The Deal

SuperValu's Private Jet at Issue as Battle Escalates

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SuperValu Inc. (SVU) has completed the sale of seven distribution centers this month—but the neophyte activist at the company's gate isn't backing down.

The insurgent investor, Jason Aintabi of Blackwells Capital, on Tuesday, May 29, escalated a change-of-control director fight he has underway at the embattled grocery store chain and distributor, arguing that company's private jet is being used "by non-employees for non-business purposes."

"To date, Supervalu has refused to provide information about the use of the private jet by the family members of the executives and directors and the use of the jet for non-business purposes," Aintabi said in a statement.

Aintabi, who founded his fund in 2016 with his own capital, wants SuperValu to split itself in two after it sells and leases back real estate. In an interview earlier this year with The Deal, Aintabi said splitting the business in two would make it more likely that potential buyers like United Natural Foods Inc. (UNFI) would swoop in and buy one of the units, the company's wholesale business.

Eden Prairie, Minn.-based SuperValu is divided into two businesses, a grocery store chain and a much better-performing wholesale business that supplies third-party grocery stores.

The campaign comes as SuperValu's shares have struggled in recent months, trading Tuesday at $17.95 a share, down from a 52-week high of $29.12.

A SuperValu spokes woman declined to comment on the use of the jet except to say its policies governing use of the company's jet are disclosed in the company's proxy statement. Aintabi is seeking to have shareholders vote on a non-binding proposal urging the distributor and grocer to provide more disclosure around the use of its jet. It is unclear whether SuperValu will seek to remove the proposal from consideration. The company spokesperson noted that the items to be considered at the annual meeting will be disclosed in securities filings in "due course."

In March, SuperValu agreed to sell 21 of its 38 Farm Fresh stores for $43 million, a move that was likely made in response to the activist campaign. Earlier this month, also likely in response to Blackwells campaign, SuperValu completed a deal to sell and lease back seven of its distribution centers as part of a previously announced agreement to sell eight of its owned warehouses. The sale of the eighth property is expected to be completed in October. The retailer said the aggregate purchase price of the units is about $483 million, with proceeds being used to cut debt and pay off a mortgage related to one of the sold properties.

The sale-lease back follows a Blackwell's SuperValu presentation issued in February, which, among other recommendations, urged the company to execute $225 million to $375 million in sale-lease backs on its wholesale distribution center real estate. Even though the company has conducted a sale-lease back program raising revenue beyond what Aintabi appears to have been seeking, the move isn't appeasing the activist who also wants the company to set up a stock buyback program, using at least part of the proceeds from the sale for capital distributions.

According to a source close to Blackwells, the fund acknowledges that SuperValu's sale-lease back effort is a step in the right direction. However, the firm is also is frustrated that SuperValu has chosen to use part of the proceeds from the real estate sales to pay down debt due in 2021, four years from now, and isn't even considering the employment of as little as 10% of the new cash to set up a new capital distribution program for aggrieved shareholders, the person said.

Activists often press retailers to monetize their real estate in an effort to raise cash for stock buybacks and dividends. Many retailers, particularly those with struggling share prices, comply with activists' demands. For example, activists in recent years have pushed for sale-lease backs of real estate at Bob Evans Farms Inc., Macy's (M), TravelCenters of Amercia LLC (TA) and Darden Restaurants Inc. (DRI). The effort generates short-term cash, often used to pay down debt or to buy back shares. However, opponents argue that a lack of real estate can hurt retailers over the long term, especially during recessionary periods when companies would like to point to real estate in their portfolio as collateral as they seek to re-negotiate loan terms.

To back his efforts, Aintabi is seeking to take control of SuperValu by moving to elect six dissident director candidates to the company's nine-person board. He has set up a website to back his campaign and his candidates have backgrounds in grocery retailers, business turnarounds and food distribution. For example, nominee Richard Anicetti, was the ex-CEO of both The Fresh Market and Food Lion. Steven Baer, another nominee, is a partner at High Ridge Partners, a turnaround, restructuring and financial consulting services company.

Blackwells also hiked its stake in SuperValu to 7.3% from 4.2%, according to a securities filing on Tuesday. The fund has been steadily accumulating more shares as the contest grows closer.

Nevertheless, the date of the contest has yet to be set even though SuperValu typically holds its annual meetings in mid-July. SuperValu also hasn't set a record date for the meeting, which suggests that the earliest the company could hold its annual meeting is likely mid-August. Shareholders who own shares on or prior to the record date are permitted to vote at the meeting, for incumbent or dissident director candidates.

Any move to postpone the annual meeting to September—more than 13 months after the previous annual meeting—could drive Blackwells to file a lawsuit in Delaware, where SuperValu is incorporated. Delaware courts typically compel companies, absent extraordinary circumstances, to hold their meetings within at least 13 months of each other. Aintabi may also need to file a lawsuit to compel the business to provide books and records.

SuperValu is likely delaying its meeting announcement as it seeks to conduct just enough M&A to appease disgruntled institutional investors. A continued postponement also raises a question of whether the fight over the future of SuperValu will shift towards a litigation battle in Delaware. Sources close to Blackwells suggest that the fund is ready to launch a Delaware litigation fight at SuperValu if the company doesn't move to hold its annual meeting and proxy fight within 13-months of its previous annual meeting, which took place on July 19, he added.