

Public Company Advisor

Practical Insights for Public Company Counsel

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King & Spalding's Public Company Practice Group periodically publishes the Public Company Advisor to provide practical insights into current corporate governance, securities compliance and other topics of interest to public company counsel.

When Shareholders and Special Interest Groups Attack – How to Mitigate Disruptions at Your Annual Meeting

Overview

With this year's annual meeting season approaching, public companies should refresh their procedures for mitigating potential disruptions. While most annual meetings are held without incident, this year companies may encounter more shareholder unrest as advocates jockey for media attention and attempt to build off of the anti-corporate fervor that groups such as Occupy Wall Street have generated.

Unless handled with care, annual meeting disruptions can result in lasting damage to a company's brand – particularly today, when an incident can be quickly posted to social media outlets and go viral in short order. Accordingly, one of the goals of the annual meeting planning process should be to anticipate and defuse the risks that disruptions pose not only to the completion of the annual meeting, but also to the company's reputation and goodwill.

Recommendations to Minimize Disruptions

1. *Engage Early.* It will be too late to begin dialogue with activist shareholders on the day of the meeting. It is critical to engage early with your activists and understand their concerns – if for no other reason than to be able to identify them and respond appropriately if they show up at the meeting.
2. *The Official Meeting Should Cover Only the Bare Necessities.* Most annual meetings include detailed investor-relations or public relations presentations by a member of the senior management team. Since these presentations increase the length of the potential window for disruption, the official business of the meeting (i.e., the voting on the proposals in the proxy statement) should be placed first on the agenda. To the extent the CEO or another member of the management team does make a presentation or engage in a Q&A session, it should come *after* the announcement of the preliminary voting results and the adjournment of the official meeting. With this ordering, companies have a greater chance of completing the necessary business of the meeting before any disruption occurs and any participation by dissident shareholders will not be reflected in the official minutes of the meeting.

3. *Anticipate and Preempt Difficult Questions.* If you believe a sensitive topic (e.g., executive compensation or director diversity) may be the subject of a question at the meeting, we have found it very helpful to preempt the question by having a shareholder friendly to management ask the question in a non-aggressive, impartial manner. This allows the Chairman to respond thoughtfully and provides the added benefit of allowing the Chairman to refer to his or her previous answer, thereby neutralizing a hostile questioner determined to ask the question again.
4. *Distribute Clear and Concise Rules of Conduct.* Clear and concise ground rules for the meeting should be adopted and these rules should be distributed to every attendee. Setting these rules is typically the purview of the Chairman and, contrary to conventional wisdom, there is no requirement that *Robert's Rules of Order* or another set of strict parliamentary procedures be prescribed (unless the bylaws otherwise provide). The rules of conduct should be flexible and summarized by the Chairman at the outset of the meeting.

We are often asked how long each shareholder should have to ask a question. Most companies tend to limit questions to two to three minutes. While some companies go so far as using a timer and ringing a bell when the time has elapsed, we have found it is far better to permit a shareholder to run over his or her allotted time than to cut off the questioner mid-sentence or to immediately turn off the microphone. In the end, the goal is to avoid a disruptive scene, not instigate an unwanted shouting match – or worse, an ejection where security must escort the shareholder from the meeting.

5. *Control Access by Establishing A Separate Check-In Area.* Many companies establish an admissions and registration desk along with a reception area apart from the actual meeting site. This practice allows companies to identify and respond to potentially difficult shareholders before the meeting begins, and may also help the company limit access to the meeting to those legally entitled to attend. Moreover, many shareholders who arrive at the meeting with a confrontational disposition may actually prefer to “vent” outside of the meeting. Having management representatives available to engage in informal conversations with shareholders may help assuage potential problems before the actual meeting begins.
6. *Adopt or Review Advance Notice Bylaws.* Advance notice provisions in a company’s bylaws require a shareholder to give advance notice of matters the shareholder intends to propose at the meeting. If a shareholder makes a surprise motion at a meeting, then the Chairman will have the authority to rule it out of order in accordance with the advance notice provision. Accordingly, advance notice provisions are powerful governance mechanisms that greatly reduce the risk of the unknown, and companies should review these provisions with the Chairman prior to the meeting.
7. *Temper Media Participation.* We recognize that having the press attend your annual meeting may be unavoidable for a variety of reasons. However, if you believe there is a likelihood of a significant disruption at your meeting, you may want to consider limiting the meeting to print media only. We are aware of some companies that provide a video feed to media outlets (particularly those companies that webcast their meetings to employees) but the video is strictly controlled by the company so that if there is a disruption, the camera avoids it. Further, rules of conduct for the meeting may prohibit photography, as well as video or audio recording. Press conferences and other media events that often now accompany shareholder meetings can be held at a different location away from any protesters – typically after the meeting is held to help ensure the company gets the last word.

When There's No Other Choice

Sometimes even the best laid plans and tactics are not enough to thwart the unruly shareholder who is determined to cause a scene and attract as much publicity for his or her cause as possible. When there is no other choice but to deal with the dissident, we recommend the following actions:

1. *Request that the Shareholder Stop the Disruptive Behavior.* As an initial matter, the Chairman should instruct the shareholder to stop the disruptive behavior and remind the shareholder of the order of the meeting set forth in the agenda. If the company has provided rules of conduct to meeting attendees, the Chairman should refer the shareholder to those rules, and note that the conduct in question is in violation of such rules.
2. *Threaten Removal From the Meeting.* If the requests to stop the disruptive behavior are unsuccessful, the Chairman should inform the shareholder that if the disruptions continue, he or she will be asked to leave the meeting. Turning off the shareholder's microphone is often an effective method of gaining the upper hand.
3. *Remove the Shareholder From the Meeting.* This is obviously the path of last resort. However, if the shareholder continues to be disruptive or abusive, the Chairman should ask the person to leave the meeting. If he or she refuses to leave, the Chairman will have to decide whether ejection from the meeting is appropriate. To that end, prior to the meeting, we recommend the issues relevant to forcibly removing a participant – such as local laws regarding trespass, disorderly conduct and even false imprisonment and battery – should be reviewed and understood by the company's security personnel.

Parting Thoughts

When faced with a disruption at your annual meeting, the goal should be to avoid inflaming what is already a tense situation. In our experience, once a disgruntled shareholder or other special interest group has made it into the meeting, it is often better to allow them to have their five minutes of fame. Although we recognize there may be no other choice but to forcibly remove an unruly attendee, allowing the activist a reasonable opportunity to promote his or her social or political agenda is typically a far more prudent approach than resorting to tactics that may be perceived in hindsight as heavy-handed or worse.

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About King & Spalding

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