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Navigating Shareholder Engagement and Shareholder Activism: Essentials and Best Practices

By Larry Sonsini and Douglas Schnell

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Engaging with shareholders and responding to shareholder activism continue to be top-of-mind for public companies. These situations present opportunities for management teams and boards of directors to work together to communicate the company's strategy and reinforce the ways in which the company is positioned for lasting success. Our experience helping numerous clients engage with and respond to their shareholders has given us insight on the practices that stand out as the most effective.

Shareholder Engagement

A thoughtfully designed shareholder engagement program is a critical tool for public companies, including those companies who are newly public, who have multi-class capital structures, or both.

What Is Shareholder Engagement and Why Is It Important?

"Shareholder engagement" is the ongoing dialogue between a company and its shareholders. It involves targeted and thoughtful outreach, response, and disclosure with the goal of communicating the company's value creation strategy and governance choices, learning investors' perspectives and priorities, and building the company's creditability with investors. Done right, it is a two-way dialogue between the company and its investors.

From the investor perspective, shareholder engagement provides insight into information not captured in the company's public filings, including the company's position on emerging topics. It also gives an opportunity for investors to directly share their observations and preferences with boards and management teams.

Shareholder engagement can provide an early warning of possible shareholder dissatisfaction, which could ripen into overt shareholder activism. In many ways, it is the proverbial "canary in the coal mine" for understanding investor concerns. When there is shareholder dissatisfaction, or when a company otherwise needs to solicit the support of shareholders, the foundation of trust and credibility built from multiple cycles of engagement can be invaluable.

Who Should Engage with Shareholders?

Shareholder engagement should be driven by the company's management team. The functional lead is typically the company's investor relations officer, who will usually participate in all shareholder engagement sessions to ensure consistency of messaging. A select group of the most senior executives (such as one or both of the Chief Executive Officer (CEO) and Chief Financial Officer (CFO)) typically participate in meetings with key shareholders, and potentially in all engagement meetings. Beyond this group, functional leads (such as the head of human resources or the head of diversity) can participate if the investor has expressed an interest in these topics. A small, well-coordinated team is best. Third-party advisors almost never participate in engagement sessions, as shareholders want to hear directly from the company and not from its advisors.

Increasingly, shareholders are requesting meetings with board members—especially the board chair or lead independent director and the chair of the board's compensation committee.

Providing shareholders with access to board members is a strategic choice, and one that should be made only after reflection on the identity of the shareholder, the goals of the meeting, and a consideration of the right participants on behalf of the company (including as to which director is the best spokesperson). In all instances, board members should meet with shareholders only with the prior knowledge and approval of the board, only in close coordination with the management team, and only after thorough preparation.

Which Shareholders Should We Engage With?

There is no fixed rule on which shareholders a company should target for engagement. Many companies utilize rough metrics to size their engagement efforts, such as focusing on their top 25 institutional holders or trying to engage with the top 50 percent of their shareholder base. The right shareholders to engage will necessarily be company-specific and, sometimes, topic-specific; engagement will also evolve over time as the shareholder base changes. Overall, a reasonable goal is to offer to engage with a sufficiently meaningful number of shareholders so that the company gains the benefit of a diversity of shareholder perspectives, including in respect of a diversity of investing styles. To manage internal resources, it may be helpful to conduct outreach in phases (particularly if a company has not engaged historically) so that the number of engagement meetings in a short period is not overwhelming. Finally, shareholders beyond the target group also may approach the company to engage on matters of importance to them, and the company will need to consider its approach to engagement with these shareholders.

The nature of the engagement may vary across shareholders. For example, many institutional investors funnel engagement through their “stewardship” or “governance” teams, with the portfolio manager not always participating in the meeting. Meetings with a governance team tend, not surprisingly, to be more focused on governance matters. In contrast, the portfolio manager may participate in engagement meetings with active managers. As such, these sessions may delve deeper into a company’s strategy and financials.

At many companies, the rise of index investing has resulted in a concentration of voting power in the hands of a relatively small number of institutional investors. Index investors are more passive, long-term focused, and interested in better understanding a company’s long-term strategy. Companies ignore index investors at their peril, and regular efforts should be made to engage with the governance teams at these investors. More generally, institutional investors carefully track each company’s engagement efforts and may be less favorably inclined to support a company that only tries to engage in years when the company needs shareholder support for a non-routine voting matter.

In 2025, BlackRock, Vanguard, and State Street—the largest index investors—split their governance teams to better align with how the assets are managed at each institution (active, passive, or sustainability). This could complicate engagement efforts in 2025 and 2026, with each pool of capital varying on a company-by-company basis and being managed by separate teams with different voting and engagement frameworks.

It is often not a bad sign if a shareholder turns down an engagement offer. Shareholders receive a great deal of requests for engagement and must prioritize their time. A shareholder declining an engagement meeting typically means that the shareholder is satisfied with the company and does not feel that

direct engagement is warranted at that time. Companies get credit with the shareholder for making the offer, even if the shareholder does not accept it.

Should We Engage with Shareholders Who Are Known “Activists”?

The answer is almost always yes. Activists are investors or prospective investors, and the best course is usually to treat them in the same way you treat similarly situated “friendly” investors. Engagement with an activist can provide valuable intelligence on the activist’s perspective and possible next steps. (See the “Shareholder Activism” section below for additional thoughts.)

When Should We Engage with Shareholders?

Shareholder engagement is an annual, year-round activity. The best time to meet with shareholders is typically from September to February. This period is often known as the proxy “offseason,” and is when investors typically have more timing flexibility, and thus may be more willing to accept an invitation for engagement. It also allows sufficient time for boards and management teams to incorporate shareholder feedback into decisions and disclosures for the next year.

Newly public companies should aim to establish connections with shareholders early rather than waiting until the company has seasoned in the public markets. Engagement efforts during the first year after going public can yield substantial dividends in ensuing years, both in building institutional capability and in developing relationships.

How Should We Conduct a Meeting with Shareholders?

Shareholders should leave an engagement meeting with the belief that the company was open to their views and honestly wants to hear and understand their concerns.

Shareholder engagement meetings are typically scheduled for 30 minutes to one hour. The company should prepare, and send to the shareholder in advance, an agenda that lays out the key topics for the meeting; this can keep the discussion on track. It can be helpful to have someone take notes for the company’s use during the meeting.

The company’s representatives should conduct the meeting and drive the discussion. Shareholders want to engage directly with the decisionmakers, so top management or a board member should be the company’s primary speakers. Throughout the meeting, the company will want to show that its participants have a strong command of the issues facing the company. Although not mandatory, executives generally engage most in discussions related to their functional areas. For example, the CEO would concentrate on questions and discussion related to strategy and “big picture” items, the CFO would focus on financials, and the General Counsel would focus on governance. Throughout the meeting, it is important for the company’s participants to demonstrate competence, alignment, and engagement.

Approach the meeting as a discussion and not a negotiation. This means listening actively and soliciting feedback, and not being dismissive, defensive, or confrontational. It is natural for there to be issues on which the company and the shareholder disagree, but the company’s focus in the meeting should not

be on trying to change the shareholder's mind. Rather, the goal is to clearly and unemotionally communicate the company's position, reasoning, and value creation strategy while also building credibility with shareholders.

How Do We Prepare for an Engagement Meeting?

Preparation is key for any shareholder meeting. Major preparatory work typically involves:

- Assembling the engagement team. The investor relations officer often quarterbackes the engagement effort, with contributions and assistance from individuals in the finance, corporate strategy, and legal functions.
- Reviewing the shareholder's voting policies and guidelines (which are typically publicly disclosed), and how the shareholder has voted at the company historically. Mutual funds, registered investment companies, and persons required to make filings on Form 13F are generally required to file a Form NP-X, which contains information on how the investor voted at each company. There are several third-party services that collate Form NP-X data into an easy-to-digest format. Also important is developing an understanding of who the key decision makers are at each investor, how to contact those persons, and what authority they have to "override" the investor's general governance policies.
- Benchmarking how the company's practices compare to the shareholder's voting policies and guidelines, if publicly disclosed.
- Understanding who from the shareholder will participate in the meeting. Be aware that the meeting may be dominated by individuals from the investor's governance team, and these individuals may have limited knowledge about the company or its business. In that regard, presenting a brief, one- or two-minute primer on the company at the outset may be helpful to orient the conversation.
- Preparing the right talking points to articulate the company's value creation strategy and governance practices, and how those compare to the shareholder's policies and areas of interest.
- Understanding aggregate historical voting patterns at the company, such as a failed "say-on-pay" vote and the reasons behind it.
- Understanding several years of recommendations proxy advisory firm recommendations at the company and how these recommendations impact the vote at prior shareholder meetings.
- Deciding on a strategy for how to proactively address tough topics, such as a failed say-on-pay vote. Although it can be tempting to hope that shareholders will not ask challenging questions or inquire about topics that are awkward for the company to discuss, it is typically better to proactively raise these items. Doing so builds credibility with shareholders, as it does not seem like the company is trying to "hide the ball." Addressing tough topics can also "open the door" for the investor to engage in the discussion, which may be helpful given the guidance from the U.S. Securities and Exchange Commission (SEC) (see next section, "What Are the Legal Requirements to Be Aware Of?").

- Developing sample questions and answers to anticipate and respond to shareholder questions. Providing clear, succinct answers—instead of non-answers—is the best approach.
- Preparing appropriate written materials to distribute in advance of the meeting. This is typically a tailored version of the company's normal investor presentation, with additional information (often from the proxy statement) added on topics such as governance and executive compensation.

Many companies—particularly as they are building experience with shareholder engagement, or where top management or a board member are participating—hold a “dress rehearsal” in advance of the meeting. This can be an effective way to ensure messaging consistency, develop natural hand-offs between participants, and allocate who will cover which topics.

What Are the Legal Requirements to Be Aware Of?

All communications with shareholders need to be made in compliance with Regulation FD, and shareholder engagement meetings are no exception. Some investors may seek to test the bounds of the company's Regulation FD compliance, and the company's participants may need to, politely but firmly, prevent the conversation from straying beyond what the company has already publicly disclosed or is prepared to publicly disclose.

A shareholder is under no obligation to keep confidential the discussion in an engagement meeting. As such, the company's participants in an engagement meeting should not say anything that they would not want to see in a subsequent letter from the shareholder to the company's shareholders or in a press release issued by the shareholder.

Generally, written materials provided to shareholders in engagement meetings are not required to be filed with the SEC as soliciting material so long as they are used in meetings held prior to the company filing its preliminary or definitive proxy statement. (To meet the company's Regulation FD obligation, it may be necessary to file these materials with the SEC or post them on the company's website.) Once a proxy statement is on file, the practice is to file written materials with the SEC because they may be soliciting material; in addition, filing at this time allows for widespread distribution of these materials to other shareholders at a time when the company is soliciting proxies. It is typically not necessary to retrieve any written materials distributed in advance of or at an engagement meeting.

In early 2025, the SEC staff revised its guidance on how engagement with companies may affect a beneficial owner's active/passive status for purposes of filings on Schedule 13G and Schedule 13D. Previously, engagement on topics such as ESG, staggered boards, poison pills, or executive pay was not deemed to be inconsistent with an investor maintaining its status as a Schedule 13G filer. Under the revised guidance, generally, an investor who describes its views and how it may inform voting decisions, without more, can still use Schedule 13G.

Although compliance with the beneficial ownership reporting rules is ultimately a matter for the shareholder, this new guidance resulted in some investors pausing their engagement meetings for a period. We believe that investors have adjusted to this new guidance. Anecdotally, we have heard that it has resulted in investors expressing greater preference for the company to take the lead in framing

the conversation (see previous section, “How Should We Conduct a Meeting with Shareholders?”) for more discussion on how an agenda provided by the company can be helpful) and for more investors to be in a “listen-only” posture. Some investors have also started to read a scripted engagement disclaimer at the beginning of a meeting. Even if an investor reads this type of script, we do not recommend altering how the company approaches the meeting.

What Should Be the Goals for Engagement?

The most important objective of shareholder engagement is the exchange of perspectives between the company and its investors. We believe that engagement meetings work best when they are a two-way dialogue, even if the two sides are not in alignment on what the company should do.

Beyond exchanging ideas, companies may have a variety of objectives for engagement, and these objectives can impact how a company approaches the meeting.

- Some companies may be engaging as a matter of good corporate hygiene and may not have a goal beyond simply meeting with shareholders. In this case, the engagement may be on high-level topics that are not especially tailored to the shareholder, with the goal primarily to keep the lines of communication open.
- Other companies may be engaging to try to build or repair a relationship. These discussions will likely have a more focused agenda than a general engagement meeting, with the goal of a frank exchange of perspectives.
- Still other companies may be gathering shareholder input on one or more issues, such as investor perspectives on the company’s pay practices. The goal of these meetings is for the investor to do more of the talking by providing its perspective and rationale.

What Should We Do After We Engage?

Post-meeting follow-up is often overlooked. Companies should promptly satisfy any commitments (such as providing additional information) made during the meeting. One or more meetings of the company’s engagement working group to discuss the results of the engagement, either after key meetings or at the end of the engagement cycle, can be useful to share impressions, agree on takeaways, and plan for the future.

We recommend that management teams be transparent with their boards of directors about the results of engagement efforts. This means providing the board with the unvarnished perspectives received, even if these perspectives are not universally flattering to the company, management, or the board. Sharing candid feedback allows the board to understand how investors see the company and consider whether change is warranted. It avoids a circumstance where the board is, in the future, surprised to learn of investor dissatisfaction. Especially in the shareholder activism context, this type of surprise can generate mistrust between the board and management team at precisely the time when trust between these two groups is critical.

After gathering shareholder feedback and informing the board, the board and management team should review the feedback to determine if adjustments to the company’s strategy, governance, compensation practices, or other areas are necessary. If changes are determined to be warranted, the

board and management team should establish a timeline and implementation approach, as well as the right way to communicate these changes to investors. Ultimately, gathering feedback is futile if the company is not going to use that feedback to inform its decision-making.

What Are Other Best Practices?

Shareholder engagement is good governance, and companies benefit from being transparent about their engagement efforts. Many companies disclose details on the number of shareholders contacted, the number of meetings held, the feedback received, and the actions taken in response to the feedback. Some companies even include “what we heard, what we did” charts and summaries in their proxy statements. These charts and summaries describe the nature of shareholder feedback received over the course of the year and detail how the company responded to that feedback. Even if this detailed disclosure is not included in the proxy statement, it can be helpful to organize the information in this manner for purposes of discussions with the board and its committees. This information requires careful recordkeeping and tracking of investor interactions—a job that often falls to the legal team if a company does not yet have a robust investor relations function.

When reporting on shareholder feedback, do not ignore hard feedback. Although it is tempting to not publicly acknowledge areas where there is disagreement between the company and investors, it is—similar to addressing tough topics in the engagement meetings—often better to address these items head on and explain why the company made the choices that it did. For example, if shareholders are unsatisfied with the executive compensation program, use the engagement disclosure to explain the company’s view on why the program is appropriate. This shows that the company listened to—and understood—the feedback. Shareholders do not expect companies to meet every request, but they do expect to see that the company listened and has a defensible approach for its choices.

Shareholder Activism

Shareholder activism is a fact of life for public companies. Activism is its own asset class, with billions of dollars allocated to investors who pursue “activist” strategies. Shareholder engagement can be helpful in anticipating and understanding shareholder activism, but it cannot eliminate it.

What Is Shareholder Activism?

“Shareholder activism” occurs when shareholders use their ownership rights in a company to influence its board and management to make changes to the company’s policies, operations, or strategic direction. Broadly speaking, shareholder activism exists on a spectrum, with governance-focused activists (especially those who frequently utilize the SEC’s Rule 14a-8 process) on one end and financial activists (such as hedge funds) on the other end. Financial activists are the focus of the thoughts below.

What Is the Current State of Shareholder Activism?

Shareholder activism continues to be a significant challenge to a company’s policies and practices. Every company (even if it has significant friendly shareholders or a multi-class capital structure) is

vulnerable to activism in some way, with that vulnerability increasing and decreasing depending on the company's circumstances.

A shareholder activist's goal is to find a catalyst to increase a company's stock price, which translates into money for the activist. A frequent catalyst is that the company should engage in a significant transaction, such as a sale of a division or the entire company. Beyond M&A, activists often focus on the company's capital structure (including whether it is properly levered), its capital return practices (both as to dividends and share repurchases), operations and strategy (such as ways to improve profitability), and board composition (including whether there are directors who bring a "shareholder's perspective" to the boardroom).

Shareholder activists constantly evolve their tactics. Many activists are now willing to engage in multi-year campaigns, and some have shown a willingness to attack companies that fended off or settled with an activist in the recent past. We have also seen an increase in the number of activism campaigns that explicitly target the company's CEO for replacement (including with the activist presenting its own CEO candidate) or question the board's succession planning efforts. There also does not seem to be an "off-season" for activism, with activists showing a willingness to approach a company at any time of the year—even shortly after the shareholder meeting.

The SEC's universal proxy card rules provided activists with a fresh tactic to use against companies. These rules significantly increased the focus on the qualifications of each director. There is now a greater premium on explaining *why* each director serves on the board (for example, explaining the unique skills that each director brings). Further, universal proxy allows activists to "target" individual directors for replacement, which has resulted in greater vulnerability for directors with long tenures or who are older than 75, or who are "overboarded" or have attendance concerns. Although the universal proxy rules do not seem to have improved the overall success that activists have in proxy contests, they do seem have increased the number of settlements with activists. (See section below, "How Should We Think About Settlement with an Activist?")

How Should We Prepare for Shareholder Activism?

The issues, tactics, challenges, and approaches in a shareholder activism situation will vary based on many factors, including the company, board dynamics, and the identity of the activist. That said, we believe that a thoughtful and well-executed shareholder engagement strategy is the best way to prepare for shareholder activism. As described above, the goal of shareholder engagement is to communicate the company's value creation strategy and governance choices, learn investors' perspectives and priorities, and build the company's credibility with investors.

Beyond engagement, the board of directors, in partnership with the management team, should frequently review the company's strategy and operations (including the metrics used to make and evaluate decisions), approach to balancing growth and profitability, margin priorities, and other key business indicators. It is often said that boards should "think like an activist," and this can be a useful construct for examining the business in a different way. For example, are there value creation strategies that the company could pursue? If so, should they be pursued, on what timeframe, and how should that be communicated to investors? If they should not be pursued, why not, and how should

that be communicated? This work can help ensure alignment between the board and management team—and expose areas where additional analysis and discussion is needed to create that alignment.

Regular board refreshment can be evidence of a healthy board dynamic and a willingness by the board to include new perspectives. Proactive board change can blunt an activist’s argument that the board is entrenched. To this end, maintaining a robust board succession plan and pipeline of director candidates can be very beneficial.

Although governance rarely precipitates activism, it can serve as a wedge issue. Activists frequently claim that governance practices that they oppose—such as staggered boards—are evidence of a board that is entrenched and out-of-touch with shareholder desires. Regular reviews of the company’s governance policies and practices, along with frank conversations at the board level about whether they should evolve, are important preparatory work. Similarly, regular reviews of structural measures—such as advance notice bylaws to ensure that they are state-of-the-art—are good practice. At the same time, boards should be cautious about simply adopting “one-size-fits-all” governance practices (which are often advocated for by activists), as they practices may not be right for the company.

Proactively assembling an activism response team—composed of key internal team members, outside counsel, a trusted financial advisor, a crisis communications firm, and a proxy solicitor—can save time and ensure that the company is able to respond rapidly to activism. This team should assemble and update a “break glass” response plan to be used if an activist targets the company. This plan is meaningfully bolstered if the team also takes the time to think through the key arguments that an activist could make in attacking the company and develop responses to those arguments. Although the final details of the company’s response will necessarily depend on the facts that exist at the time that the response is required, having draft materials can provide the company with a significant timing benefit. Activists frequently leverage their ability to strike quickly and with limited internal process to attempt to set and control the narrative. Advance work by the company can quicken its ability to respond.

Interpersonal connections among the members of the response team can be valuable in responding to an activist challenge. To keep these connections strong and maintain preparedness, the response team should collectively conduct periodic “fire drills” and vulnerability assessments. Continuing to refine the company’s responses to a hypothetical activist challenge is important ongoing work for the response team, as is understanding the strategies and tactics of investors who have made activist approaches to other companies (especially those in the same industry).

Companies should keep their eyes and ears open to investor perspectives communicated outside of formal engagement. For example, similar questions asked by different investors on earnings calls can be a sign of building investor consensus that should be understood. Robust investor surveillance efforts, including a stock watch service, can provide an early warning of an activist stock accumulation. Shareholders moving some of their holdings onto the transfer agent’s records—rather than holding beneficially through a bank or broker—can also be a telling sign that activism may be coming.

Do Companies with Multi-Class Capital Structures Need to Think About Activism?

Yes. Multi-class companies are often household names, and activism at these companies garners significant public attention. Even if the activist does not have a path to achieving its objectives, a campaign could generate significant publicity for the activist, in addition to positioning the activist for future fundraising efforts.

How Should the Board Be Involved in Responding to Shareholder Activism?

We think that the board and management team should see themselves as equal partners in addressing activism. This requires a frank and open dialogue between these groups about the company and its challenges and opportunities. As part of that, management should keep the board regularly updated about activism preparation and response. Ongoing director education—such as presentations by outside counsel on evolving activist tactics and the company’s vulnerabilities—can be helpful in demonstrating to the board that the management team has the company well-prepared for activism. The reputation and professional qualifications of directors are frequently attacked by activists. Activist attacks can be unnerving, and directors want to understand what the company will do in response. In addition, a unified board on key strategic issues is essential to successfully managing an activist attack, and it is hard to build and maintain that unity if directors do not feel that they have been kept informed. A lack of information provided to the board can further a frequent activist goal, which is to drive a wedge between management and the board by causing the board to question the company’s strategy management’s performance.

Regular board updates are equally important when a company is actively engaging with an activist. The board should always have enough information to fulfill its oversight obligation, and we have found that directors are eager to understand how the company’s advisors and management team are approaching the situation. Some directors may also be called on to meet with the activist and will need to understand the entire state of play. Said differently, *not* involving the board in activism response has the potential to create a separation between management and the board at precisely the time when those two groups must be most aligned.

Does the Board Need to Form a Special Committee to Respond to an Activist?

Generally, a special committee is not necessary. The entire board has an inherent interest in the outcome, which means that there is typically no conflict of the type that would give rise to the need for a special committee. In addition, a special committee necessarily divides the board—at precisely the moment when an activist is seeking to do the same.

How Should We Respond to An Activist?

It is most common for activists to initially approach a company privately to express their concerns and plant the seeds for change. The company and the activist may disagree on many things, and engagement may seem futile—especially if the activist is strident in its criticisms. We think that it is a strategic mistake for a company not to engage robustly with an activist while the situation remains private, as keeping the situation private for as long as possible has significant advantages for the company. In addition, many investors expect companies to engage with activists with the goal of

constructively working through their differences. But for the engagement to have a chance at being successful, the activist will want to know that 1) its views are being taken seriously and 2) the board is open to change, not asleep at the wheel, and not willfully blind to potential alternatives. This requires careful and frequent coordination between the board, the management team, and the company's advisors to ensure that the right messages are being delivered in the right sequence.

If private engagement fails, the activist may choose to make its criticisms public (or the activist may have chosen to go public from the outset). The company's posture remains the same in a public attack: it should reinforce that the board is open-minded, takes shareholder feedback seriously, and is focused on building shareholder value. A public activism situation tends to be similar to a political campaign, with each side jockeying for shareholder support and to control the narrative. Companies do better in these situations when they take the high road and show that the board is sober, deliberative, and open to change, but also able to move quickly when circumstances warrant.

Where Do Companies Go Wrong with Activists?

Each activism situation is unique, and it is impossible to script how it will resolve or what direction it will go. That said, we think that companies have less success when:

- the board and management team fail to speak with one voice (debate should be open and vigorous in the boardroom, but the board and management must be aligned publicly once a decision is made);
- they are dismissive of the activist;
- they implement a "scorched earth" defense, including by trying to be as aggressive as, or more aggressive than, the activist; and
- they take things personally and allow decisions to be clouded by emotion.

Engagement with an activist is asymmetric: shareholders will tolerate an activist doing and saying things *about the company* to a far greater extent than they will tolerate a company doing or saying similar things *about the activist*. In any activism response, the board should continually ask itself whether a proposed action will earn it more shareholder support than *not* taking the action and make decisions accordingly.

How Should We Think About Settlement with an Activist?

An activist's ultimate leverage is to conduct a proxy contest to replace some or all of the members of the board. Directors who are nominated by an activist and elected by shareholders join a board with a mandate for change, and this can have a powerful impact on boardroom dynamics; this is true even at companies with classified boards where an activist can only elect a few directors each year. In addition, a proxy contest is disruptive to employees, customers, and other constituencies, will occupy a significant amount of board and management time and attention, and is costly.

Given these factors, boards often look to resolve—or "settle"—an activism campaign before it evolves into a proxy contest through some type of negotiated compromise. These settlements can take many forms, but most often include some change to the composition of the board and the implementation of some aspects of the activist's strategy (such as increased capital return or operational improvement

initiatives). Companies can unilaterally adopt some or all of the activist's requested changes without reaching a negotiated resolution with the activist; the objective of this strategy is to erode support for the activist among other shareholders by showing that the board is its own change agent and does not need outside pressure (or new directors chosen by the activist) to take bold action. Dialogue with other shareholders during the campaign can be helpful in understanding how they view the company and the activist's critiques.

There is no precise "right time" for when a company should pursue settlement. The leverage can change—favorably and unfavorably—as the campaign evolves. In some situations, the activist's demands will be wrong for the company, and fighting the activist all the way to the shareholder meeting is the right decision. In others, a settlement can allow the company to return its full attention to execution. Overall, boards are well served when they are prepared to go the distance but flexible in their thinking about possible offramps to an activism campaign.



Wilson Sonsini regularly helps clients design and implement effective shareholder engagement programs and respond to shareholder activism. For more information, please contact any member of our [Public Company Representation](#) or [Shareholder Engagement and Activism](#) practices.

Wilson Sonsini Contributors:

Richard Blake, Lisa Stimmell, Amanda Urquiza, Tamara Brightwell,
Amy Simmerman, and Sean Donohue

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