

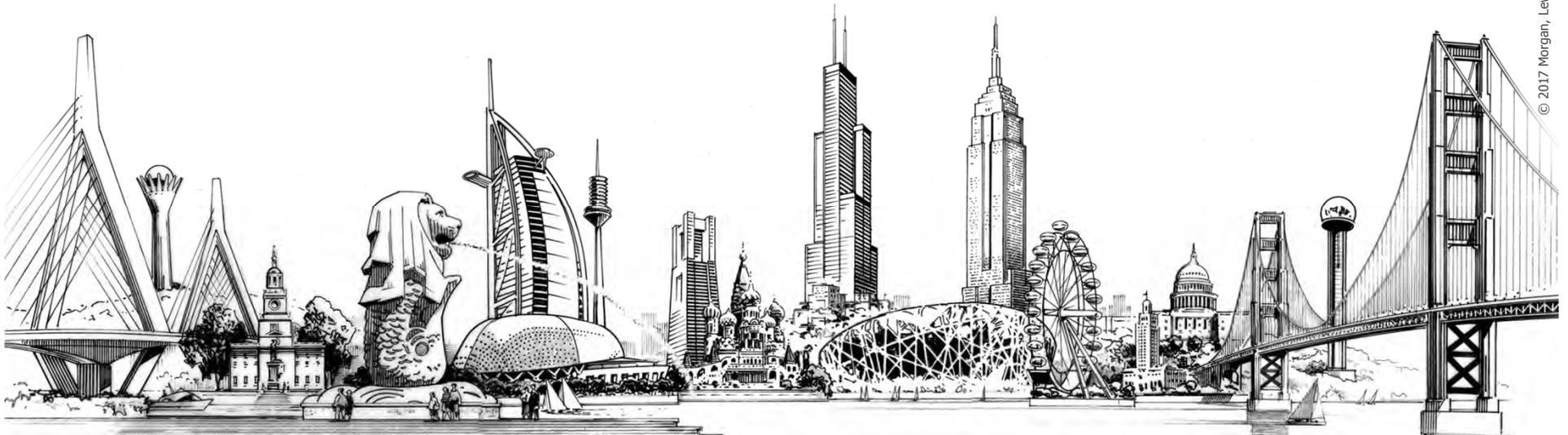
Morgan Lewis

SHAREHOLDER ACTIVISM: WHAT YOU NEED TO KNOW TO AVOID BEING AN EASY TARGET FOR AN ACTIVIST INVESTOR

Keith E. Gottfried
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Morgan Lewis

SHAREHOLDER ACTIVISM: WHAT YOU NEED TO KNOW TO AVOID BEING AN EASY TARGET FOR AN ACTIVIST INVESTOR



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The Morgan Lewis Shareholder Activism Defense Team

Biography



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Keith E. Gottfried is a partner in the New York, NY and Washington, DC offices of Morgan, Lewis & Bockius LLP where he leads the firm's market-leading shareholder activism defense practice.

Keith counsels public companies, based in the United States and abroad, in a wide array of industries, including, among others, apparel, automotive, banking, casual dining, consumer goods, energy, life sciences, manufacturing, pharmaceuticals, real estate, retail, shipping, software, technology and waste management, with respect to preparing for and/or responding to high-profile proxy contests, special meeting demands, consent solicitations, withhold and vote-no campaigns, shareholder proposals and other activist shareholder campaigns as well as contests for corporate control and negotiated and contested M&A situations. Keith also advises public companies and their boards of directors on the latest techniques for making a company less vulnerable to activist shareholders, best practices for engaging with shareholders, strategic communications, corporate governance issues, board composition enhancement programs and other board advisory matters.

Frequently quoted by the national business media on issues relating to shareholder activism, Keith publishes and presents regularly on shareholder activism related topics. Keith is listed in Chambers USA: America's Leading Lawyers for Business, which ranks him as a leading corporate / M&A lawyer.

The Morgan Lewis Shareholder Activism Defense Team

Biography



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Sean M. Donahue is a partner in the New York, NY and Washington, DC offices of Morgan, Lewis & Bockius LLP and a member of the firm's market-leading shareholder activism defense practice.

Sean counsels public companies, based in the United States and abroad, in a wide array of industries with respect to preparing for and/or responding to high-profile proxy contests, special meeting demands, consent solicitations, withhold and vote-no campaigns, shareholder proposals and other activist shareholder campaigns as well as contests for corporate control and negotiated and contested M&A situations. Sean also advises public companies and their boards of directors on the latest techniques for making a company less vulnerable to activist shareholders, best practices for engaging with shareholders, strategic communications, corporate governance issues, board composition enhancement programs and board advisory matters. Sean has been involved in dozens of high-profile proxy contests where the activist sought the election to the target's board of directors of a minority or control nominee slate. Additionally, Sean counsels public companies on corporate governance, securities regulation, capital markets transactions, and NYSE and NASDAQ compliance issues.

Prior to joining Morgan Lewis, Sean served as an attorney-adviser with the US Securities and Exchange Commission (SEC) in the Division of Corporation Finance and our activism defense clients benefit from Sean's extensive experience with SEC disclosure issues, particularly those relating to contested solicitations.

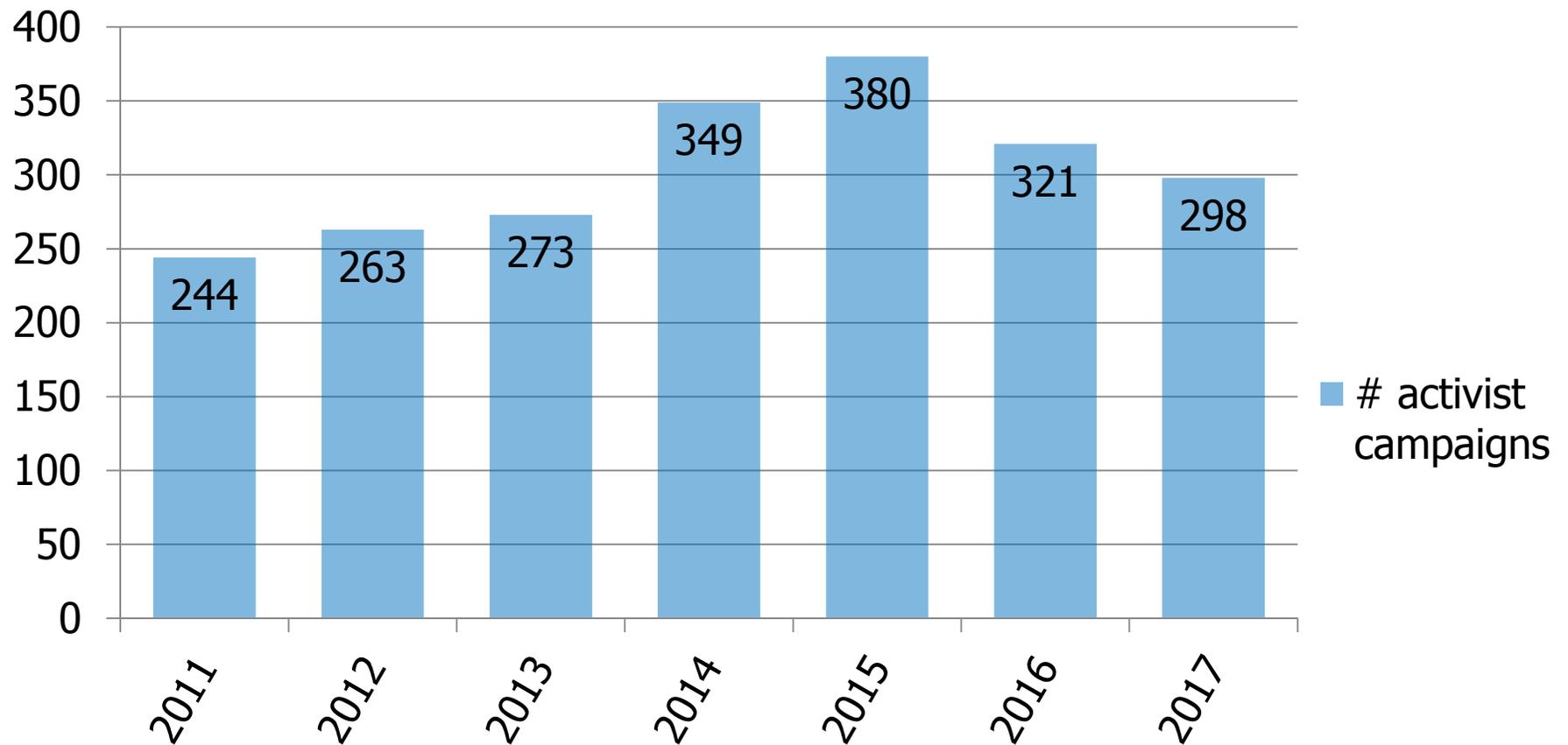
Key Areas to Cover

- Recent shareholder activism trends.
- What is driving shareholder activism.
- Who are the activist investors you should be familiar with.
- The activist's agenda - what an activist investor looks for in its targets and the most common goals of an activist's engagement with a company.
- The activist's playbook – the phases of an activist's engagement with a company.
- Types of activist campaigns
- Early warning signs of an activist investor.
- What makes a company vulnerable to an activist investor.
- Steps companies can take now to avoid being an easy target for an activist investor.
- Mistakes companies and Boards make in responding to activist investors.

RECENT SHAREHOLDER ACTIVISM TRENDS

Recent Shareholder Activism Trends – Activist Campaigns

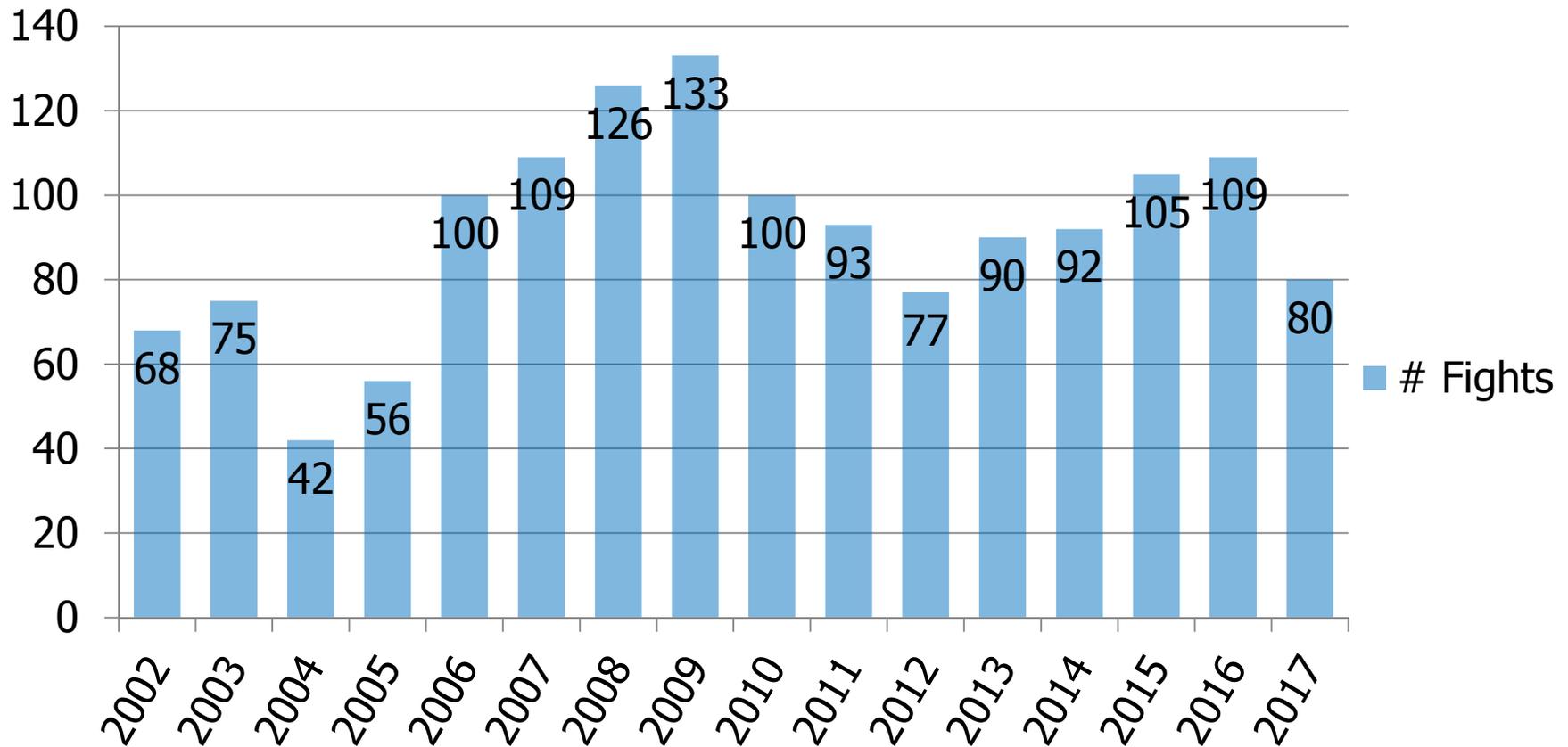
High Impact Activist Campaigns (2011 – 2017)



Source: SharkRepellent FactSet

Recent Shareholder Activism Trends – Proxy Fight Trends

Proxy Fights Trend Analysis (2001 – Present)



Source: SharkRepellent FactSet

Majority of Proxy Contests Don't Go the Distance

- Fewer proxy contests “go the distance” all the way to a contested meeting.
- The majority of proxy contests don't go the distance; they either get “settled” or are withdrawn.
- Not all proxy contests settle:*

 - 29 went to a vote in 2017: M16, D12, S1
 - 38 went to a vote in 2016: M28, D9, S1
 - 31 went to a vote in 2015: M16, D14, S1
 - 32 went to a vote in 2014: M12, D18, S2
 - 30 went to a vote in 2013: M12, D17, S1
 - 28 went to a vote in 2012: M15, D9, S4

- 2016 was a year when more proxy contests “went the distance” than at any time in the past 5 years (compare with 37 in 2010 and 51 in 2009).
- Proxy contests that “go the distance” are often at small-caps.

*Source: SharkRepellent FactSet

WHAT IS DRIVING SHAREHOLDER ACTIVISM?

What is Driving Shareholder Activism?

- Substantial inflows of capital to activists.
- More activist hedge funds are being formed.
- The desire of new activists to prove themselves to investors and the activist investor community.
- Conducive regulatory environment and lack of enthusiasm by regulators to stem the tide of shareholder activism.
- Easy access to inexpensive debt to fund share buybacks, special dividends and other shareholder value enhancing measures.
- Extended period of low interest rates making shareholder activism an area where investors seek to generate yield.
- M&A environment that encourages activists to push companies into “play.”
- The success of many activists in obtaining board representation and unlocking shareholder value encourages others to enter the field.

What is Driving Shareholder Activism?

- Change in institutional investor sentiment
 - Growing acceptance by institutional investors of activism as an investment strategy
 - Companies are less able to depend on support from institutional investors
 - Increased willingness of institutional investors to join forces with activists
 - Institutional investors more willing to openly side with activists
 - Institutional investors more willing to support one or more activist director nominees in a proxy contest
 - Pressure from institutional investors for companies to engage with activists and, at times, even to reach settlements with activists that favor activists
- Ability of activists to receive support from the proxy advisory firms.
- Increased willingness by companies and boards to engage with activists.
- Continued willingness of companies to settle with the activist and avoid a proxy contest.

What is Driving Shareholder Activism?

- Many companies continue to be “sitting ducks.”
 - Companies are increasingly less defended as poison pills, classified boards and other structural defenses are much less common, especially among the S&P 500 and corporate governance enhancements such as majority voting in the election of directors, ability of shareholders to call special meetings and the ability of shareholders to take action by written consent have made companies more vulnerable.
 - Reluctance by companies to adopt defensive measures even when advised that they are a potential target.
 - Reluctance by companies to assess their vulnerabilities with any kind of urgency.
 - Many boards are pessimistic that they can prevail against an activist.
 - Many boards fear what a proxy contest entails for the Company and the reputation of the individual directors.

WHO ARE THE ACTIVISTS?

Who Are the Activists?

- Alden Global Capital LLC
- Altai Capital Management, L.P.
- Amalgamated Capital
- Ancora Advisors LLC
- Appaloosa Management L.P.
- Atlantic Investment Management
- Barington Companies Investors LLC
- Basswood Capital Management LLC
- Biglari Capital Corp.
- Blue Harbour Group
- Broadwood Partners LP
- Bulldog Investors, LLC
- Cannell Capital, LLC
- Canyon Partners, LLC
- Carl C. Icahn
- Carlson Capital, L.P.
- Central Square Management, LLC
- Cevian Capital
- Chieftain Capital Management, Inc.
- Citadel LLC
- Citron Research
- Clinton Group, Inc.
- Clover Partners, LP
- Coghill Capital Management LLC
- Coppersmith Capital Management LP
- Corvex Management LP
- Cove Street Capital, LLC
- Crescendo Partners
- Discovery Group I LLC
- Elliott Associates, LP
- Eminence Capital, LP
- Engaged Capital, LLC
- Engine Capital Management LLC
- ESL Investments, Inc.
- Foundation Asset Management LP
- Franklin Mutual Advisers, LLC
- FrontFour Capital Group LLC
- GAMCO Asset Management
- Glenview Capital Management, LLC
- Groveland Capital LLC
- Greenlight Capital, Inc.
- H Partners Management
- Harbringer Capital Partners
- Hayman Capital Management, LP
- Highfields Capital Management LP
- Highland Capital Management, LP
- Hudson Executive Capital LP
- Ides Capital Management LP
- Iroquois Capital Management
- Isaac Capital Group
- JANA Partners LLC
- JCP Investment Partnership, LP
- Jet Capital Investors, LP
- Karpus Investment Management
- Lakewood Capital Management, LP
- Land & Buildings Investment Management LLC
- Lawndale Capital Management
- Legion Partners Asset Management, LLC
- Lone Star Value Management, LLC
- Luxor Capital Group LP
- Macellum Capital Management, LLC
- Maguire Asset Management, LLC
- Mantle Ridge LP
- Marcato Capital Management LLC
- Mason Capital Management LLC
- Mill Road Capital Management LLC
- Millennium Management LLC
- Mustang Capital Partners LLC
- Nierenberg Investment Management Company
- Neuberger Berman LLC
- Northern Right Capital Management, LP (formerly Becker Drapkin)
- Oliver Press Investors, LLC
- Orange Capital LLC
- Osmium Partners LLC
- P2 Capital Partners LLC
- Pershing Square Capital Management LP
- PL Capital, LLC
- Potomac Capital Management Inc.
- Praesidium Investment Management Company LLC
- Privet Fund Management LLC
- Raging Capital Management, LLC
- Red Alder LLC
- Red Mountain Capital Partners LLC
- Red Oak Capital Partners LLC
- Sachem Head Capital Management LP
- Sagard Capital Partners Management Corp.
- Sandell Asset Management Corp.
- Scopia Capital Management LP
- Seidman and Associates, LLC
- SilverArrow Capital Advisors LLP
- SMP Partners
- Soroban Capital Partners LLC
- Southeastern Asset Management
- SpringOwl Asset Management LLC
- Stadium Capital Management, LLC
- Starboard Value LP
- Steel Partners Holdings L.P.
- Stilwell Value LLC
- T2 Partners Management
- The Children's Investment Fund
- Third Point LLC
- Trian Fund Management, LP
- Tudor Investment
- ValueAct Capital Management
- Venetus Partners LP
- Viex Capital Advisors, LLC
- Viking Global Investors LP
- Voce Capital Management LLC
- Western Investment LLC
- Wolverine Asset Management LLC
- Wynnefield Capital Management, LLC

THE ACTIVIST'S AGENDA

The Activist's Agenda

- Opportunity to generate an outsized return.
- Perception that company is undervalued by the markets relative to its intrinsic value.
- Perception that there is a "lever" that the activist can access whether through constructive engagement with the company's management / board or through a contested solicitation, which will unlock shareholder value.
- Perception that the company is in a vulnerable position due to past missteps that have damaged the credibility of the current board / management team.
- Perception that the activist's ideas will find a supportive audience.
- Perception that other shareholders will support the activist.

The Activist's Agenda

- **M&A**
 - Engagement of a financial advisor
 - Review of strategic alternatives
 - Sale of the company or other strategic transaction
 - Spin-off or sale of divisions or assets
 - Oppose an announced M&A transaction
- **Operational changes**
 - Upgrade management
 - Reduce G&A
 - Improve cash flow
 - Eliminate business lines or products
 - Revise geographic focus
 - Change business strategy / business model
 - Monetization of intellectual property assets

The Activist's Agenda

- **Improve balance sheet / capital allocation**
 - Increase leverage
 - Alternative uses for cash on balance sheet
 - Share buyback program
 - Increase regular cash dividend
 - Special cash dividend
- **Corporate governance (often a means to the end of unlocking shareholder value, but not necessarily the primary objective)**
 - Change board composition (add directors with specific expertise to board, add directors without any prior relationship with the Company or its management, etc.)
 - Separate Chairman / CEO role
 - Declassify board
 - Compensation changes
 - Adopt majority voting
 - Allow shareholders to call a special meeting (or lower the threshold required to call a special meeting) or take action by written consent
 - Revise executive compensation

THE ACTIVIST'S PLAYBOOK

The Activist's Playbook

Phase 1 – Identify Target

- Determine that the Company is undervalued by the markets relative to its intrinsic value.
- Determine that there is a “lever” that the activist can access whether through constructive engagement with the Company’s management / board or through a contested solicitation, which will unlock shareholder value.
- Assess the Company’s vulnerabilities across multiple dimensions (e.g., structural, stock price performance, financial and operating performance, operational missteps, governance, and board composition).
- Gather intelligence on the Company and its vulnerabilities.
- Assess ability to accumulate a significant stake in the Company.
- Meet with other investors.
- Assess ability to garner support from other stockholders.
- Assess ability to garner support from proxy advisory firms.

The Activist's Playbook

Phase 2 – Accumulate Stake in the Company

- Acquire shares, in stealth mode if possible, including through cash-settled equity swaps and other derivatives.
- File Schedule 13G with SEC, if applicable.
- File Schedule 13D with SEC, if applicable.
- File Form 13F with the SEC, if applicable.
- File HSR with DOJ/FTC, if applicable.
- Continue to gather intelligence on the Company.
- Start building pools of support with other investors.
- Identify other investors who may form a Schedule 13D “group” with the activist.

The Activist's Playbook

Phase 3 – Engage with the Company

- Request meetings with management and/or independent directors.
- Develop rapport with management.
- Develop rapport with independent directors.
- Communicate to the Company and directors views on the Company and opportunities for shareholder value enhancement.
- Privately provide the Company with a “white paper” or presentation criticizing the Company and/or discussing opportunities for shareholder value enhancement.
- Communicate to the Company and directors what it is the activist is seeking.

The Activist's Playbook

Phase 4 – Apply Pressure

- Escalate engagement with the Company.
- Escalate level of criticism.
- “Divide and conquer” independent directors.
- Make strong case for “meaningful change.”
- Send private letters to the Board.
- Issue open public letters to the Board.
- Issue press releases criticizing the Company.
- Publicly release “white papers” or presentations criticizing the Company.
- Questions on earnings calls.
- Have other investors / surrogates pressure the Company.
- Encourage or lend support to anonymous blogs / “attack” websites or social medial feeds.
- Develop media campaign, including encouraging the media to write critical stories on the Company, its past performance and its challenges.
- Submit an advance notice of nomination / shareholder proposal to the Company.
- Demand shareholder list and/or corporate records and indicate need for records to investigate possible wrongdoing at the Company.

The Activist's Playbook

Phase 5 – Seek Influence or Control

- Request changes to strategic direction of the Company (such as initiating a sales process to sell the Company).
- Request board representation (short-slate or control-slate) and/or other governance changes at the Company.
- Wage proxy contest, special meeting demand, or consent solicitation to effect changes to Company's board composition and/or seek other governance changes (i.e., bylaw amendments, precatory proposals to amend charter such as to declassify board of directors).
- Wage withhold / vote-no campaigns to place pressure on directors to resign.
- Issue letters to shareholders ("fight letters").
- Issue press releases with messaging directed to the investor community.
- Issue investor presentation ("fight deck") to present case for change to investors and proxy advisory firms.
- Lobby proxy advisory firms to recommend against Board's director nominees and to support the activist's director nominees (if any).
- Meet with other investors and solicit their support.
- Pressure the Company to enter into a settlement to avoid a contested solicitation.

TYPES OF ACTIVIST CAMPAIGNS

Types of Activist Campaigns

- **Annual meeting proxy contest for board representation**
 - Minority slates
 - Control slates
- **Special meeting proxy contest to remove and replace directors**
 - May not be permitted by governing documents or may require shareholder(s) to meet an ownership threshold
 - Requires two solicitations – one to call the meeting and one for the business to be voted on at the meeting
- **Consent solicitations to remove and replace directors**
 - May not be permitted by governing documents
 - May require a higher vote threshold for shareholder approval
- **Vote no or withhold campaigns**
 - Majority voting makes these campaigns more potent and enables activists to cause a director not to receive a majority of the votes cast and then force the director's resignation
- **Rule 14a-8 shareholder proposals**
 - Not a typical tool of the "economic" activist

EARLY WARNING SIGNS OF AN ACTIVIST

Early Warning Signs of an Activist

- Unusual upticks in the trading volume of the Company's stock.
- Accumulations by hedge funds known to be activists or to invest alongside activists.
- Form 13F filings.
- Schedule 13G filings.
- Schedule 13D filings.
- HSR filings.
- Contact from an activist seeking a meeting with management or a board member.
- Activists requesting meetings at investor conferences.
- Activists' attendance on earnings calls.
- Receipt of a letter from an activist or other shareholder calling for change to board, management or strategy.
- Unusual calls to the investor relations team.
- Media inquiries.
- Market rumors.
- Reports from other shareholders of contacts by an activist requesting a meeting.

**WHAT MAKES A COMPANY
VULNERABLE TO AN ACTIVIST?**

What Makes a Company Vulnerable?

- Poor stock price performance.
- Poor operating and financial performance, particularly compared to peer companies.
- Poor total shareholder return (TSR) (particularly compared to peer companies).
- Higher G&A expenditures than peers.
- Capital structure.
- Low leverage compared to peers and significant potential for the Company to increase its leverage and fund a special dividend or stock buyback.
- Cash on balance sheet viewed as in excess of the Company's needs

What Makes a Company Vulnerable?

- Leadership issues.
- Strategy execution.
- Failure to publicly articulate a credible strategy for enhancing shareholder value.
- Potential opportunities for an activist to “unlock” shareholder value (e.g., unrelated businesses, stranded assets, sale of the Company, etc.).
- Perceived M&A / LBO opportunities.
- Perceived restructuring opportunities.
- Lack of confidence by investors in Board and/or management to create shareholder value.

What Makes a Company Vulnerable?

- Board composition, tenure, governance, experience, leadership and compensation.
- Subpar corporate governance practices.
- Failure to address proxy advisory firm concerns.
- Related party transactions.
- Minimum insider ownership.
- Executive compensation not aligned with performance.
- Failure to sufficiently engage with shareholders.
- Lack of attention to issues of concern to shareholders.
- Lack of attention to issues that are easy building blocks for an activist's messaging platform.
- Ability of an activist to acquire a significant stake.
- Bylaws that have not been recently updated and/or which are lacking modern advance notice provisions.

**WHAT CAN COMPANIES DO TO MAKE
THEMSELVES LESS OF AN EASY
TARGET FOR AN ACTIVIST?**

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Conduct a vulnerability assessment**
 - Recent financial and operational performance
 - Historical financial metrics
 - Peer performance
 - Perceived opportunities to unlock shareholder value
 - Capital allocation strategy
 - M&A history
 - Messaging of value enhancement initiatives and strategy
 - Shareholder profile
 - Shareholder engagement
 - Board composition
 - Corporate governance practices
 - Past “withhold” / “against” recommendations by proxy advisory firms
 - Certificate of Incorporation
 - Bylaws

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Review bylaws**

- Assess the need for any enhancements to provisions related to the election of directors and the conduct of other business at annual and special meetings.
- Do the bylaws require sufficient information from the shareholder proponent to enable the board to make an informed recommendation to shareholders?

- **Consider developing a shelf shareholder rights plan**

- Entails preparing all documents related to rights plan but the board takes no action other than being educated at length on how the rights plan works and the board's fiduciary duties in connection therewith.
- Does not require public disclosure.

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Enhance likelihood of receiving early warning of an activist targeting the Company**
 - Closely monitor the Company's equity and options trading activity.
 - Initiate or enhance a stock surveillance program with a strong market intelligence firm.
 - Monitor Form 13F activity.
 - Review shareholder profile on a regular basis.
 - Understand any relationships, either formal or informal, between any of the Company's holders, particularly among hedge funds and any history of parallel or concerted actions.
 - Maintain an "intelligence network" of analysts, print and online media, institutional investors, investment bankers, proxy solicitors, and legal advisors to stay abreast of developments that may make the company more vulnerable or likely to be targeted.
 - Monitor activist campaigns against competitors and industry peers.

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Become familiar with advisors experienced in shareholder activism defense, assemble a “fight team in waiting” and have the assembled fight team actively participate in preparing the Company and the Board for shareholder activism well before the activist shows up**
 - Outside corporate counsel
 - Special proxy contest counsel
 - Proxy solicitor
 - Communications/public relations firm experienced in advising companies in connection with activist campaigns and takeover defense
 - Investment bank

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Assess any corporate governance or proxy advisory firm issues that can be easily addressed**
 - Identify any “low-hanging fruit” corporate governance enhancements that do not increase the Company’s structural vulnerabilities.
 - Are there related party transactions that can be eliminated?
 - Are there say-on-pay / executive compensation issues that need to be addressed?
 - Assess whether there are any past issues with ISS or other proxy advisory firms that need to be addressed or any inaccuracies in recent proxy advisor reports that need to be corrected, particularly around governance provisions, independence and compensation
 - Correct any incorrect information in public databases, particularly those relating to corporate governance / shareholders’ rights practices.
 - Use SEC periodic reports such as proxy statement to showcase corporate governance practices not currently being highlighted.

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Assess board composition and determine whether there are any obvious gaps in relevant experiences and competencies**
 - Assess which incumbent directors would be most vulnerable in a proxy contest (due to experience, tenure, age, independence, lack of stock ownership, etc.).
 - Consider initiating a process to identify potential Board candidates (and whether to retain an executive search firm).
 - Develop pool of highly-qualified, “central casting” Board candidates to keep in “reserve” and who could be proposed in connection with a settlement with an activist.
 - Assess whether there are any skills, functional competencies, perspectives and experiences missing from the Board.
 - What would the activist’s “central casting” board candidates look like from an experience and competency perspective?
 - Be prepared to argue why the Board does not need to be refreshed with “new perspectives and insights.”

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Develop a “white paper” on the Company**
 - Be the first (or before the activist does) to write a “white paper” on the company to be internally reviewed by the board and management.
 - Know all the obvious paths to “unlocking” shareholder value and be prepared to explain why any of those paths may not be appropriate to consider pursuing.
 - Assess whether the Company should shift its strategic direction.
 - Assess whether the Company has any assets that an activist investor would claim should be monetized.
 - Be able to justify why the company should not be attempting to sell itself or one of its divisions and why the Company should remain independent.
 - Assess current capital allocation strategy and assess whether the Company should be returning more cash to shareholders.
 - Own the best ideas for “rationalizing operations to improve profitability.”
 - Anticipate how the activist would criticize the Company’s governance practices.
 - Anticipate how the activist would criticize the Company’s executive compensation practices.

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Refresh the Company's strategic plan to enhance shareholder value**
 - Refine investor presentation and other strategic communications to hone key messages on value enhancement initiatives and long-term growth plans and assess multiple channels (e.g., investor presentation, SEC periodic filings, press releases, website, etc.) for ensuring that key messages are communicated to, and understood by, shareholders.
 - Use SEC periodic reports to convey strategy and value enhancement initiatives in a manner compliant with applicable SEC rules, including appropriate updates to risk factors and forward-looking disclaimers.

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Increase the Company's visibility on "wall street" and in financial community**
 - Plan investor outreach to enhance investor relations, to assess investor sentiment, to gather intelligence and to market current strategy for growth and value enhancement.
 - Develop strong relationships with the portfolio and governance managers at institutional shareholders, including index funds.
 - Increase transparency with investors and develop messaging that addresses transparency gaps, including information regarding current strategy for growth and enhancing shareholder value and assess appropriate channels for communicating messaging.
 - Be sensitive to investor questions, queries, theories.
 - Determine which independent directors (if any) to include at investor meetings.

What Can Companies Do To Make Themselves Less Of An Easy Target For An Activist?

- **Plan today for how the Company and the Board would engage with the activist when the activist comes knocking**
 - Which members of the Board/management should be on the “front lines” in engaging with the activist?
 - Who should be the “first responders?”
 - How will the Company respond to a request for a meeting with the activist? Which Company / Board representatives would attend such a meeting?
 - How would the Company respond to the receipt of a “white paper” from an activist, both one privately shared and one publicly disclosed?
 - What would be the Company’s public response, if any, to an activist publicly disclosing a stake in the Company.
 - Conduct scenario planning exercises with the Board and outside advisers (legal, investment bankers, proxy solicitors, PR/IR) to prepare for activist engagement.

MISTAKES COMPANIES AND BOARDS MAKE IN RESPONDING TO ACTIVIST INVESTORS

Mistakes Companies Make In Responding To Activist Investors

- Failure to demonstrate a commitment to enhancing shareholder value.
- Failure to implement “early warning” systems.
- Failure to have established strong intelligence networks.
- Failure to appreciate how attractive a target the Company has become for an activist.
- Failure to sufficiently prepare for shareholder activism.
- Failure to have pre-emptively identified and evaluated the value enhancement opportunities that an activist may try to pursue.
- Failure to appreciate how vulnerable the Company is (structurally and otherwise).
- Failure to address structural and other vulnerabilities before the activist shows up.

Mistakes Companies Make In Responding To Activist Investors

- Failure to appreciate that every company is vulnerable to shareholder activism, even high-performing companies.
- Failure to appreciate the urgency of the situation.
- Failure to take sufficient ownership of the situation.
- Failure to assemble an experienced activism defense team.
 - Failure to appreciate that you can't win a championship football game with a championship basketball team.
- Failure to tap into the experience of their activism defense team.
- Failure to understand that there is no "magic wand" to resolve the activist situation.
- Failure to identify the problem that needs to be solved.
 - Is the problem to be solved an M&A problem, shareholder communications problem, a business strategy problem or a corporate governance problem?
- Failure to appreciate the importance of driving a narrative for the proxy advisory firms and shareholders.

Mistakes Companies Make In Responding To Activist Investors

- Failure to take the activist seriously.
- Failure to appreciate how well the activist knows the Company.
- Failure to appreciate the skill and experience of the activist.
- Failure to appreciate how committed the activist is to prevailing.
- Failure to appreciate that the activist is typically much better at the “shareholder activism game” than the Company.
- Failure to appreciate how well advised some activists are.
- Failure to appreciate how much support the activist will receive from other shareholders.
- Failure to engage with the activist early and communicate an openness to the activist’s ideas and perspectives.
- Failure to have identified and pursued an early settlement opportunity.

Mistakes Companies Make In Responding To Activist Investors

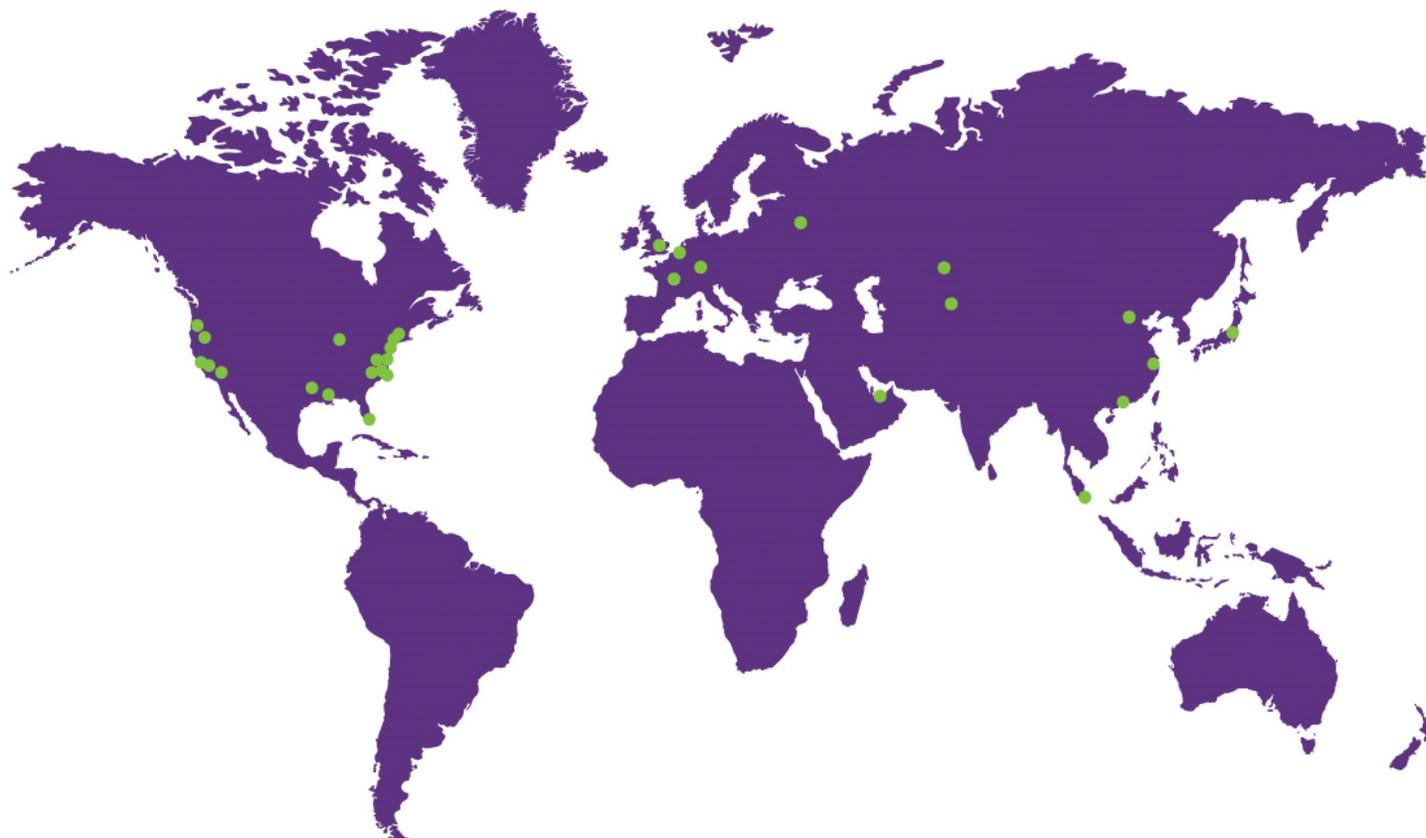
- Failure to have built strong relationships with key shareholders.
- Failure to appreciate the investment horizon of current investors and the activist.
- Failure to appreciate the importance of driving a narrative that sells well with shareholders and the proxy advisory firms.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty	Dallas	London	Paris	Shanghai*
Astana	Dubai	Los Angeles	Philadelphia	Silicon Valley
Beijing*	Frankfurt	Miami	Pittsburgh	Singapore
Boston	Hartford	Moscow	Princeton	Tokyo
Brussels	Hong Kong*	New York	San Francisco	Washington, DC
Chicago	Houston	Orange County	Santa Monica	Wilmington



Morgan Lewis

*Our Beijing office operates as a representative office of Morgan, Lewis & Bockius LLP. In Shanghai, we operate as a branch of Morgan Lewis Consulting (Beijing) Company Limited, and an application to establish a representative office of the firm is pending before the Ministry of Justice. In Hong Kong, Morgan Lewis has filed an application to become a registered foreign law firm and is seeking approval with The Law Society of Hong Kong to associate with Luk & Partners.

THANK YOU

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