# CREATING AN ACTIVIST DEFENSE STRATEGY

## Overview

### Situation

### AST's Solution

### Client Results

# MAKING THE MOST OF INCENTIVE PLANS

## Performance Incentives

## Developing Award Plans

## Communication is Key

## Designing Plan Documents
SITUATION:
Two Clients and an Activist

A privately-owned investment management company sought to sell its mutual fund assets and had struck a deal with a leading investment advisor to assume control of the funds. To proceed with the transaction, the manager needed the shareholders of all the funds in question to approve a new investment advisory agreement with the buyer.

Both firms are clients of AST Fund Solutions. Both had engaged us on their behalf in this deal. In effect, our skin in the game was doubled as to ensuring a favorable outcome for our clients.

In itself, the transfer of assets would be mutually beneficial for all involved and should have occurred without incident. In this instance, however, there was a wild card in the deck. An activist hedge fund had been accumulating shares in one of the selling investment manager’s closed-end funds and had sent the company a letter indicating they would seek to block the sale at the next Annual General Meeting (AGM) unless they received a settlement.

With an activist in the picture, the transaction was no longer routine, and the sale was in danger.
**AST’S SOLUTION:**
**Limiting Activist Outreach**

The fund manager engaged AST Fund Solutions to obtain the desired vote results, which would enable the sale to move forward despite the hedge fund’s activist stance. The advisor buying the funds had previously retained AST Fund Solutions, so we found ourselves simultaneously consulting with both the buyer and seller to gain the necessary shareholder approvals for the consolidation. This was advantageous for everyone involved, because it gave AST a complete strategic overview of the situation, enabling us to better serve both parties and to facilitate contact between the two at critical junctures.

We formulated a strategy centered on: 1) the timing of the announcement, 2) circulation of proxy materials, along with help crafting effective letters to shareholders, 3) mobilizing our call center to contact shareholders, and 4) working with the fund to tailor their presentation to a key proxy advisory firm.

A proxy fight ensued. AST Fund Solutions updated its clients regularly with both detailed vote forecasts and daily surveillance of all market activity that included Ownership Intelligence reports on the funds (tracking ownership on a settlement basis using non-public data obtained as an agent of the issuers). We compiled comprehensive reports (for the Boards) identifying the record date shares held by each institutional holder, along with comprehensive shareholder base analyses and vote forecasts based on that information.

**CLIENT RESULTS:**
**Enabling the Sale**

Thanks to our strategic advisory services, Ownership Intelligence reporting, and solicitation strategies, AST Fund Solutions was able to assemble and execute a successful proxy solicitation campaign. While the hedge fund failed to achieve any of its objectives, we succeeded in obtaining the votes necessary for the deal between our clients to move forward.

---

**AST FUND SOLUTIONS**

**Strategic Mutual Fund Proxy Services**

Understanding the priorities and concerns of mutual fund investors is critical to the outcome of shareholder meetings. For more than 40 years, AST Fund Solutions has served as a strategic partner to mutual funds and assisted them in the management of critical proxy campaigns. We offer an innovative suite of specialized advisory services and customized solutions that we tailor to each client and situation, including:

- Activist Advisory & Analytics Services
- Annual & Special Meeting Services
- Proxy Solicitation Services
- Contested Proxy Solicitation Services
- Rights Offering Information Agent Services

For more information, please contact:

Paul Torre 631.875.1625 or ptorre@astfinancial.com or visit our website at https://www.astfinancial.com/mutual-fund-proxy-services
PERFORMANCE INCENTIVES

Performance incentives have evolved significantly over the past decades. In the 90s, simple stock options were the primary incentive offered to employees. In addition, golden parachutes became prevalent, with a select few benefiting their company being acquired regardless of the company’s performance. As a result of these incentives, activism increased and the SEC began to take notice. Stock Option prevalence began to fade, and gave way to restricted stock awards and units, which provided more stability both for the issuer and the employee. In the past decade, the performance-based long-term incentive (LTI) has grown most rapidly among award vehicle types—stock options and time-based restricted awards are still being used by a majority but at a rate that has leveled off. The performance-based LTI resonates in today’s corporate environment; if the company is not performing at its best, employees do not receive their full award but instead a percentage. Conversely, if the company performs above expectations, employees may receive more than 100 percent of their awards. Performance has become a major tracking vehicle, especially for the C-suite.

DEVELOPING AWARD PLANS

Following are several key elements to consider when developing an award plan:

- **Recruitment and retention**—identify the best way to incorporate the element of retention into the total rewards.
- **Pay for performance**—there is an increased focus to design plans around performance conditions and triggers, change in control and termination provisions.
- **ISS Scorecard**—ISS has a developed approach for evaluating equity compensation plan proposals which is key for shareholder approval.
- **Incentive vs. disincentive**—Compensation is not only a major expense, it is the best tool to focus employee behavior and performance.

In a highly competitive job market, incentive plans need to be a part of your company’s road map regardless of what stage the company is in. As employees are investing their time and talent it is critical, for retention and morale, that you appreciate their contributions and want them to invest in the company’s future.
DESIGNING PLAN DOCUMENTS

The plan document should outline all the rules of the plan, such as:

- Type of awards
- Who is eligible
- Restricted period
- What happens at vesting and clarification as it relates to resignation, termination (with or without cause), retirement, death and disability
- Voting rights
- Tax implications
- Dividend rights/dividend equivalent rights

When it comes time to design your compensation program, take your time so you do not make mistakes you need to fix later. Look at what your peers are doing, as it will help in two ways—to ascertain whether the company’s recruiting and retention practices are in line with or better than what your peers are doing, and taking that time will allow you to better communicate to employees in the future. Additionally, consulting with a professional will help make the difficult decisions.

COMMUNICATION IS KEY

Communicating your plan to stakeholders will vary widely depending on the corporate culture. Often, multiple communication methods will come into play. In a manufacturing company, a town hall meeting may be the optimal method of communication, whereas an email would be expected at a tech company. The bottom line is that getting the information in the hands of employees is critical—and you can’t over-communicate. In addition, not everyone will understand the value and importance of the award, so it is crucial to educate them about the details of the award and what it means for employees’ future at the company.

EQUITY PLAN SOLUTIONS SERIES:

AST Can Help You Design & Implement a Plan

Properly constructed, an incentive plan will not only benefit employees but will help ensure the strength of your company in the years ahead. We are happy to talk with you about how we can help develop a plan that best suits your organization’s needs.

For more information visit www.astfinancial.com or email newbusiness@astfinancial.com.