



M&A AND ACTIVISM

Q&A with Mike Verrechia, Managing Director,
Morrow Sodali's M&A and Activism Advisory Group

What were the most popular demands put forth from activists in 2019?

Shareholder activists continue to pressure companies from all angles and their demands really depend on company-specific situations and weaknesses to exploit in their campaigns. In 2019 some of the more popular demands called for board representation, calls to sell assets, split the company, institute a share buyback, fire the CEO, and to oppose M&A transactions.

Are board seats still the most sought after goal?

A proxy fight for board seats, or at least the threat of a fight for board seats, remains the big gun in the arsenal of shareholder activists. That said, over the last twelve to twenty-four months we've seen many activists refrain from pulling the trigger on an actual proxy fight and instead employ different tactics in leveraging their position to effect change within a company.

In particular, we've recently seen more exempt solicitations, or withhold campaigns, targeting a company's board nominees than in previous years. For an activist who wants to voice displeasure in the performance of existing management and board members, this is a far less costly alternative to running their own board candidate(s)

in a full-blown proxy contest. Depending on the level of support achieved in this type of “withhold” campaign, an activist may decide to become more aggressive in year two and actually nominate a slate of their own director nominees.

Also, we’ve recently seen an increase in opposition to M&A deals.

Tell me more about activism in M&A.

Over the last couple of years, we’ve seen various parties take opposing stances on a number of deals. These opposition strategies include vote no campaigns, competing bids, formally soliciting votes against a deal in a proxy contest, or sometimes just spreading rumors about the deal to cast doubt on its process or suggesting that “better” deals may have been out there and not fully explored.

All of these are potentially effective in blocking, or at least casting doubt on the deal’s ability to close. For deals we’ve worked on over the last couple of years we’ve been successful in achieving the necessary vote despite opportunistic campaigns. Some of those have gone on to face additional pressure from a regulatory perspective, but ultimately ended up successfully closing.

International activism rose in 2019, particularly in Europe and Asia. Do you see that continuing?

I think it’s reasonable to expect that US activists will continue to look at non-US markets for campaign targets. Activism outside the US can present challenges for US activists who not only need to have a strong thesis to effect change, but also be in a position to understand how their contest will work from a mechanical perspective. I think it is fair to expect US activists to lean more on pressure campaigns than actual proxy fights when targeting outside of the US.

More contests continue to reach early settlement.

Why are settlements desirable for either side?

Without question, there were fewer proxy contests in 2019 than in previous years. In fact overall contests were down roughly 7.5% from the previous year. However, even with the decrease in contests, settlements continued to be the dominant end-game for shareholder activist campaigns.

Both sides of a proxy contest, company and activist, need to look carefully at the costs and benefits of a contest and determine how they define a “win.” For many companies and boards, finding a solution that can avoid a proxy contest before it begins is the most desirable solution. What changes that perspective really depends on what the “ask” is from the activist. If the demands are reasonable, and

the company and board are motivated to settle, then an agreement will likely be reached. If the activist overreaches then the ball gets advanced and sometimes goes all the way to a shareholder vote at the meeting.

From an activist perspective, getting a win in a contest strengthens their fund's track record and helps attract additional investors. However, being able to claim victory in a campaign, without having to spend the money to fight, can be just as valuable.

How do you expect companies to prepare for activism in 2020?

The best form of activism preparedness is to fully understand what a potential proxy contest would look like based on the company's current shareholder profile. If companies are not conducting that type of study, they frankly should be. Many companies have been very proactive in their shareholder engagement programs over the last few years. Not just from a simple check the box approach to having outreach, but also from the perspective of understanding their complete share register and the various ways to communicate effectively with each shareholder constituency.

We've been working with many companies who are concerned about the potential for an activism event much earlier in their annual meeting process. Getting an early start at profiling the changes in a company's shareholder base, and how those changes impact various voting scenarios, provides critical insight in devising an effective defense campaign.

ABOUT MORROW SODALI

Morrow Sodali is a leading provider of strategic advice and shareholder services to corporate clients around the world. The firm provides corporate boards and executives with strategic advice and services relating to corporate governance, shareholder and bondholder communication and engagement, capital markets intelligence, proxy solicitation, shareholder activism and mergers and acquisitions.

From headquarters in New York and London, and offices and partners in major capital markets, Morrow Sodali serves more than 700 corporate clients in 40 countries, including many of the world's largest multinational corporations. In addition to listed and private companies, its clients include mutual funds, ETFs, stock exchanges and membership associations.

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