



## DISPUTES & INVESTGATIONS

# Providing Independent Financial Review Services in Response to Short Seller and Other Public Allegations of Financial Impropriety

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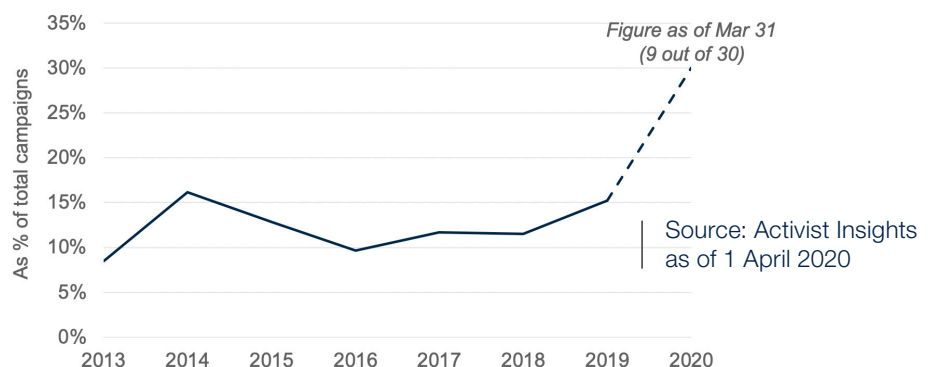
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The number of activist short seller attacks on companies listed on the Hong Kong Stock Exchange or China based companies listed on the New York Stock Exchange, NASDAQ and other global exchanges have been on the rise in recent years. Often, the immediate effect following the release of a short seller report will be a substantial fall in the share price of the attacked company, with some companies suspending trading of their shares. Along with potential damage to the reputation of the company, the release of a short seller report also attracts the attention of regulators, prompting enquiries from these regulatory bodies, as well as concerns from other stakeholders.

### Attacks on China-based companies listed in US and HK

More attacks are directed to NYSE-, NASDAQ- or SEHK-listed Chinese companies.



When a listed company finds itself as the subject of a short seller's report or other public allegations, it will need to act swiftly in formulating and implementing a decisive action plan to manage stakeholders and protect shareholders' interests, as well as handling possible regulatory and public relations challenges presented by the allegations. Regardless of the course of actions that the company chooses to undertake, it is important for senior management and those in charge of corporate governance to establish the facts surrounding the allegations in order for them to make informed decisions and communications. Given the recent trends, boards of directors and senior management should also consider preparing against such short seller's attack before the company becomes a potential target.

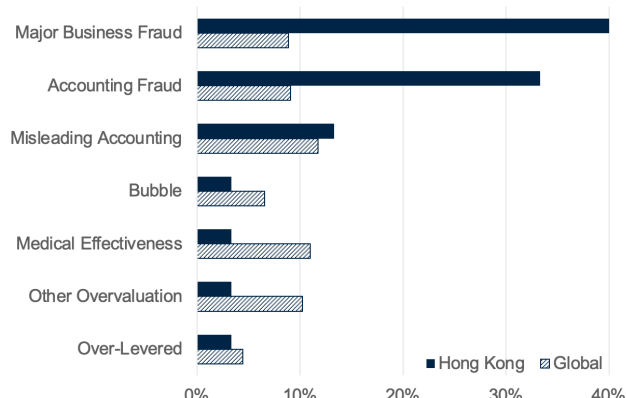
In addition to the assistance of legal and communications expertise, forensic accountants often have a significant role to play under these circumstances. The assistance which forensic accountants can provide ranges from conducting an independent review of the allegations of financial impropriety to determine the facts and circumstances, to recommending improvements to internal controls to prevent future impropriety and to amending or restating misreported financial information. A timely, informative and independent response can help to restore the confidence of investors and regulators following a short seller attack.

## HOW A&M CAN HELP

At Alvarez & Marsal, our team of experienced professionals is able to assist and work with the company, its board of directors and senior management in a timely and efficient manner in responding to the allegations raised by the short seller, and to assist in addressing any questions from regulators, auditors and other stakeholders as a result. In addition, we can also assist in considering ways which the company and its management can adapt in order to fend off further attacks. Below is an example of some of the ways which we can assist the company and its management in the event of short seller attacks.

### Type of primary allegations cited by activists, 2017-19

73% of the companies were attacked for major business fraud or accounting fraud.



Source: Activist Insights as of 31 March 2020; report archives on Activist Insight; For those with no archives, reports were retrieved from open source domain

## Independent Financial Review or Investigation

An independent financial review or investigation can help to understand the nature of the attack and assess whether there are any merits behind each of the allegations. The independent nature of such review can give confidence to the various stakeholders that the issues raised by the short seller are being taken seriously by the company and are being dealt with in an unbiased manner.

Working together with the company's management and external counsel, A&M can assist the company in performing an independent financial review or investigation, focusing on the issues raised by the short seller. This process usually follows the below steps:

- Identify the scope of the issues alleged by the short seller
- Prepare a work plan designed to assist the company in gathering the facts and information relating to the allegations raised by the short seller. The work plan may include steps such as:
  - Collection and preservation of relevant electronic and hardcopy documents;
  - Review of accounting data and other electronic data;
  - Review of hardcopy documents and records;
  - Conduct background searches;
  - Understand business processes and workflow; and
  - Liaise with key finance, management and other employees.
- Execution of the agreed work plan
- Report on the findings to management of the company in the form of an independent report.

A&M is experienced in interacting and working with a company's advisors and stakeholders during such review/investigation, and this includes the lawyers, external auditors and other advisors. A&M also has vast experience in presenting our findings to boards of directors, special committees, management, regulators and other governmental bodies as instructed or as necessary.

## Internal Control Review

Possible flaws and weaknesses may be identified during the course of the independent financial review or investigation. In addition, a company's internal control environment will likely come under scrutiny in view of the negative claims raised by the short seller. A&M is highly experienced in reviewing and assessing a company's internal controls. A&M can perform assessments and testing of internal controls, identify whether there are gaps in the framework or whether the implemented internal control system is functioning as intended, with a view to remediating any shortcomings in the current controls and improving the system in order to help the company identify weaknesses before they are targeted by short sellers.

## Restatement of company financial information and other quantum support

In the event that the concerns raised in a short seller report are found to be supported, the company may need to prepare amended and restated financial statements reflecting the updated financial position of the company. Further, the company may wish to undertake legal action against involved parties in recovering the losses and damages it suffered as a result of any fraudulent actions or misconduct arising out of the allegations raised by the short seller. A&M can assist the company in the preparation of the amended and restated financial statements and the quantification of losses and damages it suffered as a result.

## WHY A&M ?

- A&M has extensive global experience in helping listed companies in responding to short seller reports and other allegations of financial impropriety
- A&M teams are hands on, operational and action orientated in assisting our clients to deal with the most challenging and complex issues
- A&M is reactive and responsive to your needs at the instant that they are required
- A&M is experienced in working with other stakeholders and advisers, and in dealing with relevant parties such as regulatory bodies
- A&M has never and will never perform audit work for its clients, keeping us independent and conflict free.

## OUR TEAM

Our team is comprised of a diverse group of seasoned experts in major markets and financial centres throughout the world. They are the preeminent leaders with financial, accounting, economic, regulatory, industry and technical experience.

Our team comprises of:

- Certified Public Accountants / Chartered Accountants
- Certified Fraud Examiners
- Certified Anti-Money Laundering Specialists (CAMS)
- Forensic technology specialists
- Former Big Four partners and staff

## ABOUT ALVAREZ & MARSAL

Companies, investors and government entities around the world turn to Alvarez & Marsal (A&M) for leadership, action and results. Privately held since its founding in 1983, A&M is a leading global professional services firm that provides advisory, business performance improvement and turnaround management services. When conventional approaches are not enough to create transformation and drive change, clients seek our deep expertise and ability to deliver practical solutions to their unique problems.

With over 5,000 people across four continents, we deliver tangible results for corporates, boards, private equity firms, law firms and government agencies facing complex challenges. Our senior leaders, and their teams, leverage A&M's restructuring heritage to help companies act decisively, catapult growth and accelerate results. We are experienced operators, world-class consultants, former regulators and industry authorities with a shared commitment to telling clients what's really needed for turning change into a strategic business asset, managing risk and unlocking value at every stage of growth.

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