Barbarians No More: The Refreshed Public Face of Activists and What It Means for Corporate Boards

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Not long ago, *The Wall Street Journal* profiled a prominent fund manager highlighting how he works productively with the CEOs and Boards of companies in which he invested. The piece said the "soft-spoken yoga devotee" has a history of building "collaborative relationships" and often avoids "tough tactics." This was not a profile of Warren Buffet or Bill Miller, but of Barry Rosenstein, the activist investor in charge of JANA Partners, the firm that forced the break-up of McGraw-Hill, Oil States International and Marathon, and waged a bitter proxy fight at Agrium.

The *Journal* story is an example of activists seeking a medium to improve their public image and it is not the only publication showcasing these purported makeovers. Major media outlets are churning out profiles of activist fund managers ranging from the established Jeffrey Ubben at ValueAct to the up-and-coming Jesse Cohn at Elliott Associates. And who could forget the recent TIME cover calling Carl Icahn the "Master of the Universe?"

This trend is removing the stigma of being an "activist" with significant consequences on shareholder defense, especially with regard to external communications.

As we enter the heart of the 2014 proxy season, activist investors are wielding influence over corporate strategy in unprecedented ways. According to FactSet's SharkRepellent, activist shareholders won an all-time high of 67 percent of all proxy fights in 2013, though the number of fights was down as both sides looked to settle their disagreements. In a surprising demonstration of confidence, one noted legal adviser for activist funds even predicted an increase in full board slates being put forth in proxy fights.

Through thoughtful, concerted media campaigns, today's activists have been able to paint themselves as increasingly sophisticated and strategic in their approach to companies while portraying management teams as entrenched, self-interested and inflexible.

One simple example is how activists now favor lengthy presentations with a detailed investment analysis instead of a flurry of sharply worded letters. They also now build and maintain close reporter relationships that enable strategic leaks and increased background slant to any story.

Consider the *Journal* story. While clear in describing Mr. Rosenstein as an activist, the image produced is one of a smart, friendly collaborator. Mr. Rosenstein appears more like a management consultant looking to improve the company for all stakeholders than a fund manager looking to deliver alpha for his funds.

What is not directly mentioned in this story is the reality that activists invest with a laser-focus on a price target. To get that target they will pull as many levers as possible.

This image of a collaborator helps build goodwill among the shareholder base and strengthens attacks against the target company. Most importantly, it undermines a Board's willingness to engage in a public battle.

Secure in the figurative "high ground" that is favorable public perception, activist investors can quietly apply pressure to companies and seek to secure returns while avoiding the sizeable cost of a proxy fight.

How then should Boards and management teams prepare for being targeted by suddenly mainstream activists? Certainly, a focus on fundamentals (know your investors, define your message early and often) remain the basis of any good defense. However, the activists' new tactics require revised defensive measures. Here are a few tips that companies should bear in mind:

1. **Know your activist** – No two activists are exactly the same. With a healthy mix of ego and economics fueling decisions, each fund manager will pursue an investment in very different ways. Understanding the fund's typical approach to an investment, including the firm's penchant for being vocal and its recent history, current public profile, aptitude for a fight, media relationships and messaging approach are critical to forming a smart communications defense.

2. **Protect your story** – Activists are bound by a different set of standards for public communication, allowing them to be provocative, while boards are fiduciaries for all shareholders, which can sometimes limit the response. But companies should maintain a forward-leaning stance in promoting and defending their corporate governance and strategic direction. If a company does not consider how to protect a balanced public narrative with direct or indirect communications it will risk losing investor support.

3. **Look for new solutions** – Shareholder activism defense is rapidly changing and a good place to find heated academic debate. Many companies and advisors, however, lean too heavily on a standard playbook. It is important to assess the current state-of-play in all aspects of activism defense. Already in 2014 we have seen several intriguing new approaches and developments. Considering activists are constantly reinventing themselves, companies should also be looking at new ways to wage an effective defense.

4. **Leverage the organization** – Companies often consider activism defense as something that impacts only its financial communications, but when a company is thrown into the spotlight, all stakeholders will closely watch anything it puts out. Ensuring that any announcement ties back to overarching messaging that furthers the corporate narrative can be a very powerful way to impact stakeholder opinion.

5. **Forget the questionnaires** – Activism defense 101 is making sure a company knows its investors. That does not mean having analysts and fund managers fill out a standard form. It is our experience that a relatively small number of focused, blunt and in-depth calls with investors and analysts reveal much more useful information.

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