

Shareholder Activism

FTI Consulting hosted a panel discussion on shareholder activism following its recent survey of leading activists. Chaired by Edward Bridges, Senior Managing Director at FTI Consulting, the panel participants included:

- David Lis - Head of Equities, Aviva Investors
- Piers Prichard Jones - Partner, Freshfield Bruckhaus Deringer
- Steven Balet- Managing Director, FTI Consulting
- Piers de Wilde, a Senior Director in FTI Consulting's Global Risk and Investigations Practice

The shareholder activism landscape had changed dramatically. According to data compiled by Hedge Fund Research, activist hedge funds managed over \$93 billion dollars in 2013, almost triple the amount managed just five years ago, and an increase of 42 percent from an estimated \$65 billion in 2012. This increase in investment has been fuelled by returns of 16.6 percent in 2013, which far outpaced the average hedge fund, returning 9.3 percent. Further, the investors in these activist funds now include an increasing number of large pension funds and institutions – the same pension funds and institutions that have been increasingly supportive of activists with their votes.

The results from FTI Consulting's survey showed that the overwhelming majority (89 percent) of activists believe that 2014 will see an overall increase in M&A activism. Steve Balet noted the activists' increasing willingness to engage on the acquirer side of a transaction. "While nearly three-quarters (73 percent) of activists polled say they would take a traditional route, investing in a target and then apply pressure to increase the offer price during transactions, a surprising 43 percent of activists interviewed stated they would look for opportunities to discourage the transaction and instead push the acquirer to unlock value through share buybacks, dividends and divestitures, rather than go through with the transaction".

Ed Bridges pointed out that while a significant amount of activists (87 percent) see no shortage of targets in North

America, 40 percent are shifting their focus to Europe and elsewhere. This in turn had led to a sharp increase in corporate focus on activism defence planning, particularly as there has been evidence of long-only institutions becoming more activist in their own right as well as implicitly and explicitly supporting activists' positions.

The panel considered the degree of influence exerted by ISS and other proxy advisors. David Lis said that although many investors use such advisors, their influence is not clear cut as any significant or contentious issues would be looked at independently by the investor. Steve Balet noted that, from his experience, winning an ISS recommendation often helps to shut a dissident campaign down as their blessing can carry up to 10-15% of the vote and up to 30% for a corporate governance issue.

Media also continues to play an important role in activist engagements. The survey found that 88 percent of activists interviewed believed the media has positively impacted activism. Ed Bridges noted that the media had become very supportive of activists, many of whom have become increasingly sophisticated in their engagement with and use of the media. While only one-quarter of those polled already used Twitter and other social media platforms when engaging in activist campaigns, the survey found that 69 percent expected an increase in 2014.

Steve Balet pointed out that when Icahn took an activist stake in Apple, and announced it via Twitter the impact was immediate and moved the markets. "It was a lesson that everyone in the activist community noted and one that is likely to be emulated. When considering pre-emptive activist defence planning, companies need to understand what social media strategies are available both in defence and offence."

Piers de Wilde highlighted the key role of intelligence in defending against activists. He noted that an antagonistic situation may or not develop, but when it does it is best to be prepared. He also stressed that sometimes a firm's shareholders may not know the true details about activists –

and that board members have a fiduciary duty to keep shareholders informed. Developing an in depth assessment of an activist investor's intent and modus operandi was critical to understanding how they were likely to behave during the opening discussions and their response to the various strategies available.

As the discussion was brought to a close, Piers Prichard Jones issued a word of warning, stating that companies are often well prepared for hostile takeovers but don't have the appropriate mechanisms in place to react to shareholder activism, despite a general consensus that shareholder activism is more likely than a hostile takeover. Piers noted that, from a legal standpoint, listed companies often feel that activists are not subject to the same rules and restrictions as they are and that the playing field is not level in any activist campaign. He explained that market abuse and defamation are the only two genuine legal limitations on activists in the UK. He encouraged companies to analyse how they may be vulnerable to an activist attack, to regularly communicate with and monitor shareholders and to have a clear plan for engagement if an activist does target the company.

More about the survey, along with other insights on shareholder engagement and activism, can be accessed here: <http://fticonsulting.com/activism>.

10 TIPS FOR COMPANIES CONCERNED ABOUT ACTIVIST INVESTORS

1) Monitor beyond your register. Companies to not only monitor their register but also monitor attendees on conference calls and at conferences they attend. They also need to educate themselves on activists operating in their industry - past and present.

2) Know where you stand. Analyse yourself from an activists perspective by working with your outside advisors. Attempt to anticipate how you may be targeted by an activist and work on specific messaging to counter that argument.

3) Have a plan for engagement. Know who will be on your advisory and engagement team (both management and board). Know what your response will be if an engagement with an activist leaks or if the activist immediately goes public. What is your press response, employee response, customer response and supplier response?

For a full checklist, please call a member of our team below.



Ed Bridges
edward.bridges@fticonsulting.com
D: +44 (0)20 3727 1067
M: +44 (0)7768 216 607

Charlie Palmer
charles.palmer@fticonsulting.com
D: +44 (0)20 3727 1400
M: +44 (0)7976 743 360

Steve Balet
steven.balet@fticonsulting.com
D: +1 212-850-5735
M: +1 6466421397

CRITICAL THINKING
AT THE CRITICAL TIME™

About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.

www.fticonsulting.com

©2014 FTI Consulting, LLP. All rights reserved.