GOVERNANCE

August 2019 Issue 300

Women’s role in solving the productivity puzzle

‘Directors must consider which business metrics are most appropriate for identifying high performers and consider whether or not the ability to adhere to a traditional working pattern is the most important criteria at a time when productivity and the ability to innovate and generate results are becoming increasingly important.’

Alison Gill

Shareholder ‘activism’

‘Yet, when we look beyond these snappy headlines, we find not only has the concept of shareholder activism been hi-jacked by a small cadre of extremely wealthy private equity investors with large shareholdings to leverage but, more worryingly, the idea of increased board accountability is often just a polite synonym to describe rampant often wild short-termism in investment decision making.’

Gerry Brown

Content

News 3 **Corporate ethics in a digital age**
A recent report from the IBE offers practical advice about how the ethical challenges of artificial intelligence can be addressed in the boardroom and highlights nine challenges around the use of AI

4 **FTSE 100 corporate reporting trends 2019**
Black Sun’s latest analysis of corporate reporting shows that 67% of FTSE 100 companies clearly identify their shareholder groups, but only 6% provide specific examples of how the board has regard for stakeholders

5 **Internal Audit Code of Practice**
A draft code to strengthen corporate governance and help reduce the risk of further major corporate collapses has been launched for consultation by the Chartered Institute of Internal Auditors

Global News 6 **Shareholder Rights Directive II**
New ESG disclosure guidelines for Abu Dhabi
Female representation in Japanese companies
Tough new whistle-blowing laws

Features 8 **Women’s role in solving the productivity puzzle**
Alison Gill argues that looking differently at the role of women in senior management and on the board can have a positive effect on productivity

10 **Shareholder ‘activism’**
Gerry Brown looks at whether shareholder ‘activism’ is all it is cracked up to be or what people claim

Essential, Authoritative Analysis and Opinion for Board Directors, Senior Executives, Investment Professionals and Advisers

Feature

Shareholder ‘activism’

Gerry Brown looks at whether shareholder ‘activism’ is all it is cracked up to be or what people claim.

The founding tenet of shareholder democracy is that shareholders can apparently try to hold executive boards to account at Annual Meetings by virtue of their ability to vote or grumble about many aspects of company strategy from incentive plans to environmental, social and governance (ESG) matters.

> ‘In broad brush terms, said “activism” tends traditionally to be economic or, recently, more exotic and ESG in emphasis.’

This principle is, of course, laudable but often only really – ultimately – an effective mechanism for dissent or query as function of the size of your shareholding. That said, boardroom anxiety about the impacts and effects of activism and so-called activist investors upon the share price or company strategy continues to set the corporate governance mood music and continues on its exponential rise as the one-size-fits-all panacea for holding wayward or recalcitrant executives to account.

If the definition of a drunk is someone who drinks the same amount as you but you don’t like them, then so it is with investor activism as viewed from the boardroom. If you are okay with the changes proposed then executive teams can safely endorse activism as mechanism to improve corporate governance as well as influence or change board strategy. But, if you don’t agree with any proposals with some serious shareholding weight behind them – for example, a minority shareholder wanting a seat on the board, a ritual sacking of Chairman or CEO over strategy or a fire-sale-cum-spin-off-of-non-core-business style disposal – then shouts about abuse of power quickly ring out in the media and board minutes.

In broad brush terms, said ‘activism’ tends traditionally to be economic or, recently, more exotic and ESG in emphasis. Whatever side you view this activism white or wholemeal bread to be buttered on, I am firmly of the opinion that complaints and statistics about such investor activism is little more than a recent popular myth, albeit an increasingly prevalent one.

But who exactly is putting around these myths about the effectiveness and power of either democracy or activism? I think we need look no further than investment banks research departments in search of real, imagined or spurious competitive advantage vis-à-vis the competition.

For example, the always thoughtful Matt Levine of Bloomberg reports in his *Money Matters* newsletter[1], ‘JPMorgan Chase has launched a data analytics tool that aims to predict how investors agitating for change will influence other company shareholders, in the latest example of advisers using technology to help clients ward off activists. … JPMorgan has created a huge data set on previous activist situations at US-listed companies, and used that to build a profile of how various shareholders typically respond to individual activists. The system can isolate which shareholders are likely to support a given activists’ approach, JPMorgan said, and which are likely to sell their stakes if a given activist joins a company’s share register. The data are then cross-referenced against a client’s shareholder base.

“This is all done with … available data,” said Huw Richards, a former bond market banker who is in charge of digital initiatives at JPMorgan’s investment banking division. The algorithm that connects different data sets is the project’s “secret sauce”, he added.’

Levine isn’t the only sceptic about both activism and the data-analytics of self-interested advisers so also reports, ‘Bill Anderson, head of Evercore’s activism/raid defence business, said that although “statistical analyses on shareholder voting histories can be interesting, a company’s relationships with their shareholders are much more important”. He added: “I am concerned that companies – perhaps encouraged by bankers – over-focus on data, rather than the blocking-and-tackling of shareholder engagement.”’ The industry reverence of and for stats appears to suggest that Know Your Customer has nowadays fallen out of fashion in investment banking almost as much as it has at retail banking in favour of love for spreadsheets and algorithms.

In his recent book, *Boards That Dare* author Marc Stigter[2] repeatedly presses his activist panic button. ‘As shareholder voices continue to get louder and as activists gain more access and exert more influence, reluctant boards can no longer ignore them. In the past five years, one company in two in the S&P 500 index of America’s most valuable listed firms has had a big activist fund on its share register, and one in seven has been on the receiving end of an activist attack. Even though shareholder activists are a relatively small group, they’ve enjoyed a higher rate of asset growth than hedge funds and attracted new partnerships with traditional investors. As a result, they have both the capital and the leverage to continue engaging large cap companies, according to McKinsey & Company.’

Feature

If we get down and dirty with a deep dive into the latest global figures produced by Activist Insight[3] ('the definitive resource on activist investing and corporate governance'): from a UK perspective, the fanfare that greeted the uptick in so-called investor activism in this country to record and global leadership levels in Q1 2019 (with 17 UK companies 'facing public activist demands'), casual observers could be forgiven for thinking that shareholder democracy was alive and – more importantly – really kicking.

> 'That certainly could underpin the news that, despite the so-called "activism", three years later UK board related investor demands remain pretty much where they were in 2016 (49% then compared to 50%).'

Yet, when we look beyond these snappy headlines, we find not only has the concept of shareholder activism been hi-jacked by a small cadre of extremely wealthy private equity investors with large shareholdings to leverage. But, more worryingly, the idea of increased board accountability is often just a polite synonym to describe rampant often wild short-termism in investment decision-making.

Indeed, before we get carried away with the idea that the UK is at the forefront of some kind of corporate governance glasnost led by a militant shareholder democracy revolution that increasingly holds UK (or global) executive boards to account, we need to acknowledge that – according to the latest Q1 2019 figures from Activist Insight – public activist demands about both corporate governance (9%) and remuneration (7%) have crashed to all-time lows.

Obviously, it comes as no real surprise or news that private equity shareholders focus upon quick profits so have little duty of care towards matters such as diversity and inclusion, sustainability, reducing remuneration inequality or good corporate governance generally. It is also worth noting that from a global perspective, the first quarter 2019 was the quietist in activism terms since 2015. Rather than conclude that all the panic has been overblown, we must acknowledge the successful impact of public relations initiatives from cannier corporates to discuss, mitigate and resolve matters that itch and irk activist investors behind closed doors rather than virtue signalling them in a public forum.

That certainly could underpin the news that, despite the so-called 'activism', three years later UK board related investor demands remain pretty much where they were in 2016 (49% then compared to 50%).

As previously noted, actually moving the needle of dissatisfaction remains almost solely the prerogative of activists with seven figure investments rather than small ordinary shareholders. Even such shareholders aren't a guaranteed sure fire recipe for change: for example, Sherbourne Investors held $1.4bn of Barclays stock yet still failed to get their way with the board. Europe's biggest activist investors with serious strategic, board composition or governance aims in mind need to 'pay to play' to match their invariably short-termist ambitions with shareholdings often beyond the deepest pockets of individuals and pension funds alike.

Small UK investors continue to make the news, as well as signal their justifiable anger, via exercising their annual shareholder voting rights. This annual box-ticking led exercise in grass roots criticism mostly remains a charade, roughly equivalent to the effectiveness of repeatedly clicking on your Twitter like button, when it comes to making real changes to board level remuneration, environmental, social and governance issues as well as strategy.

More importantly, until shareholders can really hold UK executive boards to proper account, then we need to find other means to head off trouble at the pass. To my mind, this also requires effectively tapping into the already available non-executive talent pool. While we wait for the actions of shareholder democracy to catch up the florid claims, one place to start with immediate effect could be that UK executive boards need to commit to curtail their current widespread poor hiring practices.

Better non-executive recruitment is low-cost-high-return sensible housekeeping since it not only wards off most private equity activist shareholder interventions but it also immediately leverages the long-term value creation benefits truly Independent Directors deliver when they are allowed to hold executives to strategic account. Such free-minded non-execs are also able to provide the disinterested analysis and advice that might prevent, slow-down or mitigate the ongoing flow of often self-inflicted UK corporate scandals.

Gerry Brown is Chairman of Novaquest Capital Management and also the author of The Independent Director: The Non-Executive Director's Guide to Effective Board Presence (Palgrave Macmillan).

[1] Matt Levine: 'Activism preparedness' (Money Stuff 22.07.19)
[2] Marc Stigter: Boards That Dare (Bloomsbury, London, 2018), p.9
[3] Activist Insight: 'Shareholder Activism in Q1 2019' (April 2019)

GOVERNANCE
www.governance.co.uk

Subscription form

Please complete this form and send by mail to:

**Subscriptions Department Governance Publishing and Information Services Ltd
The Old Stables, Market Street,
Highbridge, Somerset TA9 3BP, UK**

**Tel: +44 (0) 1278 793300
Email: info@governance.co.uk
Website: www.governance.co.uk**

(Please tick one)

□ Yes! I would like to subscribe to Governance for one year

□ Or, save with a 2 year subscription

Governance international subscription costs:

	£UK	Euro	US$
1Yr	325	450	490
2Yr	585	790	855

Governance can accept cheques in other currencies but an administration fee of £15 will be charged.

□ I enclose a cheque/bankers draft for

Currency Value

□ Please invoice me

Specify currency:

Order reference:

Title:

First name:

Surname:

Position:

Company/Organisation:

Address:

Postcode:

Email:

Tel:

Fax:

What our subscribers say

'*Governance* is a great publication that I look forward to reading.'

'I have found *Governance* to be a good resource for identifying and elaborating on emerging corporate governance trends.'

'*Governance* provides a very useful summary of key issues.'

'I enjoy *Governance* very much. The comprehensive range of topics covered keeps me up to date on corporate governance matters.'

'*Governance* is a useful means of keeping up to date on developments in a field which is assuming greater importance by the day.'

'*Governance* is the leading monthly publication covering major corporate governance issues. A most valuable source of information for investors, financial advisors, corporate board members and executives.'

Index

Organisations
CIIA 5
FCA 6
IBE 3

Companies
Black Sun Plc 4
Bvalco 8
JPMorgan Chase 10
Novaquest Capital Management 10

People
Bill Anderson 10
Gerry Brown 10
Alison Gill 8
Matt Levine 10
Huw Richards 10
Marc Stigter 10

Designed and printed by
WithPrint
Riverside Studio, Gills Lane, Rooksbridge, Somerset, BS26 2TY
www.with-print.co.uk

ISSN 1358-5142

© Governance Publishing 2019. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without written permission of the copyright holder.

Governance Publishing and Information Services Ltd
The Old Stables, Market Street, Highbridge, Somerset TA9 3BP, UK
Tel: +44 (0) 1278 793300
Email: info@governance.co.uk Website: www.governance.co.uk