

## MERIDIAN BEACON

Compensation Thought Leadership

# Is Your Company Ready for Scrutiny from an Activist Shareholder?

## Activist Shareholders

Activist shareholders are more involved than ever in approaching companies in the U.S. and globally<sup>1</sup>. Activists are typically looking for business or leadership change and may target companies that are under-performing their sector. Sometimes, an activist will raise issues related to compensation as part of a broader attack.

Compensation is an area where it may be easier to enlist the support of other shareholders, particularly the proxy advisors, to further the activist's broader business agenda<sup>2</sup>. However, compensation issues are usually raised for tactical reasons, rather than being a critical driver of activist interest.

## Why Would an Activist Shareholder Raise Compensation Issues?

Activist shareholders may raise compensation issues as a “wedge” to gain broader shareholder and proxy advisor support for the rest of their agenda. Compensation issues can be used to embarrass the board and hamstringing the executive team, which may provide additional leverage in the activist's fight to gain control of board seats and force the company to consider the actions they believe will lead to greater shareholder value.

Compensation issues are almost never raised on their own. Instead, they tend to accompany the key business issues on an activist's agenda to show other shareholders that the activist shareholder has raised issues that go to the core of the willingness and ability of the Board to make decisions that are in the best interests of shareholders, rather than management. As CEO change is often part of the activist's platform, excessive or misaligned CEO pay is additional support for removal of the CEO.

## What Types of Compensation Issues Could be Raised?

Activist shareholders' perspectives on compensation are generally different than that of Compensation Committees. Compensation Committees typical look to establish **target** levels of compensation relative to reasonable market comparators, while activist shareholders tend to look at pay outcomes compared to financial and stock price performance.

When activist shareholders do come knocking, the type of compensation issues that attract their attention include:

### Activist Shareholder Action Plan

- Audit compensation plans and programs
- Identify disconnects between realized pay and financial and stock performance
- Identify other potential compensation issues-peer group, CEO to NEO pay ratio, etc.
- Take steps (as appropriate) to change incentive design or target setting and/or enhance public disclosure of the business rationale for pay design and outcomes

<sup>1</sup>Total activist demands grew from 1,571 in 2021 to 1,981 in 2023, a growth of 26%. See Diligent Market Intelligence's Shareholder Activism Annual Review 2024, available at: <https://www.diligent.com/resources/research/shareholder-activism-2024>

<sup>2</sup>Remuneration demands grew globally at 31.3% and in the U.S. at 37.3% in 2023, the highest growth amongst the demand groups tracked. Ibid.

- Use of aspirational peer groups or aspirational pay positioning (top quartile target pay positioning)
- High ratio of CEO pay to pay of other named executive officers
- Pay programs that are different from those of peer companies or the broader market without a disclosed rationale that activists believe
- Incentive targets set to reward executives for performance that lags industry norms
- Large incentive payouts when company has “underperformed” on financials or stock price
- Designs that don’t align pay outcomes with performance

## What Can You Do to Address Compensation Issues Before an Activist Approaches?

A thoughtful review of the company’s compensation programs can moderate or eliminate many of the typical activist compensation critiques. Your executive compensation advisor can help you audit your compensation plans and programs to highlight any anomalies that activist shareholder might exploit in a campaign against the company.

Once issues have been identified, the company can (as appropriate) change incentive design or target setting and/or enhance public disclosure of the business rationale for pay design and decisions. At worst, the company will understand the areas of its compensation programs that are vulnerable to becoming an activist wedge and plan its response.

### What to Do if an Activist Approaches?

If you do not have the opportunity to address potential compensation issues prior to an activist shareholder’s approach to your company, it will be critical to understand why the compensation issues are being raised, how best to respond and what the activist shareholder is ultimately trying to accomplish.

With the new Universal Proxy Card system in place, it is much easier for activist shareholders to launch a proxy battle and secure board seats. Some companies offer activist shareholders a board seat when they learn an activist has taken a significant ownership stake in their company. This can blunt some of the public spectacle that an activist shareholder action might bring and allow the company to mitigate public criticism by allowing the activist shareholder to be “at the table” and voice its concerns.

### Meridian Can Help

Meridian can help companies take preventative action prior to an activist shareholder showing interest by conducting an in-depth audit to assess potential compensation issues.

Meridian has also helped many companies once they are engaged by an activist shareholder to understand possible courses of action, the implications for their compensation plans and programs and how best to respond to the activist shareholder regarding the compensation issues raised.

Be sure to check out Meridian’s recent podcast on activist shareholders: [Podcast Summary - Evaluating Executive Pay Through an Activist Lens - Meridian Compensation Partners \(meridiancp.com\)](#)

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