
SHAREHOLDERS ACTIVISM IN MERGERS AND ACQUISITIONS

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ABSTRACT

Shareholders can influence a corporation's behavior by exercising their rights as partial owners. Shareholder activism is a practice where shareholders use their ownership rights in a company to influence corporate practices, policies, and priorities. While shareholder activism has brought about positive changes in corporate governance and increased awareness of social, political, and environmental issues, there are still many unanswered questions regarding its broader impacts. For instance, it is important to examine when shareholder activism leads to net improvements in corporate governance and helps firms address societal challenges as opposed to diverting managerial attention and resources away from core business operations. Furthermore, there is a need to move beyond the static analysis of activist-firm dyads and explore the dynamic and adaptive interdependencies that determine activism outcomes over time. Understanding how firms' responses to activism affect different stakeholders, both shareholders and non-shareholders, is crucial in determining the overall effects of activism on corporate performance and societal outcomes. The purpose of this review is to find out the role of this activism in the areas of mismanagement and oppression and also the role played in mergers and acquisition.

HISTORICAL OVERVIEW OF SHAREHOLDER ACTIVISM

Shareholder activism refers to the actions taken by shareholders to influence or bring about changes in a company's governance, management, or strategic direction. This form of activism has been in existence for many decades, with roots dating back to the early 20th century. During this period, shareholder activism was primarily driven by socially responsible investors who aimed to use their shareholder power to advocate for issues such as labor rights, environmental sustainability, and diversity. However, over the years, shareholder activism has evolved and expanded its focus to include a wide range of issues related to corporate governance, executive compensation, mergers and acquisitions, and strategic decision.

EFFECTIVENESS OF DIFFERENT STRATEGIES USED BY ACTIVISTS.

Activist shareholders employ various strategies to influence corporate behavior and bring about changes they deem necessary to enhance shareholder value. The effectiveness of these strategies can vary based on factors such as the specific circumstances, the target company's response, and the broader economic and regulatory environment. Here's an analysis of some common activist strategies:

1. Proxy Contests:

- **Strategy:** Activists nominate their own slate of directors to replace existing ones, aiming to gain control of the board and influence corporate decisions.
- **Effectiveness:** Proxy contests can be effective but are resource-intensive and can lead to a contentious and protracted battle. Success depends on garnering sufficient shareholder support and convincing institutional investors to vote in favor of the activist's nominees.

2. Shareholder Proposals:

- **Strategy:** Activists submit proposals to be voted on at shareholder meetings, addressing issues such as executive compensation, governance, or strategic changes.

- **Effectiveness:** Shareholder proposals can be a powerful tool, especially if they receive support from institutional investors and proxy advisory firms. Companies may choose to negotiate with activists to avoid the embarrassment of a public vote.

3. **Engagement and Negotiation:**

- **Strategy:** Activists engage directly with the company's management and board, often behind closed doors, to discuss their concerns and propose changes.
- **Effectiveness:** Private negotiations can lead to settlements that address some of the activist's concerns. This approach can be more amicable and less disruptive compared to public confrontations.

4. **Public Letters and Media Campaigns:**

- **Strategy:** Activists use public letters, press releases, and media interviews to communicate their views and concerns to a broader audience, including shareholders and the general public.
- **Effectiveness:** Public campaigns can exert significant pressure on a company, especially if they resonate with shareholders and attract media attention. However, it can also escalate tensions and lead to a defensive response from the target company.

5. **Litigation:**

- **Strategy:** Activists may resort to legal action to challenge corporate decisions, such as mergers, executive compensation, or alleged mismanagement.
- **Effectiveness:** Litigation can be a slower and costlier strategy, but it can yield results if legal claims are substantiated. It can also pressure companies into settling to avoid prolonged legal battles.

6. **Building Alliances with Institutional Investors:**

- **Strategy:** Activists may seek to build alliances with institutional investors, including pension funds and other large shareholders, to gain additional support for their proposals.
- **Effectiveness:** The backing of institutional investors can significantly enhance the effectiveness of activist campaigns. Institutional investors often hold substantial voting power and can influence outcomes in shareholder votes.

7. Short-Selling and Negative Research:

- **Strategy:** Activists may take short positions in a company's stock and publish negative research reports to highlight perceived weaknesses or issues.
- **Effectiveness:** While short-selling can attract regulatory scrutiny, negative research can sway public opinion and put additional pressure on a company's stock price. Success depends on the credibility of the research and the market's perception of the activist's motives.

8. Social Media and Online Activism:

- **Strategy:** Activists leverage social media platforms and online channels to communicate their views, mobilize support, and influence public opinion.
- **Effectiveness:** Social media can be a powerful tool for rapidly disseminating information and shaping narratives. However, it also comes with the risk of misinformation and increased volatility in stock prices.

In conclusion, the effectiveness of activist strategies depends on a combination of factors, including the validity of the activist's arguments, the level of shareholder support garnered, the responsiveness of the target company, and the broader regulatory and economic context. Successful activists often employ a combination of these strategies, adapting their approach based on the specific circumstances of each situation.

MERGERS AND ACQUISITIONS IN INDIA

Prior to the 1990s, Indian businesses were subject to a stringent regulation framework. Over that time, this has caused the growth of Indian business enterprises to be erratic. The Government's 1991 reform initiative has had an impact on the administration and operations of Indian businesses, leading to the adoption of various growth and expansion strategies by the corporate entities. Mergers and acquisitions (M&As) have proliferated during that process. In the Indian economy, M&As are nothing new. Indian business organizations are currently emphasizing on core competency, market share, global competitiveness, and consolidation. In the past, firms have also employed M&As to grow. The entry of foreign competitors has accelerated this refocusing process even more. Against this backdrop, Indian corporations have engaged in restructuring initiatives, mostly through M&A s, in an effort to establish a strong presence and grow within their primary areas of interest.

SHAREHOLDER ACTIVISM IN MERGRS AND AQUISITION

Shareholder activism in mergers and acquisitions (M&A) refers to the efforts made by shareholders to influence or change the decision-making process and outcomes related to a company's M&A activities. Activist shareholders may intervene to maximize shareholder value, improve corporate governance, or address other concerns they believe could impact their investments. Here are some key aspects of shareholder activism in the context of mergers and acquisitions:

1. Motivations for Activism:

Maximizing Shareholder Value is where activists often push for M&A strategies that they believe will result in the highest possible return for shareholders. Governance Concerns is where shareholders may engage in activism to address perceived governance issues, such as conflicts of interest or inadequate board oversight in the M&A process.

2. Strategies Used by Activists:

Proxy Contests: Activists may attempt to gain control of the board of directors through proxy

contests to influence M&A decisions.

Litigation: Activists may resort to legal action if they believe that the M&A process is not being conducted in the best interests of shareholders.

Engagement with Management: Activists may engage directly with the company's management and board to express their concerns and propose alternative strategies.

3. Objectives of Shareholder Activism in M&A:

Blocking or Supporting Transactions: Activists may seek to block a proposed M&A transaction or advocate for a specific deal that they believe will be more beneficial.

Increasing Sale Price: Activists may push for a higher sale price or improved terms for shareholders in an ongoing M&A deal.

Alternative Proposals: Activists might propose alternative strategic initiatives, partnerships, or spin-offs they believe would create more value.

4. Examples of Activist Involvement:

- Activists may accumulate significant stakes in the target company and use their voting power to influence M&A decisions.
- They may publicly express their views through letters, presentations, or media interviews to garner support from other shareholders.
- Activists may collaborate with other institutional investors to amplify their impact and increase the likelihood of achieving their objectives.

5. Challenges and Controversies:

- Activist interventions can lead to conflicts between shareholders with differing views on the best course of action.

- Some stakeholders may argue that short-term profit motives of activists can be detrimental to the long-term interests of the company.

In summary, shareholder activism in mergers and acquisitions is a complex and multifaceted phenomenon. Activists aim to influence M&A processes to align them with what they perceive to be in the best interests of shareholders, but the outcomes can depend on a variety of factors, including the specific motivations of the activists, the reactions of other stakeholders, and the regulatory environment.

CASE STUDY: One notable case of shareholder activism in the context of mergers and acquisitions involves the 2014 acquisition attempt of Allergan Inc., a pharmaceutical company, by Valeant Pharmaceuticals International Inc. and Pershing Square Capital Management, an activist hedge fund led by Bill Ackman.

Background:

- **Target Company:** Allergan Inc. was a multinational pharmaceutical company known for products in the fields of dermatology, eye care, and aesthetics.
- **Acquirers:** Valeant Pharmaceuticals International Inc., a multinational specialty pharmaceutical company, and Pershing Square Capital Management, an activist hedge fund.
- **Trigger:** Valeant and Pershing Square jointly launched an unsolicited takeover bid for Allergan in April 2014.

Key Events:

1. Unsolicited Takeover Bid:

- Valeant and Pershing Square made a \$47 billion unsolicited bid to acquire Allergan, proposing a cash and stock deal.
- The acquirers sought to take advantage of synergies in the pharmaceutical industry

and create a larger entity with increased market share and cost-cutting opportunities.

2. Shareholder Activism:

- Pershing Square, led by Bill Ackman, had acquired a significant stake in Allergan before the takeover bid, making it the largest shareholder with approximately 9.7% ownership.
- Ackman publicly supported the acquisition, asserting that it would create substantial value for Allergan shareholders.

3. Defensive Measures by Allergan:

- Allergan's management, led by CEO David Pyott, strongly resisted the takeover bid, characterizing it as undervaluing the company and being driven by Valeant's business model, which involved aggressive cost-cutting.
- Allergan implemented defensive measures, including the adoption of a shareholder rights plan (poison pill) to make a hostile takeover more difficult.

4. Legal and Regulatory Actions:

- Allergan took legal and regulatory actions to resist the takeover, filing a lawsuit against Valeant and Pershing Square, alleging insider trading and other violations.
- Regulatory bodies, including the Securities and Exchange Commission (SEC), investigated the circumstances surrounding the acquisition attempt.

5. White Knight Strategy:

- Allergan actively sought alternative partners to Valeant and Pershing Square. Eventually, Allergan entered into negotiations with Actavis plc, a Dublin-based pharmaceutical company.

6. Resolution:

- In November 2014, Allergan agreed to be acquired by Actavis for approximately \$66 billion in a friendly deal, which was valued higher than the hostile bid by Valeant and Pershing Square.
- The Actavis-Allergan merger created one of the world's largest pharmaceutical companies.

Key Takeaways:

- **Shareholder Activism's Impact:** Pershing Square's involvement as an activist shareholder played a significant role in the attempted acquisition of Allergan. The sizable stake held by the hedge fund gave it substantial influence over the direction of the company.
- **Defensive Measures:** Allergan's management employed various defensive measures, including legal actions and seeking alternative partnerships, to thwart the hostile takeover.
- **Regulatory Scrutiny:** The case attracted attention from regulatory bodies, reflecting the increasing scrutiny of shareholder activism in M&A transactions.
- **Value for Shareholders:** Ultimately, the resolution through a friendly merger with Actavis resulted in a higher valuation for Allergan shareholders compared to the initial hostile bid.

This case underscores the complexities and challenges associated with shareholder activism in M&A, including legal battles, regulatory scrutiny, and the strategic decisions made by both the target company and the activist investors.

MISMANAGEMENT AND OPPRESSION IN THE ACTIVISM PROCESS

Shareholder activism can arise in response to perceived apprehension and mismanagement within a company. Activist shareholders may intervene to address concerns about the company's strategic direction, financial performance, corporate governance, or other issues they believe are negatively impacting shareholder value. Here's how shareholder activism can be linked to apprehension and

mismanagement:

1. Financial Underperformance:

Trigger: Activists may become involved when they observe persistent financial underperformance compared to industry peers or market benchmarks.

Objective: Activists may push for changes in the company's strategy, cost structure, or management to enhance financial performance and deliver better returns to shareholders.

2. Strategic Concerns:

Trigger: Shareholder activists may express apprehension if they believe the company's strategic decisions are not aligned with maximizing shareholder value.

Objective: Activists may advocate for changes in the company's business strategy, including mergers, acquisitions, divestitures, or other initiatives they see as more beneficial.

3. Corporate Governance Issues:

Trigger: Concerns about corporate governance practices, such as inadequate board oversight, conflicts of interest, or executive compensation, can prompt shareholder activism.

Objective: Activists may seek changes to the board of directors, demand improvements in governance practices, or advocate for executive compensation reforms.

4. Mismanagement Allegations:

Trigger: Activists may step in if there are allegations of mismanagement, including instances of fraud, unethical behavior, or a failure to address operational challenges.

Objective: Activists may call for a change in senior management, demand internal investigations, or seek legal actions to address alleged mismanagement.

5. Shareholder Value Erosion

Trigger: A sustained decline in shareholder value may be a catalyst for activism.

Objective: Activists may propose strategies to reverse the decline, such as operational improvements, cost-cutting measures, or changes in the company's capital allocation policy.

6. Communication and Advocacy:

Trigger: Activists may communicate their concerns through open letters, public statements, or regulatory filings.

Objective: By making their concerns public, activists seek to rally support from other shareholders and increase pressure on the company to address the identified issues.

7. Legal and Regulatory Actions:

Trigger: In cases of alleged mismanagement, activists may resort to legal and regulatory channels to seek remedies.

Objective: Legal actions could include lawsuits, proxy contests, or appeals to regulatory bodies to investigate and address the alleged mismanagement.

8. Negotiation or Settlement:

Outcome: In some cases, companies and activists may reach a settlement or agreement to implement certain changes, avoiding protracted legal battles and disruptions.

It's important to note that while shareholder activism can be a force for positive change, it can also be controversial, with some stakeholders arguing that short-term profit motives may not align with the long-term interests of the company. Companies need to carefully assess activist concerns and engage constructively with shareholders to find solutions that benefit the organization as a whole.

FUTURE PERSPECTIVES OF SHAREHOLDER ACTIVISM:

1. **Increased Globalization of Activism:** Shareholder activism has been a growing trend globally, and this is likely to continue. Activist investors may increasingly target companies outside their home jurisdictions as they seek opportunities for value creation.
2. **Focus on ESG Issues:** Environmental, Social, and Governance (ESG) considerations are gaining prominence. Shareholder activists may increasingly target companies for perceived shortcomings in ESG practices, urging them to adopt more sustainable and socially responsible strategies.
3. **Technology and Digital Activism:** The use of technology, including social media and online platforms, may play an increasing role in activist campaigns. Activists might leverage digital tools to communicate with shareholders, coordinate efforts, and influence public opinion.
4. **Regulatory Responses:** Regulatory bodies may respond to the evolving landscape of shareholder activism by introducing new regulations or updating existing ones to address issues related to disclosure, proxy voting, and the rights of shareholders.
5. **Diversity and Inclusion Activism:** Shareholder activists may increasingly focus on issues related to diversity and inclusion within companies, advocating for diverse representation on boards and addressing gender pay gaps.
6. **Long-Term Value vs. Short-Term Activism:** There may be an ongoing debate about the balance between short-term profit motives and the long-term interests of companies. Some activists may increasingly focus on sustainable, long-term value creation rather than short-term gains.
7. **Private Equity and Activism:** Private equity firms may become more involved in shareholder activism, either through direct involvement or by partnering with activist investors to take companies private and implement changes away from public scrutiny.
8. **Increased Collaboration Among Activists:** Activist investors may collaborate more

frequently, forming alliances to pool resources and increase their collective influence. This could involve joint efforts in proxy contests or coordinated campaigns against specific companies.

9. **Data-Driven Activism:** Activists may increasingly rely on data analytics and artificial intelligence to identify potential targets, assess vulnerabilities in target companies, and devise more sophisticated strategies for influencing change.
10. **Stakeholder Capitalism Influence:** As the concept of stakeholder capitalism gains traction, activists may increasingly focus on ensuring companies address the interests of a broader set of stakeholders, including employees, customers, and the communities in which they operate.
11. **Shareholder Activism in Emerging Markets:** Shareholder activism may continue to expand into emerging markets as investors seek opportunities in regions with significant growth potential but may also face unique challenges.

It's important to note that the future of shareholder activism will depend on a variety of factors, including regulatory environments, economic conditions, and broader societal trends. The balance between shareholder interests and broader stakeholder concerns is likely to be a central theme in shaping the trajectory of activism in the years to come.

CONCLUSION:

Shareholder activism plays an important role in corporate governance and the strategies used should be effectively used. With accordance to mergers and acquisitions shareholder push the management in order to increase the shareholders value by intervening in decision making .As every coin as a flip side there are high chances of mismanagement and oppression in playing the role of activists, but with dynamic changes in the corporate environment and technologies such factors have less impact.

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