

NEW CHALLENGES

AN INTERVIEW WITH MICHAEL VERRECHIA, MANAGING DIRECTOR, M&A AND ACTIVISM ADVISORY GROUP, MORROW SODALI.



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WHAT OPTIONS DO SHAREHOLDERS HAVE TO CHALLENGE M&A THEY DON'T LIKE?

Over the last 24 months we've seen shareholders or third-party bidders employ various opposition strategies to challenge M&A deals. Whether it's been through competing bids, vote no campaigns, full blown contests with competing ballots in the mail, or in some cases simply injecting rumors into the marketplace via media outlets regarding other deals that were not fully explored or others waiting in the wings, all can be effective strategies in blocking a deal.

The most effective of those campaigns have been the ones where the activist has clearly communicated the rationale for opposing the deal and also filed an opposing proxy statement soliciting votes against a transaction. A formal campaign not only secures an audience with the various proxy advisory firms, but also tends to get more airtime with both institutional and individual shareholders.

SHOULD COMPANIES PLAN TO DISCLOSE MORE ABOUT THEIR PROCESSES FOR REVIEWING OFFERS, AND EARLIER, THAN HERETOFORE?

I think it is wise for companies to be very transparent about their processes and rationale right from the announcement of a deal, especially considering the level of investor outreach and engagement they should expect shortly thereafter. Obviously, demonstrating a thorough process and strategic rationale will be a vital piece of the proxy statement, but also a significant part of any initial investor presentation that's made available shortly after announcement.

TRADITIONALLY, M&A ACTIVISM IS MORE POPULAR ON THE SELLER'S SIDE BUT IN 2019 IT WAS COMMON ON THE BUYER'S. HOW DOES THIS CHANGE DEFENSE STRATEGIES?

Defense strategies are always situational. Whether activism surfaces on the side of the buyer or seller is just part of the equation. I think the most critical aspect of the response is

for both parties to convey a thoughtful, thorough message that supports the strategic rationale for the transaction and the conflict-free process in coming to terms on the deal. It is crucial to stay on point with that message when companies are in front of shareholders. To that end, understanding the different shareholder constituencies and how each effectively receives that message is paramount to the communications campaign and the key to securing the vote.

HOW DO RETAIL/INDIVIDUAL SHAREHOLDERS PERSPECTIVES DIFFER FROM INSTITUTIONS AND HEDGE FUNDS?

While traditional institutions have internal voting guidelines and access to proxy advisory firm research, and hedge/event-driven funds have their own outlook, the individual investor often has only what is directly provided to them. When the retail component of the shareholder profile is critical in an otherwise close vote, understanding their sometimes unique perspectives and explaining the rationale in language they will understand can be a challenge.

In recent situations where we have been out in front of individual holders with sizable positions, it has been fairly common to hear about their long history as a shareholder/customer and their reliance on a dividend, etc. Obtaining a favorable vote from someone so attached to their investment can be particularly challenging, even in the face of what might be considered "a great deal" from an economic perspective.

DO YOU ANTICIPATE A CONTINUATION OF 2019'S TRENDS? WHAT ELSE COULD WE SEE?

I think it is fairly reasonable to see a continuation of deal activism in the coming year. We are already involved in a few situations that have seen opposition in different forms. It will be interesting to see if these campaigns will be limited to trying to block the deals, or if they eventually take shape as proxy contests for board seats. 🍷