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When public company management and boards dissatisfy shareholders, they may join forces to enact positive change through many avenues, including engaging in a proxy battle. To enforce their will, the vote of the majority of shareholders must be won over, similar to what is experienced in a political campaign.

This action can cause resistance and hostility from the company's board of directors. The dissatisfied shareholders may persuade other shareholders to use their voting rights for proposed changes to the company's board members.

Shareholders may try to remove the board members who oppose their recommended changes and employ their own candidates. New board members are typically more receptive to shareholders' proposed changes, making them easier to implement and driving a company to move in a new strategic direction. On the positive, this complex, professional deliberation can create a new vision, suggest a different approach, and still drive returns.

Samir Manji, CEO and founder of private equity firm Sandpiper, explains that, "A lot of time, effort and emotion goes into a public campaign or private engagement, for both the issuer and the activist. Press releases can get heated, shareholder solicitation often resembles a tactical political campaign, and every move and statement made, by both sides, gets dissected and defended. Ultimately, when all is said and done, the onus is on everyone to work harmoniously post-contest."

This complex "battle" can be ego driven, heated, and very unpleasant for all involved parties depending on the approach. If egos are put aside, it is the objective of all parties to collaborate efficiently and effectively to achieve a greater understanding and alignment.

Manji suggests that, "to achieve this requires unanimous commitment, putting the past behind and leaving egos at the door. Then, investing the time necessary to get to know each of your colleagues in the boardroom one-on-one enables one to build relationships that, over time, can strengthen so as to make for a more effective and productive environment in the boardroom. Whether through a public campaign or private engagement, we consistently communicate to the board and management that our focus is to maximize value for all shareholders. Once management and the board understand that we are committed to the company's long-term success, moving the company forward becomes easier."

While a proxy war may be distracting and overwhelming – alternatively, it can be very clarifying and refreshing – a chance for new opportunities and different perspectives can push a business in the direction that it needs to go. Deliberations and negotiations can be expensive and fundamentally exhausting but when all involved parties come together to collaborate, a greater understanding of what the business/shareholders need, can be achieved. This would allow for new ideas that can potentially drive businesses and allow them to flourish.

Stephen Griggs, CEO of Smoothwater Capital, adds, “The best approach is to work to overcome the personal bitterness of the fight, and avoid taking prior comments and statements personally. Often, directors who have been the most negative about you are surprised that activist directors do not have “horns” and actually know the business well—and probably better than them. Stay professional, listen to the views of other directors and management—they will know a few things that you may not—and make your strategy logic known in a polite but firm way. It takes time to make changes, but often hard decisions need to be made and implemented right away.”

Understanding the importance of remaining unbiased and open to other perspectives can help preserve the positive nature of professional deliberations.

Humble Unification

The internal processes that are involved in post-settlement mediations can be taxing on a team—which can bring about dispute, but it is important to take action to unify management, the board, and shareholders to avoid recurring contentions. Manji suggests the following steps to combat recurring disagreements: “Fostering relationships – we spend one on one time with the management team and each member of the board, including the chairman. We get to know them. We ask questions, we listen, and we constructively share our ideas and perspectives. We make ourselves available in between regularly scheduled board and committee meetings. With management, we remind them that we are there to support them in executing on an aligned strategy. Alignment – We work to align management and the board on the strategy and narrative. Shareholders, analysts and the media will continue to engage and it’s critical to ensure that the messaging is agreed upon and consistent. Humility – We are willing to accept that we only know what we know. While our underwriting is based on in-depth analysis of all publicly available information, we accept that there may be information or context that we previously did not have access to which may cause us to change our view or re-prioritize certain initiatives we had advocated for.”

According to Kelly Marshall, chairman of the board at Granite REIT, one of Canada’s largest industrial landlords and subject of a recent heated proxy battle, there are other factors impacting amiability of board members. While there is a necessity to agree on moving forward from the pandemonium of a proxy war, *legacy* also plays a key role in how quickly the fire of a proxy fight burns out amongst board members.

In the case of Granite REIT, the settlement resulted in a board with only two members remaining from the original parties. Marshall explains, “The legacy and lack of predispositions from the past also contributed to the creation of an open post-settlement environment. That’s not to say that activists should attempt a coup d’état in their next campaign, but the idea of an entirely new board certainly abates the tensions of the past.”

However, Walied Soliman, co-chair of the special situations practice of Norton Rose Fulbright Canada and global chair of Norton Rose Fulbright, attributes Granite REIT’s success not only to the collaborative environment and lacking board *legacy*, but also to the investor representation on the board – “before even making a peep about a company, shareholders seeking change should be very clear in their own minds about what the underlying causes of the problems are and what is truly required to fix them. They should not confuse effects with causes.” Alignment, therefore, is a crucial aspect of creating a unified board environment.

Walied adds that in the most contentious situations, all parties, on both sides, need to find a common ground. “It is better to start out with what you have in common so you can truly zero in on the areas of disagreement, rather than blowing everything up into one more exhibit in a case against the other side.” To achieve a common goal, it is important to collaborate and remain unified as opposed to taking a more autonomous approach. Change takes time but it is important that activists remain diligent and continue to work incrementally to achieve their goals.

Post Settlement

Creating an amicable post-proxy environment is riddled with complexity, however, a significant amount of potential issues can be mitigated with a well-aligned and effectively communicating group of board members. Walied offers, “A settlement is both an end and a beginning. It usually takes much more work to move forward and work constructively once a settlement is achieved than to get to the settlement. Do not underestimate that when you put your name on the dotted line. Both sides will need to put in the work”. Collaborating, remaining humble, and being open to new ideas goes a long way in the initial stage after an engagement.