

Wachtell Defends Staggered Boards

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Despite a campaign led by a [Harvard](#) Law School professor to remove them, staggered boards still have an outspoken defender in Wachtell, Lipton, Rosen & Katz.

In a memorandum published on Wednesday entitled “Harvard’s Shareholder Rights Project Is Wrong,” the law firm stood up for the practice, in which only a portion of a company’s directors come up for election in a given year. Staggered boards have been criticized by some corporate governance experts as potent antitakeover devices.

As [the Deal Professor](#) noted earlier this week, the Harvard Law professor Lucian A. Bebchuk spearheaded the Shareholder Rights Project, partnering with five institutional investors to pressure major companies into declassifying their boards. The project managed to convince about a third of all Standard & Poor’s 500 companies with staggered boards to eliminate the provision.

Yet to Wachtell, the project is both wrong-headed and destructive. Four of the firm’s partners — Martin Lipton, the creator of the “poison pill” antitakeover provision; Theodore N. Mirvis; Daniel A. Neff; and David A. Katz — wrote in the memo that there is “no persuasive evidence” that de-staggering boards helps bolster shareholder value.

Instead, a declassified board structure makes it harder to fend off “an inadequate, opportunistic takeover bid.”

“It is surprising that a major legal institution would countenance the formation of a clinical program to advance a narrow agenda that would exacerbate the short-term pressures under which American companies are forced to operate,” the Wachtell lawyers wrote.

The tough tone by Wachtell isn’t surprising, given its reputation as the go-to legal counsel for companies under attack from hostile bidders. The firm’s reputation is so well-known that the activist hedge fund manager William A. Ackman made this crack at [Tulane University](#)’s Corporate Law Institute conference earlier this month: “I think their job is to protect entrenched management.”

The Wachtell memo takes its rebuttal a bit further, arguing that the Shareholder Rights Project only furthers the agenda of “short-term oriented” activist investors looking to profit at the cost of destroying long-term value for their fellow investors.

It also includes this rejoinder:

“This is, obviously, a far cry from clinical programs designed to provide educational opportunities while benefiting impoverished or underprivileged segments of society for which legal services are not readily available.”

Them’s fighting words. Your move, Professor Bebchuk.