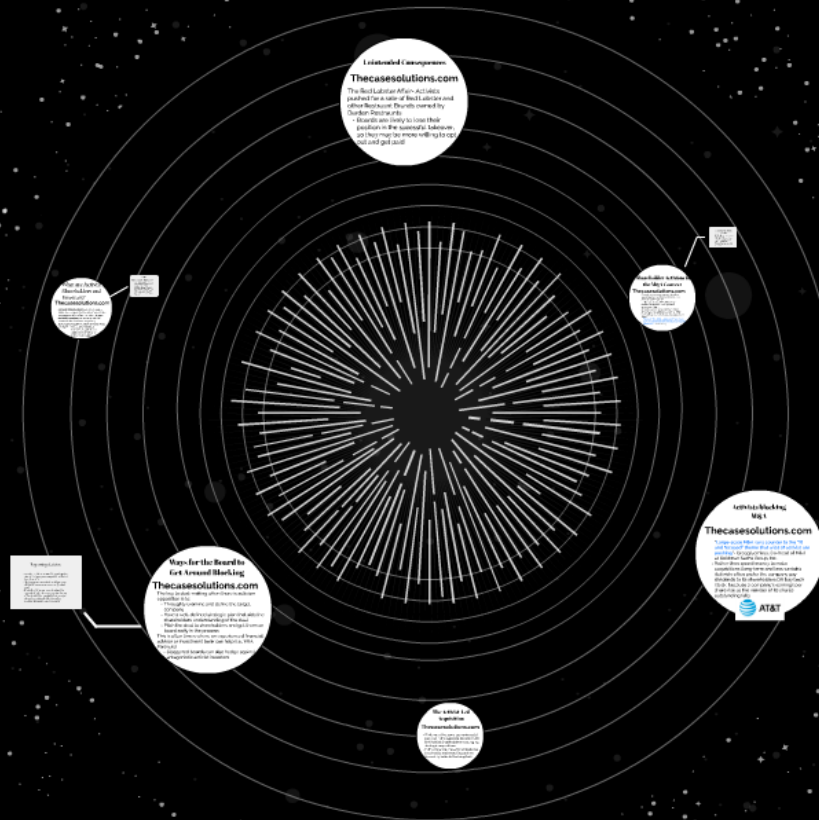


Sharks in the Water: Battling an Activist Investor for Corporate Control (B)

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What are Activist Shareholders and Investors?

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- **Activist Shareholders** use their equity stake in a corporation in order to pressure management to effect certain changes
- **Activist Investors** are merely activist shareholders that are purposely purchasing equity in order to make these changes
 - Utilize proxy battles, lawsuits, negotiations with management, or public campaigns

Why?

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- **Social and Environmental-** Attempting to effect social change or adopt environmentally friendly policies
- **Governance-** Trying to make changes in governance mechanisms that can make it easier for activist to have an impact
- **Financial or Economic Activist-** Trying to make changes to increase shareholder value or simply looking for events to generate returns (i.e., "Pump and Dump" schemes)

Shareholder Activism in the M&A Context

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- Recent trends show that activism has become a key catalyst for M&A activity and corporate spin off
 - Ex: Carl Ichan and Family Dollar
- Activist Acquisition has impacted announced deals
- Shareholder activism can block deals, encourage the selling or spinning-off of companies, or even encourage acquisition (rare).

"Some in the field suggested more than 25% of total deals are the result of activist pressure" - Sarah Reilly

Activists blocking M&A

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"Large-scale M&A runs counter to the "fit and focused" theme that a lot of activist are pushing"- Gregg Lemkau, Co-head of M&A at Goldman Sachs Group, Inc.

- Rather than spend money to make acquisitions (long-term and less-certain), Activists often prefer the company pay dividends to its shareholders OR buy back stock, because a company's earnings per share rise as the number of its shares outstanding falls



AT&T

Ways for the Board to Get Around Blocking

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The key to deal-making when there is activism opposition is to:

- Thoroughly examine and define the target company
- Have a well-defined strategic plan that aids the shareholders understanding of the deal
- Pitch the deal to shareholders and get them on board early in the process

This is often times where an experienced financial advisor or investment bank can help (i.e., VRA Partners)

- Staggered boards can also hedge against antagonistic activist investors

The Activist-Led Acquisition

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- While rare, the same scenario could play out in the opposite direction with the Activist Shareholder encouraging strategic acquisitions.
- In this instance, the activist would be less hostile and more focused on increasing value in the long-term.

Unintended Consequences

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The Red Lobster Affair- Activists pushed for a sale of Red Lobster and other Restaurant Brands owned by Darden Restaurants

- Boards are likely to lose their position in the successful takeover, so they may be more willing to opt out and get paid