

Dissident shareholders can make or break your deal

Whether you're buying or selling a business, you need to be aware of the power of minority owners or shareholders. Individuals who own only a small percentage of a company can still wreak considerable havoc on a deal if they don't approve it. However good a deal looks to you, be prepared to handle the objections and actions by activist and dissident shareholders — no matter how miniscule they may seem on paper.

The mouse that roared

Recently, the news has been full of the ongoing dispute between Yahoo! and legendary financier Carl Icahn, who owns only 4% of the company's stock, but wields disproportionate power over its future. Icahn wants to depose the current Yahoo! board so that the board's replacements can accept Microsoft's buyout offer. While most minority shareholders are neither as famous nor as powerful as Icahn, they can play an outsized role in determining whether an M&A transaction goes forward.

Dissident shareholders come in all varieties, including hedge fund and other investment account managers, social activist investors, and risk-averse investors who don't trust management. And, of course, there are always investors who simply don't believe that a transaction makes strategic sense.

Address trouble head-on

The best way to prevent dissenting shareholder trouble is to anticipate it. If, for example, you have your eye on a target company, research its shareholders and pinpoint those who have a history of aggressive or disruptive dissent. Open communications with these shareholders as soon as feasible so that they understand your intentions and are more likely to align themselves with your plan.

Indeed, both parties to a deal need to be proactive about communication. Unless you make a clear, compelling case for an M&A to minority owners early in the process, you risk damaging rumors and unfounded suspicions spreading like wildfire. And once these stakeholders have their hearts set against the plan, it may be hard to change them.

If you discover objections to a deal, dig for their roots. Some minority shareholders don't actually want to block a deal, but only to challenge a particular point in the sales agreement, such as the sale of a particular asset or financing terms. If possible, try to reach a compromise with these owners before they get a chance to ally themselves with other dissatisfied shareholders.

Weapons in their arsenal

Minority owners can wield their power in surprising ways. When deals are subject to supermajority (67% to 90%) vote requirements, a single investor may be able to accrue enough small percentage votes to block it.

If you're a buyer, comb through your target's charter to see if a supermajority amendment has been enacted in the past. If you're a seller subject to such a requirement, you might want to try to remove supermajority-related language before putting your business on the market. Typically this involves a shareholder proposal at an annual meeting or a new amendment to the company's charter. Activist shareholders might also use litigation to disrupt and distract your plans, or, in some cases, to force you to go through with a deal.

Eyes wide open

While you can't fully prevent minority owner dissent, you can minimize the damage they cause. Reducing minority shareholder-friendly language in corporate charters, and making sure you have a good relationship with all of your shareholders, will certainly help.