



KINGSDALE

Shareholder Services

CERTAINTY IN UNCERTAIN TIMES:

HOW TO SURVIVE IN A WORLD WHERE THE MARKET IS DOWN AND ACTIVISM IS UP

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ABOUT KINGSDALE



- With offices in Toronto, New York, and Vancouver, Kingsdale Shareholder Services is the leading shareholder services and advisory firm, having acted on the largest and most high profile proxy fights and transactions
- Kingsdale offers an array of specialized services including: strategic and defensive advisory, proxy solicitation, governance advisory and proxy analytics, information agent, depositary, communications, voting analytics, shareholder identification, asset reclamation/asset reunification, and stakeholder surveys

The Kingsdale Advantage

- **Strategic Leadership:** Trusted advisor to management and boards. Strategic advisory team has the ability to access and influence key decision makers
- **Unequaled Results:** Unparalleled ability to maximize shareholder participation and outcome. We've achieved more success for our clients than any of our competitors
- **Best-in-Class Talent:** Experienced team of industry veterans including governance, legal, financial, communications and operations experts
- **Dedication to Client Service:** We provide exceptional service and 24/7 dedication to our clients
- **Customized Solutions:** We assess your objectives and key issues you will be confronting and design your strategy based on your unique circumstances

UNCERTAIN TIMES: WHAT MATTERS FROM 2015



- With markets down—especially commodities markets—issuers are under increased scrutiny
 - There are more undervalued companies, more over-compensated directors and managers, and more unhappy shareholders—this means more opportunity for activists
- Activism is up in North America with 140 proxy fights to date (34 in Canada and 106 in the US)
 - What is not in these numbers is the activity behind closed doors. We estimate only 1/3 of activist interactions become public
 - Activism now a year round threat
- Too many boards are still failing to listen to shareholders, especially on issues like compensation, this creates weak spots for activist attacks
- Pressure is mounting on issuers from both long and short-term shareholders.
 - Directors and management are left wondering which owners do they and should they serve first?

LONG OR SHORT: WHO COMES FIRST?



What You Need to Know

- Long-term investors are pushing to ensure their philosophy and focus are reflected in corporate strategy; warning against pitfalls of short-termism
- Short-term investors challenge the notion that *'some investors are more equal than others'*
 - *What makes the ideas of an investor who has held a position for six years inherently superior to the ideas of one who has held a position for six months?*
- Activists charge the long vs. short debate is yet another corporate tactic designed to foster entrenchment by increasing the status of those investors who have most demonstrated they are willing to tolerate underperformance

What You Need to Do

1. Be aware pressure to focus on the short term can be from the board itself. Ensure compensation is structured to ensure directors allocate the right amount of time to long-term study and strategy
 - Consider establishing a separate Risk Committee whose mandate is to look ahead
2. Talk to your largest investors about their investment beliefs, long-term benchmarks they deem important and long-term risk tolerance. Don't just assume you know.
3. Be aware certain types of funds have been labelled short-term but their track record shows otherwise

CHANGING ENGAGEMENT EXPECTATIONS



What You Need to Know

- Issuers should be under no illusion that good enough this year will get them by next year
- Rapidly approaching a tipping point where shareholders who are not getting the access and information they expect will soon hold boards accountable
 - Companies that are slow to respond to shareholder expectations will become targets for proxy access
- Shareholders want access to independent directors and clear process for regular interaction
 - Too often corporate communications become a routine exercise of required disclosure leaving companies with the mistaken impression they have '*communicated*'
- **Why it matters:** Shareholders who understand your strategy and see their input manifested in it are more likely to support it—especially in a period of adversity

What You Need to Do

1. Beware your protocols to communicate do not look like an attempt to insulate from inquisitive shareholders (i.e. a Shareholder Relations Committee).
 - *Effective shareholder communication is not a special project, it is a culture.*
2. Do not pursue a process designed to help spread your message without meaningful attempts to gather input. Shareholders want to know how their input will influence strategy and if it won't, transparency as to why
3. Directors should attend investors days and accompany IROs on roadshows

THE CHANGING FACE OF ACTIVISM



What You Need to Know

- Activist funds continue to attract capital and superior talent because they are getting results. This means they have the skills and leverage needed to take on more and bigger targets
- Rise of the “constructivists”
 - Balance sheet activism is down as more companies have caught on to increased dividends/buybacks
 - Rather than criticize, these are activists with more sophisticated and constructive approaches (“free investment bankers”)
- It is no longer a taint to work with activists and the “management bounce” is deteriorating
- More activists in your stock at once. Rise of “wolf packs” creates an increased challenge

What You Need to Do

1. Distinguish the Ackmans from the ‘ankle biters’
2. Realize activists are no longer a time-bound crisis to be managed but shareholders to be engaged
3. Think more holistically in terms of your areas of vulnerability. Not good enough to ‘*think like an activist*’, need to think like a ‘*constructivist*’
4. Reject the ‘not invented here’ syndrome. Ask yourself what aspects of a proposal make sense objectively or could be adapted to create value. Don’t be afraid to attribute credit by indicating you are interested in something brought forward by a shareholder and vetted by the company
5. Accept a proxy fight is not a pillow fight and have your team of advisors and playbook ready



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