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Procter & Gamble's 'Rumble' Could Be A Harbinger Of Your Board's Proxy Fight

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The Proctor & Gamble headquarters complex is seen in downtown Cincinnati. (AP Photo/John Minchillo)

Perhaps it's not surprising in our contentious age that corporate board elections have become so combative that they mirror in size and spending statewide political campaigns. In a climate increasingly dominated by activist investors – some of whom used to be known as "corporate raiders" before a smart re-brand – bare-knuckled proxy fights are becoming commonplace. So pervasive are these battles, in fact, that those companies that haven't yet experienced one should prepare themselves for the inevitable.

Just ask board members and shareholders of Procter & Gamble, the heartland-based producer of dozens of consumer brands. They're weathering a months-long boardroom battle that's missing only switchblades and a Leonard Bernstein musical score from degenerating into a bad – and very expensive – remake of "West Side Story." It's likely to take several more weeks before the curtain comes down on P&G's board rumble – and years before its wounds heal.

If such a nasty spat can happen to an iconic company that prides itself on discipline and traditional values, it can happen to anyone.

The outsiders in the fight for a seat on the company's 12-member board were spearheaded by activist investor Nelson Peltz, the head of Trian Fund Management, a hedge fund. Peltz waged an aggressive and costly campaign, emulating tactics he previously used to acquire sizeable stakes in – and influence the strategic direction of – such corporations as H.J. Heinz and DuPont. His platform – a global restructuring of the company coupled with a radical new approach to product development – was viewed as divisive, even inflammatory, by P&G's incumbent regime.

P&G's insiders were led by Chief Executive Officer David Taylor, who argued the company has already begun to regain market share and revamp its R&D. Taylor and his board allies claim to have "won" the battle by engineering a narrow defeat of Peltz's bid. The referendum on Peltz' effort was so closely contested – said to be just .02% short of a literal dead heat – that the matter has gone to a recount expected to take weeks.

When a corporate proxy fight turns this venomous, it's referred to in the industry as a "snake pit." Even a genius like Bernstein would have been hard-pressed to come up with music that captures the sound of hissing reptiles.

Should P&G's insiders emerge from the pit, it may turn out to be a Pyrrhic victory.

The staggering $100 million or so the P&G regime spent to keep Peltz off its board – shareholders were inundated with leaflets, emails, podcasts, and videos at a clip New Hampshire presidential primary voters would have appreciated – did not deter Peltz from persuading select board members and a substantial chunk of shareholders to embrace his shake-up agenda. Peltz may not win a seat on the P&G board, but, over time, his antidotes stand a good chance to be absorbed into P&G's growth strategy.

Beyond what the future holds for P&G, the Peltz board fight may be a harbinger of what lies ahead for Corporate America. More and more activists – motivated by both financial and political imperatives – are targeting board control as a way of advancing their goals. The P&G experience may serve as a template for other activist investors, some of them with track records and grand designs far less constructive than Peltz's.

We are very likely entering a volatile new era of proxy fights – and that's not necessarily a bad thing for companies seeking healthy back-and-forth contributions from their board members. It's arguable that certain activists are better educated regarding marketplace dynamics and business risks than many traditional directors. Buttressed by big data, activists can come to the boardroom armed with facts in hand and multiple strategic options, not to mention a disdain for boardroom politics that could prove useful. Of course, they might also just be motivated by more handsomely rewarding their own position.

In sum, the right activist board members can help their companies make informed decisions and properly assess attendant risks. But the wrong activist board members can become albatrosses, dragging a company farther down. The key for smart company boards is to attract participation from constructive – not destructive – activists.

"There is no doubt that the level of activism and the number of companies impacted by it are on the rise," commented Brian V. Breheny, a Skadden partner and merger-and-acquisition specialist who once headed the U.S. Securities and Exchange Commission's M&A office. "Activist campaigns have evolved into sophisticated movements. As a result, advanced planning and preparation by companies of all sizes are advisable."

Douglas Chia, the Executive Director of the Governance Center for The Conference Board, adds, "Activist investors are challenging the way a public company director carries out his/her duties. In some cases, a more aggressive style of a dissident director could be just what a sleepy board needs. In others, intentionally disruptive behavior risks chilling open discussion in the boardroom. Incumbent board members may all of a sudden feel threatened and put on the defensive. Critical discussion that should take place with the entire board may move offline to one-on-one communications. Boards have traditionally made consensus-based decisions. The prospect of activists in the boardroom highlights the importance of an independent chair or lead director who possesses high 'E.Q.' and the ability to build consensus in the face of rapidly changing group dynamics."

Messrs. Breheny and Chia are right: building consensus in a rapidly changing marketplace is *the*challenge for every corporate board these days. With such high stakes, and with outsiders being so adept at social media, no wonder so many proxy fights have turned ugly.

Still, not every board of directors' battle will take on the patina of a rumble. But corporate boards would be well advised to recognize the inevitability of proxy fights, institute transparency where they can, and prepare for *every* contingency, no matter how unpleasant. No board wants to hear the sound of snakes hissing.

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