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Lessons Learned from Trian's Campaign at Procter & Gamble

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Editor's note: Aneliya S. Crawford is a partner, and Brandon S. Gold and Daniel A. Goldsteinare associates at Schulte Roth & Zabel LLP. This post is based on a Schulte Roth publication authored by Ms. Crawford, Mr. Gold and Mr. Goldstein. Related research from the Program on Corporate Governance includes The Long-Term Effects of Hedge Fund Activism by Lucian Bebchuk, Alon Brav, and Wei Jiang (discussed on the Forum here); The Myth that Insulating Boards Serves Long-Term Value by Lucian Bebchuk (discussed on the Forum here); and The Uneasy Case for Favoring Long-Term Shareholders, by Jesse Fried (discussed on the Forum here).

On Dec. 15, 2017, sixty-six days after holding its annual meeting, The Procter & Gamble Company announced that Nelson Peltz, founding partner and chief executive officer of Trian Fund Management, L.P., would join Procter & Gamble's board in March 2018, marking a dramatic conclusion to the so-called "largest proxy fight in history" and the "the largest boardroom battle in the history of director insurgencies."[1]

Trian's strategy—and ultimate success—in this blockbuster fight for board representation at Procter & Gamble offers key lessons for both activists and companies sitting across the table from activists. The latest proxy season proved that no company is too big to be immune from activism and Trian's campaign at Procter & Gamble proves that these mega-cap fights can bring success for activists. Those sitting on either side of the table—no matter the size—will find that it is worthwhile to consider the lessons learned from Trian's proxy fight:

A strategy that does not overreach and represents a sensible offer hard to refuse pays off.

Shareholders looking to take an active role to promote change at the board level of a company in their portfolio face the double-barreled question of how many nominees they want to run. This is a nuanced strategic decision often with outcome-determinative consequences. Factors to consider include the rigor of ISS review for short vs. majority slates, the composition and likely posture of the shareholder base, the tactical positioning for settlement negotiations and, of course, above all, the business needs of the company and the proposing shareholder's objectives.

[1] Hirsch, Lauren. *The largest proxy battle ever is coming to a head on Tuesday*, [CNBC] (Oct. 10, 2017), *available at* https://www.cnbc.com/2017/10/09/pg-proxy-battle-nelson-peltz-procter-gamble-board-decision.html; Orol, Ronald. *Peltz Won't Get Everything He Wants With P&G Board* Seat. [TheStreet] (Dec. 16, 2017), available at https://www.thestreet.com/story/14422695/1/peltz-will-have-a-modest-impact-on-p-g.html.

Trian's strategic decision to nominate one person—Nelson Peltz—to the Procter & Gamble board presented a rarely-seen, yet highly effective take-it-or-leave it approach. Trian understood that running a single director meant that Procter & Gamble had no middle way solution that it can offer in a negotiation for a settlement. However, the genius of the strategy was to offer something so reasonable that a costly fight could not be justified. Many institutional investors, proxy advisors and commentators agreed that when a respected investor offers the expertise of a seasoned operator with a material ownership stake and relevant financial and consumer company experience it makes no sense to spend tens of millions of dollars and much time and effort to ward him off. Trian's stated intentions to seek to restore to office any displaced director further underscored that Procter & Gamble could only gain by adding an additional valuable resource and a bitter, time consuming and costly fight was simply unwise and unpopular with many of the company's owners.

Demanding only what you need to solve the problem communicates good preparation and thoughtful strategy.

Trian's demands were finely honed to solve the problem it perceived at Procter & Gamble. The dissident preempted the usual talking points for defending managements, rife with insinuations about the activist's motives, by early and relentlessly repeating what it was not trying to do: no break-up of the company, no CEO change, no leaving Cincinnati. This was not a campaign of throwing in everything but the kitchen sink or pushing as far as you think you can get. Trian had done extensive diligence, knew what needed to change and pushed for just that.

Focus on the long-term value-creation strategy aligns and unites shareholder interests.

Most activists are engaged shareholders proposing long-term value creation strategies. Trian's insistence throughout the Procter & Gamble campaign on long-term solutions paid off. Several large traditional passive asset managers took the side of the dissident. The focus on the sustainable success of Procter & Gamble created a critical alignment between the interests of all shareholders. Ordinarily, a large retail shareholder component is favorable for a defending company, especially in the case of a household name with enormous influence in the local community. However, Trian did better than one might have expected among the large retail shareholder base. The dissident made clear it was not proposing any financial engineering, no cuts to pension benefits or reductions in R&D, marketing or capital expenditures. Shareholders who had an emotional attachment or sense of loyalty to Procter & Gamble and who wanted to see its future brighter were not necessarily compelled by the minimal changes in the management's plan. Making some changes in the face of an activist campaign does not mean that a company does not require further strategy redirection when a well-informed shareholder insists change is needed.

Keeping on message and maintaining the high road are vital.

Disciplined and easy-to-understand messaging is key for shareholders looking to effectuate change. This is especially true when the shareholder base has an outsized retail component and the targeted company has a complex business with problems that may be difficult to wrap one's mind around. Trian boiled down its value creation strategy to a few key points: reverse the loss of market share, simplify the matrix organizational structure, and add critical consumer packaged goods expertise on the board. Then it had the discipline to stay on point for the full 10-month campaign and not try to go blow by blow with one of the largest marketing machines in corporate America.

Procter & Gamble's attempts to change the conversation through attacks on Trian and Nelson Peltz did not necessarily resonate with investors and proxy advisors. The expensive avalanche of mailings to shareholders concerned some mom-and-pop investors and Procter & Gamble retirees who saw it as wasteful and spoke about it at the company's annual meeting. The most expensive defense in history, which spared no resource and pulled every string of influence, was increasingly condensed to the question: is it worth fighting such a sensible demand at such large cost. Why?

Proxy plumbing issues mean that who is "ahead" at the polls matters none when the margin is slim.

Our proxy voting system is broken. Any contested situation where the results are within 5% range could be anybody's race—there is no definitive way to know. Contending sides in the current regime must find the discipline to move past the ballots to real solutions with no further time wasted. Any battle that ends that close is already sending a clear message anyway.

SRZ served as legal counsel to Trian Fund Management LP in connection with its proxy campaign at The Procter & Gamble Company.