

Activism Best Practices for Directors



Confidentiality

- All information and communications regarding the activist situation are highly confidential and should not be shared with anyone outside of the company and the advisor team. Do not trust anyone else to keep discussions confidential.



Inquiries/No One-Off Conversations

- Directors should expect calls and questions from investors, employees, business associates and potentially the media.
- Activists sometimes try to call or meet directors unannounced to elicit useful “sound bites.”
- Directors should decline to comment and refer any formal inquiries to the designated spokesperson.



Emails, Text Messages & Written Communications

- Limit any written communications related to the activist situation (e.g. emails and text messages) and treat them as formal correspondence.
- If seeking legal advice, copy General Counsel on all written communications with the following legend: “Privileged and Confidential – Attorney-Client Communication.”



Note Keeping

- Keeping notes from meetings or related conversations concerning an activist situation is generally discouraged.
- Notes must be accurate, complete and free from extraneous material (including humor or other notations), which could be misunderstood or taken out of context.
- Personal notes and drafts of board minutes are discoverable in litigation and may contain statements that can be misinterpreted or taken out of context.



Board Meetings

- The Board should be prepared to meet on short notice and set aside time to review meeting materials, if warranted.
- Counsel should generally attend all Board meetings during the activist situation.



No Trading

- Depending on situation, directors should not trade in any securities of the company (including derivatives) without prior consultation with General Counsel (not even during open trading windows).



Intelligence

- Directors who obtain any information about the thoughts, intentions, plans or views of the activist or any other investors should share this information with the management team immediately.



Participation

- Directors should stand ready – after careful preparation by the advisor team – to participate in meetings or calls with the activist, other investors, proxy advisory firms and potentially the media.