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The Activist Investor

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Case Study: The Wet Seal, Inc.

Last year, an experienced activist investor with under 5% of a company's shares restructured the BoD of a portfolio company in a little over a month.

Clinton Group objected to how teen clothing retailer Wet Seal continued to lose money, and yet had half of its assets in cash. So, rather than wait almost a year for the next annual meeting, it organized a consent solicitation to replace most of the BoD.

This case study identifies the key landmarks in what became a successful effort to defend investor rights and preserve value in a portfolio company.

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How to Change a BoD in a Month
(Consent Solicitation in Action)

May 16, 2012 – Annual Meeting
The Wet Seal, Inc. conducts its annual meeting at its offices in Foothill Ranch, CA. The director nominees each receive no less than 87% of the votes cast. The annual say-on-pay resolution receives support from 86% of the votes cast.

July 23 – BoD fires the CEO
The BoD appoints an Office of the Chairman to lead the company, consisting of non-executive Chairman Harold Kahn, and the COO and CFO.

> Wet Seal, a once-hot teen apparel retailer, suffered from deteriorating sales and a declining share price, down over 40% in the past year. Still, it enjoys very healthy cash reserves owing to its previous years' decent profits.

July 30 – Clinton Group correspondence disclosed
The company discloses several letters from Clinton Group, a hedge fund that owns 4.7% of the outstanding shares, to the BoD, from June and July 2012. Clinton Group sets forth a case for a share repurchase and operating improvements.

August 21 – Dismal second quarter results
The company discloses lower sales and greater operating losses. It also reveals a new poison pill and expanded exec comp programs as an employee retention plan.

August 23 – Clinton Group announces consent solicitation
In a news release, Clinton Group identifies five director nominees, and states its intention of soliciting consent from other investors to replace five incumbent directors.

August 30 – Clinton Group preliminary consent materials
Clinton Group files its preliminary consent statement with the SEC. Including all exhibits, it amounts to about 30 pages. It provides for the appointment of five new directors to replace four incumbent directors and fill one vacancy. It also proposes some technical bylaw amendments that support the appointment of the new directors. Clinton Group also files its first Form 13D, since additional purchases pushed its ownership to 6.7% of outstanding shares.

September 6 – Wet Seal preliminary revocation materials
Wet Seal files it preliminary revocation statement with the SEC. It merely allows shareholders to revoke any previously submitted consents.

September 10 – Clinton Group definitive consent materials

Clinton Group files these after responding to routine SEC comments. This becomes the record date for consents, so Clinton Group has sixty days to solicit consents representing a majority of shares outstanding.

September 19 – Clinton Group rejects settlement proposal from Wet Seal

Clinton Group declines to add only two of its nominees to an expanded BoD.

September 20 – Two new Wet Seal directors

Wet Seal appoints two new independent directors. It also reduces the previously announced exec comp increases, and revokes the poison pill.

September 24 – Wet Seal definitive revocation materials

Wet Seal files these after submitting two other preliminary filings for SEC review.

September 6-October 4 – Public relations battle

Wet Seal and Clinton Group write numerous letters to shareholders:

- Disclosing detailed analyses supporting their respective records and BoD nominees, and criticizing each others' nominees
- Announcing support or opposition from proxy advisors
- Wet Seal accuses Clinton Group of mere day trading, and Clinton Group defends its record of successful investment
- Clinton Group discloses on October 2 that Wet Seal directors evidently decide to resign, and then renege the same day.

October 5 – Wet Seal and Clinton Group settle

The four incumbent directors that Clinton Group targeted resign. Four of Clinton Group's nominees take their place. Wet Seal will also reimburse Clinton Group for $250,000 of its costs for the consent solicitation.

Later, Clinton Group discloses that it has solicited consent from shareholders representing at least 63% of outstanding shares. It had commitments from others that would have brought the total to almost 70% of outstanding shares.

The Activist Investor

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For further information, or to discuss a specific turnaround situation, please contact:

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