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US Foods at odds with investor over board control

By

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Sachem Head Capital Management LP, which owns a 8.7 percent stake — approximately \$700 million — in U.S. Foods, has nominated seven directors in an attempt to seek control of US Foods Holding Corp.'s 10-member board.

Sachem Head said it is looking to wrest control of the company to improve profitability. "A new culture of accountability is required at US Foods, and we believe that change must start in the boardroom," said Scott Ferguson, Sachem Head's principal.

US Foods countered that it has demonstrated an ability to create sustainable value for shareholders and pointed to continued opportunities to grow market share, expand gross margins and increase operational efficiencies. "The initiatives that drive these outcomes have been under way for over a year and largely overlap with the suggestions made by Sachem Head," the company said in a statement.

In December, the US Foods board's Nominating and Corporate Governance Committee interviewed three director candidates Sachem Head privately proposed.

Following these interviews US Foods said it offered to appoint two new directors to the board, including Ferguson, Sachem Head's principal, and a mutually agreed-upon second director with relevant supply chain leadership experience. The company said Sachem Head made the appointment of Bernardo Hees as executive chairman a precondition for any engagement.

"In the course of its evaluation of Bernardo Hees, the board identified significant concerns regarding his leadership roles at previous companies, which Mr. Hees was unable to dispel during the interview process. As a result, the board was not willing to appoint him to the board, let alone name him executive chairman as originally proposed by Sachem Head," the company said.

Among other things, the Brazilian SEC investigated Hees as the former CEO and director of America Latina Logistica over financial irregularities in the company's financial statements. In 2019, ALL and its former executives and directors, including Hees, paid a fine of \$1.99 million to settle with the Brazilian SEC.

Separately, Hees stepped down as CEO of Kraft Heinz in 2019 after the company had to take a \$15.4 billion impairment charge. Kraft Heinz's stock price fell over 50 percent under Hees' leadership, from the close of the merger of Kraft and Heinz in 2015 until Hees departed in 2019, representing a loss in market capitalization of over \$50 billion.

In September 2021, the U.S. Securities and Exchange Commission found Kraft Heinz had falsified supplier contracts to achieve cost savings and artificially inflated earnings during Hees' tenure as CEO. Kraft Heinz consented to a cease-and-desist order and paid a civil penalty of \$62 million. More than 20 federal and state-level lawsuits against Kraft Heinz have been filed since the SEC investigation became public, all of which name Hees as a defendant.

"At US Foods, we believe that integrity in leadership matters," the company said. "Mr. Hees' interviews did not allay the board's concerns about Mr. Hees' oversight and leadership that resulted

in these financial improprieties."

Ferguson said, "Bernardo's career experience reflects a unique parallel to the company's operations — he has been the CEO of a foodservice customer (Burger King), a foodservice supplier (Kraft Heinz) and a route-based network (ALL). We believe his experience can provide the company's boardroom with operational expertise and discipline that would be difficult to replicate in any other single director."

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