



The Activist Dossier: Strategies and Profiles of the Wolfpack

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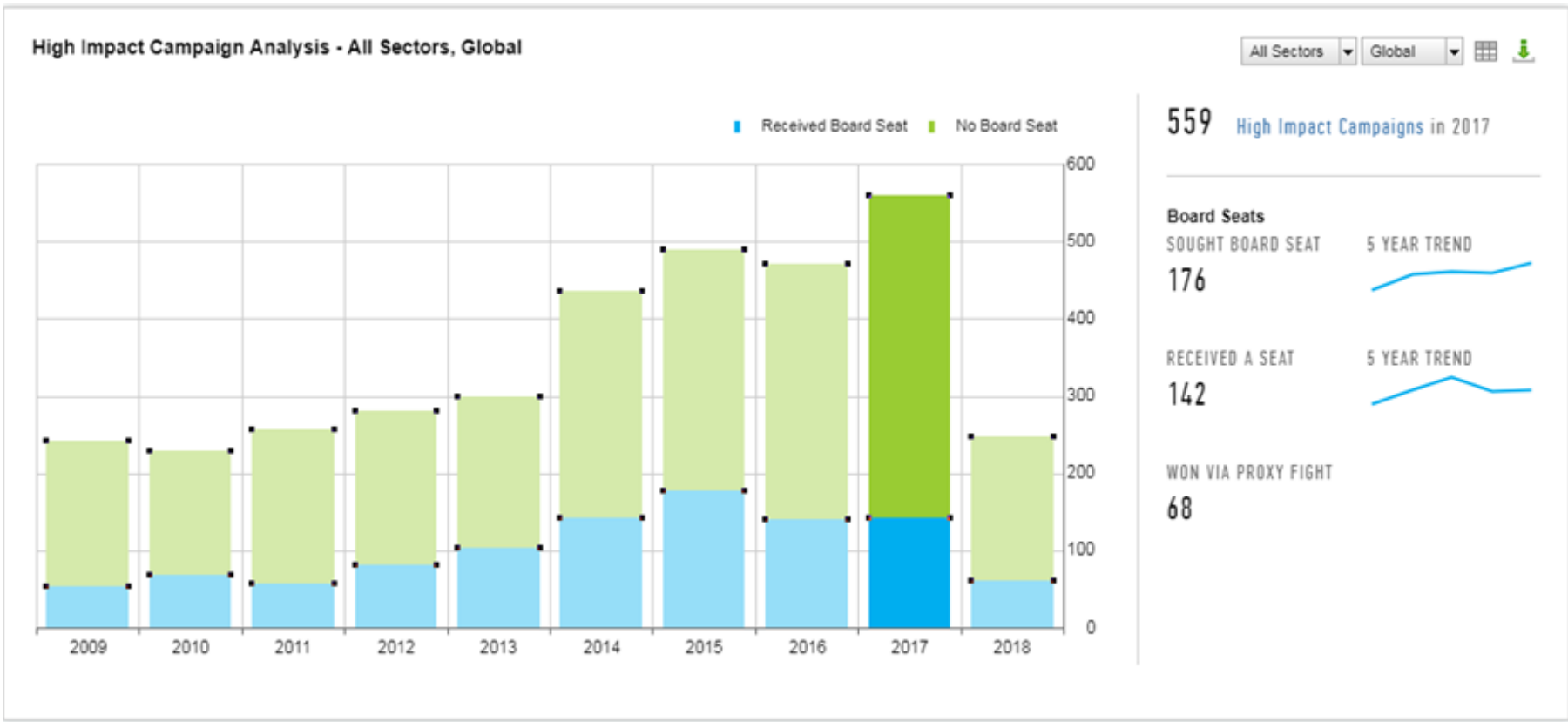


Orr Strategic Communications

May 18, 2018

- ❑ Activism by the Numbers
- ❑ Who are the Activists
- ❑ Activist Tactics
- ❑ Corporate Defense Tactics
- ❑ Proxy Advisor Influence
- ❑ Activism in the News
- ❑ Dealing with a Public Activist
- ❑ Outlook

Number of Activist Campaigns Continues to Increase



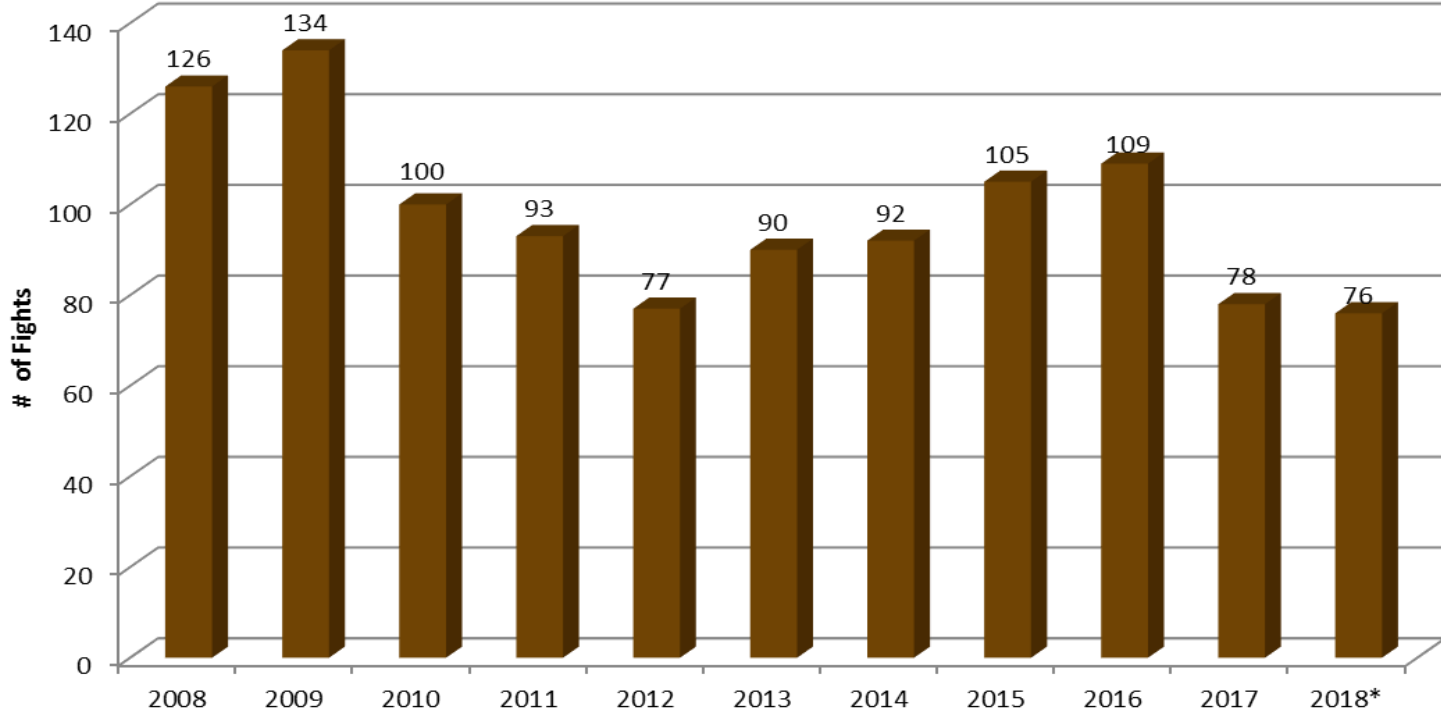
Source: www.SharkRepellent.net

Activism by the Numbers

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- Shareholder activism is a major force: \$190B in assets as of November 2, 2017
- 396 US activist campaigns through September 2017, 640 global campaigns
- YTD, 19.9% of activist targets had market caps greater than \$10B and 61.2% of activist targets had market caps of less than \$2B
- Approximately 20% of activists launching campaigns in the first half of 2017 were “First –Time Activists”
- YTD, in the US, 62% of proxy contests were for board representation, 28% were for board control and 6% were for opposing a management proposal
- Activists were successful in 41% of the 29 proxy fights that have gone to a vote YTD

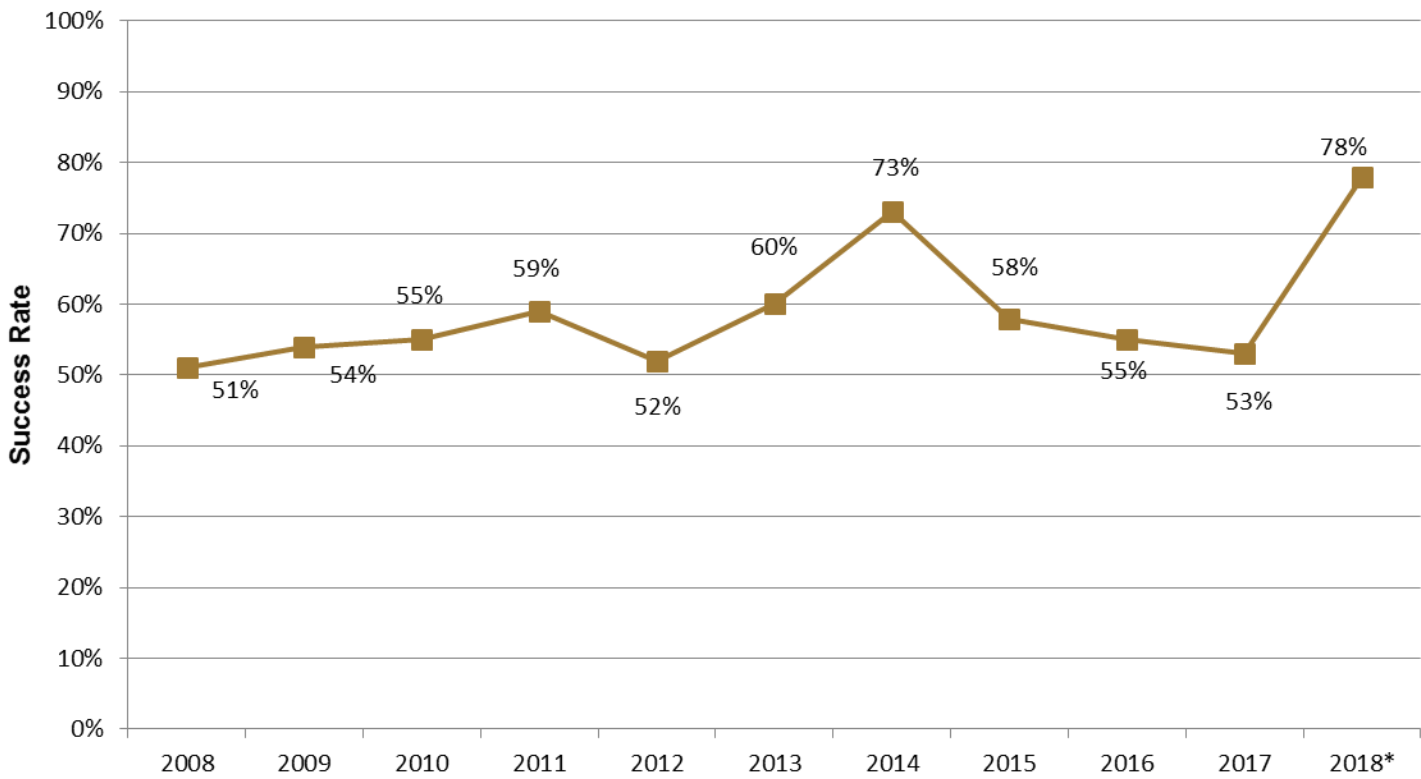
Number of Proxy Fights Declined Considerably



Source: www.SharkRepellent.net

*Through 5/1/18

Activist Success Rate, Proxy Fights 2001 – Present



Source: www.SharkRepellent.net

*Through 5/1/2018

Proxy Contests That Went the Distance During the Last Five Seasons

- ❑ The majority of proxy fights “settled” (a continuing trend of the new activist era)

- ❑ But not all proxy fights settled:
 - 30 went to a vote in 2017: M16, D13, S1
 - 38 went to a vote in 2016: M28, D9, S1
 - 31 went to a vote in 2015: M16, D14, S1
 - 32 went to a vote in 2014: M12, D18, S2
 - 30 went to a vote in 2013: M12, D17, S1

Who are the Activists?

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■ Traditional Economic Activists



■ Corporate Governance Activists



Who Are The Activists? The “Wolfpack”

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Many are claiming the activist banner and/or piling on....







Alden Global Capital
Altai Capital
Amalgamated Gadget
Ancora
Appaloosa Management
Atlantic Investment Management
Barrington Capital
Basswood Capital Management
Biglari Capital
Blue Harbor Group
Bulldog Investors
Cannell Capital
Canyon Capital Advisors
Carlson Capital
Cevian
Chieftain Capital
Citadel
Citron (Short
Clinton Group
Clover Partners
Coghill Capital
Corves Management
Crescendo partners
D.E. Shaw
Dialectic Capital
Discovery Group
Elliott Management
Eminence Capital
Engaged Capital
Engine Capital
ESL Partners
Franklin Mutual Advisers
FrontFour Capital Group
GAMCO

Glenview Capital
Greenlight
H Partners
Harbinger Capital
Hayman Capital
Highfields Capital Management
Highland Capital Management
Hudson Executive Capital
Icahn Associates
Isaac Capital
JANA Partners
JCP Investment Management
Jeereddi partners
Jet Capital
Karpus Investment Management
Lawndale Capital Management
Land & Buildings
Legion Partners
Lone Star Value Management
Lucus Advisors LLC / Red Alder
Mantle Ridge
Marcato Capital management
Mason Capital
Millennium Management
Muddy Water
Nierenberg Investment Management
Norther Right (fka Becker Drapkin)
Oliver Press
Osmium partners
PL Capital
Pershing Square
Potomac Capital Management
Praesidium Investment Management
Purple Mountain Capital Partners

Raging Capital Red Mountain Capital
Sachem Head
Sandell Asset Management
Sarissa Capital
Scopia Capital Management
Seidman & Associates
SMP Asset Management
Soroban Capital
Southeastern Asset Management
Spring Owl Asset management
Stadium Capital
Starboard Value (fka Ramius)
Steel Partners
Stilwell Value
T2 Partners Management
The Children’s Investment Fund
Third Point
Trian
Tudor Investment
ValueAct Capital
Vertex Capital
VIEX Capital Advisors
Viking Capital
Voce Capital
Western Investment
Wynnefield Capital







Activism at a Transactional Level

Are Activists the New Deal Makers?

 <p>Acquired by Actavis</p>	 <p>Acquired by Thoma Bravo</p>	 <p>Acquired by BC Partners</p>
 <p>Proposed transaction announced</p>	 <p>Merged as Dell Technologies</p>	 <p>Verizon acquired Yahoo! and merged with AOL into Oath</p>

Activism at a Transactional Level

Or the New Deal Breakers?

 <p>vs.</p> <p>Berkshire Hathaway's proposed acquisition of Energy Future Holdings Corp.</p>	 <p>vs.</p> <p>EQT Corporation's acquisition of Rice Energy</p>	  <p>and</p> <p>vs.</p> <p>Sabra Health Care REIT Inc.'s merger with Care Capital Properties Inc.</p>
<p>Dialectic Capital Management LP</p> <p>vs.</p> <p>OpenText Corporation's proposed acquisition of Covisint Corp.</p>	 <p>vs.</p> <p>Ashford Hospitality Trust's unsolicited bid to acquire FelCor Lodging Trust Incorporated</p>	 <p>vs.</p> <p>Columbia Pipeline Partners LP merger with TransCanada Corporation</p>

Support for Activism – Institutions Known to be Vocal

Traditional “long only” institutional investors increasingly support activists publicly & privately

Support for Activism – Companies Targeted by Institutions

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Traditional “long only” institutional investors increasingly target large corporations

Early Engagement Matters

- ✓ They build a stake
 - ✓ They apply pressure
 - ✓ They seek control influence

Range of Activist Tactics (Often in Combination)

Moderate	Aggressive	Hostile
Accumulate shares	Stockholder proposals	Present detailed proposal (breakup or sale of the company, change in strategic direction, and/or cash distribution)
Use trading, derivate, and hedging strategies to increase position and leverage	Withhold vote campaign	Demand seat on board
Encourage other hedge funds to enter stock	Agitate for removal of takeover defenses	Public relations campaign to replace board and/or management
Observe and comment	Form committee/alliance with other stockholders	Solicit buyers for all or part of business
Agitate privately	Interview customers, stockholders, and line management	Enlist ISS and Glass Lewis to publicly support dissident action
Aggressive questioning on conference calls	Leak ideas to research analyst community	Litigation against company
	File Schedule 13D	Tender offer
	Hire former employees and/or experts in sector	Proxy fight/consent solicitation

- ❑ Nominate director candidates privately
- ❑ Nominate director candidates publicly
- ❑ Submit white paper or letter to board and management privately
- ❑ Publish white paper or letter to board publicly
- ❑ Submit public offer (to put company “in play”)
- ❑ Launch any of the following public campaigns:
 - ✓ Shareholder outreach (exempt solicitation)
 - ✓ Proxy fight for board seats
 - ✓ Written consent or special meeting to remove incumbent board, if allowed
 - ✓ Withhold (“Vote No”) campaign

Potential Company Actions

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- ✓ Assess potential vulnerabilities in light of current circumstances
 - Including: financial performance/TSR, governance profile and takeover defenses, feedback from shareholders
- ✓ Assess shareholder base and potential voting scenarios
- ✓ Engage with your shareholders early and often
- ✓ Review sell-side research and media commentary
- ✓ Review structural defenses and potential enhancements
- ✓ Develop and hone responses to each potential attack (but know when not to respond)
- ✓ Identify board members who will help lead the dialogue
- ✓ Evaluate need for further engagement with dissidents
- ✓ Communicate business and capital allocation plans and progress of ongoing initiatives
- ✓ Review current board composition and assess need for refreshment
- ✓ If nominations are submitted:
 - Consider interviewing candidates submitted
 - Assess whether to add candidates to the board, negotiate/settle, or fight

New Solicitation Strategies – Where to Begin

- ❑ Analyze stockholder base
 - ❑ Consider stockholder composition within the specific context of the campaign
- ❑ Set a meeting date and record date – these dates can have an impact
- ❑ Create vote projection(s) for respective proposals and campaign scenarios
- ❑ Develop appropriate response scenarios
 - Segment solicitation and communication strategies for different stockholders (retail institutional, proxy advisory, etc.)
 - Plan strategy for communication with Institutional Shareholder Services (ISS) and Glass Lewis
 - Use appropriate solicitation communication technologies
 - Internet and social media
 - Mail
 - Vote by phone (OnPhone Voting™)
 - “Traditional” media

Analyzing Stockholder Base Highlights Differences of Approach Among Investors

Active Managers	<ul style="list-style-type: none">■ Portfolio manager influence can be significant■ Hold at custodial banks■ Typically receive research from ISS/GL■ May vote case-by-case
Index Funds	<ul style="list-style-type: none">■ Hold at custodial banks■ Heavily influenced by ISS/GL■ Frequently automatic “custom” ISS/GL but evolving (more case-by-case)
Quant Funds	<ul style="list-style-type: none">■ Generally do not interact with companies■ Hold at custodial banks■ Usually automatic ISS/GL
Public Pension Funds	<ul style="list-style-type: none">■ May pursue governance activism■ Hold at custodial banks■ Heavily influenced by ISS/GL■ May have custom voting policy
Hedge Funds	<ul style="list-style-type: none">■ Often support activist agenda■ Hold at prime brokers and custodial banks■ May subscribe to ISS/GL■ Typically vote case-by-case on activist matters
Activists	<ul style="list-style-type: none">■ Hold directly and through derivatives■ Transaction focused■ Hold at prime brokers and custodial banks■ May subscribe to ISS/GL■ Vote case-by-case on activist matters
Retail	<ul style="list-style-type: none">■ May be difficult to reach in activist situations or proxy fights■ Hold on registered list and at retail/discount brokers■ Tend to support management■ Hearts and minds can be won through outreach

A settlement may involve a number of elements including:

- Board representation (dissident nominees or other independent nominees)
- Committee representation
- Commitment by the company regarding the size of the board
- Withdrawal by the dissident of all proposals and nominations and agreement to vote for the company's nominees
- A standstill agreement whereby the dissident agrees to limit its security holdings in the company and refrain from public or private agitation
- Expense reimbursement
- Other agreements by the company, such as formation of a special committee, engaging a financial advisor or agreeing to pursue a specific corporate transaction

- ❑ Institutional Shareholder Services (ISS)
 - Leading proxy advisory firm in terms of size and influence
 - More than 1,700 clients: institutions, mutual funds, corporate and public pension funds, hedge funds, college endowments, and other institutional shareholders
 - Many institutions strictly follow ISS recommendations when voting their shares
 - Will meet or speak separately with both sides in a proxy contest before releasing its recommendation to clients
 - ISS report will be issued approximately 10–14 days before meeting
- ❑ Glass Lewis & Co.
 - Only significant competitor of ISS, Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board (OTPP) and Alberta Investment Management Corp. (AIMCo)
 - Many of the largest institutions, mutual funds, index and public pension funds subscribe to Glass Lewis (generally also subscribe to ISS)
 - Traditionally did not speak to either side, but that is changing; will now speak with both sides if they believe further clarification would be helpful
 - Recommendations often differ from ISS
- ❑ Egan-Jones Proxy Services
 - Smaller coverage universe than ISS/GL and extremely limited influence
 - Usually will have conference calls with both sides in a proxy contest

A negative recommendation by the proxy advisers does not mean an automatic defeat; it does, however, require actions to adjust strategy to overcome these setbacks

Activism Sells News – A Dedicated “Beat” for Reporters

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Beyond the news, many outlets are providing commentary or perspective



Activists use traditional media and social media as a low cost credible means of adding pressure



Activism Sells News – Activist Stories are Sensationalized

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- Company must be measured in its response
- Activists can be more aggressive - making media an easier tool to use
- News travels fast and “conventional wisdom” develops quickly
- Retail and consumer-facing companies are of particular interest to reporters and generate **significant** coverage

- Everything you say, and have said, can and will be used against you
 - Critical to stay on message and control the forum for delivery
 - Optimal coordination is essential to succeed

- Similar to a political campaign
 - Strategic rapid response communications are required
 - Third-party advocates are needed
 - Rhetoric can often be heated
 - Constant battle for shareholder support/votes

- Opposition
 - No strategy or statement goes unchallenged
 - Company, Board and management team go under a microscope
 - Directors/management open to public criticism
 - Greater scrutiny by investors, media and other stakeholders

Boards Need to be Ready – What to Expect?

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Directors will be active participants in any solicitation campaign – with shareholders, proxy voting firms and even the press

- Individual directors are often targets of attacks
 - “Industry” experience, tenure, ownership and contributions in current role, including record of performance since time on the Board, are all examined

- Details need to remain confidential
 - Board meeting calendars and director whereabouts should remain confidential
 - Calls should be screened
 - All conversations should be viewed as “on the record”

- Activists will
 - Utilize personalities within their funds to their advantage
 - Usually ask to meet with one or more directors (or even the full Board) prior to launching a public attack
 - Leverage “friends” to add to their credibility and create a back door
 - Look for and attempt to create divisions, including views on leadership

Where Companies Can Go Wrong

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- ✓ Failing to realize that private communications inevitably become public
- ✓ Disparaging hedge fund holders and portraying activists as “fast money” and therefore unimportant
- ✓ Making it personal and taking it personally
- ✓ Evoking dismissive posture or bunker mentality
- ✓ Failing to consider vulnerabilities and making candid assessments of whether advance actions should be taken to address them
- ✓ Failing to speak with ONE voice – Management and Board
- ✓ Failing to engage shareholders and communicate investment thesis PRIOR to activist campaign

❑ **Activists**

- 2017 saw a substantial increase in large-cap activism, particularly among the larger activists
- But small-cap activism continues to provide many compelling opportunities (larger universe, less efficient markets, limited analyst coverage)

❑ **Universal Proxy Card**

- The Universal Proxy Card lost momentum in 2017, but is still a possibility
- With many changes within the SEC, and more to come, the future of the Universal Proxy Card is uncertain

❑ **Proxy Access**

- The battle for proxy access has played out, and the standard has become a 3% ownership threshold with a 3-year holding period and limit on nominations of not more than 20% of the board
- GAMCO announced it would use proxy access at National Fuel Gas but withdrew its nomination, as its 13D filing would have precluded it from meeting the procedural requirements

❑ **Focus on Directors**

- Institutions are increasingly focused on board refreshment and director diversity, in terms of experience and demographics

QUESTIONS

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