NACD CHAPTER PROGRAM SUMMARY

NACD NEW ENGLAND CHAPTER

EVENT TITLE: Shareholder Activism and Board Dynamics: What Every Corporate Director Needs to Know
EVENT DATE: 10/1/2024
EVENT TIME: 4:30 p.m. ET

PROGRAM SUMMARY:

What makes a company a target for activist investors? What can companies do to be seen as a leader and not a laggard in their peer group? Is superior financial performance enough to keep activists away? If an activist has asked for a meeting with your board, it might be too late to ask such questions, but every director should understand how activists operate, the trends shaping activism today, and the steps a board must take when an activist comes calling. NACD New England hosted a panel discussion to explore both sides of the typical activist campaign with insights from a successful activist investor, an experienced corporate director and an expert in activist defense and investor relations.

Activists can generally be categorized into two groups: those focused on environmental and social issues and those aiming for financial returns. The latter, particularly hedge funds with activist strategies, globally control approximately $160 billion in assets. In 2024, these funds initiated around 550 campaigns in the United Staes, with 105 board seats gained, 85% of which came by way of settlements. The trend toward settlement agreements, as opposed to shareholder votes, continues to dominate the landscape, with activists pushing for changes in areas like operational performance and M&A transactions.

Activist campaigns are growing increasingly sophisticated. Today's activists come to the table well-prepared, with thorough research and detailed proposals for creating shareholder value. Boards should not automatically dismiss activists as merely disruptive or uninformed. Instead, companies must recognize that institutional investors are more willing than ever to support activist proposals if they are aligned with long-term value creation.

Activists continue to drive changes related to M&A transactions. Approximately one-third of campaigns that push for a transaction are successful, while about half of those that oppose a proposed deal succeed. Boards need to understand that activist agendas related to M&A are often well-informed and may reflect shareholder concerns about the company's long-term strategic direction.

Small-cap companies represent a growing battleground for activists. Such firms often have more concentrated shareholder bases and can be seen as undervalued, making them prime targets. Additionally, small-cap companies often lack the internal resources necessary to effectively communicate their long-term strategies to investors, leaving them vulnerable to activists. The ability of activists to target individual investors through social media rise of retail investors has further shifted the power dynamic.

When facing an activist, board directors need to be honest with themselves in assessing whether the activist's proposals address legitimate issues that the company has not yet resolved. Furthermore, it is crucial to understand the activist's background, agenda, and track record. Boards should engage in a constructive dialogue with activists rather than reflexively taking a defensive stance, as activists might have valuable insights that could benefit the company.

Refusing to engage with activists is not a viable strategy. Activists are part of the broader shareholder landscape, and their proposals often reflect real opportunities for value creation. Boards need to understand that many campaigns now result in settlements because activists are well-prepared and offer well-researched solutions that institutional shareholders are often willing to support.

Another significant trend is the professionalization of activist campaigns, facilitated by the introduction of the universal proxy card. This has made it easier for activists to get their candidates in front of shareholders and has increased the likelihood of settlements before disputes escalate. In response, boards are becoming more proactive, addressing potential vulnerabilities early and formulating strategies to prevent activist challenges.

Of course, not every activist will offer constructive ideas. When dealing with more aggressive or inexperienced activists, boards can still benefit from drawing out the engagement process, conducting thorough evaluations of the activist's proposals, and adopting reasonable ideas where appropriate. When making such changes, boards should ensure that they are highlighted in the company's IR materials, such as a press release or earnings conference call. Doing so can signal progress to investors and reduce activist pressure overall.

Clear communication and transparency are crucial elements in managing activist situations. Companies should ensure they engage meaningfully with shareholders well before an activist arrives. Waiting for an activist campaign before initiating dialogue with shareholders can erode trust and lead to deeper conflicts. Consistent communication of the company's long-term strategy, operational milestones, and performance is critical.

Artificial Intelligence should be an important area of focus for corporate boards. Activists are increasingly looking at how well companies are governing their technology investments, particularly in AI, and whether those investments yield their expected returns. DEI (Diversity, Equity, and Inclusion) issues, meanwhile, are not a central focus for financial activists, but still represent an important element of corporate strategy, especially in terms of talent management and long-term value creation.

The importance of strong collaboration between boards and activists should not be underestimated. Constructive engagement can turn potential conflicts into opportunities for growth and value creation. However, boards must remain vigilant and avoid making concessions too quickly. By being open to activist input, conducting thorough and independent assessments, and maintaining transparency with shareholders, boards can better navigate the evolving activist landscape.

KEY TAKEAWAYS:

- **Activism Trends:** Activists today tend to be very well prepared, armed with thorough research and value creation ideas, which makes institutional investors more likely to support their agendas. Activism is more common among small- and mid-cap companies, where operational vulnerabilities are typically more apparent.

- **Board Preparedness:** Boards must be proactive in addressing their company's operational and governance issues to minimize the risk of being targeted by an activist. Key focus areas include capital allocation, operational improvements, long-term strategy, and board composition and diversity.
- **Engagement with Activists:** Companies should listen to activist proposals and remain open to constructive ideas. Engagement can often lead to settlements that benefit both parties. However, when activists are not aligned with the company's long-term goals, firms need to push back strategically.
- **Board Dynamics:** If an activist gains a board seat, the board must continue to work cohesively. Trust-building and open communication between new directors and incumbents are essential.

MODERATOR:

David Hunker, Managing Director and Global Head of Activist Defense and Shareholder Engagement, Piper Sandler

SPEAKER(S):

Wendy Lane, Board Director, Verisk Analytics, CAC Holdings, Envestnet, et al.
Christopher Pappano, Managing Director, Barington Capital Group
Maureen Wolff, CEO, Sharon Merrill Advisors

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