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REWRITING THE PROXY PLAYBOOK: TRIAN PARTNERS VS. DISNEY CASE STUDY

Trian Partners' campaign to wrest two board seats from The Walt Disney Company already stands as a proxy contest for the ages and will rewrite the playbook for many contested meetings in the years to come. In addition to the significant outreach to the institutional investors ("usual institutional suspects,") the campaign required substantially increased retail engagement due to Disney's massive retail holder base. The process effectively involved two simultaneous campaigns: one campaign to sway hundreds of financial institutions, and another to energize the retail base of several million shareholders, which typically remains apathetic toward proxy voting. Examining the retail and institutional campaigns as two pieces of one whole provides important insights into this game-changer of a campaign, and teaches practitioners some valuable lessons.

FINANCIAL INSTITUTIONS

In the Trian-Disney face-off, a few institutional investors played a huge role in helping Disney come out on top. Here are some key takeaways:

As a general rule, State Street, Vanguard, and BlackRock support management. This generalization was once again the case at Disney. Save certain extreme scenarios, the "Big Three" Index Fund Managers are predisposed to vote against activist investor initiatives. Even with the advent of the Universal Proxy Card providing the ability to split ballots, these three fund managers are far less likely to provide dissident support by splitting their tickets, as opposed to supporting full management slates in large cap proxy contests. Company advisors and activists are aware of this tendency and usually factor it into campaign strategy accordingly.

It would not be surprising if, upon public release of voting results, we learn that the actively managed institutions that voted for Trian outnumbered those who voted in favor of management. Nevertheless, the voting power of smaller-sized institutions is often outweighed by the index funds—this vote weight disparity is a common situation in proxy contests—even if smaller institutional investors are highly frustrated with management, keeping the Big Three index funds on your side decreases the chances you'll lose an election.

OKAPI Partners LLC
1212 Avenue of the Americas, 17th Floor
New York, NY 10036-1600

New York: +1 212 297 0721
London: +44 20 3417 3284
Email: info@okapipartners.com

Financial institutions frequently vote together. Many investors don't want to be on the losing side of a vote, especially when it could mean souring their relationship with company leadership and losing their direct line to management and the boardroom. BlackRock, Disney's third largest institutional shareholder, voted unusually early (almost a week before the meeting) in favor of management, and this information was quickly reported in the media, allegedly as a result of a leak. Typically, State Street, Vanguard, and BlackRock vote closer to within 24 hours of the meeting, so this early vote was unexpected. This unusual glimpse into the voting behavior of a major index fund allowed other institutions to factor this information into their own vote; some may have even changed their vote as a result. While some may find it surprising that investors share information, financial institutions frequently pay attention to each other prior to casting their votes (appreciating that these investors generally are not prevented from discussing views on proxy voting), and often vote in accordance with what they observe or learn from peer institutions.

Engaging with institutional investors, even in good times, is the key to circumventing potential activist situations. Furthermore, hearing out dissident concerns is worthwhile and important. There is no monopoly on good ideas – savvy companies can co-opt or borrow dissident's ideas, and in some cases even take credit for them. When investors including Trian voiced concern ahead of the 2023 annual meeting that Disney's elimination of their long-time dividend was a result of poor management of the balance sheet, Disney appeared to realize that this issue was a problem for shareholders. To stem potential votes against the incumbent board, the company reinstated its dividend (albeit at a much lower rate than before).

When investors credibly expressed concern with Disney's succession plan in the aftermath of Bob Iger's re-appointment as C.E.O., Disney responded by publicly recognizing its mistake and appointing James P. Gorman, a former Morgan Stanley C.E.O. involved in his own firm's succession planning process, to the board in 2024 as one of the four directors who would be working to improve the situation. In the same vein, investors are less likely to vote with management when they feel unengaged and unheard by management. Maintaining a direct line with a company's largest investors and keeping relations friendly is important, especially if an activist situation arises.

Contact Us

OKAPI Partners LLC
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New York, NY 10036-1600

New York: +1 212 297 0721
London: +44 20 3417 3284
Email: info@okapipartners.com

Although many financial institutions claim that issues like succession planning and board tenure are important to them, a strong C.E.O. or celebrity C.E.O tends to get more leeway. Once again, financial institutions are eager to maintain a direct line to a company's board, and especially when that board is run by a prominent Chief Executive like Bob Iger, they may also not want to risk losing this known quantity. (A similar scenario played out at the 2024 Tesla annual meeting: Elon Musk has made a name for himself independent of Tesla, and many large investors want to maintain a good relationship with him.)

RETAIL VOTERS: AN UPHILL BATTLE FOR DISSIDENTS

How does a large retail base affect proxy contests? This question was of particular importance at Disney considering approximately 1/3 of Disney's shares were held by retail holders. It's well-established that many Disney shareholders are diehard fans of the media content that the company produces and the parks they own, and associate the company with a sense of nostalgia and fond memories.

In many ways, the loyal Disney shareholder base is a unique asset for this company. Retail holders typically vote with management (if at all), but given the higher-than-normal affinity Disney shareholders have for the company, a key part of management's strategy was to turn out their retail base. The more likely apathetic but company friendly retail shareholders were to vote, the more likely DIS' management vote totals would increase.

For a variety of reasons, most prominently those pertaining to share price performance (and also potentially to the perception of corporate policy shifts), not all DIS shareholders supported management. Trian didn't necessarily expect to swing Disney's large and loyal retail base in overwhelming numbers. Instead, they were looking to overcome the characteristic apathy of retail voters in an effort to make the race as tight as possible by chipping away at the company's natural advantage. To achieve this goal, they had to find and motivate frustrated shareholders with a fraction of the Company's budget.

FYI

Trian had the odds stacked against them from the jump. While Trian fought to keep or decrease the typical ratio of 3/4 of retail voters siding with management, Disney fought to turn out voters and expected a favorable ratio. Despite spending significant funds on thoughtfully designed mailing materials to fortify their retail campaign, Trian was outspent in a splashy effort by Disney, one of the world's largest media and entertainment companies, to turn out their voting base with slickly-designed mailers, e-mail and video messaging.

Disney used their resources and their place in the cultural zeitgeist to their advantage. With iconic characters like Professor Ludwig Von Drake and Mickey Mouse at their disposal, Disney was able to get creative with informational videos that pulled at the heartstrings of lifelong Disney fans. Watching them, one might ask, "Are we about to vote in a proxy contest, or hop on Space Mountain?" This use of nostalgia and light-hearted marketing was a success in helping turn out Disney's retail base. The company supplemented these efforts with ominously narrated political-style videos. Endorsements by celebrities like George Lucas of LucasFilm and the families of Walt and Roy Disney also aided Disney in motivating fans to vote with management.

While Trian pointed out the inconvenient facts of Disney's recent mismanagement and strategic missteps, management focused on painting an optimistic picture of the future and calling upon the nostalgia of the past to engage retail voters. Trian's campaign slogan was "Restore the Magic," and they hoped to do so, in part, by exposing and repairing deficiencies within Disney's board. In order to do so, Trian had to make pragmatic and financial arguments to investors dissatisfied with Disney's stock performance. Disney, however, had messaging that was far more palatable to their retail base – keep our board as is, and we'll continue making magic, despite some recent bumps in the road. Given the pre-existing tendency of retail voters to vote with management, Disney's simple and optimistic message helped turn out their enthusiastic retail voters.

Disney also helped its cause by implementing well-timed corporate strategies that were designed to improve operations, expenses and capital structure — and boost its stock price — at least in the short term during the campaign. As of the close of the annual meeting date, the stock was trading at approximately $118.98 per share. Many of these changes were, in fact, originally proposed by Trian, and some observers have argued that these changes would never have been made without the pressure from Trian's campaign.

Both sides made use of online advertising and numerous social media platforms, released informational videos, as well as telephone and mailing campaigns. This varied strategy allowed them to reach Disney shareholders of all ages and demographics.

BTW: It's important to keep communications with retail shareholders jargon-free and comprehensible – these are everyday people who may not be familiar with proxy contests and just want to know what this proxy contest means to "their" company and investment.

CLOSING REMARKS

The Trian Partners vs. Disney proxy contest showcases a masterclass in creative media use and shareholder engagement on both sides of the fight, setting a precedent for what contested situations could look like in years to come. Disney eventually won the election contest, retaining all of their seats. While the media and many advisors like to talk about wins and losses, hedge funds measure their success by returns, and it was reported that Trian made a substantial profit on their position. It is also interesting to note that while the stock was trading at $118.98 at the close of the annual meeting date, it was trading as low as $86 per share (in mid-August 2024), down approximately 38%. Only time (and the shareholders) will determine the actual winner of this campaign as the Company will need to execute on a plan embraced and promoted by management and shareholders alike.