Questions Board Members Should Ask About Shareholder Activists

Beth Kurth

Two words for a board facing shareholder activism: Opposition Research. Opposition research is standard operating procedure in political campaigns whereby there is an effort not only to highlight a candidate's strengths, but also to uncover the opponent's weaknesses. Importantly, opposition research is not designed to spread untruths. Rather, the goal is to highlight the "votes and quotes" that diminish an opponent's statements. As any "oppo" practitioner can attest, it is no accident when a candidate campaigning on a platform of lower income taxes is revealed to have signed legislation raising property taxes.

Attempting to define an opponent as something other than what the person purports to be is not new – neither in the political arena, nor on Wall Street. In fact one of the better examples in the investment community occurred more than twenty years ago when The Gillette Company used opposition research to defend itself in a proxy contest.

In early 1988 Coniston Partners announced that it had acquired 6 percent of Gillette. Gillette was an independent company at the time, whose product line included shaving products, toiletries and pens (made from the same plastic as razors), and Coniston was an LBO firm, the 1980's version of today's activist investor. Coniston was determined to replace four members of Gillette's 12-member board so it could influence policy, claiming that Gillette the company should simplify operations and divest its other product lines. The partnership had even formed a new entity, R.B. Partners, short for razor blades, to pursue Gillette.

Gillette in turn conducted research to understand Coniston's background and what the partners were likely to do if they won the board seats. Gillette's research indicated that Coniston was primarily interested in making money from any divestures. The research also uncovered a partnership whose ownership was far more complicated than Coniston had revealed. In addition to a strong defense against the Coniston Partners' proxy contest, Gillette also launched a counter-attack which culminated in an "An Open Letter to Fund Managers from Gillette: The Coniston Group - Who Are They?" This *Wall Street Journal* advertisement was accompanied by a chart depicting "a tangled web of Coniston-related foreign and domestic corporations and partnerships." By the end of the year Gillette came out on top of the hard-fought proxy vote with 52 percent of the votes.

With today's activists investors focused on compensation and governance, there is an opportunity for issuers to uncover the activists' own history on these issues. Is an activist hedge fund assailing your CEO for receiving "excessive" compensation? This might be a good time to research the hedgie's fee structure. Is your company under attack for a lack of perceived director independence? Certainly it is worth a little digging to understand the management structure of whoever is making the charge.

There are many good defensive moves to prepare and protect a company from shareholder activists. It is also worth noting that even the best defense can sometimes use help from a strong "oppo" offense.

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Beth Kurth has more than 20 years of investor and public relations experience. She is the president of Kurth & Company (www.kurthandco.com), a Boston-area firm providing communications, event and membership services