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Top 10 Topics for Directors in 2017: Shareholder Relations

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In the past, scholarly articles, panels and other sources of information for directors of public companies have focused on corporate governance and defensive measures. While such discussions have merit and utility, the paradigm is shifting to suggest that a more proactive approach is increasingly appropriate. In other words, while winning a proxy contest or reaching a settlement with an activist investor is good, avoiding the situation altogether is better.

The primary advice for a board of directors to foster shareholder relations is to address shareholder concerns. This means proactively engaging with shareholders and performing self-diagnostic analyses. A director should be cognizant of underperformance in relation to industry peers and other lagging performance areas. Un- and underutilized capital and assets can, for example, be sold and returned to shareholders to avoid future fights. Even if the decision is made not to make material changes to a company's plan, having thoughtfully considered shareholders concerns will mean the board is more prepared when the activist arrives. Not only that, but other shareholders are likely to show deference to a board that actively considers their concerns. Thus, making sure to engage shareholders is of the utmost importance.

If engagement and relations prove ineffective, a board may still need to go to the mat with an activist shareholder. In such a situation, a director will be playing catch-up unless he or she properly understands governance vulnerabilities. For example, a board may be vulnerable as a result of de-staggered boards, lack of access to a poison pill and a shareholder right to vote by written consent and to call special meetings. Understanding that such vulnerabilities exist, and being mindful of them in the negotiation process, can be the key to success in any contest.

Generally speaking, these factors boil down to one primary axiom in the activist arena: a director should take a commonsense approach. Shareholders demand value and a voice. Meeting those demands can turn a foe into an ally. If that approach fails, preparation is key.

View the full report here.

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