Deciphering the 'Wolf Pack'

Panelists:
- Jason Alexander, Managing Director, Georgeson
- Beth Flaming, Partner, Sidley Austin
- Tom Johnson, President and Head of Mergers and Acquisitions, Abernathy MacGregor
- Michael Macakanja, Managing Director, Mergers and Acquisitions, JPMorgan Chase
- ***Moderator:*** Larry Larsen, Senior Vice President, Greentarget Global Group

Key Takeaways

- **Shareholder activism is rising.** Shareholder activist hedge funds have become a permanent asset class. This uncorrelated asset class is growing 25 percent annually and delivers above-average investor returns. Activist Insight estimates activist funds hold close to $340 billion in assets under management. Armed with growing amounts of capital, activist funds are more strategic and well-organized than ever, and targeting more large companies.
- **The activist playbook.** Jason Alexander from Georgeson explained how activist investors create “wolf packs.” By the time a company receives its first call from a shareholder activist fund, that fund has already held initial conversations with the target company’s institutional investors, developed ideas to increase value, identified candidates for the board of directors and informally shared its ideas with other funds. A wolf pack forms when the lead fund files a Schedule13D, disclosing that it is an active investor and has acquired beneficial ownership of more than 5% of a voting class of a company’s equity securities. Followers fall silently into line because the larger the pack, the more likely the lead actor can force corporate change.
- **How can this be legal?** “Conscious parallelism,” explained Beth Flaming from Sidley. A “wolf pack” is an informal association of hedge funds that stop just short of forming a group that agrees to act in concert. Insider trading rules do not prohibit the lead fund from telling other investors about its plan to initiate an activist campaign. The pack recognizes that the initiative is a “go” when the lead wolf declares its intentions in a 13D filing, and acts accordingly.
- **Don’t lose control of the narrative.** Activists are masterful operators who launch sophisticated and aggressive media relations campaigns to escalate the situation. Every major business publication now has a news beat covering shareholder activism and corporate governance. Target companies need to win on message, said Tom Johnson from Abernathy. Unfortunately, most target companies try to control their communication through written statements that have been sanitized by lawyers. Compare that to activist messaging, which is designed to grab attention, and may be vicious or directed personally at the CEO or specific directors. “Give your investors something to vote for rather than something to vote against.”
- **Best practices are evolving.** IROs can help their companies prepare. Best practices include identifying an activist response team and creating a first-responder playbook. The most progressive companies engage investment bankers and governance experts to assess their vulnerabilities. They also dialogue with institutional investors well in advance of a proxy filing about executive compensation plans, director slates or other activist issues.

– Bess Gallanis