"So You Lost the Proxy Contest..." Now what?

By Christina Toh-Pantin

In light of the considerable resources employed to mount a defense against an activist investor, it never surprises us when a company decides to clam up and hunker down after a board battle, especially when dissidents have unseated some existing board members and unsettled the rest. Whether due to a settlement with an activist or loss of a contested vote at the shareholder meeting, proxy contests that result in a change in board composition can leave companies uncertain how to move forward and reluctant to say much.

After months exchanging heated press releases and fight letters soliciting shareholder support, one-time opponents may find themselves suddenly working together, guiding a company whose corporate strategy and narrative have been called into question and are likely subject to change. Faced with the need to incorporate new directors, realign strategic priorities and figure out how everyone will work together, the temptation is great to back-burner media interviews, dial back shareholder engagement and seek refuge in “business as usual.”

Business, however, is rarely usual after a lost proxy fight and our experience is that such moments of transition present great opportunities. While it has its challenges, the end of a proxy fight is a chance for the company to refocus on long-term strategy and to ensure that its narrative is steered back toward its future.

These opportunities are occurring more frequently, as dissidents are increasingly successful in gaining board seats. According to BoardEx, the top 15 activist funds nominated or recommended 588 director candidates at U.S. companies over the past six years. Of those, 330, or 56 percent, were installed onto corporate boards through director-election contests or negotiated settlements.

**Short- v. Long-Term**

When the dust has settled, a company with a revamped new board of directors should quickly take stock of its priorities, including its communications plan. A dissident investor may have shifted the focus to a much shorter-term perspective, such as boosting the company’s share price, selling assets or replacing senior management. The onslaught of proxy filings, articles, TV appearances and social media salvos can leave a well-crafted, carefully nurtured corporate narrative in tatters. And on the internal front, in order to maintain message control during the fight, a company often has enacted changes in the way it speaks to its employees and other important constituents.

What we’ve learned is that it is critical to align management (which may be new) and the Board (which may also be new) on a corporate narrative that can bring stability to what has become a decidedly unstable situation.

A CEO we helped navigate through a proxy fight was recently faced with this issue after a battle with a vocal activist resulted in two new directors on the company’s board. We talked to the CEO about various scenarios and ultimately recommended the company change its approach and take a “high-touch” posture and communicate face-to-face with the company’s shareholders, employees, customers and other key stakeholders, stepping up its engagement with these constituents after the proxy contest. The main message in each session was that the company’s commitment to meeting each group’s needs was unchanged. We helped the CEO tailor this message and plan to each of these audiences, resulting in a successful endeavor that helped put the proxy fight and near-term fallout in the rearview mirror.
In other cases, it can take time for new board members to mesh with incumbents, and the challenge will be to ensure that any fissures don’t spill over into external and internal communications.

“For the first few months, they wouldn’t even look at you in the face,” one independent director recently told us about his initial time on a board to which he was added as part of a settlement with an activist. After the new director showed a willingness to listen, contribute ideas and cooperate for long-term success, the wall of resistance was breached, allowing the board to collaborate for the benefit of the company and its shareholders.

Big Picture Focus

For some companies, post-proxy fight means returning to the pre-activism cadence of communications, while for others, it may be a period of reinvention and reassessing what they say in light of changes that have been adopted as a result of the activism. Whichever the case, our advice is to gear the company’s communications strategies toward the long term, which can help to defuse the ugliness of a proxy fight. A narrative that emphasizes value creation is not just the right approach for shareholders but will also resonate with customers, employees, vendors and other constituents.

Some other key pointers for a post-proxy company:

- Let bygones be bygones: This means a board speaking with one voice
- Saying what the new board and management will be doing is good, but doing what you say you were going to do is the real litmus test. Companies also should consider opportunities to provide progress reports on matters that were resolved after the proxy contest, including improvements in contentious areas such as compensation. These don’t have to constitute full press releases, but could be folded into earnings releases or in investor presentations
- Telling the story internally and externally is critical. After a particularly contentious battle, it is important to adopt a fresh perspective, one that leaves the acrimony of the past in the past and that incorporates input from as comprehensive a group as possible

Wrapping Up

Rather than reverting to old habits, proxy fights and settlements should provoke management teams and boards to re-examine the company’s communications strategy.

What story did the other side tell that resonated with the investment community? What did the company hear from other investors and stakeholders during the battle? These are important questions to examine and utilize to enhance a company’s message and communications program.

Once the fight is over, the wise move is to catch your breath, check your ego and get ready to re-tell all constituents what your company stands for and how it plans to win their trust in its future. We tell companies that they should do this and move forward with the support of all the talent on their board of directors, including those once thought of as enemies.

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*Abernathy MacGregor has been helping companies manage communications challenges for over 30 years. We invite you to visit our [website](http://abmac.com) to learn more about our team, services and insights.*