

INVESTIGATIONS IN PROXY AND CORPORATE- GOVERNANCE DISPUTES

The Mintz Group helps companies and investors initiate and defend against proxy contests and corporate governance campaigns by gathering information on board slates and sitting directors. Working closely with our clients and their legal, financial and communications teams, we gather information our clients need for an effective attack or defense.

Our investigations dig deep into each individual's background, litigation history, business and financial relationships, and reputation—uncovering vulnerabilities that can raise doubts about their independence or fitness to serve. The work we do has helped clients win shareholder support, pursue legal remedies, shore up takeover defenses and structure alternative slates. We also help ensure our clients are aware of any vulnerabilities within their own boards or slates of directors.

Throughout this process, we stay out of the limelight while preparing our clients for outreach to shareholders and the public at large.

A Multi-Pronged Strategy on Opposition

The Mintz Group's principals have been conducting investigations in proxy contests since the mid-1980s, probing scores of proposed board slates and sitting corporate boards in the U.S. and abroad. Many of our staff are former investigative reporters, which we think gives us an advantage in understanding complex issues and unearthing relevant information in the public arena.

We generally begin by gathering background information on the opposing board members' corporate (and, where relevant, individual) financial, regulatory and litigation histories. Using public but often obscure databases, websites and other information sources globally, our investigators can produce preliminary reports, often in less than 72 hours, which go far beyond readily available information in popular news databases and online resources.

Our investigations have uncovered such show-stoppers as undisclosed self-dealing; lack of independence from other board members or candidates; undisclosed regulatory issues; mismanagement of companies or divisions, operationally or financially; damaging exposés in hometown newspapers; alleged associations with organized crime; or even long-forgotten criminal convictions.

Representative Examples

In one case, we discovered that a proposed independent director actually shared a vacation home with the CEO of the company. In another matter, we found that a potential director – who had recently changed his name – had headed three companies that went bankrupt in the 1990s, before facing allegations of securities fraud and insider trading. In yet another case, we uncovered the fact that a proposed director for an insurance company had two drunk-driving arrests and five citations for speeding – one for driving more than 120 miles per hour.



Self Due-Diligence on Proposed Slates

We also regularly conduct due-diligence on our clients' own board or board candidates in order to identify potential issues that the opposition may use against our clients. Examples of such issues can be seemingly insignificant past litigation, past ties to individuals who have been discredited, offshore regulatory issues or poor corporate performance that could be attributed to the stewardship of a nominee.

Understanding what these potential issues are in advance allows our clients to prepare their legal and communications teams for any attacks and put forth a more effective and well thought out strategy to defend against them.

These issues become paramount in proxy campaigns in regulated industries, where board slates are subject to the scrutiny of not only shareholders but also government regulators.

How We Work

We are experts at gathering facts in ways that don't leave footprints and don't make waves.

Because the reputations of companies and individuals may depend on the facts we gather, we recognize the importance of accuracy and attention to detail, and our responsibility to maintain the highest professional and ethical standards. We believe that thorough investigations can and should be conducted in ways that do not invade anyone's privacy.

Many of our clients check LexisNexis, Google and other resources themselves before asking the Mintz Group to dig deeper. This saves our client money and assigns us only the investigative steps by which we add significant value.

We start by quietly following the paper trails that business people leave behind. When we uncover facts or allegations about a bidder's history, reputation, or character in our preliminary reports, we follow up discreetly and carefully. When members of board slates have been involved in government or regulatory enforcement actions, the former government agents on our staff help us understand their significance.

In our initial reports, we develop additional investigative steps we could take to dig further, such as conducting interviews with former colleagues or employees or conducting a deeper review of archived regulatory records. We often provide graphic renderings of complex relationships and histories that our clients use in communications with shareholders and regulators, including fight websites. Our reports include the facts we uncover, as well as copies of actual documents in which those facts appear.

Our clients maintain control of both the investigation and its cost by paying fixed fees for agreed-upon work.

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