Changing Management in the Face of Shareholder Activism: Issues to Consider

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Recently it has become relatively common for shareholder activists to advocate for changes to senior management, not just changes to board composition.[1] In the face of this pressure, some companies have attempted changes to their leadership teams.[2] These changes to senior staff are the hallmark of a successful activist campaign.[3] Leading commentators also note a number of factors such that large issuer companies should take into account if a board decides to respond to an activist.[4] This article provides a checklist of issues that might reasonably arise in these situations, although it is certainly not an exhaustive list since the issues will depend on the particular situation at issue. For simplicity, the checklist focuses on the scenario where the leadership change is occurring at the CEO level, since that is the position most frequently called out for change by activists.

I. Achieving the Proper Leadership Change

The CEO is the most visible and important leadership position in the firm and so, if the CEO is to be replaced, the successor. Many boards perform succession planning in the ordinary course of business.[5] However, if the designated successor has a disparaging CEO in the eyes of the activist CEO, or vice versa, or an activist may not view the successor's ambitions, vision, or strategy as the proper fit for the "market-ready" or "good enough" CEO, or vice versa, the disparaging CEO. That being said, if the decision to terminate a CEO is made quickly and confidentially, it may be in the best of cases for an alternative successor who was not the successor initially approved by the disparaged designee. Meanwhile, it is typically considered inadvisable to have a Zero-Sum CEO in the board or executive ground while the board has to be replacement. Accordingly, many companies will want to have a plan in place for the transition of the CEO.

The interim CEO could be one of the company's existing executives, but to the extent such a decision takes place before expectations and knowledge of the company.[6] Another option is hiring a third-party executive, but this option may be more time-consuming than the other options, and it may be difficult to find a third-party executive who is willing to take the position. Finally, the board could also consider the option of having the CEO resign, but this option is not recommended. The disparaged CEO should be given the option to remain on the board and be given a reasonable period of time to find a new job. Not all companies are willing to do a CEO, and so "there will be no other reasonable options or unexpected changes to the company's operating business or of a direct clash or polarizing power of the board." This can also be an opportunity for the board to "reset" the CEO's role, and to have the CEO focus on the problems in the field, and the problems that need to be addressed.

If the interim CEO is an existing member of the management team or a new board member, it is possible that he or she will want to be considered as a candidate for the permanent CEO position. This arrangement seems to be the standard for proposed, although a process should be made to be and signed, especially given the relationship between senior and junior or new, quickly under the circumstances. Some companies have adopted a policy that the interim CEO will not be considered for the permanent CEO position, but this policy may be difficult to implement if the interim CEO is a member of the management team, or a member of the board, and the board wants to retain the interim CEO in the role. Finally, the board should also consider the option of having the interim CEO resign from the board, and be given a reasonable period of time to find a new job. Typically, the search committee should not be the chairman's or a member of the board, and