

TOP TAKEAWAYS

**Preparing Your Board to Deal with Activist Shareholders**

1. **The growing trend of shareholder activism is real.**

Shareholder activism is here to stay. Many activist shareholders are becoming more sophisticated, spending up to six months and millions of dollars on research in preparation for a proxy fight. Institutional shareholders and proxy advisors are increasingly aligning themselves with activist campaigns, and unlike in the past, many well-qualified, experienced directors are now willing to serve on a dissident slate.

2. **Meet with your activist shareholders early and often.**

Relations between the board and the activist shareholders can be much more constructive if the board meets with activists early and often. Don't wait until proxy season to start meeting with activists—by then it's too late—and look for opportunities to extend an olive branch.

3. **Take activist shareholders seriously.**

By the time activist shareholders approach the board directly, they very likely already have the support of the top institutional shareholders, and more sophisticated activists will have spent large amounts of time and money building a case against the board. The best companies take activists seriously and respond objectively, while the worst companies are recalcitrant and respond emotionally.

4. **Play devil's advocate.**

Many boards have begun to use the threat of activism as an opportunity for value creation. Directors may perform a critical self-examination, or they may hire a third party to evaluate the company using only public information. Either approach will identify corporate weaknesses and operational vulnerabilities, which are good places to begin the proactive improvements that will keep shareholders happy and keep activists at bay.

5. **Strive for greater connectivity between the board and the shareholders.**

Traditionally, boards rarely communicated with shareholders, but this approach is quickly becoming outdated. In today's world, boards should seek to connect with shareholders. Consider taking greater advantage of online investor relations platforms to present reports and videos to shareholders. Dialogue between directors and shareholders is rarely counterproductive.

6. **Evaluate processes for board renewal.**

Make sure processes for board renewal are effective, robust, and peer-reviewed. Institutional shareholders will take note if a board becomes stale, and may be more easily convinced to back activist investors as a result. Likewise, approach board renewal proactively; if used only as a defensive measure, it likely will not be enough to fend off activist shareholders (especially if the activist has highly qualified nominees on its slate).

7. **Have a strategic plan for the future.**

In the past, the best defense against activist shareholders was a high stock price, but that is no longer the case. Today's activist shareholders care less about past performance and more about plans for the future—the most successful active investors reevaluate their portfolios every day, and aren't afraid to push for change if they sense a company is heading in the wrong direction. Even companies that are doing well today should have a strategic plan for the future to show investors how they plan to continue to grow.

8. **Keep the lines of negotiation open.**

As a practical matter, a proxy fight can last for months and cost millions of dollars—not to mention most institutional investors don't like them. Companies can improve their chances of containing costs by keeping the lines of negotiation with activist shareholders open, and many activists are open to modest, reasonable settlement offers. (Though beware—crafting a good settlement offer is an art in itself. Too little risks offending the shareholder; too much risks giving away the store.)

9. **Pay attention to what institutional shareholders are saying.**

Institutional shareholders and activist investors often have the same concerns, so pay attention to what institutional shareholders are saying. This isn't always easy—institutional shareholders are often less direct than activist investors—but it's a good way to find out where activists might be focused and how to prepare board members accordingly.

10. **Establish relationships between the board and top shareholders.**

While many public companies' top shareholders are index funds, board members often do not have relationships with those funds (even if the company's executives do). Many activist shareholders, on the other hand, eagerly cultivate these relationships, giving activists the inside track when it comes to a proxy fight. Board members should develop relationships with index funds and all of the company's top shareholders—though they should also be prepared for the questions about compensation and governance policies that will inevitably arise.

**For more information**

For more information on Preparing Your Board to Deal with Activist Shareholders, please feel free to contact the moderators directly:

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