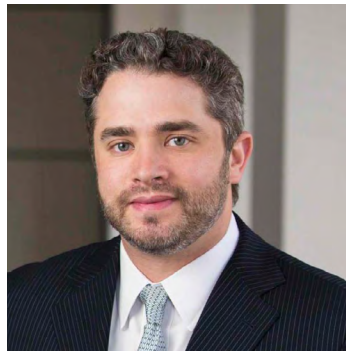


# Making board disclosure a peacetime priority

Providing quality intelligence on director qualifications and skillsets is essential to win the favor of investors, write Lawrence Elbaum and Patrick Gadson, partners, and Jon Solorzano, counsel, at Vinson & Elkins.



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Shareholder activism ranks among the toughest tests a company can face. Activists strike often and suddenly, with increasingly sophisticated tactics. A formidable campaign can sink a company's share price, damage its reputation, disrupt its day-to-day business, and undermine its long-term strategy.

Defending against activism begins well before an activist comes knocking, and enhancing board disclosure is a critical component of proactive peacetime preparation. Companies must think like activists, and ask of themselves the same fundamental question that an activist would: Why are our directors the right people to oversee the company?

No question, robust disclosure has long been a key principle of good governance. But with investors increasingly seeking better information about corporate boards — and with universal proxy cards putting individual directors in greater jeopardy — spelling out each director's value has never mattered more.

## A thoughtful approach

Beyond the minimum required in regulatory filings, many companies disclose little about their directors, and the information they do disclose — primarily in stale professional biographies — seldom explains *why* their directors belong on their board. Fancy degrees and titles might make for a standout early-career résumé, but most investors see these items as little more than trivia.

A more thoughtful, modern approach to disclosure centers on linking each board seat to the company's strategic direction. This means explaining the value that each director brings to the business (and its current and future strategy), and describing the knowledge, skills, and experience that qualify them to oversee management and protect investor interests.

A primary goal of this approach is to inspire investor confidence. For example, if a director has been on the board for a decade, but the company has since evolved or acquired an asset that reshaped the business, the company needs to show how that director — and the board broadly — remains fit for purpose.

Similarly, if a director has been a CEO elsewhere, the company needs to explain how that specific experience has prepared the director to navigate the risks and opportunities facing this company. Whatever directors' area of expertise, disclosure should focus less on who they are — and more on what they've done and why it matters.

## A valuable tool for activist defense

No two activist campaigns will center on the same value-creation thesis. But they all face a common hurdle — convincing shareholders to vote for change — and the Securities and Exchange Commission's (SEC) universal proxy rules have made this hurdle easier to clear.

With activists now able to nominate their own director candidates on the same proxy card as management, proxy voters can vote for a combination of nominees from competing slates, rather than choose between one slate and another. For shareholders who might be reluctant to support a full activist slate, this à la carte choice makes voting for change more palatable, and makes robust disclosure even more valuable for keeping shareholders on management's side.

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Think about it: In the throes of a proxy battle, investors who are familiar with the strengths of the incumbent slate will be more likely to support it. Investors hearing about the board's strengths for the first time, by contrast, will be difficult to convince — and more open to change.

Robust disclosure can also dissuade activists from even waging a proxy battle. When companies can show that their board is effective, the case for new blood weakens, incentivizing activists to pursue other targets. As Ben Franklin famously advised, an ounce of prevention is worth a pound of cure.

An effective board is essential for companies to succeed. Investors know this as a rule, but they also know that not every company follows it. That's why it's so critical for companies to engage with their investors — through formal conversations if possible, and robust disclosure at a minimum. Companies that do will be well positioned to keep activists at bay, and to emerge victorious in any proxy battle they encounter. [ia](https://www.insightia.com)