

May 9, 2007

Lessons from the Recent Motorola/Icahn Proxy Contest

The recent failure by Carl Icahn to win a seat on the Board of Directors of Motorola, Inc. serves as a reminder – in a time of ever-increasing shareholder activism – that the dissident does not always prevail. Institutional investors will support an incumbent Board, even in the face of disappointing operating results, if the Board shows that it is engaged and proactive and that the dissident’s nominee will not add value.

Icahn commenced his “short-slate” proxy contest in late January, initially demanding a highly leveraged \$20 billion stock buyback program. Icahn later dropped that demand and recast his campaign – asking stockholders to appoint him as their representative on the Board to “demand accountability.”

Motorola’s response was that Carl Icahn’s success as an investor did not mean that he would add to the strength of an extremely qualified, active and engaged Board. Icahn offered no plan to deliver value to stockholders or to improve the performance of Motorola’s business. Motorola stated that the Board was willing to add qualified independent directors, and had offered to work with Icahn to identify mutually acceptable candidates, but that the Board was not willing to simply appoint Icahn in order to avoid a proxy contest.

Short-slate proxy contests are sometimes viewed by investors as “win-win” propositions, on the grounds that adding one or two dissident nominees to a board “may help” and most likely “won’t hurt.” ISS effectively took this position in recommending that stockholders vote for Carl Icahn’s election to the Motorola Board. Nonetheless, stockholders chose not to elect Icahn.

As stockholder activism continues to escalate, we expect many companies will find themselves on the defensive. Each proxy contest is unique. The issues, tactics and deal team required to mount an effective response will vary depending on the company, the industry and the dissident, among other factors. However, some key reminders from the Motorola/Icahn contest are useful to keep in mind:

1) *Stockholders Listen.* Despite the substantial influence of proxy advisory firms such as ISS and Glass Lewis, responsible institutional stockholders will make up their own minds, and remain skeptical of short-slate nominees who do not clearly add value or articulate a plan. This underscores the importance of developing a strong, clear and consistent message and communicating it directly to key stockholders. Meetings are more effective than newspaper ads.

2) *Involvement by the Board and Senior Management Matters.* Involving senior management and independent directors in these meetings is critical to communicating credibly. In particular, the willingness of Board members to meet with key institutional holders demonstrates that the Board is engaged and committed to addressing the issues facing a company.

If your address changes or if you do not wish to continue receiving these memos, please send an e-mail to Publications@wlrk.com or call 212-403-1472.

3) *Meet with the Dissident.* The best way to understand what the dissident really wants is to meet in person. This can also help ensure that the dissident understands the company's position, and the limits on what the company can, or is willing, to undertake in response.

4) *Assemble a Team Responsible for Seeing the Process Through.* Supporting senior management and the Board during a proxy contest involves a number of internal and external resources. These include finance and strategic development personnel as well as investment banking, legal, investor relations, public relations and proxy solicitation personnel and advisors. Assembling a team with representatives from each area that meets regularly to review events, react and plan proactively is an absolute necessity.

Martin Lipton
Patricia A. Vlahakis
Gregory E. Ostling
Jonathan H. Gordon