

Anticipating Activism

Implications for Your 2019 Annual Meeting of Stockholders

Activist investors often begin planning their campaigns as much as a year in advance of the annual meeting. This includes accumulating stock positions, coordinating with other hedge funds in so-called “wolf packs,” analyzing the target company’s defenses and vulnerabilities, and making initial contacts with the target company. Therefore, target companies should focus on early vigilance and advance preparation.

Please email us at Activism@lw.com for more information on activist investors or for the specific dates and implications for your company.

SAMPLE DATE*	EVENT	DESCRIPTION	IMPLICATIONS FOR ACTIVISTS
Fall 2018	Initial Activist Approach	During this period, activists commonly contact the company and may begin pressing demands. Activists may not clearly identify themselves when contacting the company. Review 13F filings for early indications of stake-building.	Initial approach is critical for activist to gauge company receptivity to demands and set tone for discussions.
Mid-November 2018	Schedule 13Fs Filed	Schedule 13F disclosures of stock ownership positions can be an early warning signal that an activist or “wolf pack” is preparing to target a company.	Securities acquired after September 30 are not reportable until mid-February 2019 unless resulting in ownership in excess of 5%.
November 2018	Third Quarter Earnings Release	Third quarter earnings can be a catalyst for activist to go public with a campaign, especially if results are weak or the company is not responsive to demands.	Activist campaign and “wolf pack” is usually fully engaged by this point and prepared to wage a proxy fight, if necessary.
December 2018	Deadline for 14a-8 Proposals	Rule 14a-8 stockholder proposals must be submitted for inclusion in the company’s proxy statement not less than 120 days before the anniversary of the 2018 proxy statement.	14a-8 is rarely used by activists, but can be used by governance watchdogs to weaken takeover defenses.
January to February 2019	Deadline for Stockholder Nominations and Proposals	Advance notice deadline for stockholder nominations and proposals is often 90 to 120 days prior to the anniversary of the 2018 annual meeting, as set forth in the bylaws.	This deadline is often a critical juncture in negotiations with activists. If resolution or settlement is not reached by the deadline, activist may be forced to proceed with nominations.
March 2019	Record Date	Stockholders on this date will be entitled to vote at the annual meeting, even if they later sell their stock.	Activists and “wolf packs” will want to maximize their voting power by this point.
May 2019	Annual Meeting	If the annual meeting date is changed significantly from the 2018 date, it may reopen advance notice and 14a-8 deadlines.	Proxy statements are commonly mailed 45 days before the meeting.

* This 2019 Annual Meeting Calendar is for illustrative purposes only. It assumes a hypothetical company with a calendar-year fiscal year, an annual meeting in early May, and an advance notice deadline for stockholder nominations of not less than 90 to 120 days prior to the first anniversary of the last annual meeting.