

By Louis Cordone,
Senior Vice President, D.F. King

POST-ACTIVIST SHAREHOLDER COMMUNICATIONS

Enhancing Engagement



WHY POST-ACTIVIST SHAREHOLDER COMMUNICATIONS ARE CRITICAL

Investor intelligence and a strong investor communications plan can help to mitigate some of the volatility, but more importantly, conversations with investors help provide valuable insights into how the street views the company. Furthermore, an active shareholder communications plan that is inclusive of leadership will introduce new board members to the street and provide an opportunity to level set investors' expectations and perceptions of the company.



COUNTERING THE LONG-TERM ACTIVIST IMPACT

The aftereffects of shareholder activism are long and permanent for a company and its current and future shareholders. Regardless of the proxy results, the company will be changed forever. As a result, the company will need to reintroduce itself to investors present and future who need to know the impact of the changes on their investment. Before communicating to the investors, it is critical for companies to identify what has changed.

CORE AREAS THAT ARE DIFFERENT IN A POST-ACTIVIST WORLD





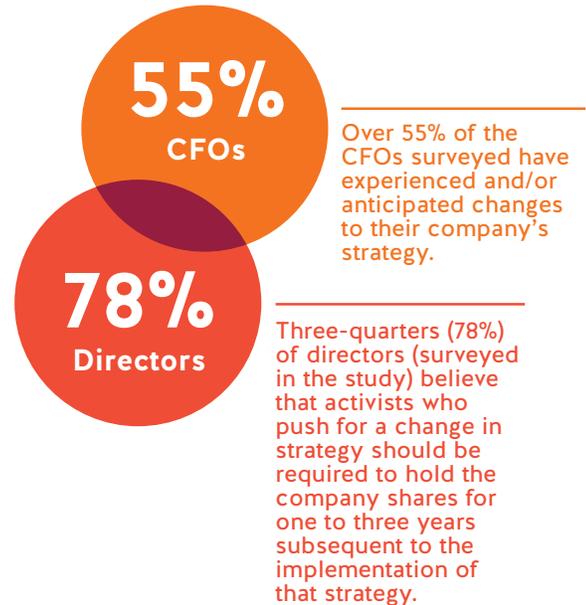
KEEPING COMPANY STRATEGY ON AN EVEN KEEL

Depending on the activist's assessment of the company, changes in company strategy can range from divestiture (carve-out or spin-off divisions) or performance improvement initiatives, to changes in corporate strategy, to a share repurchase plan and asset sale. In a report published in *Deloitte CFO Insights*,¹ over 55% of the CFOs surveyed have experienced and/or anticipated changes to their company's strategy.

Any change to the corporate strategy must be communicated clearly to investors who will be concerned to understand how the changes will affect their investment opportunity. Traditionally, changes in strategy driven by activists will prioritize short-term shareholder value over long-term company growth. Investors will make buy-and-sell decisions based on whether or not they agree with the revised strategy. For example, long-only investors who supported management during the proxy contest will have concerns about a shift in strategy that focuses on the short term. Meanwhile, hedge fund and fast money investors will look forward to maximizing shareholder value over the short term.

As a result, companies fear that a strategy shift could create unnecessary volatility and sell pressure on the stock. To combat this risk, companies often look for long-term commitments from activists. For example, according to a report published by the NYSE Governance Services, "Three-quarters (78%) of directors (surveyed in the study) believe that activists who push for a change in strategy should be required to hold the company shares for one to three years subsequent to the implementation of that strategy."²

These assurances are put in place to help protect the company's long-term focus and should be communicated to investors. Several benefits may accrue from communication. For example, although these requirements may not prevent investors from selling, they could bolster investors who do not hold shares to initiate positions. This new crop of investors may provide the depth to liquidity needed to support the stock price.



HOW TO POSITION COMPANY MANAGEMENT CHANGES

Changes to leadership can range from management change, to board change, to executive compensation and the addition of the activist to the board. In the same report from Deloitte mentioned above,³ the remaining CFOs surveyed experienced or anticipated changes to leadership. If company strategy represents the company's business plan, leadership is responsible for executing it. When leadership changes are presented to investors, investors need to decide whether or not they think the new leadership can be successful.

Separately, changes to the board can also create the challenge of getting to know new faces. Boards that have been in place typically build up trust over the years. The members have access to privileged information, and it is often taken for granted that this information will not be shared. A new face, who also represents a key investor, will cause confidentiality concerns⁴ for the company and shareholders alike. A key takeaway published by NYSE's Governance Services⁵ shows that directors overwhelmingly agree that if an activist places a director on the board, the fund should be subject to the same restrictions on pledging and hedging, and under no circumstances should that director be allowed to take confidential information back to the fund.



EVOLUTION OF THE SHAREHOLDER BASE

Shareholders remain the target audience for communications, but are they the same investors as before who received prior communications from the company? Chances are these investors have adjusted their shareholder positions and views on the company as the pressures of an activist campaign drained resources and executive focus away from the business.

By nature, the capital markets are dynamic. Shareholders are free to make buy-and-sell decisions based on information they are receiving about the individual company and macroeconomic or geopolitical events. Shareholders are a moving target even in the best of times for a company.

In a post-activist environment, identifying current and potential investors becomes even more difficult. In times of shareholder activism, many smaller investors sell shares to avoid participating in the event. This practice is often referred to as “voting with their feet.”⁶ These shares are often purchased by fast money investors who are looking to turn a profit on volatility. Other buyers could represent wolf-pack investors⁷ who are seeking to support the activist.

Meanwhile, the larger institutional investors will look to vote in line with their goals and objectives. If the end result of the vote puts the company out of line with its goals, they may choose to sell the stock. Finally, new investors may see the outcome of activism as an opportunity to initiate a position. Depending on the outcome, they may view the changes as a positive catalyst for the company. In this scenario, there could be a fresh crop of new institutional investors entering the stock.



THE POST-ACTIVIST OPPORTUNITY

Companies that have not engaged with dissident shareholders may believe that once the campaign ends, they can return to business as usual. In reality, the post-activist environment can be as difficult for a company as the fight. Whether or not the activist wins, management wins, or a compromise is reached, post-activist impacts on company strategy, management, and shareholders are real and lasting.

“Communication is among the most critical steps the company must take.”

As both the company and its shareholders search for stability, the company must communicate its continued viability and value amid change. Communication is among the most critical steps the company must take. Shareholders will want to hear what changes have taken place, get to know and meet new leadership, and understand the short- and long-term opportunities for their investment. The company has the opportunity to reshape its perception, increase its value, and strengthen shareholder support through clear and meaningful communications.

We begin to perform this service directly after the pricing occurs. We monitor the initial pricing and shareholder activity. This is a decisive period for tracking ownership, as many outcomes can ensue from it. Critical to this is uploading ownership data ahead of the first filing.

ABOUT THE AUTHOR

Louis Cordone is Senior Vice President at D.F. King, and leads the Ownership Intelligence team. As a senior member of this group, Mr. Cordone consults for companies on securities ownership for regulatory compliance and investor outreach. Previously, he was the Head of the Advisory Services in the Americas division for Thomson Reuters. In that role, Mr. Cordone managed industry-based teams of analysts who provided shareholder identification services to Investor Relations Officers.

¹ Lamm, Bob, and Chris Ruggeri. "CFO Insights | Activist Shareholders: How Will You Respond?" Deloitte, 2015, www2.deloitte.com/content/dam/Deloitte/tr/Documents/finance-transformation/wallace-cfo-insight-activist-shareholder.pdf (Retrieved 6/27/2019)

² "The Effect of Shareholder Activism on Corporate Strategy: A 2016 NYSE Governance Services/Evercore/Spencer Stuart Survey Report." NYSE Governance Services, 2016, www.spencerstuart.com/-/media/pdf_files/research_and_insight_pdfs/the-effect-of-shareholder-activism-on-corporate-strategy_nyse_101016.pdf?la=en&hash=8179E3941E61BE19F3FBE9CCB3AC29F5D29A2FDO

³ Lamm, Bob, and Chris Ruggeri. "CFO Insights | Activist Shareholders: How Will You Respond?" Deloitte, 2015, www2.deloitte.com/content/dam/Deloitte/tr/Documents/finance-transformation/wallace-cfo-insight-activist-shareholder.pdf (Retrieved 6/27/2019)

⁴ Frost, Lindsay. "Activist-Appointed Directors Causing Confidentiality Concerns." Agenda | A Financial Times Service, 4 Apr. 2016, www.conference-board.org/retrievefile.cfm?filename=AgendaWeek-040416.pdf&type=subsite

⁵ "The Effect of Shareholder Activism on Corporate Strategy: A 2016 NYSE Governance Services/Evercore/Spencer Stuart Survey Report." NYSE Governance Services, 2016, www.spencerstuart.com/-/media/pdf_files/research_and_insight_pdfs/the-effect-of-shareholder-activism-on-corporate-strategy_nyse_101016.pdf?la=en&hash=8179E3941E61BE19F3FBE9CCB3AC29F5D29A2FDO

⁶ Frost, Lindsay. "Activist-Appointed Directors Causing Confidentiality Concerns." Agenda | A Financial Times Service, 4 Apr. 2016, www.conference-board.org/retrievefile.cfm?filename=AgendaWeek-040416.pdf&type=subsite

⁷ Small, R. Christopher. "Wolf Pack Activism." Wolf Pack Activism, Harvard Law School Forum on Corporate Governance and Financial Regulation, 9 Feb. 2015, corpgov.law.harvard.edu/2015/02/09/wolf-pack-activism/



CONTACT US

Call: (877) 814-9687

Email: newbusiness@astfinancial.com

Visit: astfinancial.com

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