

THE ACTIVIST REPORT

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10 Questions with Harry van Dyke



Harry van Dyke is Executive Vice Chairman of Morrow Sodali. Harry has more than 30 years of experience in a range of roles in investment banking. He

is the former CEO and founder of Teneo Capital, an investment banking boutique providing financial advisory services to corporations, family offices and private equity firms on a global basis. Prior to Teneo, Harry was a Managing Director and Group Head in Investment Banking at Bank of America, where he established, built and ran a business development effort while concurrently overseeing two M&A businesses – Corporate Divestitures and Middle Market M&A. Previously, Harry spent 22 years with Morgan Stanley, most recently as a Managing Director and Group Head in Investment Banking. During his tenure with the firm, he launched and ran both the Latin America and Asia Pacific M&A franchises, and lived in both London and Hong Kong. Harry holds a BA from Yale University in Economics and in Engineering & Applied Science, as well as an MBA with honors from the Harvard Business School.

13DM: You have had a long and very successful career in Investment Banking, and most recently served as the CEO and founder of Teneo Capital prior to your appointment as Executive Vice Chairman of Morrow. Tell us why you chose to join Morrow Sodali.

HVD: After 30 years as an M&A banker, it was time for something new. Morrow

Sodali is a very exciting company – it's a truly global operation with enormous growth potential. The more time I spend with my colleagues the more clear to me the tremendous opportunity for Morrow Sodali to become the premier firm in our space and to expand our client base and services, and I look forward to doing my part to help make that happen.

13DM: Tell us a little about Morrow's practice. What are some examples of your client representation as it relates to shareholder activism?

HVD: Founded as Morrow & Co. over 45 years ago, we are a broadly-based shareholder engagement services firm. We provide proxy solicitation, M&A and activism advisory, governance consulting, stock surveillance and debt advisory services. We have 13 offices around the world and clients in over 40 countries. In the shareholder activism space, our services are primarily focused on serving publicly traded companies facing an actual or potential threat from a shareholder, from proxy contests for board seats to contested M&A. Our services include activism preparedness and defense, strategic stock surveillance, vulnerability assessments, shareholder engagement and advisory consulting.

13DM: You recently announced the creation of a Strategic Advisory Board, of which you will serve as the Chair. Why did Morrow Sodali take this step?

HVD: While our business is successful and continues to grow at a healthy rate, we felt it was important for Morrow So-

dali to gain perspective and advice from an experienced group of business and legal leaders as we seek to expand even more rapidly. The eight who have joined us in this capacity come from a wide range of backgrounds, from the law and consulting to governance and corporate leadership and even academia. We have five former CEOs, two former CFOs and two professors (Harvard Business School as well as NYU and University of Pennsylvania law schools). It's a remarkably talented and thoughtful group of people who will help us with the "big picture" questions we have, as well as providing us with their thoughts and perspectives on particular issues facing us or our clients.

13DM: What do you foresee for activism in the US and international markets in the next year?

HVD: As to be expected, there was clearly a fall-off in shareholder activism campaigns during the 2020 proxy season here in the U.S. After what was shaping up to be a busy year early on, many activists were hesitant to charge after companies for fear of being labeled "opportunists" during the uncertainty of a global pandemic, and companies didn't have an appetite for the significant cost of a proxy contest. In many cases, both companies and activists preferred to settle. That said, my colleagues Mike Verrechia and Paul Schulman, who run our M&A and Activism Advisory practice, expect an active season next year. There's lots of dry powder and, while markets are recovering, they have done so unevenly, leaving numerous investment

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opportunities.

13DM: COVID-19 has clearly affected many of your clients' businesses; how has it impacted yours and how do you think COVID-19 is impacting activism generally?

HVD: We have been pleased to see how well our broadly-based business has held up through the pandemic so far. Our revenues and profits are up, and we expect even greater growth next year. While activism as a whole was reasonably quiet this year, we were involved in nearly half of all the situations that went to a vote, and our clients came out on top in all but one. So, while the market this season was slow, Morrow Sodali was still very active.

13DM: What changes do you anticipate in shareholder expectations with COVID-19 and can you recommend some best practices for clients in this environment?

HVD: While you might argue that activists gave a lot of companies a "bye" this past season, Mike and Paul tell me they expect substantially more activity next year. The best practice for facing shareholder activism is to be properly prepared. We've been working with many clients to assess the threats of shareholder activism and help them understand that threat as it pertains to their specific shareholder profile. We expect many companies will continue to want that level of understanding as we navigate through COVID-19.

13DM: The SEC has taken some controversial actions recently (proposing changes to the 13F thresholds, regulating proxy advisors); how do you expect that to affect your clients?

HVD: You could argue that the potential change in 13F thresholds will increase the need for companies to do their own work when it comes to track-

ing their institutional shareholders. There will be significantly greater uncertainty and lack of clarity regarding companies' shareholder profiles, which could allow many activists to stealthily acquire positions in their targets. The impact of the new proxy advisor regulations may also be significant, but it remains to be seen what effect it will have on their recommendations and practices of the proxy advisors. The ability for companies to provide a response to the recommendations may impact the level of robo-voting which is often significant and hopefully will lead to more institutions voting independently.

13DM: Once a company is engaged in a proxy fight, there are many ways for a company to succeed, but two of the main ways are either to have a better plan than the activist or a better relationship with shareholders than the activist. Which is more important?

HVD: I'm afraid both are important. Effective relationships with a company's leading shareholders can help ensure that companies hear and understand their shareholders' views, but if the company doesn't have a good plan, no amount of shareholder access will be able to paper over that shortcoming.

13DM: How do you see corporate executives reacting to activists today? Has that changed significantly over the last 15 years?

HVD: I think it's clear that most corporate management teams are more open to dialog and discussion with activists than they once were, including being willing to accept representatives of the activists on their boards of directors. While there are still some activists, and some corporates, who prefer to "come out swinging", the market has moved to a greater willingness to enter into constructive dialogue. Of course, new activists pop up all the time, eager to make their marks, so companies will

never be entirely insulated from those threats.

13DM: When an activist shows up at a Company, the Boards tend to get very defensive and become even more reluctant to admit past mistakes. On the other end the activists often come with a plan that they strongly believe in. Is there something that can be done differently on either end to make the process less antagonistic?

HVD: We don't find that our clients get their backs up reflexively, but instead are thoughtful and in many cases have carefully assessed the ideas raised by the activist. Of course, when activists take positions that are incorrect or are overly aggressive the corporation needs to set the record straight. Part of our role is helping the company assess its areas of strength and weakness, and making sure those factors are incorporated into finding a solution to the issues raised by the activist.

13DM: From board room diversity to disclosures around climate change impact, corporate stakeholders are increasingly looking at corporate stewardship and ultimately the value to society that companies are creating. When advising boards, how much relative emphasis do you place on ESG factors?

HVD: In recent years our Governance Consulting practice, which covers all the areas encompassed in ESG, has grown substantially. There is no doubt that topics such as these matter to our clients' shareholders, and must be taken seriously. Much greater emphasis is being placed on all the topics under the ESG umbrella, including those you mention, and we see that only continuing to increase. The E and S, which have not historically been significant factors in shareholder activism, are becoming much more so and we expect that focus to escalate.