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Can Peltz Score?: What's Behind the May 13 DuPont vs. Trian Contest

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ACTIVIST INVESTORS

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On May 13, DuPont will hold its 2015 meeting of stockholders. For thousands of big companies this is an annual ritual, but usually it's a non-event, as most elections of corporate directors are uncontested. At DuPont this year, however, things are different: Trian Partners, led by Nelson Peltz, is trying to elect two nominees to DuPont's board of directors. DuPont's CEO Ellen Kullman and her fellow directors are opposing this effort.

This developing election contest seems to have already brought lots of changes to DuPont and to Delaware, changes that seem unsettling for the 213 year-old company that has been a mainstay in the life of Delaware and its economy.

How and why did all this happen? Read on.

Why is there an election contest for DuPont's board of directors?

Discontent among some DuPont stockholders over the performance of the company and its stock price is at the heart of the current contest over board seats at DuPont. According to Peltz, Trian made a sizable investment in DuPont in the belief that the company could be made more valuable because it had too many unrelated businesses and too much

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And what is the value of the stockholder activist?

"... activists fill a governance void that afflicts today's public companies. A rising chunk of the stock market sits in the hands of lazy investors. Index funds and exchange-traded funds mimic the market's movements, and typically take little interest in how firms are run; conventional mutual funds and pension funds that oversee diversified portfolios dislike becoming deeply involved in firms' management. In the face of Wall Street's provocateurs, America's lazy money is waking up."

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Nelson Peltz and his Trian hedge fund are trying to win seats on DuPont's board. CEO Ellen Kullman is trying to block his shot.

JAMES WARREN/ GANNETT ILLUSTRATION

DuPont

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corporate overhead. Trian has contended that DuPont's stock price would improve if its businesses were split up and managed more efficiently. There's an election contest now because Trian asserts that DuPont's management hasn't done enough to make the company more efficient.

What is "shareholder activism"?

You're watching it in action. "Shareholder activism" can mean lots of things, but these days it most commonly refers to large stock investments made with the intention of pressuring corporate management to alter corporate strategies and focus on increasing financial returns to shareholders, either through a higher stock price, higher dividends, stock repurchases, or a combination of these. Beyond question, it's an investment strategy to make money.

Won't shareholder activism harm research and development and impair long-term economic growth?

This is the major criticism of shareholder activism: that it focuses on short-term financial returns to shareholders, and not on long-term sustainable growth. Investors like Trian are often accused of buying a company's stock, pressuring management to make strategy changes that yield a quick sale or restructuring of the company, and then exiting the investment, leaving the company weaker in the long run. This has undoubtedly occurred at some companies. On the other hand, shareholder activism has been successful of late due to increasing support from investors, like pension funds and mutual funds, that hold stock for the long term yet believe that some shareholder activist initiatives are good for both shareholders and the economy as a whole.

Why can't DuPont's directors look out for the interests of the community?

They can, at least as far as the law is concerned. Under Delaware law, boards of directors have broad discretion in mapping out a corporate strategy, as long as they select a strategy they believe will serve the long-term interests of the company's stockholders. And in choosing that strategy, directors can consider the impact of the company's operations on its employees, customers, suppliers and the communities in which they operate.

So why can shareholders influence corporate strategy?

It's simple, really. No matter what the directors of a company can legally consider in developing a business strategy, it is the stockholders – and only the stockholders – who get to elect the directors. In the long run, a board of directors that consistently disregards the interest of stockholders is cruising for an electoral bruising.

Is it healthy that stockholders have the influence they do?

The important long-term question is whether shareholders – the holders of the power to elect directors – will exercise their influence in a way that serves the long-run interests of society. Some have expressed concern that many large institutional investors are more concerned about short-term profits and don't invest for the long term. No doubt this is true in some cases, and turnover in share ownership suggests a lot of short-term focus. Others, however, maintain that many institutional investors necessarily invest for the long term, and need to and do take long-term economic effects into account.

Who's going to win the election contest at DuPont?

It's doubtful that anyone really knows the answer yet. It may depend on tactical initiatives yet to be taken by Trian and DuPont management. And it's always possible that the contest could be settled before the shareholder vote occurs at DuPont's 2015 annual meeting. Whether settled or fought to the finish, though, and whatever the outcome, one thing seems certain: DuPont will not be the same company that it is today in 5, 10 or 20 years. DuPont has reinvented itself several times over, and like most big companies it will have to do so again and again to stay in business. Shareholder activism is only one of the many forces that are responsible for the accelerating pace of change in the business world. In some ways, Peltz and Trian have already won. DuPont's planned spinoff of its performance chemicals business (to be named Chemours) and the sale of the DuPont Theatre business and the possible sale of the Hotel, were clearly part of the Trian agenda, and are already a reality.

Is all of this good for the company, and for Delaware?

In today's environment of shareholder activism, corporate tax inversions and increasing global competitive pressures, the idea of corporate loyalty to a "hometown" is pretty stressed. DuPont and its Chemours spinoff will remain a vital part of our community only if Wilmington and the state of Delaware continue to provide the business climate that will enable the companies to compete effectively in the global marketplace.

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