

## Defending Against a Consent Solicitation

**Situation Analysis:** In October 2008, an investor group (“the Group”) led by the founder, former Chairman and former CEO of a long-time LHA client, disclosed its accumulation of an 11.4% equity stake in the Company during the preceding two weeks. The Group claimed its purchase “represented an attractive investment opportunity,” while auspiciously calling attention to the significant decline in the Company’s share price following the appointment of a new CEO two years earlier, and highlighting stock-price gains during the former CEO’s tenure. The Group subsequently made public its intention to replace the Board of Directors. In January 2009 the Group initiated a formal consent solicitation to remove without cause each member of the Company’s Board of Directors, and elect its slate of five proposed Directors. Once gaining control of the Board, the Group intended to install its members as Company executives and remove the current team.

**LHA’s Solution:** LHA played a leading role in devising and conducting a well-organized, systematic and proactive response to this crisis. Even prior to the formal battle over boardroom control, LHA spearheaded the process for the selection of a top-notch proxy solicitation firm. A core working group was then formed with members of the Company’s executive team, outside corporate counsel, counsel to the independent Directors, Delaware counsel, business consultants, and LHA investor relations and media relations professionals. This team, dubbed Project Integrity, held regular meetings and conference calls throughout the process.

The majority of the Company’s outstanding shares were held by a small number of institutions, providing a well-defined audience for our work. To establish a baseline for investor sentiment, LHA held in-person or telephone meetings with management and all major institutional holders in December 2008 to ascertain their views of Company performance and “soft sound” opinions about the Group and support for current management.

To equip Project Integrity for the coming fight, LHA drafted an in-depth Story Board. This internal document provided the basis for future news releases, Fight Letters, media outreach and SEC filings, including the consent revocation document. The Story Board contained key messaging, including quantification of management’s accomplishments since the new CEO assumed leadership, details on a series of management initiatives to support business growth while reducing expenses and conserving cash, findings from the test-marketing of a new Company marketing approach and advertising message, industry and peer-group comparative data, sell-side analyst commentary, plans for an expansion of the business model and more. Story Board messages were adjusted as the contest progressed and to reflect new information, emphasizing in particular market-share gains. Project Integrity members kept a watchful eye on the Group’s SEC filings, announcements and assertions, and strategized and enacted counter-arguments and tactics.

Active and aggressive outreach to investors, influencers and through the financial media continued throughout the process, and included an initial webcast that featured a new corporate presentation, one-on-one meetings and conference calls. To achieve an accurate, fully transparent record, these presentations also were archived on the Company’s website. Along with management LHA tracked investor meetings, sentiment and probable votes, and LHA’s strong relationships with many of the Company’s top holders complemented the proxy solicitation firm’s efforts by gaining intelligence on the funds’ views of the proxy battle and their voting intentions.

To reach Company employees (whose loyalties the Group called into question) and to add a personal element to the contest, LHA created a series of four videos featuring the new CEO addressing various topics. These videos, which were posted on YouTube and announced internally, mirrored the Fight Letters and were accessed by hundreds of viewers.

**Results:** Project Integrity's efforts, supported by Company facts and accomplishments, resulted in all three leading proxy advisory firms recommending that stockholders vote to retain current Company management and Board of Directors, and reject all proposals made by the Group's consent solicitation. In March 2009, the Group terminated its consent solicitation and withdrew its slate of Director nominees, having at that time received votes, other than its own holdings, totaling only 6% of the Company's outstanding shares.

Of note, Company YouTube videos were sufficiently effective to induce management to continue the practice as an employee-relations tool.