

## **Behind the boardroom door: Activist investors and the board**

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Whether they're investors dissatisfied with the stock price or ideologically motivated campaigners pushing corporations to change policies and take stands, activist investors pose a complex challenge for business leaders serving on public company boards. Besides the traditional concerns about shareholder returns and capital deployment, directors now often face pressure to decide how to respond to activist investors seeking changes in governance, disclosure and social and environmental issues. What topics must directors be prepared to cover? What are the most effective ways to engage with activist investors? And what's expected of boards today? Those are some of the questions that will be the focus of NACD New England Chapter's June 19 panel that includes Matthew DiGuseppe, vice president, head of Americas, on the asset stewardship team of State Street Global Advisors; Deborah Ellinger, lead independent director, iRobot Corp.; James Hamilton, director, BlackRock Investment Stewardship; and Maureen T. Wolff, CEO, Sharon Merrill Associates Inc.



## **What are some of the most challenging shareholder-activism issues boards will have to grapple with in 2019 and 2020, and how should they prepare?**

**Wolff:** We have seen a sea change in the level of interest in ESG (environmental, social and governance) issues, especially among large index funds, and we expect ESG to play an increasing role in activist situations over the next few years. But, one area that will never change is a focus on performance: If companies do not create shareholder value, activists will get involved. To prepare, build relationships with your investors in good times and in bad, regularly track investor perceptions, identify your vulnerabilities, make the necessary changes and communicate the company's long-term strategy, with benchmarks to measure the progress.

## **How has the growth of social media changed how activists communicate with shareholders, and how corporate boards best respond?**

**Ellinger:** All forms of communication come into play once an activist shows up, but the same rules govern social media as govern traditional communication channels: Keep your message simple, continuously reinforce two or three key points, and don't overreact. There is no need to tweet about it.

**DiGuiseppe:** It's still in the early stages, but social media is likely to impact the role of retail investors in proxy contests. For institutional investors, the level of communication around proxy contests has grown to the point where there may not be a marginal benefit from additional communication streams.

**Wolff:** With social media, activists have a powerful platform to communicate directly and rapidly with shareholders. Boards need to be able to respond using the same social media platforms, or they will have a difficult time reaching all their shareholders. Today, social media is another tool in the toolbox that enables that connection. Forward-thinking companies understand that the best time to implement social-media platforms is before they are needed in a crisis.

## **What do you consider to be the best practices and approaches for boards to negotiate compromises with shareholder activists to avoid proxy battles?**

**Hamilton:** Our engagements with companies and activists are not negotiations, but constructive dialogues meant to build a mutual understanding of the issues. They should engage with us as early as possible, once the activist investor's

arguments are public, so we can make better-informed decisions to support the outcome we believe best aligns with our clients' long-term economic interests.

**Ellinger:** Listen to them carefully, meet top to top with others in the room, and be clear from the beginning about where compromise might be possible — and where it isn't. There is no room for waffling when talking with an activist.

**How would you advise boards to evaluate whether director candidates proposed by activist shareholders could actually become positive additions to the board?**

**DiGiuseppe:** Board seats should not be viewed as bargaining chips, but rather should be filled by the directors that are best suited to contribute to the company's long-term strategy. The existing board evaluation process is the foundation to evaluate candidates proposed by activist shareholders. Boards should be regularly evaluating their skills and competencies against those that are necessary to be aligned with the company's long-term strategy. A board with a strong culture that embraces refreshment, succession planning and evaluation will be well-positioned to demonstrate the value of each director and to consider candidates proposed by activists.

**Wolff:** Interview an activist-sponsored director candidate as you would any other. Assess whether they have the experience and skill set you are looking for in a board member. Do they fill in any gaps on your current board? Does their experience provide valuable insight that is relevant to the execution of your strategy? Study their backgrounds carefully. Will they use their qualifications to make decisions in the best interest of the company — or instead only work to advance a particular agenda?