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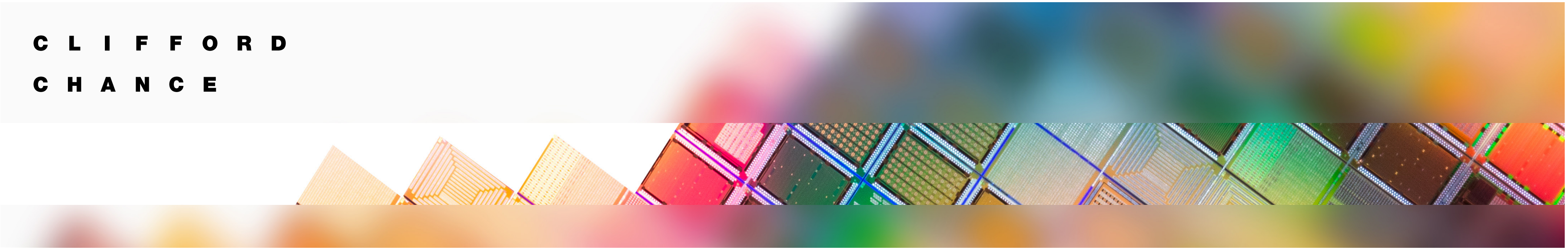

SHAREHOLDER ACTIVISM IN THE UK – WHEN NOT IF

Shareholder activism is an increasingly significant risk for UK PLCs. Against a backdrop of increasing general shareholder dissent, activism has been steadily growing. Global activist campaigns are up 36% year on year.

Amid the current economic climate no listed company is immune. Whilst PLCs operating in certain sectors, such as oil and gas, may have been on red alert for a while, others are now waking up to the reality that they may be targeted.

The key to managing an activist campaign successfully is to understand the tools in the activist's arsenal and preparing accordingly. We therefore recommend that companies work with their advisers on a regular basis to ensure their activist defence strategy is as robust as possible.

Here, we flag five key points PLCs should bear in mind when considering activism. For more information, please request Clifford Chance's UK Shareholder Activism Approach Guide.

AT A GLANCE

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Clifford Chance's UK Shareholder Activism Approach Guide provides a comprehensive overview of activist trends and tactics and insights into how PLCs can prepare and react. **Please let us know if you would like a copy.**

1. When, not if: preparedness is key

Do you have a plan that seeks to prevent your company becoming the target of an activist strategy? Do you have a clearly articulated equity story and strategy, which your institutional shareholders are supportive of? Do you have a plan for what happens when an activist appears on your register and starts to engage?

Whilst companies cannot plan for every possible activist scenario, having a framework where team members know what they need to do will help ensure that there are no hasty mis-steps. In particular, knowing which advisers to call, having a pre-planned announcement strategy/leak protocol, and ensuring that the Board is fully briefed on the plan of action are all essential preparatory steps.

Up-front preparation will put the company in the best possible position to respond and will maximise the chance of a successful outcome.

2. Understand the activist

Activists behave in different ways. Many will take the route of a reasonably predictable escalation, starting with a private request for engagement and leading up to, potentially, public demands and threats. Others may immediately seek to engage publicly and aggressively. Your advisers can help you by analysing an activist's previous campaigns and modus operandi.

Some activists will threaten litigation against the Company, as well as its directors on an individual basis for breach of fiduciary duty. This is typically a pressure tactic. Absent fraud or deliberate misfeasance by directors, it is difficult and rare for shareholders to bring action directly against directors in the UK.

The dynamic is different for a campaigning ethical activist, however, whose aims are publicity and example-making, as they are more likely to litigate even without a clear and satiable goal.

3. Engagement is crucial

Whichever approach an activist investor takes, simply refusing to engage will rarely lead to a successful outcome. There are many examples of UK-listed companies refusing to engage meaningfully with an activist investor, which have resulted in unsatisfactory results for the company – for example, a CEO being forced out after a long and damaging public battle.

Small compromises by a targeted company in the early stages may be the lesser of two evils and avoid a larger, more damaging public defeat later on.

4. The activist profile is changing

Gone are the days where long-only institutional investors behave in a passive way. Given their increasing focus on ESG and stewardship matters, UK-listed corporates should be prepared for long-only institutional investors to take a more active interest. We are increasingly seeing these investors team up with activist shareholders to increase the pressure brought to bear on companies. As a result, companies should engage with these investors as they would an activist – proactively and regularly and with a real focus on seeking their support for the company's strategy.

5. Campaigns are unpredictable

Unlike UK takeover offer processes, shareholder activism campaigns are not governed by any regulatory framework in the UK. This means there is no time limit by which activists must cease any campaign. Once they appear on a company's register they are often there to stay and may take their time to deploy wide-ranging tools and strategies – this can make campaigns unpredictable.

This means that engagement with activists requires careful consideration and expert strategic advice.

Shareholder activism – to sum up

Shareholder activism should be at the forefront of every PLC's board discussions. All listed companies are vulnerable, and activists (and their goals) are no longer immediately identifiable.

Effective preparation and engagement allows companies to react to any activist attack effectively and reduces the risk of any long-term negative impact.

For more information, **please request Clifford Chance's UK Shareholder Activism Approach Guide.**

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