

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)

Engage. Assess. Respond.

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THE CONFERENCE BOARD
Trusted Insights for Business Worldwide



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.

“Given the dramatic changes taking place on the corporate governance landscape, this is a timely publication worthy of attention by directors, officers, and investors.”

James C. Morphy
Managing Partner
Sullivan & Cromwell LLP

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.

Shareholder Activism

Disident Information:

Fund Name: Warren B. Kander
Ownership: 2.9%
Proposals: Three Directors

Top Institutional Holders:

Fund name
Investment Advisers
Hedgebury Financial Inc. (Ticker: HRF)

Disident Information:

Meeting date: December 29, 2009
Outcome: Settled

Fund Name: Peerless Systems Corporation
Ownership: 20.40%
Proposals: One Director

Top Institutional Holders:

Fund name	Ownership	Voting results
Talon Asset Management	1,287,837	N/A
Second Curve Capital, L.L.C.	1,002,000	N/A
Fairview Capital Investment Management	970,000	N/A
North Star Investment Management Corp.	864,874	N/A
North Star Asset Management Inc.	30,055	N/A

Proxy Advisory Recommendations:

Proxy Advisory Firm	Management	Disident	Split	Comment
RiskMetrics	X			
Glass Lewis		X		Vote for one and withhold on one of management's nominees

Investors:

Disident: D.F. King

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.

Shareholder Activism

Bulldog Investors

Bulldog Investors often employs investor activism to unlock the intrinsic value of its investments - mostly in closed-end funds and, more recently, with Special Purpose Acquisition Vehicles (SPACs). Bulldog has conducted more than 30 proxy contests and several "hostile" tender offers since its inception in 1992.

Phillip Goldstein formed Bulldog Investments in 1992 after 25 years as a civil engineer. Goldstein is a widely quoted author on corporate governance, and securities regulation. He is a frequent speaker at SEC's controversial rule to register hedge funds. Goldstein graduated from the University of South Carolina with a Bachelor of Engineering degree in 1968 with a Master of Engineering degree in 1992.

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Founder, Chairman and CEO
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Steve Samuels
Co-Founder & Principal
Andrew Dalos
Managing Member

Recently Disclosed Company Investments (Holdings as of 12/31/2009)

Ticker	Company Name	Shares held	Percent ownership	Change	Value	Value percent of portfolio
FGF	Focused Alpha Growth Fund	2,109,252	10.36%	Increased	\$10.5	Not Available
FCF	Focused Alpha Large-Cap Fund	540,450	10.98%	Increased	\$2.7	Not Available
FCF	Focused Alpha Large-Cap	1,416,089	14.67%	Increased	\$7.1	Not Available
FCF	Focused Alpha Large-Cap	2,986,999	7.25%	Increased	\$14.5	Not Available
FCF	Dividend & Income Fund	1,555,252	17.13%	Increased	\$7.7	Not Available
FCF	German Dividend	885,580	16.95%	Increased	\$4.4	Not Available

Corporate Governance Handbook: Legal Standards and Board Practices

Facts and Statistics

Top Executive Compensation

Executive compensation data reported in proxy statements filed by SEC-registered companies as of June 2008 and analyzed by The Conference Board revealed that:

- CEO compensation rises with company earnings and size.
- CEO compensation is higher for larger companies.
- Smaller companies pay lower CEO compensation.
- Services (non-banking) and banks (23.31%) pay the highest CEO compensation.

Table 15: CEO Compensation by Corporate Revenue

Revenue deciles in millions	Median total cash compensation	Median total compensation
\$0 - <	\$139.4	\$151,523
>= \$1	234.2	1,125,540
>= \$10	410.7	1,393,827
>= \$50	924.801	1,814,441
>= \$100	1,077,303	2,116,330
>= \$250	1,594,000	2,648,893
>= \$500	2,852,863	3,852,863
>= \$1,000	4,358,392	5,358,392
>= \$2,500	7,559,887	12,800,000

Chart 27: CEO Compensation Mix Distribution

Mix of compensation varies greatly from industry.

Industry	Salary	Bonus	Incentives	Other
Other (S)	23.78%	2.61%	19.07%	7.54%
Other	26.41%	5.68%	14.14%	5.30%

Source: Kevin Hallrock and Judd Tonks, Top Executive Compensation in 2008, The Conference Board, Research Report 1436, 2008. Based on a review of 2,104 filings by SEC-registered companies.

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.



“A very comprehensive set of resources, including battle-tested recommendations that will prove invaluable for both companies and investors.”

Arthur Crozier
Co-Chairman
Innisfree M&A Incorporated

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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Interested in becoming a member of The Conference Board Governance Center?

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New



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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and a regularly updated website
(see details inside)



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Best Practices and Engagement Tools for Public Companies

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

John C. Wilcox
Chairman, Sodali

Former Head of Corporate Governance, TIAA-CREF