The Two-Company CEO, Exotic but Not Extinct

Article published on October 14, 2013
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The debates over how many outside boards are too many for a CEO or whether the chairman role should be separate are by now familiar to directors. A group that went public last week with a market value of $1 billion offers an example of a bird more rarely seen in the corporate-governance wilds: a CEO of two publicly traded companies at the same time.

SFX Entertainment had its initial public offering via Nasdaq on October 9. As the company disclosed in a regulatory filing, , its CEO and chairman, **Robert Sillerman**, is also CEO and executive chairman of **Viggle**, which trades off the exchanges under the ticker symbol VGGL.

Sillerman is a veteran media entrepreneur with a track record that includes serving as CEO and executive chairman of a previous company also called SFX Entertainment. **Clear Channel** bought that one for a reported $4.4 billion in August 2000 to form **Live Nation**. Still, his dual roles as head of two public companies put him in a small club, one that some corporate governance specialists say brings up governance questions.

“That’s very odd,” says **Charles Elson**, a board member at **HealthSouth** and director of the John L. Weinberg Center for Corporate Governance at the **University of Delaware**, when told of the arrangement. “You’re being paid to be a full-time CEO. How on earth could you be the CEO of a second company at the same time? You can’t be in two places at once.”

Sillerman, through a spokesperson, declined requests for comment. According to the regulatory filing, Sillerman received total compensation of $15.1 million last year, all in the form of option awards. A recent filing for Viggle, a social television firm that operates a second-screen mobile app, shows Sillerman received $1.8 million in total pay there for fiscal 2013.

The SFX Entertainment head’s outside responsibilities are clearly disclosed in the filing, which notes that Sillerman’s employment agreement “requires that he devote his time, attention, knowledge, best professional efforts and skills to the duties assigned to him by us.” But, the filing continues, “he is permitted to pursue other professional endeavors and investments that do not violate the terms of his employment agreement, including provisions relative to non-competition and non-solicitation.” Any paid work beyond what’s listed in Sillerman’s contract is “subject to the reasonable approval” of the board.

Sillerman also sits on the board of **Circle Entertainment**, another company traded off the exchanges, where he was CEO and chairman for five years through this January. From 2005 to 2010, he was CEO and chairman of **CKX**, now **Core Media**, which owns the relevant copyrights for the *American Idol* series, **Elvis Presley** and **Muhammad Ali**. He previously held leadership roles with investment firms **FXM** and **MJX**.

SFX Entertainment says in its filing that it believes “Sillerman is qualified to serve as a member of our board of directors because of his extensive background as an executive of companies in the entertainment and music industries.”

Qualifications aside, the list of CEOs serving in the same role at other public companies simultaneously is relatively short. One was the late **Steve Jobs**, who served as CEO of **Apple** and **Pixar** simultaneously for several years. For a current example, **Carlos Ghosn** is CEO of both **Renault** and **Nissan**, though he holds the same position at the **Renault-Nissan Alliance**, a partnership between the two companies.

More often, instances of a CEO running two companies at once involve privately held firms. **Elon Musk** is CEO of both the publicly traded **Tesla Motors** and the private **SpaceX**. A spokesperson declined to comment on Musk's behalf, but a few years ago Musk told *BusinessNewsDaily*, "If you're the CEO of two companies you have to work two bloody asses off and you don't have two asses."

Among other two-company CEOs in the spotlight recently: **Brian Lee**, who was CEO of two private companies, **Shoedazzle** and **Honest**, until August, when Shoedazzle was merged into **JustFab** and Lee stayed on as a director. JustFab declined to make Lee available for comment. Elsewhere, **Twitter** creator **Jack Dorsey** serves as executive chairman of that soon-to-be-public company as well as CEO of privately held **Square**.

One of the higher-profile cases of a CEO with multiple leadership roles was **Tony O'Reilly** of **Heinz**. O'Reilly was often criticized for spending too much time on his outside work overseeing three companies he owned — I**ndependent Newspapers**, **Fitzwilton** and **Waterford Wedgewood**. He stepped down as CEO of Heinz in 1997, after also coming under criticism for his pay and Heinz's corporate performance, although a company spokesman said any complaints were unrelated to the timing of O'Reilly's exit.

Holding senior management positions at two or more different entities is "an unusual situation," says **David Larcker**, director of the corporate governance research program at **Stanford University**'s Graduate School of Business. "From a board perspective, you want to make sure that this guy's focus is on running that company and creating value, and not spread out to the point where there's not enough time and energy to do multiple things."

Larcker adds that the board of a company with two CEOs may also want to pay special attention to potential transactions between the two firms he or she leads.

"What does the other company do?" he says. "Does it have relationships with this company? If so, are the terms of the deals properly vetted?"

Adam Epstein, lead director of **OCZ Technology Group** and a consultant to small-cap companies, points out that so long as the outside work is disclosed, it's up to investors to take it into account. "First and foremost, [make] sure the relevant disclosures are accurate and clear," Epstein writes in an e-mail. Secondly, he adds, "if you don't like the way a company is managed [or] governed, don't buy the stock."

Calpers's global governance principles state that a current CEO should not serve on more than one outside board, and then only if the CEO's company meets certain performance criteria. Those principles also quote **ISS** co-founder **Robert Monks** writing in 1996 that "no CEO has time for more" than running one major corporation and possibly serving as a director of another. ISS policies call for withholding support in director elections from a CEO deemed "overboarded," though not if the CEO runs only a private company.

While activist investors and proxy advisors might not often have to address two-company CEOs, they have typically been clear in their preference for a separate CEO and chairman in most cases. And the trend has moved that direction. According to *Agenda*'s 2013 Board Leadership Guide, the number of non-executive chairmen on Fortune 100 boards is now 24.7%, up from 20.1% last year and 14% in 2009.

A reverse arrangement prevails at a handful of companies: the co-CEO. **Omnicom Group** and **Publicis Groupe**'s recent merger agreement, for instance, calls for a co-CEO arrangement for 30 months. Beleaguered **BlackBerry**, formerly **Research In Motion**, was another prominent example of two CEOs' jointly running a single company.

As for SFX Entertainment, the company specializes in so-called electronic dance music, a market that has swelled in recent years thanks to festivals such as Electric Daisy Carnival and celebrity DJs like Avicii and Skrillex. That makes it an unusual company in ways beyond governance: Its disclosed "risk factors" include canceled events, with a note that the recent Electric Zoo Carnival was cut short "after there were two fatalities, which the media reported to have been related to drug use by the individuals."

None of that may matter to investors if SFX Entertainment does as well for them as Sillerman's previous company by that name.

"Companies can govern themselves however they wish, within reason, and the market will value the same thereafter," notes OCZ Technology Group director Epstein, author of a recent book, *The Perfect Corporate Board*. "Also, governance scrutiny in the history of the U.S. capital markets tends to be inversely proportional to share price appreciation. Accordingly, if SFX goes on to be a huge home run, no one will care about the CEOs' other pursuits."

In other words, as long as the music is playing, the markets will dance.