

## THOUGHT LEADERSHIP

# Activism Defense: Expert Advice on How to Build Trust with your Shareholders

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As we close out this proxy season, it's clear that the shareholder activism landscape has evolved, and more companies are being targeted than ever before. For every big public contest (like at Disney or Illumina), there is also significant money at play across the board, as small and mid-cap companies are targeted by activists and explore settlements where possible.

The bottom line: investor activism is a rising trend and companies are facing increasing risk.

So how do you leverage your company's shareholder engagement efforts to avoid an expensive proxy contest that will likely damage your business while distracting the board and management?

The secret to a good activism defense is all about play-calling *before* the game. And getting your company's management, board, and advisors to run through the strategy in advance of proxy season.

Read on for three areas of opportunity for companies to keep in mind, from activism and investor experts across the spectrum.

## Assess (and address) your vulnerabilities – frequently

Good governance requires companies to be *continually* assessing vulnerabilities and creating plans to remedy these areas.

Ted White, Managing Director and co-founder of Legion Partners Asset Management, an activist investment manager, highlighted how important it is for activists to see a commitment to ongoing improvements from their portfolio companies. "We as shareholders ought to be a bit critical and skeptical when companies are only making changes when they're under pressure...can you trust that the culture has actually changed if [the company] had full reign of [the board] they picked? Directionally, those changes are usually good but you can't always trust that it's enough."

For companies looking to preempt activism, it's important to regularly evaluate your risk areas, make a plan to address them, and provide explicit disclosures regarding the enhancements.

By providing insights into the broader decision-making process, companies can demonstrate a clear commitment to long-term value creation, something all shareholders support.

## Maintain an even-keeled, open-minded approach

Some advisors that may counsel companies to “raise the drawbridges” when targeted by an activist.

However, this can send the wrong signal that the activist is indeed correct about the company's vulnerabilities and such actions may therefore be counterproductive.

Marian Macindoe of Parnassus Investments, a sustainable investment firm, affirms this in her role as Head of ESG Stewardship overseeing the firm's proxy voting: “You're supposed to be partners and collaborating together to improve value for the company rather than just going in to destroy.”

An overly aggressive and single-minded defense strategy can backfire and misses out on the opportunity to engage productively and proactively with investors. “If an activist is actually at your doorstep, it's too late,” according to Amanda Shpiner, Managing Director at Gasthalter & Co., a strategic communications firm focused on shareholder activism.

“Some of the best work happens [first] behind the scenes. If there's a way to get to a settlement or some type of constructive dialogue before an activist has to launch a proxy fight, in many cases, that's a win for both sides.”

## Trust your key stakeholders and engage them often

By and large, industry experts recommend one piece of advice to keep in mind when considering activism defense: trust your shareholders.

“The number one piece of advice [for companies] is that you need to build trust with your shareholders over time. And that's not just the shareholders that you already know - it's activist shareholders and potential activist shareholders. It's understanding not just who they are, but why they're invested in you, and then making sure that you clearly communicate the vision and the strategy that you have for your company and your plan to get there,” according to Marian Macindoe.

From the activist perspective, trust enables better, more productive communication across the board, which translates to fewer company resources spent. According to Ted White, “The least risky, quickest, least expensive route is to engage management...if you have to go public, it raises the stakes and it's harder to communicate with companies.”

For Amanda Shpiner, companies should look at trust as building and forging relationships with investors over the long-term because ultimately, they are owners of the company too. “They [activists] want to benefit shareholders. They want to ensure that the board has the right skill sets in place to be able to lead the company forward.”

Developing a communication plan that builds trust with shareholders is an important first step to engage proactively with activists, if and when the time comes.

While investor activism may be new to some companies in 2024, don’t forget that the principles of good governance always apply— creating disclosures that can speak to key issues like director qualifications, executive compensation, and cyber-related risks. Your proxy statement and other financial filings remain essential tools for strategic communication and activism defense.

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