



Regulatory Issues

Frank A. Mayer, III / Travis P. Nelson



Regulatory Issues

- **Change in Bank Control Act**
 - Rebuttable Presumption of Control
 - Control of at least 10 percent of the stock in the bank or BHC; and
 - Securities to be acquired at registered under Sec. 12 of the Securities Exchange Act of 1934, OR the acquiror would become the largest shareholder
 - Regulators focus on intent to control/influence the management of the bank
 - Presumption of control can be rebutted



Regulatory Issues

- **Bank Holding Company Act**
 - Does not apply to individual investors
 - Source of Strength Doctrine
 - Prompt Corrective Action authority



Regulatory Issues

- **FDIC Policy on Investing in Failed Banks**
 - Who is covered?
 - Capital requirements
 - No source of strength requirement
 - PCA authority
 - Affiliate transactions restrictions
 - No silo structures



Regulatory Issues

- **Federal Reserve Policy Statement**
 - Designed to attract private equity investments in banks
 - Ability to take an increased equity stake in the institution
 - Greater board representation
 - Greater communication with management



Regulatory Issues

- **Negotiating the purchase of banks and bank assets**
 - What's the process?
 - Strategic issues in dealing with the FDIC



Shareholder Activism

Angelo A. Stio III



Topics

- **What is an Activist Shareholder?**
- **Typical Goals of an Activist Shareholder.**
- **Targets of Activist Shareholders.**
- **Tactics of Activist Shareholder.**
- **Does Shareholder Activism Work?**
- **Management's Defenses.**
- **Cases**



What is an Activist Shareholder?

- **Individual investor or hedge fund**
 - Traditionally, the purview of institutional investors such as labor unions, public pension funds and religious organizations
 - Today more and more hedge funds - 13,000 hedge funds controlling more than \$1.8 trillion in investable capital
- **Use its stake to put public pressure on management**
- **Try to achieve financial goals and/or non-financial goals**



Typical Goals of an Activist Shareholder

- **Maximize shareholder value**
- **Distribute excess cash, increase dividends, force stock repurchase**
- **Refocus business strategy**
- **Sale or Merger**
- **Improve corporate governance**



Targets for Activist Shareholders

- **Poor stock price in relation to peers**
- **High cash balance**
- **Untapped or mismanaged opportunities**
- **Poor corporate governance**
- **Perceived merger or buy-out opportunities**
- **“A Bank with management problems and solid assets that are underperforming”**



Tactics of Activist Shareholders

- **Become the beneficial owner of 5% of stock**
- **Communicate with board members/management with goal of maximizing shareholder value**
- **Seek board representation without a proxy fight**
- **Put forth shareholder proposals about corporate governance**



Tactics of Activist Shareholders

- **Publicly criticize the company and demand change**
- **Threaten a proxy fight in order to gain board representation**
- **Launch proxy contest to replace members of board**
- **Litigation**
 - Books and records request
 - Breach of fiduciary duty
 - Shareholder disenfranchisement
 - Corporate waste



Does Shareholder Activism Work?

NYU Study published in Journal of Finance

- **Stocks of companies targeted by hedge fund activists earn a 10.2% abnormal return in the period around the filing of the 13D. Those facing other kinds of activists outperform by 5.1%**
- **Superior returns persist in the one-year period following the 13D. Hedge fund campaigns deliver an average 11.4% abnormal return after a year, and other activists' interventions result in 17.8% outperformance**



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- **Hedge funds pushing a confrontational agenda win 60% of the time, and other investors achieve their objectives in 65% of the campaigns. Most commonly, they win board seats by threats of proxy contests**



Management's Defenses

- **Review and improve corporate governance**
- **Know your shareholders**
- **Communicate regularly with largest shareholders**
- **Address legitimate shareholder concerns**
- **Develop a communication strategy**
- **Be prepared and make informed decisions**
 - In time of depressed stock prices, reduce costs, strengthen balance sheet, and make necessary changes in leadership
- **Hire professional team before proxy battle and litigation**