

# AGENDA

## OPINION

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### Lower, Looser, Lighter: Why M&A-Focused Activist Campaigns Could Rise in 2025 — and How Companies Can Prepare

If boards are going to fend off an activist agitating for a sale, they'll need to show up to win

By **Patrick Gadson, Lawrence Elbaum** | January 21, 2025

Public companies always have an abundance of priorities to address, and defending against shareholder activism is increasingly at the top of the agenda. Across industries and market caps, today's activists are more aggressive and sophisticated than ever, pushing for changes in operations, strategy and governance that they assert will unlock value for shareholders.

In 2025, the activism landscape promises to be similarly busy. Underperforming companies will likely face a wide range of campaigns, with high potential for activism focused on M&A.

Indeed, with **dealmaking activity expected to rise in the year ahead**, campaigns with M&A-related theses — whether calling for breakups, divestitures or outright sales — could follow suit. Three key factors could drive this trend in 2025.

#### **Lower Financing Costs**

The first factor involves market conditions, which have not been conducive for dealmaking over the past three years. In 2022 and 2023, tightening monetary policy drove up borrowing costs and reduced the projected enterprise value of potential acquisition targets, leaving many buyers and sellers far apart on price and leading to a **sharp decline in global M&A activity**.

Last year didn't produce the dealmaking boom that many anticipated. But the Federal Reserve's rate cuts did **reawaken interest among some investors**. With further cuts on the table for 2025— albeit **perhaps fewer than initially forecast** — M&A should continue to become less expensive to finance, bringing more prospective buyers back into the market.

### **Looser Capital Requirements**

A second factor involves regulatory capital. After a series of regional bank failures in early 2023, a trio of regulators — the Fed, the FDIC and the OCC — **proposed a rule** redefining how the largest banks must assess their risk and how much capital they must hold to absorb potential losses.

If adopted, the proposal would implement the final components of the so-called Basel III endgame, marking a fundamental change in the U.S. risk-based capital framework — with the potential to sharply curtail lending and investment.

The rules' compliance period had been slated to begin in July 2025. But in light of the November election results, **their future is in serious doubt**. Under the incoming administration, the FDIC and OCC will both have new leaders, who will be likely to further dilute, table or even quash the rules entirely. In any of those scenarios, the largest banks would be operating under fewer constraints — and have more cash available to invest — than they might have expected.

### **Lighter Merger Scrutiny**

A third factor involves merger scrutiny. Under the Biden administration, antitrust enforcers have pursued an ambitious agenda. And though the administration's challenges to deals often lost in court, its tough antitrust playbook **chilled the broader dealmaking environment**.

If the Senate confirms President-elect Trump's picks to lead the FTC and the DOJ's anti-trust division, **most dealmakers can reasonably expect lighter merger scrutiny** — a potential boost for M&A activity. Yes, some see Vice President-elect JD Vance's praise for FTC Chair Lina Khan — and Trump's pick of a Vance advisor to head antitrust at DOJ — as evidence that broadly aggressive antitrust enforcement could continue, but there are reasons to be skeptical.

First, that aggressive approach could be **limited primarily to Big Tech**. Second, the FTC and DOJ's assertive 2023 merger guidelines could be revisited or replaced. And third, any budget and staff cuts led by the new Department of Government Efficiency could leave antitrust enforcers without the capabilities necessary to advance an ambitious agenda, regardless of who is leading them.

## How Companies and Their Boards Can Prepare

Taken together, these factors could help release pent-up demand for M&A — and, in the process, spark an increase in M&A-focused activism. For example, companies that have long wanted to sell might now be better able to find buyers. Similarly, activists that had been focused on winning board seats or pursuing operational changes might now opt instead to push for their targets to be sold.

In this environment, companies must be ready to defend themselves, and that centers on developing a clear, easily digestible rationale for remaining independent and publicly traded. In other words, companies must explain to their shareholders how they plan to create more value in the coming years than can be achieved through a sale.

On the governance side, boards should be meeting regularly with their bankers, lawyers and other strategic advisors — getting refreshers on their fiduciary duties, their company's market value versus its intrinsic value, and the opportunities available in the market. Companies whose boards do these things — and that can articulate a sound long-term strategy — will be better able than others to defend against M&A-focused activist campaigns.

## Showing Up to Win

Most boards succeeded at the ballot box against activists in 2024, partly on the strength of institutional investor support and proxy advisor recommendations. But in 2025, companies should not assume that institutional investors will vote the same way, especially in light of a changing M&A market. Nor should they assume that ISS and Glass Lewis will recommend management-supported candidates.

Defending against M&A-focused activism is seldom straightforward, and in a year where the dealmaking environment is attractive, some companies could be especially vulnerable. If companies are going to fend off an activist agitating for a sale, they'll need to show up to win, and showing up to win means preparation, preparation, preparation.