The Shareholder Activism Report
Best Practices and Engagement Tools for Public Companies

“Important reading for corporate directors and those who advise them.”

David A. Katz
Corporate Partner
Wachtell, Lipton, Rosen & Katz

New!
Includes a 400+ page publication and a regularly updated website (see details inside)

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The Conference Board Governance Center

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Shareholder Activism Report
Best Practices and Engagement Tools for Public Companies
by Matteo Tonello and Damien Park

Gathering securities holding intelligence
- Limits of investor disclosure
- Lists of beneficial owners
- Securities surveillance services
- Trade settlement data from custodian banks

Activist types and investment strategies
- Hedge fund activism as an investment strategy
- Supporting votes by institutional investors
- The role of mutual funds and tag-along shareholders

Shareholder engagement techniques
- Establishing an engagement policy
- The role of the governance committee
- Complying with Regulation FD
- Engaging with governance and proxy voting professionals

The target profile
- Low capitalization
- High trading liquidity
- Undervaluation
- Operational performance
- Cash availability
- Debt capacity
- Asset diversification
- Low R&D expenditures
- Extensive institutional ownership

Activist demands
- Financial demands
- Strategic demands
- Governance-related demands

Key financial issues in activism campaigns
- Liquidity needs and other balance sheet issues
- Financial reporting and auditing issues
- Mark-to-market issues

Key strategic issues in activism campaigns
- Strategic oversight issues
- Risk oversight issues
- Performance evaluation issues

Key governance issues in activism campaigns
- Majority voting
- Electronic delivery of proxy materials
- Broker discretionary voting
- Proxy access reform
- Separate notice and record dates for shareholder meetings
- Say on pay
- Compliance with enhanced disclosure rules
- Board leadership structures
- Director and nominee disclosure
- Directorships held and legal proceedings
- Risk oversight disclosure
- Climate change risk disclosure
- Risk resulting from compensation policies
- Compensation consulting fees
- Equity award value reporting
- CEO succession planning
- Director compensation standards
- Executive compensation standards
- Recent shareholder proposals

Activist tactics
- Nonconfrontational tactics
- Confrontational tactics
- Threatening as a tactic
- Group tactics
- Wolf packs
- Remora funds
- Ten-or-fewer rule
- Free communication rule
- Electronic shareholder forums
- Empty voting techniques
- Over-voting
- Dividend recapture tactics
- Fiduciary obligations and share recall

Corporate responses
- Response strategy
- Outreach measures
- Support by proxy vote advisors
- Relations with stakeholders
- Avoiding outright criticism

Defensive measures
- Defenses against hostile acquisitions
- Shareholder rights plans
- "NOL" rights plans
- Section 203 of the DGCL
- Supermajority vote and fair-price requirements
- Defenses in proxy vote contests
- Classified board structures
- Disallowing action by written consent
- Limiting the ability to call special meetings
- Adopting advance-notice bylaws

Activism campaign outcomes
- Success rates
- Case studies of success and failure
- Settlements

Also includes a regularly updated website:
- Directory of 400+ activist investors
- Top 50 activist profiles
- 2009 proxy contest fact sheets
- 2010 proxy season updates
- Voting policies by major shareholder group and advisories (including CalPERS, TIAA-CREF, Council of Institutional Investors, and RiskMetrics)
- Literature on activism (organized by topics)
- List of advisors and specialists
- Over 200 sample documents from activist campaigns:
  - DE220 letters
  - Letters to management
  - Shareholder proposals
  - Proxy solicitation materials
  - Settlement agreements

To order or request more information, contact Timothy Concannon at timothy.concannon@conference-board.org or +1 212 339 0207.
Save time and access critical information on activist investors and their objectives and strategies through a single, easy-to-use reference book and its online supplement. The Shareholder Activism Report and the related resource portal provide you with one reliable source of information that goes well beyond discussing the regulatory environment in which activists operate. Investor profiles, proxy contest fact sheets, and statistical data on activists’ objectives and strategies are offered to help companies analyze the rationale of activists’ requests and engage effectively with the investment community.

Detailed profiles of activist investors offer up-to-date information on their current positions, investment styles, and the recent activism situations in which they were involved.

Summaries of the most notable proxy contests of the last few years are supplemented with the documents used by companies and investors, including DE220 letters to access shareholder lists, letters to management, presentations made during proxy solicitations, and settlement agreements.

Companies are guided through an assessment process for the evaluation of adherence to best practices. Practice discussion is accompanied by charts and tables with statistical information on their use within the company’s peer group.
About The Conference Board Governance Center
The Governance Center brings together a distinguished group of corporate directors, senior executives, institutional investors, and governance practitioners in a nonadversarial setting to discuss the most pressing issues in corporate governance.

The Governance Center draws upon almost two decades of authoritative research on issues of corporate law, governance, and risk oversight. Most recently, The Governance Center instituted the Task Force on Executive Compensation, co-chaired by Robert E. Denham, former chairman and CEO of Salomon Inc., and Rajiv L. Gupta, former chairman and CEO of Rohm and Haas Company. The Task Force issued recommendations to public companies in September 2009.

These efforts build upon the internationally acclaimed and influential The Conference Board Commission on Public Trust and Private Enterprise, which was co-chaired by Hon. Peter Peterson and Hon. John Snow and whose members included Hon. Paul Volcker; Hon. Arthur Levitt, Jr.; Andrew Grove, chairman of Intel Corporation; Ralph Larsen, former chairman and CEO of Johnson & Johnson; and John Bogle, founder and former chairman, Vanguard Group, Inc.

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To order or request more information, contact Timothy Concannon at timothy.concannon@conference-board.org or +1 212 339 0207.
The Conference Board brings you today’s most comprehensive reference guide to engaging shareholders, preventing proxy contests, and, when necessary, appropriately addressing requests for change made by activist investors.

The Shareholder Activism Report helps you navigate investor filings, distinguish investor types, and learn about activists’ objectives and tactics. Benchmarking information is offered to increase shareholder value and address gaps and vulnerabilities that would increase exposure to requests from activist investors.

Order today and, in addition to the report, you will receive online access for two to the Shareholder Activism Resource Portal, which features:

- Directory of 400+ activist investors
- Proxy contest fact sheets
- Voting policies by shareholder groups
- Extensive literature (articles, legal memorandums, business notes, conference presentations)
- Top 50 activist profiles
- Over 200 sample documents from activism campaigns (including response letters and settlement agreements)

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"A timely and comprehensive analysis that should promote rational discourse and reduce the fear factor."

John C. Wilcox
Chairman, Sodali

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