CSX Board to Require CEOs to Get Annual Physical Exam

By: Paul Ziobro | Date: January 23, 2018

CSX Corp. will require the railroad's chief executive to submit to an annual physical exam that will be reviewed by the board, adopting an unusually aggressive approach to a delicate issue just weeks after the death of its previous CEO.

The railroad's board was under fire last year after it agreed to hire Hunter Harrison even though he declined to get a physical exam or provide access to his medical records— despite concerns about the then 72-year-old railroad veteran's health.

The board ultimately asked shareholders to vote on a pay package that in effect would bless the arrival of Mr. Harrison. The resolution passed with overwhelming support. Mr. Harrison, who signed a four-year contract with the Jacksonville, Fla., company in March 2017, died Dec. 16 following unspecified health issues.

CSX's latest move is an attempt to address the sensitive issue of CEO health and how much boards are entitled to know about it, especially in cases where a company's fortunes are so closely tied to their leaders. CSX shares surged in January 2017 on news that Mr. Harrison wanted to run the company.

Securities laws don't explicitly require companies to disclose executive health problems, though companies must share material information that might affect investors' decisions to buy or sell stock.

Apple Inc.'s board never disclosed the specific reasons for two extended medical leaves by co-founder Steve Jobs, decisions that angered some shareholders. Mr. Jobs died in 2011 after battling pancreatic cancer.

United Continental Holdings Inc. told investors in October 2015 that its new CEO Oscar Munoz had been hospitalized but didn't initially disclose that he had suffered a heart attack. He took a medical leave, had a transplant and returned the following year.

In 2015, Goldman Sachs Group CEO Lloyd Blankfein disclosed a lymphoma diagnosis shortly after receiving the news from his doctor. He said he planned to continue working through treatment and returned to work full-time the following year.

While some companies do require CEOs to undergo annual physicals, it isn't clear how many have to share results with the board. The research firm Equilar Inc. couldn't find evidence that any of the 500 largest U.S. companies considered a similar proposal over the past five years.

Requiring executives to share their physicals with the board could violate employment laws and at the least requires waiving a right to privacy. **"I regard that as a slippery slope,"** said **Thomas Flannery,** managing partner at the executive search firm **Boyden.** **"It could have a bigger downside than upside."**

Instead, Mr. Flannery said he encourages both the CEO and the board to be open about health problems and whether they affect the executive's ability to fulfill his or her duties.

At its meeting next month, the CSX board will adopt a policy that requires its CEO get a comprehensive physical performed by a medical provider chosen by the board, according to a letter submitted to the Securities and Exchange Commission reviewed by The Wall Street Journal. A CSX spokesman declined to comment.

The new policy will avoid a shareholder vote on a resolution that had been proposed by an individual CSX investor for the company's next annual meeting. "This is an important victory for shareholders," said John Fishwick, a Virginia attorney who submitted the proposal, in a video posted on Facebook. Mr. Fishwick owns 1,000 CSX shares.

The rule comes after a year in which Mr. Harrison's health had overshadowed his attempt to turn around the railroad operator. Mr. Harrison was named CEO following a brief battle with an activist shareholder. The shareholder wanted Mr. Harrison to implement a new operating plan at CSX modeled after prior turnaround he executed at two major Canadian railways.

Mr. Harrison had a history of health issues and required the use of a portable oxygen tank to treat an unspecified medical condition. He declined the board's request to review his medical records or submit to a physical as part of being named CEO.

His hiring included an $84 million payment to Mr. Harrison to cover compensation he left behind when he quit his job at another railroad to lead CSX.

CSX faced a difficult decision. Word that Mr. Harrison was interested in leading CSX added $10 billion to the company's market value. Blocking his appointment, even with unspecified health issues, likely would have caused shares to drop, analysts said at the time.

Mr. Harrison moved quickly to change CSX, idling hundreds of locomotives, closing several rail yards and overhauling train schedules, which caused delays during much of the summer. The railway has since recovered, although the company is still working to win back customers lost last year.

Mr. Harrison died two days after taking a medical leave of absence. Jim Foote, who was hired as Mr. Harrison's No. 2 in October as three other senior executives were leaving, was named permanent CEO shortly after Mr. Harrison's death.

Mr. Foote this month acknowledged that the speed at which Mr. Harrison made changes at CSX was broadly disruptive to the railroad's operations. The company has since hired another operations executive to work under Mr. Foote and expanded its senior management team with leaders to help carry out the remaining phase of the turnaround.

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Link: https://www.wsj.com/articles/csx-board-to-require-ceos-to-get-annual-physical-exam-1516724880