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Some Lessons from BlackRock, Vanguard and DuPont—A New Paradigm for Governance

Recent statements by the CEOs of BlackRock and Vanguard rejecting activism and supporting investment for long-term value creation and their support of DuPont in its proxy fight with Trian, prompt the thought that activism is moving in-house at these and other major investors and a new paradigm for corporate governance and portfolio oversight is emerging.

An instructive statement by the investors is that they view a company's directors as their agents; that they want to know the directors and have access to the directors; that they want their opinions heard; and that their relations with the company and their support for its management and board will depend on appropriate discussion of, and response to, their opinions.

The investors want to engage with the directors on a regular basis. They suggest that the company have a program or process for regular engagement. One suggestion is a shareholder relations committee of the board. Other suggestions range from directors accompanying management on investor visits; to directors attending investor day programs and being available to the investors; to the lead director being the liaison for communication. The investors are not wedded to any one form of engagement and are content to leave that to the company and its board.

The investors want independent oversight by a balanced board of effective directors that has appropriate skill sets to properly discharge its responsibilities. They expect the board to arrange meaningful evaluations of its performance and to regularly refresh its membership. They expect "best practices" corporate governance and compensation keyed to performance and shareholder returns.

The investors want the company to proactively communicate its business strategy to its shareholders, and to keep them advised of developments and problems. Vanguard suggests that directors think like activists "in the best sense" and question management's blind spots and the board's own blind spots. To aid in that effort, Vanguard suggests that the board bring in a sell-side analyst who has a sell recommendation. The investors will not accept that there is insufficient time for engagement and discussion of the business or that SEC Reg FD forecloses meaningful discussion.

The investors expect the company to hear out an activist hedge fund that takes a meaningful position in its shares. But Vanguard says, "It doesn't mean that the board should capitulate to things that aren't in the company's long-term interest. Boards must take a principled stand to do the right thing for the long-term and not acquiesce to short-term demands simply to make them go away."

As activism moves in-house at major investors and the new paradigm becomes pervasive, the influence of the activist hedge funds and ISS and Glass-Lewis will shrink and will be replaced by the policies, evaluations and decisions of the major investors. While this will be a welcome relief from the short-termism imposed by the activist hedge funds, it raises a new fundamental question—how will investors use their power? This remains to be seen. It is not likely that activism and short-termism will totally disappear, but I'm comfortable that the influence of major investors will be more favorable to shareholders generally and to the Nation's economy and society, than the self-seeking personal greed of hedge fund activists.

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