

DuPont-Trian Proxy Fight: Communications Lessons Learned

The high-profile, prolonged and contentious proxy fight between DuPont and Trian Partners recently concluded in victory for DuPont as shareholders elected all 12 members of DuPont's director nominees. This outcome – which *The Wall Street Journal* deemed a “landmark” setback for Trian – represented the culmination of an epic battle spanning two years and included a pitched debate concerning the increasingly outsized role of shareholder activism. After all, even before Trian began publicly agitating, DuPont had taken significant steps to improve productivity, return capital to shareholders, and position the company for the future through divestitures and related strategic efforts. The results seemed to speak for themselves as DuPont's stock outperformed the broader market. Nonetheless, Trian campaigned aggressively on the notion that DuPont suffered from bloated corporate overhead, misguided acquisitions, and general underperformance relative to peers. As with many proxy and activist situations, DuPont's communications strategy played a vital role in the outcome. At the risk of oversimplifying an immensely complicated situation, we believe there are nonetheless key communications lessons that apply to public companies contemplating how to: (1) prepare for and preempt an activist shareholder; and (2) decisively manage such a situation once it has developed. Key considerations in this regard include the following:

- **The Best Defense is a Great Offense:** After the final votes had been tallied, DuPont CEO Ellen Kullman observed that, “I think we as a company don't tell our story well enough ... we've undergone a lot of change, and as we've engaged with shareholders, even retail, it was clear that they remembered a company of maybe 20 years ago, not the company that we're creating going forward.” This underscores the fundamental value of developing and executing a thoughtful, proactive investor relations strategy with consistent and frequent communication with shareholders. Doing so will help ensure buy-in and build support from retail and institutional investors alike *before* an activist situation takes hold. Companies that undertake such efforts only after an activist shareholder situation arises will, by definition, be playing defense. And, what's worse, they may not have all of their plays ready in the first place. It also is worth noting Kullman's related observation that, as an engineering and science-based company, DuPont had perhaps under-invested in telling shareholders about the “power of DuPont.” This brings to mind the profoundly elegant saying that, “The single biggest problem in communication is the illusion that it has taken place.” Shareholders can't read the corporate-institutional mind.
- **The Power of Compelling and Consistent Messaging:** Retail investors and the three largest shareholders in DuPont, all of which manage index funds, overwhelmingly sided with the company. In appealing to these shareholders, DuPont maintained basic and consistent messaging predicated on the theme of **higher growth and higher value** by, among other things:
 - Spinning off the performance chemicals unit;
 - Repurchasing additional shares;
 - Leveraging the company's innovation platform; and,
 - Cutting costs.

Trian, on the other hand, carried the burden of a more complex and nuanced messaging structure built around the idea that – while “there have been many positive developments at DuPont”¹ – more should be done. In other words, their principal argument was one of *degree*, rather than *fundamental reform*. In a proxy battle against a company that was already outperforming the market, this was not a particularly compelling battle cry.

- **Importance of Campaign-Style Tactics:** Activist campaigns and proxy fights serve as the corporate equivalents of political-style campaigns. While tactics in this regard must be tailored to the situation at-hand, there is value in considering the following:
 - Press releases
 - ‘Fight letters’ can be disseminated broadly as press releases.
 - Stand-alone press releases also can be used responsively.
 - Personal visits
 - Executive roadshow, including investor presentation and detailed questions and answers.
 - White papers/editorials
 - As the contest progresses, parties should evaluate the need to develop or maintain momentum through a variety of additional communications activities, including the submission of editorials or other commentary to leading publications.
 - Website
 - Throughout the campaign, documents and additional information can be posted to a dedicated website.
 - **Response Team:** It is a good idea to create a team to prepare for and respond to shareholder activism. Ideally, this team would consist of key members of senior management, internal and outside legal counsel, proxy solicitor and public relations experts.

Looking ahead, corporate boards and management teams should be sensitive to emerging trends among activist investors, and to the extent possible, ensure activist tactics are met with a commensurate and effective response. Perry Street looks forward to a continued dialogue in this regard with our clients and friends of the firm. ¹ See [Trian Issues Statement](#) - businesswire.com