Shareholder Activism: Friend or Foe?

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Panelists:
Mark Gerstein, Partner, Latham & Watkins LLP
Jessica Moran, Former Director, Investor Relations, Cliffs Natural Resources Inc.
Michael Steele, CFA, Vice President, Investor Relations, Office Depot

Moderator: Andrew Siegel, Partner, Joele Frank

Key Takeaways

Activism is the new normal. Assets held by activist hedge funds increased more than 50 percent to $100 billion between 2012 and 2013. Of the 90 proxy campaigns in 2013, only one-third went to a vote. The remaining 60 campaigns were settled with management or withdrawn. Activists usually want one of four actions from target companies: to explore strategic alternatives, return capital to shareholders, improve corporate governance or improve operations.

The IRO is a key player in activist engagement. The IR officer is in a position to "hear the footsteps coming," said Jessica Moran, who first detected an activist shareholder in her company's stock through surveillance. In addition, panelists suggested IROs pay attention to new questions coming in from multiple investors, which is a leading indicator that activists are planting the seeds of discontent by holding informal talks with sell-side analysts, large shareholders and former employees who remain friendly with management.

Not all activists use the same playbook. It's easy to lump all activists together, but they have different goals and use different strategies. For example, smaller activists can be more unpredictable than well-established activists in their attempts to break into the headlines and gain support from other holders. It's important to have people on your team with experience and knowledge of the playbook your activist is most likely to use. Activists' financial analysis can be shoddy and a good investment banker who knows your company can find the weaknesses in an activist's proposal. Armed with a good analysis of the numbers and assumptions, you may be able to extinguish overtures early in the process through a thoughtful discussion with the activist.

Prevent activist campaigns through candid communication with shareholders about your strengths and weaknesses. The IRO brings a unique and objective perspective about how a company's shareholder base is likely to respond to an activist's proposal. Proactively solicit input on issues from your investors. Management should leverage investor calls to remove these concerns from the table.

When to listen and learn, when to fight and when to settle. Increasingly, IROs, management and boards treat activist investors with cautious respect and are more willing to work through legitimate issues raised by outsiders. Also, companies have become more aware of the limitations of any governance defenses (poison pill redemptions, staggered board terms). More than half of all proxy campaigns in 2013 were for board representation – and giving up a board seat increasingly seems more prudent that a distracting, expensive, public proxy fight.

– Bess Gallanis