Developments in Shareholder Engagement and Corporate Governance

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Executive Summary

• Corporate Governance
  • Shareholder Proposals
  • Proxy Access
  • Proxy Disclosure Issues & Areas of SEC Focus

• Compensation & Say-on-Pay
• Shareholder Engagement
• Shareholder Activism
• Other Topics
Corporate Governance: Shareholder Proposals
## Most Popular Shareholder Proposals

<table>
<thead>
<tr>
<th>By Number Put to a Vote</th>
<th>By Vote Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proxy Access</td>
<td>Reduce Supermajority</td>
</tr>
<tr>
<td>Political Contributions</td>
<td>Proxy Access</td>
</tr>
<tr>
<td>Independent Chair</td>
<td>Call a Special Meeting</td>
</tr>
<tr>
<td>Act by Written Consent</td>
<td>Act by Written Consent</td>
</tr>
<tr>
<td>Greenhouse Gas Proposals</td>
<td>Pro-Rata Vesting of Equity Awards</td>
</tr>
<tr>
<td>Pro-Rata Vesting of Equity Awards</td>
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</tr>
<tr>
<td>Call a Special Meeting</td>
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</tr>
<tr>
<td>Report on Sustainability</td>
<td>Clawback</td>
</tr>
<tr>
<td>Clawback</td>
<td>Political Contributions</td>
</tr>
<tr>
<td>Reduce Supermajority Provisions</td>
<td>Greenhouse Gas Proposals</td>
</tr>
</tbody>
</table>
Corporate Governance: Proxy Access
Proxy Access: What a long, strange trip

1934: The SEC requests comment on whether “shareholders [should] have access to management’s proxy soliciting materials for the purpose of nominating persons of their choice to serve on the board of directors.”

1942: The SEC solicits comments on a proxy access rule proposal, which was never adopted.

1940s – 1970s: Not much attention is paid to the issue of proxy access.

1977: The SEC requests comment on whether “shareholders [should] have access to management’s proxy soliciting materials for the purpose of nominating persons of their choice to serve on the board of directors.”

Early 1990s: The SEC Staff uses the director election exclusion of 14a-8 to allow issuers to exclude proposals relating to the nomination and election of directors.

1992: The SEC rejects a universal proxy access concept and instead adopts the “short slate” rules.

2003: The Staff studies the election and nomination of directors, and the SEC proposes a rule providing proxy access to 5% holders upon the occurrence of certain triggering events.

2005: AFSME v. AIG casts doubt on the SEC’s Rule 14a-8(i)(8) position for excluding proxy access proposals.

2007: The SEC proposes and then rejects universal proxy access for 5% holders, while confirming a basis for excluding an access proposal.

2009-2011: The SEC proposes and ultimately adopts universal proxy access for 3% holders who have held for 3 years, while also reversing the director election exclusion provision of Rule 14a-8(i)(8). The Dodd-Frank Act resolves authority questions. The rule is invalidated.

2011-2015: Private ordering of proxy access occurs with Rule 14a-8 proposals, culminating in the Boardroom Accountability Project.
Proxy Access Developments in 2015

- Shareholder Proposals in 2015
  - 86 Proposals Submitted to a Vote
  - Average 55% Support
- Over 100 companies within the S&P 500 have adopted proxy access, a majority without shareholder approval of a proxy access shareholder proposal
- Shareholder proposals are focusing more on CII’s Best Practices
- Is 3 years/3%/25% the standard?
- What about group size?
- What to do if you have yet to receive a proposal
- What to do if you have received a proposal
Corporate Governance:
Proxy and Other Disclosure Developments
Director Election Voting Standards

- In July 2015, CII filed a rulemaking petition asking that the SEC require companies to clarify the voting standards for the election of directors because in CII’s view, companies that use the state law default plurality rule, coupled with a policy that requires the director to submit a resignation if the director does not receive a majority of votes in favor, should not be permitted to state that their directors are elected by majority voting standards.
  - In addition, CII believes that proxy cards should only allow for the ability to “withhold” instead of voting “against”

- The United Brotherhood of Carpenters previously submitted a supplement to a petition filed in 2011, addressing a similar problem.

- The SEC Staff in the Division of Economic and Risk Analysis found examples of a number of companies which described their director election voting standards in a confusing manner.
Audit Committee Disclosure

• Over the past four years, there has been a substantial increase in attention to the role played by the audit committee of the board of directors and the audit committee-auditor relationship

• Several groups have noted the importance of the audit committee and its oversight responsibilities with respect to the auditor, while at the same time citing a lack of transparency about this relationship and the overall role that the audit committee plays within the issuer

• Rel. No. 33-9862 (2015) is a new SEC concept release soliciting comment on many of the audit committee/auditor disclosure concepts that have been "encouraged" over the past few years
SEC Disclosure Review Project

- Over the past couple of years, the SEC Staff has been taking a close look at how to improve the disclosure regime for public companies.
- Disclosure reform is a frequent area of attention for the Staff and the Commission, however such efforts often fail to lead to tangible changes.
- The latest effort was prompted by the Regulation S-K study mandated by the JOBS Act and now the Fast Act has prompted further study.
- Many of the provisions of Regulation S-K and Regulation S-X need to be updated and modernized.
- The Staff is considering not only changes to the disclosure requirements, but also the ways in which information is presented to investors.
Executive Compensation & Say-on-Pay
Executive Compensation

- Say-on-Pay, which was implemented pursuant to the Dodd-Frank Act, has had a dramatic effect on disclosure about executive compensation and the level of engagement with stockholders on compensation and governance matters.
  - The concept for Say-on-Pay originated in the UK in 2002, and was advocated by shareholder proponents in the US beginning in the middle part of the 2000s.
  - The vote is non-binding, yet it has had a significant effect on pay disclosure and pay decisions.

- The say-on-pay experience has highlighted concerns about the role and influence of proxy advisory services.

- The vast majority of companies obtain substantial majority support for the say-on-pay vote, but the dialogue has focused increased attention on pay for performance and overall compensation practices.
Pay Ratio Disclosure

• New Item 402(u) of Regulation S-K requires disclosure of:
  (A) The median of the annual total compensation of all employees of the company, except the CEO of the company;
  (B) The annual total compensation of the CEO of the company; and
  (C) The ratio of the amount in (B) to the amount in (A), presented as a ratio in which the amount in (A) equals one, or, alternatively, expressed narratively in terms of the multiple that the amount in (B) bears to the amount in (A).

• Identifying the median employee

• Disclosing the pay ratio

• Evaluating the exemptions

• Transition period
Pay Ratio Disclosure

- Form a Compliance Team—SEC reporting, the general counsel’s office, investor relations, information technology, human resources, accounting and finance, payroll processing, disclosure committee, compensation committee
- Assess the Landscape—assess whether existing systems need to be modified or new systems developed in order to capture the necessary data to perform the analysis required under the final rule
- Consider Outside Advisors—statisticians, compensation consultants, investor relations professionals, proxy solicitors, compensation consultants, and disclosure counsel
- Review the Calculation and Disclosure Options—methodologies, assumptions, available exemptions
- Address any Necessary Compensation Changes—should changes be made to the CEO’s compensation?
Shareholder Engagement
The Rise of Engagement

- Various contributing factors: rising activism; a focus by institutional investors; say-on-pay votes; the role of proxy advisory firms

- Spectrum of investor approaches: voting, meeting with management; meeting with directors; letter writing campaigns; shareholder proposals; “vote no” campaigns; proxy contests

- Range of topics: board composition; corporate strategy; capital allocation; say-on-pay; activist campaigns; shareholder proposals; environmental and social risks

Effective engagement drives outcomes
# The Evolving Investor Landscape

## Composition of U.S. Public Company Shareholder Base

<table>
<thead>
<tr>
<th>Pre-2000</th>
<th>2000 - 2008</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Institutional investors largely actively managed (&gt;90%)&lt;br&gt;- Large individual retail holdings (~35% of S&amp;P500)&lt;br&gt;- Material pension holdings&lt;br&gt;- Small hedge fund ownership (&lt;$200BN AUM)</td>
<td>- Rise of index strategies&lt;br&gt;- Decline in retail holdings&lt;br&gt;- Decline of private pension holdings&lt;br&gt;- Significant increases in hedge fund capital ($2.1TN in AUM by 2007)</td>
<td>- Capital flows from actively managed funds into index (&gt;20% of mutual funds)&lt;br&gt;- Continued decline in retail holdings (&lt;20% of S&amp;P 500)&lt;br&gt;- After financial crisis cull, hedge fund assets to $2.5TN</td>
</tr>
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## Shareholder Activism Prevalence & Characteristics

<table>
<thead>
<tr>
<th>Pre-2000</th>
<th>2000 - 2008</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>- “Corporate raiders” focused on hostile takeovers and bust-up transactions (e.g. Icahn, Perelman, Kerkorian, Peltz)&lt;br&gt;- Limited AUM</td>
<td>- Activism goes mainstream&lt;br&gt;- ~$50BN of dedicated assets&lt;br&gt;- Includes raiders-turned-activists (e.g. Icahn, Peltz) and new funds (e.g. Pershing Square, Third Point)</td>
<td>- $150BN of dedicated assets&lt;br&gt;- Activism is prevalent and not limited by size of target&lt;br&gt;- Wide range of funds pursuing strategy</td>
</tr>
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## Long-Only Shareholder Receptivity to Activism

<table>
<thead>
<tr>
<th>Pre-2000</th>
<th>2000 - 2008</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Broad support of management teams and skepticism of raiders&lt;br&gt;- Governance / voting issues not central to analysis&lt;br&gt;- Tendency to sell stock vs. agitate (or support agitators)</td>
<td>- Selective support for activists in the bull market&lt;br&gt;- Proxy advisors influential and supportive of activists&lt;br&gt;- Governance / voting groups established by large funds</td>
<td>- Many actively managed funds support (and solicit) activists to enhance returns&lt;br&gt;- Index governance teams frequently interact with activists – although generally only supportive of long-term objectives</td>
</tr>
</tbody>
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Transitions in Shareholder Bases and Investor Attitudes Towards Activism Have Significantly Increased Risk for U.S. Public Companies
Overview of Decision-Making Within Global Institutional Investors

External Influencers: Investment
- Corporates (Execs / IR)
- Investor Community (Longs / HF)
- Research Analysts
- Press

External Influencers: Governance
- Pension / Union Funds (e.g., CalPERS, CtW)
- Proxy Advisory Firms (e.g., ISS / GL)
- Governance Organizations (e.g., CII, NACD)
- Other Major Inst. Investor Governance Groups
- Activists
- Corporates (infrequent / situation specific)

Decision-makers at Global Institutional Investors

Investment Decisions
- PMs / Analysts

Governance Standards & Proxy Voting
- Governance Teams

PMs selectively influence voting decisions / governance team analysis influence PM attitudes towards their portfolio companies

Institutional voting decisions are made by groups with limited exposure to corporate IR efforts
<table>
<thead>
<tr>
<th><strong>Institutional Investors Have Increased Transparency Regarding Their Positions on Governance and Activism</strong></th>
</tr>
</thead>
</table>
| **BLACKROCK** | CEO has been a vocal proponent of shareholder engagement with portfolio companies, long-term value, and critical of short-term activism and has sent letters for several years to S&P 500 companies regarding these issues.  
In 2016, CEO letter highlighted that in order to secure support from shareholders in the event of activism companies should disclose long-term strategic plans for value creation.  
Key backer of the SDX (Shareholder Director Exchange) protocol.  
Recently launched a public “vote no” campaign at a Hong Kong-listed issuer following unsuccessful private engagement efforts with the company. |
| **Vanguard** | Prior to the 2015 proxy season, CEO McNabb sent letters to Vanguard’s portfolio companies encouraging them to establish shareholder engagement processes.  
Recently announced its was withdrawing its support of a more corporate-friendly 5% threshold for proxy access in lieu of a 3% threshold.  
In 2014, sent letters to nearly 500 companies ahead of the proxy season to proactively engage with them on specific governance issues. |
| **STATE STREET** | Recently noted the need for an increased role for the board in strategy and risk oversight.  
In 2014, announced a director tenure policy for investees that would result in withhold votes for certain directors on boards with excessive tenure. |
| **ARTISAN PARTNERS** | Following private meetings with management, issued a public letter to the Board of Johnson & Johnson recommending steps including a review capital allocation controls and a potential spin off of certain businesses. |
| **NEUBERGER BERMAN** | Publicly vocal in a number of activism and M&A situations (Charles River, OfficeMax).  
Proposed director nominees at Ultratech and signaled possibility of a proxy contest.  
Took a 20% stake in activist fund JANA Partners in 2015. |
| **TIAA** | Sent letters to several hundred portfolio companies encouraging proactive adoption of proxy access based on a 3% / 3-year basis. |
Effective Engagement

• Evaluate disclosure practices, compensation policies, governance practices for areas of concern

• Develop an outreach strategy

• Identify the appropriate people to lead the effort

• Establish relationships with the appropriate personnel

• Prepare effectively; poor preparation can result in counterproductive meetings

• Conduct meetings and seek to be responsive to feedback
Shareholder Activism
# Overview of the Shareholder Activist Environment

<table>
<thead>
<tr>
<th></th>
<th>Prevalence of activism is increasing</th>
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<tbody>
<tr>
<td>1</td>
<td>Dedicated activist funds now have more than $150B AUM</td>
</tr>
<tr>
<td></td>
<td>“Second growth” activist funds – managers spun-off from established activist funds – are common (e.g., Corvex, Marcato, Sarissa)</td>
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<tr>
<td></td>
<td>Non-traditional activist investors – those who are not primarily known for agitation – are selectively pursuing public and private agitation</td>
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<thead>
<tr>
<th></th>
<th>Institutional investor support for activism has increased</th>
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<tbody>
<tr>
<td>2</td>
<td>Large investors frequently interact with activists and, at times, may suggest that activists target companies they view to be problematic (e.g., CalSTRS)</td>
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<tr>
<td></td>
<td>Activism generates non-correlated returns for investors, which are very desirable for asset owners particularly in the current environment</td>
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<thead>
<tr>
<th></th>
<th>Activists leverage a wide range of governance pressure points</th>
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<tbody>
<tr>
<td>3</td>
<td>While the fundamental financial investment thesis drives an activist to take an initial stake, governance is a key determinant of outcomes</td>
</tr>
<tr>
<td></td>
<td>Activists are willing to dedicate extensive resources to expose weaknesses in the management team and directors – board composition is especially critical</td>
</tr>
<tr>
<td></td>
<td>Activists will work tirelessly to undermine investor confidence in the board’s oversight, management of conflicts, and compensation practices</td>
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<tr>
<th></th>
<th>Activist tactics are extremely sophisticated</th>
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<tr>
<td>4</td>
<td>Sophisticated trading strategies and derivative structures allow activists to take large stakes with little warning</td>
</tr>
<tr>
<td></td>
<td>Activists will prepare detailed analysis to underpin their campaigns – often conducting their own “investor days” to generate support</td>
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<td></td>
<td>Increasingly, sophisticated advisors are willing to represent the activists (banks, consulting firms, law firms)</td>
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<thead>
<tr>
<th></th>
<th>Activists have generally outmaneuvered the corporate community</th>
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<tbody>
<tr>
<td>5</td>
<td>Activists have built relationships with institutional investors over the past decade</td>
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<tr>
<td></td>
<td>In many situations, they will have vetted a fight with investors prior to launch</td>
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<td></td>
<td>Significant, proactive, company preparedness is necessary to prevent significant disadvantage</td>
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</table>
Capital Allocated to Activist Strategies has Increased, Driving Increased Activity

### Potential Key Factors in 2016 Activism

- Expansion in “dry powder” has significantly increased the frequency of activist campaigns
- Size and performance are no longer barriers to shareholder activist agitation
  - Mega-cap companies – e.g., Apple / Icahn, PepsiCo / Trian, Bank of NY / Trian & Marcato
  - Companies with solid track records – e.g., Allergan / Pershing Square, DuPont / Trian
  - Increasing number of second generation activist funds

### Funds Dedicated to Activist Strategies

<table>
<thead>
<tr>
<th>Year</th>
<th>$47</th>
<th>$51</th>
<th>$66</th>
<th>$93</th>
<th>$120</th>
<th>$150+</th>
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<tbody>
<tr>
<td>2010</td>
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<td>2011</td>
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<td>2014</td>
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<tr>
<td>2015</td>
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</tbody>
</table>

Source: Shark Repellent, Hedge Fund Research, as of 31-Dec-2015

1 Based on campaign announcement date; includes US campaigns (both proxy fights and other publicly-announced activist campaigns) as of 31-Dec-2015
Activists Have Had Significant Success in Proxy Fights, Increasing Pressure on Companies to Settle

Proxy Fight Outcome Trends

- Activists are increasingly winning or being granted Board seats (+19% increase from 2014)
- Activists have won 5 of the 7 proxy fights that have already occurred in 2016
- These trends reflect both an increasing acceptance of activism by traditional investors, as well as a disinclination of activists to pursue activism in situations where a victory is uncertain

# Campaigns Resulting in Board Seats

<table>
<thead>
<tr>
<th>Year</th>
<th>Granted</th>
<th>Won Via Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>89</td>
<td>14</td>
</tr>
<tr>
<td>2009</td>
<td>74</td>
<td>25</td>
</tr>
<tr>
<td>2010</td>
<td>61</td>
<td>8</td>
</tr>
<tr>
<td>2011</td>
<td>51</td>
<td>8</td>
</tr>
<tr>
<td>2012</td>
<td>68</td>
<td>11</td>
</tr>
<tr>
<td>2013</td>
<td>73</td>
<td>18</td>
</tr>
<tr>
<td>2014</td>
<td>91</td>
<td>16</td>
</tr>
<tr>
<td>2015</td>
<td>117</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: Shark Repellent

1 Based on seat won/granted date
2 Based upon scheduled or anticipated meeting date; data as of 3 February 2016
Institutional Investors are Becoming Increasingly Supportive of Activism

Activists Have Evolved to Secure Support of Traditional Institutional Investors

- Build relationships with institutions and, in particular, their governance and proxy voting teams
- Invoke corporate governance best practices in campaigns
- Emphasize longer-term change thesis, including increasing focus on operational improvement
- Create slates with high quality, independent nominees
- Take the high road and avoid personal attacks

Recent Examples of Public Support of Dissidents by Traditional Institutional Investors

<table>
<thead>
<tr>
<th>Company</th>
<th>Investor</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microsoft</td>
<td>Franklin Templeton, Capital Research</td>
<td>Privately supported ValueAct pressure on Board / CEO</td>
</tr>
<tr>
<td>ALLERGAN</td>
<td>T. Rowe Price</td>
<td>Publicly opposed defensive actions taken against Valeant</td>
</tr>
<tr>
<td>IRON MOUNTAIN</td>
<td>Davis Selected Advisors</td>
<td>Supported Elliot proxy fight</td>
</tr>
<tr>
<td>Ultratech</td>
<td>Neuberger Berman</td>
<td>Threatened proxy contest</td>
</tr>
</tbody>
</table>

Quotes & Commentary

- “These days, mutual funds often are siding with activists. They quietly have backed some of the most prominent activist campaigns, including Starboard Value LP’s removal of the entire board at Darden Restaurants Inc. last year and a push at General Motors Co. this year for a quicker share buyback. Although Nelson Peltz ultimately lost his campaign to get on the board of DuPont Co., he came close thanks to the support of many investors.” Wall Street Journal, August 9, 2015

- “Periodically, we are approached by large institutions who are disappointed with the performance of companies they are invested in to see if we would be interested in playing an active role in effectuating change,” said Bill Ackman… Institutional investors even have an informal term for this: R.F.A., or request for activist. New York Times, March 18, 2014

- “Those activists who focus on long-term value creation sometimes do offer better strategies than management. In those cases, BlackRock’s corporate governance team will support activist plans.” Larry Fink, Letter to S&P 500 CEOs, February 1, 2016

- “We take this seriously…the firm believes it has an obligation to protect investors’ interests, respond to the changing corporate-governance environment, appreciate the importance of ‘responsible activism,’ engage in three phases of interaction (ongoing dialogue, proxy voting and direct engagement) and apply common sense to complex issues.” Brian Rogers, Chairman, T. Rowe Price
Considerations for Activists When Evaluating Targets

## Potential for Economic Gain

| Strategic Outcome | - Is the company a logical target for a strategic acquirer?  
|                   | - Are there opportunities for divestitures, restructuring, spin-offs, etc.? |
| Operational Improvement | - How do revenue growth and margins compare against peers?  
|                         | - Are there opportunities for significant cost savings or other operational initiatives? |
| Capital Structure Improvement | - Is there excess cash with a poorly defined strategy for deployment?  
|                              | - Can the company sustain additional leverage? |
| Passive Investment Thesis | - Is the company trading below intrinsic value?  
|                           | - Is there a reason to think the valuation disconnect will resolve over the investment horizon? |

## Stable Business Model

| Value Support | - How variable is the business?  
|              | - Is the business subject to macroeconomic cycles or other uncontrollable factors? |
| Valuation Support | - Is the business trading at a discount to historical or peer multiples?  
|                  | - Are there buyers if the stock cracks? |

## And a High Likelihood of Success in a Campaign

| Clear Path | - Is the company vulnerable from a structural defense standpoint? |
| Corporate Governance Concerns | - Does the company have corporate governance, board, compensation or similar deficiencies that can be leveraged to establish a need for change?  
|                         | - Do shareholders have concerns about whether the board provides effective oversight? |
| Shareholder Support | - Based on the factors above, will the company's shareholders support a dissident proxy fight? |

Activists have limited bandwidth; give them reasons to move on to the next investment opportunity.

ROI of investment is evaluated both in absolute terms AND relative to other potential targets.
A Governance “Hook” Is Often Required for Activists to Gain Traction with Voting Decision Makers

Valuation, business fundamentals and strategic factors will drive the initial investment thesis of activists…

**Company Fundamentals**

- Relative valuation
- Portfolio rationale / break-up potential
- Shareholder returns (relative and absolute)
- Business strategy
- Operational performance
- Capital structure / capital allocation decisions
- Cost structure
- Buyside M&A track record

**External / Strategic Factors**

- Attractiveness to acquirors in M&A
- Competition / threat of potential entrants
- Relationships with investors (PMs and governance teams)
- Government / regulatory interaction

…but activists will focus on the governance attributes of a company to determine whether they can prevail in a fight.

**Corporate Governance**

- Board composition and leadership
- Director experience/backgrounds
- Board accountability measures (e.g., board leadership structure, responsiveness to shareholders)
- Oversight of board and management conflicts
- Shareholder defenses (e.g., classified board, no right to call special meetings, supermajority voting standard)
- Timely adoption and adherence to best practices
- History of shareholder proposals
- Alignment of pay and performance
- Robust proxy disclosure (esp. CD&A)
- Independent oversight of compensation program
Activists Pursue a Range of Governance, Financial and Strategic Objectives

Activists must establish a deficiency in governance to succeed in a campaign…

- Governance
  - Seek Corporate Governance Changes
    - MSMB / Pfizer
    - Relational, CalSTRS / Occidental Petroleum
    - Icahn / Gannett
    - Trian / State Street
    - Corvex / Commonwealth REIT
    - Sandell / JDSU
    - Icahn / eBAY
  - Change Board / Management
    - Relational Investors / Home Depot
    - Pershing Square / P&G
    - Pershing Square / JCPenney
    - Third Point / Yahoo!
    - Icahn / Hertz
    - ValueAct / Microsoft
    - Third Point / Sotheby’s
    - ValueAct / MSCI
    - Sarissa / Ariad
    - Marcato / Bank of NY Mellon

- Stock Repurchase / Capital Structure
  - Icahn / Time-Warner
  - Greenlight / Microsoft
  - Elliott / NetApp
  - Icahn / Apple
  - Starboard / Staples
  - Corvex / Crown Castle
  - Pershing, Sachem Head / Zoetis
  - Appaloosa, Hayman / General Motors
  - P. Schoenfeld / Vivendi

- Stock / Operations
  - Relational / Genzyme
  - Pershing Square / Air Products
  - Sandell / Bob Evans
  - Pershing Square / Canadian Pacific Railway
  - Starboard / Darden
  - JANA / Juniper
  - Trias / DuPont
  - Elliott / Juniper

- Force Spin-Off / Divestitures
  - Icahn / Time-Warner
  - Pershing Square / McDonald’s
  - Icahn / Chesapeake
  - Icahn / Genzyme
  - Pershing Square / Fortune Brands
  - Jana Partners / Safeway
  - Icahn / eBay
  - Trias / DuPont
  - Trias / PepsiCo
  - Third Point / Amgen
  - Starboard / Yahoo

- Operational Improvement
  - Icahn / Clorox
  - Icahn / Forest Labs
  - Icahn / Amylin
  - Trian / Mondelez
  - JANA / URS Corp.
  - Marcato / Intercontinental Hotels
  - Elliott / Interpublic Group
  - Pershing Square / Allergan
  - JANA / Petsmart

- Frustrate / Complicate M&A
  - Icahn / Clorox
  - Icahn / Forest Labs
  - Icahn / Amylin
  - Trian / Mondelez
  - JANA / URS Corp.
  - Marcato / Intercontinental Hotels
  - Elliott / Interpublic Group
  - Pershing Square / Allergan
  - JANA / Petsmart

- Sell Company
  - Icahn, Southeastern et al / Dell
  - Mason Capital / J. Crew
  - Third Point / Smurfit-Stone
  - Paulson / Sprint-Nextel
  - CtW / KKR Financial
  - Elliott / Family Dollar
  - CtW / Walgreen’s
  - KSA Capital / TRW

…even though economic objectives (e.g. M&A, recap, spin-off) are the primary motivation for the campaign.
Activists Utilize Aggressive and Sophisticated Tactics in their Campaigns

<table>
<thead>
<tr>
<th><strong>Derivative Accumulations</strong></th>
<th>Activists will often accumulate with stealth through the use of equity derivatives</th>
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<tbody>
<tr>
<td><strong>White Paper / Town Hall</strong></td>
<td>Activists regularly create detailed presentations arguing their case for change, often making them public</td>
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<tr>
<td><strong>Leverage Social Media</strong></td>
<td>Social media sites such as Facebook and Twitter are starting to emerge as additional avenues to share information</td>
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<tr>
<td><strong>Retain Financial Advisors</strong></td>
<td>Activists will frequently engage financial advisors to validate their investment thesis and ideas for change</td>
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<tr>
<td><strong>Litigation</strong></td>
<td>Activists often pursue litigation to remove defenses and to gain access to internal discussions through discovery</td>
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<tr>
<td><strong>Collaborating With Strategic Party</strong></td>
<td>Activists may team with a bidder to aggregate their stakes to have a greater impact</td>
</tr>
<tr>
<td><strong>Hostile Bid / Tender Offer</strong></td>
<td>Activists may submit bids for their targets, although these are typically “stalking horse” bids intended to flush out strategic buyers</td>
</tr>
</tbody>
</table>
Preparedness by Threat Level

• Normal Course
  • Evaluate potential vulnerabilities: strategic, financial, operational, governance, compensation
  • Frequent communication with active investors; periodic communication with passive investors
  • Refine investor and media message in light of potential criticisms

• Heightened Risk
  • Further enhance investor and media message
  • Develop activism defense plan
  • Consider implementation of investor friendly governance changes

• Initiation of Activism
  • Full internal and external teams
  • Full outreach to all investors
  • Execute activism defense plan