

>> **Shareholder activism:
from obstacle to opportunity**

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In 2012, the season of general meetings of shareholders all around the world took a different turn since shareholder's active participation increased significantly, namely institutional shareholder's participation in the so-called "Shareholder Spring". In some cases, activism swept away even some companies' top executives as was the case with Andrew Moss, CEO of Aviva, or Sly Balley, CEO of Trinity Mirror.

Although this name can seem presumptuous —the intensity of shareholder activism as well as its success has been, and continues to be, radically different depending on the geographic area—, a close follow-up on last year's event should be made by listed companies worldwide.

The key question is whether the importance acquired by investors in the 2012 meetings was an isolated event or the beginning of a trend and, if so, which are the determinants that encourage and promote shareholder activism. This confirms that investors are indeed one of the most critical stakeholders or interest groups for companies.

A FAVORABLE ENVIRONMENT

In the first analysis, it should be noted that the **world economic prospects** are still uncertain and thus it is expected that shareholders will continue to be concerned and have specific requirements and initiatives in order to improve corporate governance, which should result in a higher return on their investment.

On the other hand, **regulation and legislation** in various countries continues to develop in order to facilitate shareholder participation in meetings. In this respect, the importance of the United Kingdom has to be stressed: it has a greater shareholder activism and it is a pioneering country regarding relations with investors. In June 2012, the United Kingdom launched a new legislation whereby it is compulsory to complete the annual advisory vote on executives' wage policy with another binding vote every three years.

The European Commission for its side adopted last December the **"Action Plan on European Company Law and Corporate Governance"** and it is therefore likely that during the current financial year further developments in this regard will take place, which affects our market.

In fact, in late March 2013, the Spanish Ministry of Economic Affairs published a Ministerial Order that regulates the "Annual Corporate Governance Report" and the "Annual Remuneration Report" among other information tools companies must submit in order to enable a greater transparency of the companies, although they do not directly facilitate shareholder participation. As will be outlined below, the demand for greater transparency within all areas of the companies' management including relations with investors is, indeed, an unstoppable global trend.

Finally, a **diversification of the shareholder structure** and a greater penetration of foreign investors into the corporate capital are key points. We live in a globalized economy with abundant liquidity and this trend seems likely to be maintained. As will be shown below, these two factors are direct causes of a growing shareholder activism.

INFLUENTIAL FACTORS

Currently, shareholder activism is not a determining factor. According to a study conducted by AMO financial communication consulting network, to which LLORENTE & CUENCA belongs, only 14% of the analyzed cases between 2010 and 2012 were successful in the United States, while this figure represented 36% in Europe. Nevertheless, companies have the responsibility to develop a strategy regarding relations with investors which enables them to anticipate potential issues that may arise with regard to the General Meeting of Shareholders and to protect themselves against opportunistic investors seeking only maximum short-term profits.



From our point of view, there are three main factors that determine the intensity of shareholder activism and which should thus be taken into consideration by companies when it comes to defining their Plan of relation and communication with investors:

- **Shareholder composition.** On one hand, companies having a greater free float are logically more likely to manage more active shareholders. And, contrary to institutional shareholders, reference shareholders (those with a very significant participation) are normally represented in the main decision-making bodies of the companies and they generally do not express their disagreement in meetings.

On the other hand, it is of fundamental importance to analyze the percentage of foreign investors in the corporate capital, since they are much more active than national shareholders, who normally delegate their vote to the Corporate Council.

Likewise, their nationality must be known, since their level of activism—for instance, English, American and French funds are much more active than Arab, Chinese or German funds—and their sensibility to certain matters varies notably.

- **Criteria for voting decision.** Remuneration, standards of Corporate Governance, the number of independent directors and evaluation procedures are normally some of the most sensitive issues that determine the vote.
- According to a study conducted by AMO and LLORENTE & CUENCA, both in the United States and in Europe, issues related to Corporate Governance and the posts on the Governing Board were the shareholders' most common demands between 2010 and 2012.
- **Object of the investment.** Finally, it is important to know the object of the shareholders' investment, specifically whether it is a short-term or a long-term investment. In this regard, it is not surprising that objective evaluation criteria are sometimes set aside and a dissenting vote is cast referring to the Corporate Governance criteria, while the real aim is to obtain a substantial increase of the dividend.

AREAS FOR ACTION

After the analysis of the aforementioned points, companies should define a specific action plan with two main areas:

identification and knowledge of shareholders and the establishment of communication and relation channels with institutional and minority shareholders.

It is a known fact that the **identification** and **knowledge** of shareholders are key aspects to developing an efficient strategy regarding relation with investors and to avoiding potential complications in shareholders meetings. It is therefore important to consult with professionals who have expertise in this area and to use all necessary means, so that the identification and knowledge gathered are as reliable as possible.

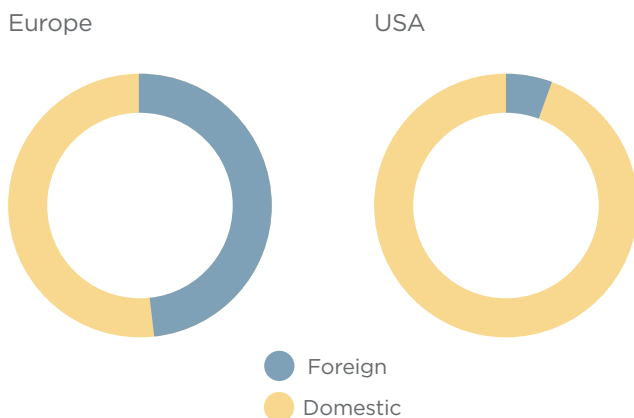
At the same time, it is advisable that departments of investors relations have an adequate **communication strategy** supporting the business objectives.

In this regard, maintaining a structured, transparent and constant dialogue which goes beyond the general meeting of shareholders and other occasional events such as the presentation of results is a priority. Although the main objective is to avoid potential opposing votes, a solid and constant relation with shareholders is safer and more efficient when it comes to achieving the proposed targets and it also allows a more efficient explanation of the company's reality and consistently rebuts opposing arguments.

In this context, the following key points should be pointed out as they should be taken into account in developing the communication activity with the aforementioned stakeholders:

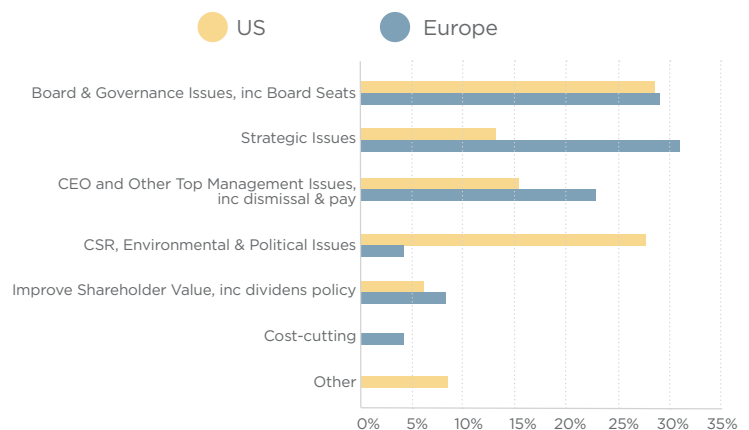
- **Key interlocutors:** although it is advisable to launch specific mass communication campaigns, personalized communication through, for instance, roadshows has to be segmented. In this respect, priority shareholders must be identified taking full account of their ownership percentage along with their position within the company.
- **Definition of 'equity story':** despite the fact that listed companies normally have a well-defined and established 'equity story', it is important to reflect and analyze whether, in addition to telling exactly what they are, they also tell what they want to be or, in other words, the company's 'aspirational me' and its level of connection with the stakeholder investor.
- **Transparent information:** As previously mentioned, transparency has a significant value that companies' stakeholders increasingly demand. It is therefore important for shareholders to understand and realize the information provided by the company, although it is not always as positive as would be hoped. The language used must be

SOURCE OF SHAREHOLDER ACTIVISM



Source: study conducted by AMO and LLORENTE & CUENCA 2010-2012]

MAIN SHAREHOLDER INQUIRIES



Source: study conducted by AMO and LLORENTE & CUENCA]

direct, clear and understandable, not to mention the essential accuracy of the information.

- **Specific milestones:** even though communication with shareholders must be consistent over time, the General Meeting of Shareholders becomes a key moment. It is a priority to address any doubts or queries that may arise. In addition to this, documents regarding the meeting must be accessible and usable.

Listed companies are gradually placing more importance to this issue and improving every year the quality of the information provided. In fact, according to a survey conducted by Funds People, Georgeson and Cuatrecasas, Gonçalves Pereira, 43% of institutional investors feel that the information provided by companies in Spain at the occasion of the 2012 meeting was sufficient and clear in comparison to the 15% registered in 2011.

- **Online assets:** the space for relations with investors on the company's websites must be practical, accessible and clear and it must also meet the information needs of shareholders. Likewise, the rest of digital assets (such as social networks) must be coherent with the corporate story and achieve the set objectives.

With regard to social networks, it is worth stressing that although the departments of investors' relations do not

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normally use them as a direct communication channel, their increasing relevance should not be underestimated. In fact, in the United States SEC **has recently issued a regulation** which obliges listed companies to report their decision to convey important messages to investors through social networks. Companies must specify which channels they wish to use, which must be accessible so that the investors' right to be informed at the same time is fulfilled.

A KEY STAKEHOLDER

While it is true, as explained above, that shareholder activism is not a substantive activity yet, the importance of shareholders is still growing in terms of credibility and influence; thus, companies must consider them as key stakeholders with whom they can openly communicate and maintain an open and transparent dialogue.

Moreover, shareholders must exercise responsibly their right to vote in order not to betray the corporate principles of value creation and not to have only on a short-term vision.

Building a constructive relationship of trust between companies and their investors constitutes a priority issue which will benefit both sides as well as the companies' reputation and this will have a positive influence on other interest groups.





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