that they “speak for” much larger ownership stakes
  • Some traditional institutional investors are willing to pair with an activist in a particular campaign

(continued)
**How do Institutional Investors Decide Who to Support in a Proxy Contest?**

Institutional investors are increasingly supporting dissident slates of director nominees in proxy contests, helping them successfully gain board seats at public companies. Large institutional investors have developed in-house voting policies to guide their case-by-case voting decisions in proxy contests.

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<thead>
<tr>
<th>Investment Firm</th>
<th>Proxy Voting Policy</th>
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<tr>
<td><strong>BlackRock ($4.6 trillion in assets under management)</strong></td>
<td>BlackRock evaluates a number of factors including: the qualifications of the dissident and management candidates; the validity of the concerns identified by the dissident; the viability of both the dissident’s and management’s plans; the likelihood that the dissident’s solutions will produce the desired change; and whether the dissident represents the best option for enhancing long term shareholder value.</td>
</tr>
<tr>
<td><strong>Proxy Voting Policy:</strong></td>
<td><em>BlackRock voted with activists in 39% of the 18 largest U.S. proxy contests (measured by market cap) during the 2015 proxy season.</em></td>
</tr>
<tr>
<td><strong>Fidelity ($2+ trillion)</strong></td>
<td>Fidelity evaluates a number of factors including: management’s track record and strategic plan for enhancing shareholder value; the long-term performance of the target company compared to its industry peers; and the qualifications of both the dissident’s and management’s nominees, among others. Fidelity will ultimately vote for the outcome it believes has the best prospects for maximizing shareholder value over the long term. Fidelity makes clear that it believes strong management creates long-term shareholder value and generally tends to support management.</td>
</tr>
<tr>
<td><strong>Vanguard ($3+ trillion)</strong></td>
<td>Vanguard evaluates the nominees’ qualifications (both slates), the performance of the incumbent board, and the rationale behind the dissident’s campaign to determine which outcome Vanguard believes will maximize shareholder value.</td>
</tr>
<tr>
<td><strong>T. Rowe Price ($763 billion)</strong></td>
<td>T. Rowe Price evaluates a number of factors including: the long-term financial performance of the target company relative to its industry; management’s track record; and the qualifications of both the dissident’s nominees, among others.</td>
</tr>
<tr>
<td><strong>Dimensional Fund Advisors ($418 billion)</strong></td>
<td>Dimensional evaluates the following factors: long-term financial performance of the target company relative to its industry; management’s track record; background to the proxy contest; nominee qualifications and any compensatory arrangements; strategic plan of dissident slate and quality of critique against management; likelihood that the proposed goals and objectives can be achieved (both slates); and stock ownership positions.</td>
</tr>
<tr>
<td><strong>TIAA-CREF Asset Management ($834 billion)</strong></td>
<td>Will generally vote for the candidates it believes will best represent the interests of long-term shareholders. TIAA-CREF’s engagement program involves many different activities and initiatives. Engagement may include supporting an election contest or change of control transaction.</td>
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### Proxy Advisory Firms Still Influential

Although their impact has waned in recent years, proxy advisory firms remain influential. An unfavorable recommendation by ISS or (to a lesser degree) Glass Lewis could affect the outcome of a proxy contest.

In contested elections, proxy advisors consider a number of factors:

<table>
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<tr>
<th>FACTORS CONSIDERED</th>
<th>OTHER OBSERVATIONS</th>
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<tr>
<td>• ISS asks two questions:</td>
<td>• Proxy advisory firms generally are in favor of “new blood”— for at least a couple of seats.</td>
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<tr>
<td>1. <em>Has the dissident demonstrated that change is warranted at the company?</em></td>
<td>• Much more difficult for a dissident to achieve majority control, as ISS requires that (1) existing directors have clearly failed to perform their duties and (2) the dissident has a detailed, viable strategy for improvement of the company</td>
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<tr>
<td>2. <em>If change is warranted, are the dissident nominees more likely to effect that change than the management nominees?</em></td>
<td>• ISS supported at least one dissident in half of the proxy contests that went to a vote in 2015. ISS is also increasingly showing support for “control” slates.</td>
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<tr>
<td>• ISS considers the following factors, among others:</td>
<td>• Short slate rule facilitates nomination by dissidents of a few directors by permitting dissident proxy card to “fill out” the remainder of the Board (<em>e.g.</em>, proxy card elects named dissident nominees and all the unnamed management nominees other than Mr. X and Ms. Y)</td>
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<tr>
<td>• Long-term financial performance of target relative to its industry peers</td>
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<td>• Management’s track record</td>
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<td>• Background to the proxy contest</td>
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<td>• Nominee qualifications and any compensatory arrangements</td>
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<tr>
<td>• Strategic plan of dissident slate and quality of critique against management</td>
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<tr>
<td>• Likelihood that the proposed goals and objectives can be achieved (both sides)</td>
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<td>• Stock ownership positions</td>
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</table>
Traditional Activist “Red Flags”

- Relative underperformance and/or perceived potential for better performance
  - Compared to peers OR missed targets and/or earnings
  - But note that recently, activists have also been targeting companies who have performed in line with or better than their peers. About one third of recent target companies were outperforming the wider market when the activism began

- Significant cash on balance sheet or unused credit capacity

- Perceived management weakness

- Multiple business lines (spin or sell)

- Undervalued/underappreciated assets

- Perceived excessive executive compensation

- Concentrated shareholdings—how many shareholders does it take to get to 50% plus 1

- Perceived other governance issues (e.g., related party transactions, long board tenures, lack of board diversity)
Activism Preparedness & Response
**Activism Preparedness: Before the Activist Emerges**

Management and the Board should adopt a proactive strategy to anticipate and defend against the potential for an activist campaign before an activist knocks at the Company’s door.

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<thead>
<tr>
<th>1</th>
<th>ASSEMBLE AND EDUCATE TEAM</th>
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<tr>
<td>✓</td>
<td>Assemble core response team, including both internal personnel and external advisors (legal, financial, public relations, proxy solicitor)</td>
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<tr>
<td>✓</td>
<td>Review structural defenses and governance trends on an annual basis</td>
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<tr>
<td>✓</td>
<td>Conduct an annual review with the Board on strategic alternatives and intrinsic value</td>
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<tr>
<td>✓</td>
<td>Maintain communications between management and the Board</td>
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<th>2</th>
<th>IDENTIFY VULNERABILITIES</th>
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<tr>
<td>✓</td>
<td>Think like an activist investor</td>
</tr>
<tr>
<td>✓</td>
<td>Identify areas of potential vulnerability, including governance and financial performance</td>
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<tr>
<td>✓</td>
<td>Review charter/by-laws, contracts (change in control provisions, executive compensation)</td>
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<th>3</th>
<th>REMAIN PREPARED AND ANTICIPATE</th>
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<tr>
<td>✓</td>
<td>Take appropriate preemptive actions, including enhancements to structural defenses</td>
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<tr>
<td>✓</td>
<td>Formulate a business response plan to an activist investor challenge</td>
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<tr>
<td>✓</td>
<td>Develop a communications response plan: public messaging, investor outreach, employee outreach, ISS and other third-party governance reports</td>
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<tr>
<th>4</th>
<th>MONITOR SHAREHOLDERS</th>
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<tr>
<td>✓</td>
<td>Actively engage and monitor hedge fund and institutional shareholder base – understand their concerns and ensure management communicates regularly to address issues</td>
</tr>
<tr>
<td>✓</td>
<td>Communicate strategic plan and vision regularly to shareholder base</td>
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</table>
Activism Preparedness: Shareholder Engagement

• It is important to maintain a positive dialogue, relationships and credibility with shareholders, especially key institutional investors and other large shareholders

• Plan ahead – the best time to create a foundation for investor engagement is in between proxy seasons

• Practicing proactive and consistent investor engagement will help the Company both understand investor concerns and build credibility to secure support in the face of future activism

• Directors should understand their fiduciary duties and the Company’s current defensive posture, in addition to being familiar with the Company’s strategic plan

• The Company should articulate a clear strategic plan and vision for creating shareholder value and practicing good governance

• Consider any appropriate changes to the Company’s current governance practices – it may also be a good excuse to reach out to an investor

• Remain alert of developments in shareholder activism and proxy access

• *Remember to be mindful of Regulation FD during discussions with investors*
Hypothetical: An Activist Investor Comes Knocking

Part I

• On a clear day, the Company’s CEO receives a call from Mr. X, the head of a prominent activist hedge fund
  • Mr. X informs the CEO that his hedge fund has just become one of the Company’s largest shareholders and is about to file an HSR notification regarding its intent to acquire approximately 5.5% of the Company’s stock
  • Mr. X also states that his hedge fund will then file a Schedule 13D with the SEC publicly disclosing that it has acquired beneficial ownership of more than 5% of the Company’s stock and intends to engage in discussions with the Company’s board and management
  • Mr. X asks to schedule a meeting with the CEO and members of the Company’s board. Mr. X enthusiastically tells the CEO that the Company has great potential and he would like to share his thoughts on how the Company can further enhance shareholder value

• The CEO immediately calls you, the Company’s General Counsel, to inform you about the call from Mr. X

• What should you do?
Hypothetical: An Activist Investor Comes Knocking

Part II

• The CEO and Chairman of the Board agree to meet with Mr. X to learn as much as possible about Mr. X’s plans for the Company

• During the meeting, Mr. X discloses that he would like the Company to consider a spin-off of one of its business units and explains why he believes that a spin-off is in the best interest of the Company and its shareholders

• Mr. X states that he is willing to work with the Company privately, but that he is considering nominating three director candidates prior to the advance notice deadline for the Company’s upcoming annual meeting if he does not feel that sufficient progress has been made in advance of the deadline

• The CEO and Chairman report back to you and the Board regarding the meeting. What should you do next?
Hypothetical: An Activist Investor Comes Knocking

Part III

- The Company and Mr. X engage in further discussions over the next few weeks
- Mr. X is pleased to learn that the Company has agreed to consider a spin-off, but he does not think that the Company is moving fast enough
- The Company and Mr. X discuss a potential settlement, but Mr. X is adamant that he personally serve on the Board and the Company would prefer that a settlement involve appointing independent directors with industry expertise
- Unfortunately, settlement discussions break down and Mr. X sends an official notice nominating three director candidates (Mr. X and two independents) for election to the Company’s Board at the next annual meeting
- Mr. X also informs the Company that his hedge fund now beneficially owns more than 5% of the Company’s stock and will shortly be filing a Schedule 13D
- What should you do now? How should the Company prepare for a public campaign by the activist?
Hypothetical: An Activist Investor Comes Knocking

Part IV

• The Company and Mr. X’s hedge fund enter into a settlement agreement, pursuant to which Mr. X and an independent director selected by Mr. X are appointed to the Company’s board in exchange for certain standstill protections.

• The Company and its financial advisor conduct a strategic review to investigate the spin-off and other strategic alternatives available to the Company.

• The strategic review is now complete; based on the results, the Company’s financial advisor, senior management and a majority of the Board believe that a spin-off is not in the best interests of the Company and its shareholders.

• Mr. X and the new independent director disagree with this decision and continue to support a spin-off.

• How does the Board navigate this conflict? What should the Company do next?
# Activism Response: Best Practices

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<th>Legacy Approach</th>
<th>New Strategy</th>
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<td>• Respond reactively to activist interest in the company</td>
<td>• Objectively and proactively assess the company’s vulnerability to activism</td>
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<td></td>
<td>• Self-assess board composition and governance posture</td>
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<tr>
<td>• Ignore or stonewall the activist, especially if not a</td>
<td>• Establish an effective avenue for communication</td>
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<tr>
<td>material shareholder (~5%)</td>
<td></td>
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<tr>
<td>• No or limited interaction with activist by management</td>
<td>• Critical to listen to shareholder concerns no matter how small an investor’s ownership stake</td>
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<td>and Board</td>
<td>• Subject to Reg FD, actively engage in understanding an activist’s position</td>
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<tr>
<td>• Treat the activist like a hostile acquirer</td>
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<tr>
<td>• Defend the company’s stated strategy</td>
<td>• Provide the activist with senior management and possibly Board access, if appropriate</td>
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<tr>
<td>• Implement defensive measures</td>
<td>• Objectively assess merits of shareholder input</td>
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<tr>
<td>• Reject the activist’s assertions/recommendations either</td>
<td>• Implement change if consistent with the company’s view of long-term value creation</td>
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<td>privately or in a press release</td>
<td>• Actively identify decision-makers at each shareholder and how they would vote</td>
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<tr>
<td></td>
<td>• Anticipate ISS’ response to defensive measures</td>
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<td></td>
<td>• Weigh pros and cons of potential settlement / concessions for the activist</td>
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<td>• Fight or contest the activist’s demands if necessary and in best interest of all shareholders</td>
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Activism Response: Best Practices

• The Company has no duty to disclose the emergence of the activist investor (unless the Company or its representatives is the source of a leak)
  • All inquiries should be referred to the CEO to enforce a “one voice” policy

• The Board should continue to meet regularly to discuss the activist situation
  • The Board can delegate day-to-day communications issues to a working group of directors, but the full Board should be kept informed at all times

• Keeping the board and management cohesive and energized is essential to success

• Remain focused on the business – activism campaigns consume time and resources, but strong performance is one of the Company’s best defenses

• Maintain credibility with shareholders, proxy advisory firms and other stakeholders by emphasizing the strengths of the Company’s strategic plan and why the Company’s board is best equipped to execute against that plan

• Consider whether the Company should take any affirmative actions (e.g., appoint new independent directors) even after the activist has gone public

• Consider whether it is appropriate to enact any defensive measures (e.g., put a poison pill in place), but be careful of ISS’ and investors’ reactions

• With the assistance of the Company’s external advisors, continue to monitor analysts’ reports, media and social media regarding the activism situation