

May 10, 2021

Lessons from TEGNA's Second Straight Proxy Fight Win

On May 7, 2021, at TEGNA Inc.'s contested annual meeting, shareholders demonstrated their strong confidence in the company by re-electing all twelve of the incumbent nominees and none of the three nominees proposed by hedge fund Standard General, which owned 7% of TEGNA's shares. The dissident hedge fund had run a short slate of four candidates the previous year, in what was then the first ever contested virtual proxy contest, when it also failed to win a single seat. This year's proxy contest also proved to be the first of its kind, as noted below.

With the company's share price at an all-time high, indicative of its financial and operational outperformance in a challenging year, and subscription revenues exceeding even pre-Covid guidance, Standard General's operational attacks found no traction. Instead, Standard General pivoted to a different line of attack, claiming diversity, equity and inclusion ("DE&I") issues at TEGNA, initially based on an incident cited by a nominee who withdrew midway through the campaign for conflict reasons, but later extending to wider DE&I attack themes to a level not seen in prior contests.

This line of attack, which included anonymized allegations and *ad hominem* accusations, proved hollow, as shareholders recognized TEGNA's long-standing commitment to DE&I and its excellent track record of integrating and advancing DE&I in relation to its workforce, board and business initiatives. This work, which TEGNA was able to show with employee data and enhanced board and management-level oversight structures, proved persuasive. Several key shareholders expressed their skepticism at the manner in which Standard General tried to deploy DE&I issues in its proxy fight in this context, especially at a time when investor, corporate and national attention has been rightly and constructively focused on such matters and these topics had previously been a priority area for TEGNA. All three proxy advisory firms agreed with TEGNA, with ISS noting that "... this is not a board that has been caught flatfooted or is reactive regarding issues of diversity and inclusion ... the board's actions to rewrite all of its committee charters to include diversity oversight responsibilities and the company's hiring of a senior executive to oversee diversity show that the board had already focused its attention on DE&I." TEGNA also proved it could move quickly to set the record straight, engage effectively across all constituencies and provide clarity and consistency with board and management-level messages and engagement.

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Standard General's back-to-back proxy campaigns exemplify a growing trend of repeated campaigns waged by a dissident at the same company, regardless of the outcome of the initial campaign (*i.e.*, settlement or defeat), the economic expense of a proxy fight, and the likelihood of winning on the second try. For example, approximately 37.5% of Russell 3000 companies that faced an actual or threatened proxy contest in 2021 to date were targeted by the same activist investor who had made demands for board representation at that company in previous proxy seasons, up from 27.8% in 2020. Much like Biglari's multi-year war with Cracker Barrel, Icahn's successive proxy contests at Forest Laboratories and Starboard Value's various forays into multi-year activism, today's activists are less inclined to sell down or back down after defeat or a negotiated outcome, often testing out various permutations of attack in subsequent years. In fact, repeat contests are often viewed as easier for activists, who can put the onus on incumbent directors by pointing to perceived broken promises, failure of expectations, or continued underperformance. Companies that have successfully fended off one proxy contest must therefore continue to stay vigilant, including by actively engaging with the dissident along with other shareholders as part of its post-proxy season shareholder outreach program, and following up on commitments made to its shareholders.

Ultimately, TEGNA's win of the first proxy contest based largely on DE&I issues illustrates that a company can still defend an activist campaign on the merits. Strong financial and operational performance and delivery of shareholder value, together with a strong record on ESG and DE&I issues, will prove to be the best defense for companies against future attacks.

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