June 16, 2016

Voce Capital Management Demonstrates How Not to Run a Proxy Contest

Yesterday, the entire board of directors of FBR & Co. was overwhelmingly re-elected in the face of a bitter proxy fight waged by Voce Capital Management, an activist hedge fund. Voce committed strategic and tactical errors, costing its investors significant amounts of money, and unwittingly providing valuable lessons on responding to dissident shareholders.

In 2015, Voce and its affiliates purchased approximately 5% of FBR's outstanding common stock. Consistent with FBR's commitment to regular dialogue with its shareholders, FBR attempted on several occasions to solicit input from Voce. Voce did not provide any meaningful suggestions for improvements and instead, after a brief series of initial conversations, elected not to engage with the company for a period of almost five months.

After the protracted silence, surprisingly Voce nominated three candidates for election to FBR's board and commenced a vitriolic and highly-charged proxy campaign. Voce's campaign was noteworthy for its repeated unsupported attacks which demonstrated a fundamental lack of knowledge of, and sensitivity to, the people-intensive nature of a financial institution. Voce had no concern for the highly skilled professionals whose talents are required to operate an investment banking and broker-dealer business. Despite the lack of merit to its arguments or a coherent business strategy, Voce received the support of ISS and Glass Lewis.

The management and board of FBR wisely elected not to sink to Voce's level. Voce issued numerous highly inflammatory "fight letters", planted critical news stories in trade and other publications and provided misleading information as to the state of the voting to shareholders. FBR responded by taking the high road, it did not issue attack letters or commence litigation, rather it professionally and analytically presented its plans to shareholders.

Voce further evidenced its lack of commitment to its position by the fact that none of the Voce nominees or principals of the fund attended the FBR shareholder meeting and Voce's representatives chose to forego the time allotted to them to address the meeting. The very next day Voce sold its shares of FBR common stock at a significant loss. Voce had purchased its position in FBR at a volume weighted average price of $22.37 per share and sold its shares for $16.40 per share. In addition to the loss on the position, the Voce investors will bear Voce's fees and expenses.

FBR was successful not only because of Voce's numerous failings but also because the FBR management team had spent years engaging with its retail and institutional shareholders. As a result when shareholders were presented with a choice between an activist running a destructive campaign and management's clear strategy, they overwhelmingly supported the current FBR board. This campaign illustrates that careful shareholder engagement over many years can counteract the results of a negative campaign and reflexive ISS and Glass Lewis recommendations of activists.

Edward D. Herlihy
David E. Shapiro

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 212-403-1443.

W/2704738