

How Much Cash Ya Got?



By Nancy May, President and CEO, BoardBench Companies

Picture this: someone knocks on your door. When you answer, the first thing they ask is: “How much cash ya got?” Or, maybe, you see someone looking over your house who tells you that they now own your mortgage, and starts telling you things you can and can’t do anymore. Unmitigated gall? Farfetched? Maybe, but if you’re a director on a public company board, you will likely live through such a scenario, when (not if) that activist investor comes knocking.

You’ve all read about them, some of you have even dealt with them. But those “thems” come in ever more varied shapes and sizes with new tactics unfolding as we speak. If you’re on a large cap board, you’re well acquainted with well-funded private equity firms, hedge funds, and institutional investors. However, directors have rarely concerned themselves with small and micro-activist investors. This will change as more wolf and hyena packs trot into view.

Activists are not benign. No matter their size, shape, or approach, they can all be defined by their intent: to squeeze your firm for a payoff, and the sooner, the better. Many disguise, even justify their purpose, with terms like “unlocking value,” “improving corporate governance,” “strengthening performance,” etc. Occasionally, companies benefit from activist-“suggested” opportunities that boards don’t see, or get to root out some non-performing directors. These so called “win-win” situations are mostly inadvertent, and not the activists’ primary intent. Remember this: Activist investors place their interests first. Your board members, company management, and all non-aligned shareholders place a distant second.

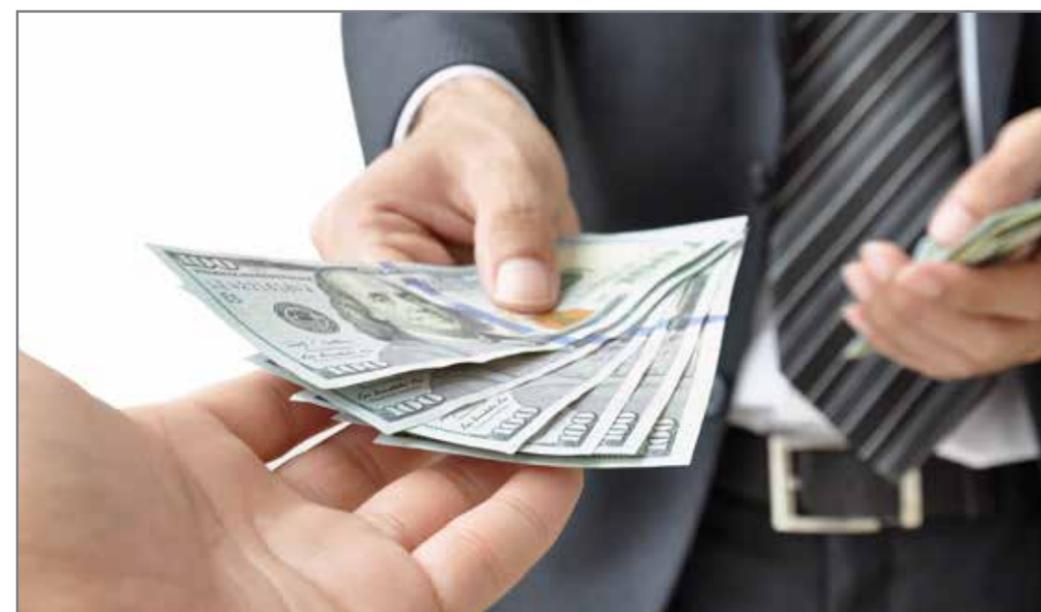
If you’re a public director, or even the owner(s) of a private or closely held company, your experiences with activists could be critical to your continued service. With the current environment being what it is, owners and boards must start being alert to, being prepared for and becoming dynamic in their dealings with it.

Being Alert. Does your company generate revenue or hold assets of ANY sort? If so, you are a potential activist target. No listed company is too big. Wolf packs regularly pull down elks; hyenas occasionally take down lions. Nor are you too small: even rabbits are fair game. In 2016, three quarters of all activist targets were under the \$2 billion market cap, with the majority between \$50M – \$1B. Younger, smaller activists can be more tenacious as it’s not just about the money, but also about building their reputations. They know that smaller targets are less alert, lack experience and response resources, and are typically unprepared. To a predator, the weaker you look, the more you look like dinner. If your IR isn’t exceptionally talented/experienced, and thinking proactively about what threats are out there, give serious thought to augmenting your “activist intelligence” with an experienced anti-activist advisor who knows (or will know) your company, your peers, your industry, your shareholders, and your stalkers. You just can’t prepare for what you don’t know.

Being Prepared: Get your house in order, get all players on the same page, and keep them there. Seriously evaluate each director, your top management, your company performance, and where you stand amongst your peers, as if you were a short-term investor. Meet with and know

the goals of your shareholders. Make obvious changes now and let everyone know why.

The importance of retaining and maintaining a relationship with a skilled activist advisor can’t be overstated. Activists know what they’re going to do far better than you know what they’re likely to do. If you’re not yet under attack, a “friend/advisor” brought on early can provide timely warnings, polish potential response plans, and, maybe, save the day. Obviously, though, the cavalry can’t ride to the rescue if there is no cavalry.



Being Dynamic: Activists seek to divide and conquer. They pit directors against each other, against management and, of course, other investors against both groups. Other tactics they use include making lots of noise, and plain old bluffing. Time is not generally on the side of the activist, nor is an all-out proxy fight. So, the first rule in engagement is to find out what they want, and how serious they are.

Boards need to listen to what activists want and what case they’re making – preferably not in the public forum first. So it’s a good idea to quietly engage with activists, but with extreme caution! While a private discussion is preferable to a public platform, nothing said in private can be expected to stay private. But don’t be lulled into thinking that an activist is asking for only small changes, like a board seat or two, or a little spin off. Board seats can allow activists to get a better look inside and find

more opportunities to loot you. Small victories can be promoted as validating the credibility of an activist’s full agenda to your shareholders.

So, how will you respond? If you’re prepared and have confidence in your board members, management, and shareholders, a well-organized, aggressive, and united response can and should be made.

Of course, you can do what so many do: go belly up when the activists call and give them what they want. With any luck at all, the company will stay together, sort of. You might even get to keep your board seat. Throughout history, paying tribute has placated some raiders, at least until the next attack, or until one ran out of treasure. Sheep are passive. Sheep get shorn, and then get eaten. Giving in is giving up. Lions, tigers, and bears do get taken down occasionally, but only by the very brave, the foolhardy, or the desperate.

Obviously either path you take, tribute or defense, is probably going to be expensive. But the business environment these days is more like a savanna, jungle, or forest than a pretty little garden. You can pay

now to shore up your defenses, make real changes and allies, or pay the activists later. So ... how much cash ya got?

For a 10 point Activist Review Checklist go to:
<http://boardbench.com/index.php/news-insight/activist-10-point-list/>

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