

Activism and the Art of Readiness: A Primer for Investor Relations Officers

According to data compiled by Activistmonitor, shareholder activism in the UK and Europe is increasing year-over-year. Since 2011, the number of European campaigns in which an activist has made a public demand increased more than 150% per annum from 18 at the end of 2011 to 179 at the end of 2017. Further, activists seeking European targets are not limiting themselves to small and mid-cap companies; from 2014 – 2017 among public campaigns, the number of European large cap activist targets has increased by almost 70%.

While aggressive “US-style” activism grabs the headlines, some US funds have become more sophisticated in how they approach UK / European targets and are gaining influence through a constructive approach that allows them to cultivate a broad coalition of support from traditional institutional investors. Similarly, there are several “home-market” activists who implicitly understand the rules of engagement in a given jurisdiction and which are working successfully behind-the-scenes to affect change at portfolio companies. In many cases, rather than waging aggressive public battles, activists on this side of the Atlantic are taking “constructivist” approaches to engagement that play out over longer periods of time than relatively quick but painful contests for board seats over a single annual meeting cycle.

All of this suggests that activism can no longer be taken for granted by UK and European companies as an isolated phenomenon that burns brightly and quickly fades away. It is a potent and lasting market force that has evolved over time to become a manifestation of deep-rooted investor concerns across global capital markets. This begs the question: Are you ready?

The Role of Investor Relations in Activist Situations: Leading From the Front

Investor Relations (“IR”) is the first line of engagement and defence when an activist expresses interest in investing, or invests in, a company. Activist fund analysts or portfolio managers will first call the IR department with questions about the company, or may seek an audience at a conference either in a one-on-one or group setting. Similarly, if an activist fund acquires a position that crosses a disclosure threshold prior to making contact with the company, it is the IR department which often sees the disclosure first. In both cases, the onus is on IR to inform management and recommend a course of action.

After the initial engagement, a senior Head of IR will not only be required to manage the ongoing interaction with the activist fund but will also be responsible for ensuring that existing long-only investors support the company and its strategy. Further, the task of organizing the company’s capital markets focused response to an activist will – and should – fall under IR’s remit.

These responsibilities add significant complexity to an already complex job. The Head of IR will have to manage both internal and external stakeholders during a “bet the company” situation that most will never have experienced before. Being prepared is crucial to success.

How prepared are you...really?

We are sure that you have in your office a dust-gathering binder that provides step-by-step instructions for responding to an unsolicited acquisition proposal. Perhaps that binder has even been expanded to address an activist approach. This is all you need to cope in a live activist situation, right? No.

The bid defence binder is a pragmatic, albeit incomplete-by-definition, guide to handling an unsolicited M&A approach. While these books are as good as far as they go with respect to M&A, they are often deficient when it comes to shareholder activism. The goals of a hostile bidder are clear: Buy your company at the best possible valuation for the acquirer and its shareholders and do so within a clearly defined regulatory framework.

When it comes to activism, however, demands are not always fixed. Additionally, unlike M&A defence, there is no definitive endpoint to an engagement that often takes place outside of takeover regulation. Contrary to stereotype, activist funds can take long-term positions and can hold a company responsible for its actions for the entirety of their investment horizon, sometimes with an ever-changing investment thesis. It is a psychological and economic game without a clear conclusion.

Assuming an adequate state of readiness based on a few topical discussions and pages in a book is to invite complacency that could prove fatal. How the initial conversations with an activist are handled can establish the tone for the duration of the engagement. IR is more exposed than most in this scenario, and a lack of full preparation presents several risks:

- Not understanding the investment approach, track record, and general modus operandi of an activist which takes an interest in your company can result in an uninformed response that ranges from unwarranted alarm to unhelpful defensiveness. This can have long-tailed consequences, and may in some cases even be outcome determinative.
- Assuming that first contact with the company is part of an activist fund’s initial due-diligence underestimates the level of analysis that goes into selecting investments. If an activist is following your company, it is doing so for a well-researched reason.
- Misdirecting or mishandling activist requests, be they for information or audiences with management and the board, has many unintended consequences both internally and externally.
- Relying on preconceived notions or outmoded generalities about activists can severely impede – and even irrevocably damage – productive dialogue with both the activist and long-only investors.

As a Head of IR, you are the first point of contact for each key player in a game of multi-dimensional chess. It is critical that you are clear-eyed about your ability to handle an activist inquiry or investment, and that you are able to honestly assess your level of readiness free from cognitive or philosophical biases, false senses of security, or complacency. Be your own harshest critic, seek help when necessary, and make sure you have the resources you need to take rational and proportionate action.

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