



## Strategies for Dealing With Activists

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### Panelists:

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**Moderator:** Claudia H. Allen, Partner, Neal Gerber Eisenberg

### Key Takeaways

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- Make sure you keep in touch with your company's major investors – not just the fund managers of your top 25 shareholders, but the people who vote the proxies. This can help you understand what your holders see as the company's big issues. If you reach the point where an activist investor is pushing for a change, it will then be easier to get a feel for how much support he might receive from other investors. As proxy rules have changed, it's easier for activists to solicit the interest of like-minded supporters and force action.
- Conduct ongoing shareholder surveillance, but realize you may not have the whole picture because activists often take ownership via options and other methods. To supplement surveillance, tap your relationships with sell-side analysts. They can give you a heads-up if a hedge fund or big investor starts raising questions about your company.
- Even if you don't currently have contentious relations with any of your big shareholders, you should have a core team in mind in case the situation changes.
  - At Kraft, the core response team is the CEO, CFO, IRO, general counsel and corporate secretary. When dealing with activists on several occasions over the past few years (Nelson Peltz/Trian, Pershing Square, Carl Icahn), the Kraft response team could be expanded to include investment bankers, a PR agency and outside counsel, including corporate governance experts.
  - In 2007, Hexcel's IRO faced the task of pulling together a response team over a weekend in the middle of July due to initiation of an activist campaign by hedge fund OSS Capital. As a long-time shareholder, OSS had repeatedly expressed dissatisfaction with the rate of improvement of the company's performance as compared to a peer in one-on-one meetings. However, the situation was stable until shortly after Hexcel's long-time CFO left, and OSS didn't see any outside change agents brought into either operations or finance to improve margins. This was the "final straw" that transformed OSS from outspoken critic to activist.
- In dealing with activists, it's obviously best to avoid a proxy fight altogether. Take the time to understand their motivation and point of view, offer an open dialogue, and educate these and other shareholders on the issues raised. While activists should not expect special access, Hexcel allowed OSS to make a presentation to its full board in hopes of heading off a proxy fight. Although OSS subsequently decided to seek three Hexcel board seats, Hexcel management's **supplemental proxy materials** specifically rebutted OSS assertions and clarified information already on the public record, helping the company gain support from the two major proxy advisory firms and win its proxy fight in 2008.

– Lavonne Kuykendall