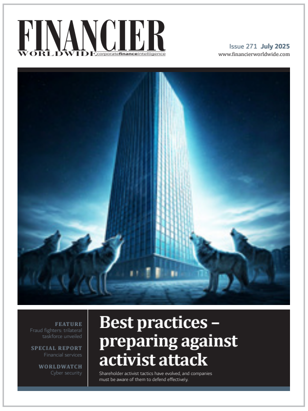

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Best practices – preparing against activist attack

BY RICHARD SUMMERFIELD

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In an increasingly complex and volatile market, public companies have, in recent years, faced a growing array of challenges from takeover bids and activist investors. While shareholder activism was once largely concentrated in the US, it has now become a global phenomenon, with companies around the world contending with activists and their diverse demands.

2024 was a particularly significant year for shareholder activism. According to Barclays, a total of 243 activist campaigns were launched globally – the highest number since 2018. The Asia-Pacific region saw a record 66 campaigns, surpassing Europe for the first time. In contrast, European activity declined by 26 percent year-on-year to 48 campaigns. In the US, campaign activity rose by 6 percent to 115 campaigns. However, in terms of campaigns globally, the US hosted just a 47 percent share in 2024, compared to 69 percent at its peak in 2015.

Consistent with historical patterns, there was a 67 percent surge in activity from the third to the fourth quarter, as activists typically intensify efforts during this period to align with US nomination windows, which open between December and February.

Barclays also reported a record number of activists launching campaigns in 2024, with 160 different investors involved, including 45 first-time activists – both all-time highs. Notably, first-time activists accounted for 18 percent of campaigns, surpassing major activists, who were responsible for just 17 percent, marking a record low share for the latter. This shift underscores the broadening of the activist landscape, as the strategy gains wider acceptance among institutional investors globally, and points to evolving norms in corporate governance and shareholder engagement. The increase in campaigns initiated by first-time activists also reflects a growing acceptance of activism in the market as a credible approach to generating long-term value.

As Stephen Glover, a partner at Gibson Dunn, points out, activists

are now casting their nets wider. "Activist funds have become increasingly aggressive, and are now searching for targets not only in the US but also Europe and Asia," he says. "No company is too large to be exempt from challenge, and large cap companies increasingly find themselves in the activists' crosshairs. Although some industries, such as tech, media and retail, have drawn more activist attention than others, no economic sector is safe from challenge. The number of activist funds has continued to grow, and even campaigns launched by small funds have been able to get traction.

"Over the last year or two, the number of campaigns that focused

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on strategic or operational issues and advocate for management changes has increased. By contrast, there have been fewer M&A-focused campaigns, in part because the M&A markets have been less active," he adds.

Evolving tactics and strategic shifts

The tactics and strategies employed by shareholder activists have evolved significantly in recent years, and companies must be aware of these changes to defend themselves effectively. What began in the 1980s as a brash and often combative movement led by so-called 'corporate raiders' has matured into a sophisticated, globally attuned and strategically agile force.

One of the most notable developments is the growing tendency for activists to go public early. "They will sometimes launch 'sneak' attacks in which they mount a public campaign without having first engaged in a dialogue with the target's board and management team," explains Mr Glover. "This change may be attributable in part to the increasing number of activist funds and the declining number of easy targets. For similar reasons, activist funds are more likely to work together or take aim at the same target at the same time than was the case in the past."

As a result, settlements are now happening more quickly, with many deals being finalised even before any public disclosures are made. Additionally, activists have become more effective at engaging with target company shareholders, who are increasingly open to their arguments. They are also more adept at identifying strong board candidates.

The shift in activist behaviour and the rising number of campaigns are being driven by several factors, with M&A playing a central role. "M&A continues to be a primary catalyst for activist activity, with an expected increase in campaigns if M&A volumes rise in the latter half of 2025," notes Peter Casey, president at Alliance Advisors. "Activists remain focused on strategic and operational enhancements, often pushing for leadership changes, including chief executive turnover. While corporate governance remains an important focus, stock underperformance relative to peers remains the principal driver of activist interventions, as it often signals mismanagement and an opportunity to generate returns. Activists target companies with operational inefficiencies, including high costs, ineffective supply chain and suboptimal capital allocation.

"Other focal points include weak board structures, excessive executive compensation and insufficient independent oversight. Activists also seek companies with unclear or poorly executed strategies, non-core assets or valuations that lag their intrinsic worth. In such cases, they frequently advocate for asset sales or spin-offs to unlock shareholder value," he adds.

The landscape of shareholder activism has evolved considerably, with key developments shaping its trajectory. "Activists are increasingly targeting large-cap, high-profile companies, demonstrating a willingness to take on more significant challenges and allocate greater resources to their campaigns," says Adam Riches, senior managing director (global) at Alliance Advisors. "As institutional investors and other stakeholders demand greater corporate accountability and transparency, activists are leveraging these expectations to align their agendas with traditional asset managers.

"Additionally, shareholder activism has become more globalised, with investors applying North American strategies and tactics in regions that were previously less receptive to activist interventions," he adds.

Regulatory impact and developments

Recent regulatory changes – particularly the US Securities and Exchange Commission's (SEC's) universal proxy rule – have significantly reshaped the activist landscape. The rule allows shareholders to vote for a combination of nominees from both company and activist slates, rather than choosing one side entirely. "As a result, activists are now more emboldened to pursue board seats, increasing the frequency and success rate of campaigns," notes Mr Riches.

Shareholders are no longer limited to voting exclusively for either all management or all activist nominees. Instead, they can select individual candidates. "This ability to pick and choose tilts the playing field somewhat in the activist's favour, because they can attack individual management candidates who they believe are particularly vulnerable," says Mr Glover.

In today's evolving activist and regulatory environment, companies must respond with clarity, transparency and a well-defined strategy.

The universal proxy card has also led to a rise in settlements, as companies face greater pressure to reach agreements with activists early. With shareholders now able to support a mix of nominees, the chances of activists winning board seats in contested votes have increased.

This shift has prompted more proxy contests focused on criticising individual directors, and has heightened the perception among companies that such contests are riskier than before. While the overall number of contested campaigns has not grown, the increase in settlements suggests companies are more inclined to avoid drawn-out battles.

Favourable rulings in Delaware — particularly regarding books and records requests under section 220 of the Delaware General Corporation Law — have further supported activists. However, recent legislative changes may limit the scope of these demands, potentially reducing this advantage.

Identifying and addressing vulnerabilities

Given the rapid pace of change and the increasing globalisation of activist behaviours, companies must take proactive steps to identify potential vulnerabilities and pre-empt shareholder activism.

Mr Glover highlights several vulnerabilities that can make a company an attractive target for activists. If a company underperforms its peers – whether through weaker profitability, slimmer margins, or a lower share price – activists may argue that its strategy is flawed, operations need restructuring, or leadership should change. Underperforming or non-core business units can also be targeted, with activists pushing for divestitures or spin-offs. If the company appears to be a viable acquisition target, they may advocate for a sale. A strong balance sheet with excess cash or low leverage compared to peers can prompt calls for share buybacks or increased dividends. Additionally, boards with long-serving or underqualified directors are more vulnerable to demands for refreshment.

"A company preparing for the possibility of an activist challenge should engage in a candid self-evaluation process and take pre-emptive steps," says Mr Glover. "For example, it can undertake its own board refreshment programme or make operational adjustments to improve margins and profitability. If the company has a plan for resolving strategic or operational problems that cannot be implemented immediately, it should be prepared to explain the plan and the proposed timetable. If the company believes that an apparent vulnerability is actually a strength, it should be prepared to explain why."

According to Mr Casey, to mitigate the risk of activist intervention, companies should begin by monitoring performance metrics. "Companies should regularly track key performance indicators and stock performance relative to peers to detect early signs of underperformance. They must also assess board composition – ensuring the board has the necessary expertise, independence and diversity to drive long-term shareholder value. They should review governance and compensation policies, ensuring they align executive compensation structures and governance frameworks with shareholder expectations.

"The board must also be refreshed proactively in order to introduce new directors to enhance skills and address tenure-related concerns," he continues. "Steps should also be taken to clarify strategic direction. To that end, companies should regularly evaluate and communicate corporate strategy and capital allocation decisions to investors. And finally, companies must maintain strong shareholder engagement. Establishing open lines of communication with institutional and retail investors will help to address concerns proactively and build trust."

Strategic responses to activist campaigns

In today's evolving activist and regulatory environment, companies must respond with clarity, transparency and a well-defined strategy.

Upon detecting activist interest, companies should immediately mobilise a core team – typically including legal counsel, a proxy solicitor and investor relations professionals. This group monitors shareholder movements, prepares public messaging and ensures the board can clearly articulate the company's strategy. "Your company is under attack – this is not the time to practice 'wait and see' or penny-pinch," suggests Mr Casey. "Get your team up and running day one."

Waiting or cutting corners is risky. Ideally, companies should assemble a broader advisory team – including financial advisers, legal experts and public relations specialists – before any activist emerges. "The advisers can help the company identify vulnerabilities and prepare defences in advance," says Mr Glover. "The more time the adviser team has, and the more thorough its discussion with the company, the better the company's defence will be."

A consistent and proactive communication plan is also essential. Companies should clearly convey their strategic vision and be ready to address potential activist concerns across various scenarios. This includes preparing tailored responses and designating one or two spokespersons to ensure a unified message. Engagement should extend beyond shareholders to include employees, customers and suppliers, building broader support and reinforcing confidence in the company's direction.

Listening to activists can offer valuable insight into potential public campaigns and help shape a more effective response. Constructive dialogue may lead to mutually beneficial outcomes and reduce the risk of prolonged disputes. "Ultimately, however, companies must be prepared for a proxy fight," says Mr Casey. "Even if the goal is an amicable resolution, companies should be ready to defend their strategy in the event of a shareholder vote."

Companies should remain open to valid feedback while defending their strategy. Demonstrating a willingness to engage in good faith – especially in the early stages – can strengthen credibility with shareholders. If the company has a sound plan to address perceived issues, it should be prepared to explain it clearly and confidently.

"The company may be able to persuade the activist that the problems it has identified are not really problems, or that the company has a well-developed, effective plan to solve those problems," says Mr Glover. "At least in the early stages, before a proxy contest has started, it is important not to be too combative."

The future of shareholder activism

Looking ahead, shareholder activism is expected to intensify as investors continue to scrutinise corporate strategy and performance. "Key trends will include an increased focus on capital allocation, with activists challenging inefficient capital deployment and holding boards accountable for underperformance," predicts Mr Riches. "Likewise, activists will demand greater alignment between corporate strategy and shareholder interests, driving changes in leadership and business direction. As shareholder rights improve in various markets, activism will continue to gain traction in regions where investors have historically been less vocal.

"Overall, companies should anticipate a more sophisticated and globally interconnected activist landscape, requiring proactive governance, clear strategic communication and ongoing engagement with stakeholders to mitigate risk and foster long-term value creation," he adds.

It is increasingly evident that activists will remain a powerful force in the marketplace for the foreseeable future. Companies with underperforming stock, non-core business units, excess cash, weak management teams or entrenched directors will continue to face significant pressure. However, by taking proactive and pre-emptive measures – particularly in relation to communication and stakeholder engagement – companies will be better positioned to deter activist campaigns and protect long-term shareholder value. ■