

Dealing with shareholder activism:

Twenty things to do (and six things not to do)

Any listed company is a potential target for activist campaigns. But companies can take steps to minimise and mitigate the risk

1. **Track and evaluate factors that may attract the attention of activists.**

These may include factors such as:

- Visibly weak or problematic governance.
- Poor stock market performance.
- Negative coverage from analysts.
- Sustained negative media coverage.
- A stockpile of cash.

2. **Assess the company's situation regularly, to identify vulnerabilities.**

If appropriate, use external advisers to audit the company's position and/or maintain a watching brief over potential trigger points.

Certain situations may be particularly attractive to activists: e.g. they may campaign against a sale – often aiming to achieve better terms or a better price via an alternative deal – or invest in an acquirer whose stock price falls after a merger announcement, hoping to kill the deal and drive the price back up.

3. **Monitor activist activity in other companies.**

Track trending issues and evaluate your vulnerability on them. External advisers may be retained on a watching brief.

4. **Monitor the shareholder register and trading in the company's shares.**

Causes for concern may include unusual activity (including unusual levels of stock lending and borrowing), stake-building by known activists or their proxies, and the appearance of multiple small holdings on the register.

5. **Ensure the Investor Relations team has good, proactive relationships with major shareholders.**

Address the concerns of key shareholders quickly and effectively, while delivering a strong message on issues such as strategy, growth and shareholder value.

6. **Identify and target shareholders the company would like to have.**

A core of large holdings in the hands of sympathetic institutional investors is a strong defence against activism.

7. **Engage regularly with smaller shareholders.**

Such engagement tends to be with retail investors, but it can still have a positive effect on overall shareholder sentiment (and social media coverage).

8. **Maintain good relationships with analysts and journalists.**

Good practice includes running roadshows (including virtual ones), making information easy to access, and responding promptly to queries.

9. **Although board-proposed resolutions at general meetings are still usually approved (unlike shareholder resolutions), opposition to them should be taken seriously.**

Under the UK Corporate Governance Code, if 20% or more of votes are cast against the board recommendation for a resolution, the company should say how it will consult shareholders on the issue, then publish the views received and actions taken. But even a negative vote below 20% can be a sign of trouble.

The most successful shareholder resolutions are often the more specific ones. It is usually easier to attract support for the removal of a particular director with a poor record than it is to force strategic change.

10. **Have an action plan for responding to activism, to facilitate a co-ordinated and rapid response to activist activity.**

Some companies run exercises to stress-test their plans (and to give their team experience), with external advisers playing the role of the activist.

Responding to activism



When the risk of activism becomes a reality, what steps can a company take to deal with it quickly and effectively?

11. Understand what the activist is doing (and why) and analyse how much of a threat they really are.

If the activist has previously targeted other companies, a review of their tactics may be useful.

Where activists have previously failed to create value or achieve their goals, it may be in the company's interest to highlight that.

12. Calibrate your response carefully and strategically.

A one-size-fits-all reaction from the company may simply encourage activists to double down, and might even cause disquiet among other shareholders.

- It usually makes sense to treat ESG activists who are keen to engage differently from those whose main aim is disruption.
- An activist investor seeking a constructive discussion on strategy will expect (and should probably get) a different reception from one who comes in wanting to sack the board.

13. Develop your publicity campaign or communications strategy.

A company targeted by activists will want to involve external advisers (probably including brokers, lawyers and PR advisers) when considering and drafting its communications, as there may be risks around e.g. defamation or disclosure.

A company's initial instinct may be to counter-attack immediately by discrediting the activist: e.g. by drawing attention to litigation in which the activist is involved, or negative publicity it has received in the past. But such steps should only be taken in the context of a broader – and carefully planned – publicity campaign or communications strategy.

When developing a communications strategy, a company should:

- Aim for a clear and, ideally, simple strategy to get its message across to the broad majority of shareholders.
- Decide how far it will acknowledge any validity in the activist's arguments. If it believes the activist has no case, it needs to explain why. Otherwise it needs to present a credible plan for dealing with the issue (unless it can show that e.g. doing so would have too great an opportunity cost).
- Evaluate and respond to the activist's own communications strategy.
- Agree which individual(s) will speak on behalf of the company, in order to ensure a consistent and well-presented message.
- Agree on the appropriate tone for its messaging. Appearing defensive is probably not a good idea – but nor is it always best to fight fire with fire. Input from veterans of activist campaigns will help the company get it right.

14. Engage with activists and be seen to engage with them.

You can also use publicity and the media to talk more widely about the issue that concerns the activist – but try to avoid negotiating with the activist through the media or in public.

15. Engage promptly and openly with other major shareholders to put forward your arguments.

Where possible, take the initiative – don't give the activist a free hand to make the running or determine the agenda.

16. It is sometimes appropriate to take pre-emptive action to address the activist's concerns.

A major attraction of doing this is that it not only takes the wind out of the activist's sails but also allows you to deal with those concerns on your own terms.

Responding to activism



17. When activists table a resolution, the company should make its own position clear and engage with shareholders.

Companies sometimes use proxy solicitation agents to maximise their reach among shareholders.

It is increasingly common for major shareholders to indicate, in public and in advance, how they will vote in meetings.

This can significantly help (or hinder) the board.

18. Prepare thoroughly for any general meeting, including AGMs.

For more detailed information on activism in AGMs and other general meetings, see our [longer guide to shareholder activism](#).

19. Monitor activity and check compliance.

Like the company, activist shareholders are subject to rules – some triggered by the size of their shareholding, for example, or requiring them to follow specific procedures – and the company should pay close attention to what the activist is doing.

- If any of the activist's actions may constitute regulatory breaches (e.g. of insider dealing rules), the company may wish to report this to the regulator.
- However, regulators do not like to be seen to be used as a negotiating tool and take a dim view of attempts to leverage a threatened regulatory breach for commercial benefit.

20. Know when to compromise.

If an activist is likely to prevail in the long term, then the company's own long-term interest may be to embrace them. It is not uncommon for companies to enter into formal relationship agreements with activists – sometimes involving a seat (or seats) on the board and commitments around strategy and governance.

- Such agreements may also include, for example, clauses to stop either side disparaging the other, or to stop the activist increasing its stake or pursuing its campaign.
- Even without a formal agreement, a seat on the board is sometimes enough to bring the activist onside. Directors owe duties to the company and must take collective responsibility for board decisions. It is a breach of duty for a director to seek to undermine the board by publicly dissociating themselves from board policy without permission.

Responding to activism: don't...



1. **Don't underestimate activists**

Many are well funded, committed and ready for the long haul.

Activists are also usually well informed, and often come armed with deep bespoke research on their targets.

Companies should not assume that their connections with their shareholders are automatically better than those of activists.

2. **Don't ignore activists**

Particularly in the early days of a campaign or stake-building, the company may be tempted to do nothing, rather than spend management time dealing with it – sometimes hoping that the activist will have minimal demands or will soon sell their stake again. Such hopes are usually ill-founded.

3. **Don't dismiss activists**

When activists are not investment professionals but are from pressure groups, some companies may be inclined not to take their arguments and campaigns seriously.

But patronising or dismissive comments about activists often play badly in the media, and increasingly with other shareholders.

Especially if activists are from a minority or community that feels it has been treated poorly by the company, displaying an apparently dismissive attitude can be a major own goal.

4. **Don't automatically attack activists**

Many shareholders now have a somewhat positive view of activists, in many cases hoping that they might shake up the business and add or return value.

It is usually more effective to counter the activist's argument – e.g. explaining why they will not achieve value – rather than attacking the activist themselves.

5. **Don't try to deny activists a platform**

The law gives all shareholders certain rights at meetings and in other situations – for major shareholders, many other situations.

In an age of social media, trying to deny even the smallest shareholder a platform is likely to be unsuccessful and probably counterproductive.

It will also almost certainly be counterproductive to argue that it is 'for the good of the company/other shareholders' not to let the activist make its case.

6. **Don't panic**

Activist shareholders usually start off in the minority – they need to win over other shareholders.

A chaotic or uncoordinated response to the appearance of an activist – or an unduly aggressive or defensive response – typically plays into their hands.

If you have a stress-tested plan for dealing with activists, good shareholder relationships and good corporate governance, you are in a strong position to counter an activist campaign.

Even if you fall short in one or more of those areas – or others, like share price – you will almost certainly have a number of viable options.

Many activist campaigns ultimately fail, or are resolved by compromise. Proceeding carefully, reasonably and rationally is the company's best route to achieving one of those outcomes.