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Phoenix Rising? Proxy war brewing over board makeup.

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By Sean Wolfe

A proxy fight is brewing over the direction of Phoenix Technologies between the new management of the company and its largest single shareholder, hedge fund Ramius Capital Group.

It's the latest in a series of misfortunes to plague Phoenix, which makes firmware—software embedded into computer chips that allows the computer to boot up, and helps to control various devices.

That capability alone may seem ancient, and of questionable relevance in a technology market where sexier sectors like social networking, video sharing, and web applications are drawing the most investor attention and capital.

But viewed solely as a cash-spinner, there's enough to have drawn the attention of New York-based Ramius, whose investment thesis seeks steady returns (5 to 10 percent above T-Bill performance) in market spaces not subject to "market-directional" volatility.

Because hardware makers such as Microsoft and Intel pay Phoenix a fee to use their firmware, that makes for a predictable revenue stream. Moreover, despite its financial struggles in recent years, Phoenix remains a market leader in a sector where competitors are few.

The company's revenues have taken a hit in recent years, owing to the company's costly experiments with new product lines that failed to take off, and questionable financial reporting.

That brought about a crisis and led to the sacking of its CEO Albert Sisto, who was followed out the door by the firm's CTO and its CFO.

Turnaround Specialist

In September, CEO Woodson Hobbs came onboard to turn the company around and began his tenure by issuing pink slips to about 60 workers, or 15 percent of the company's employees. That cut operating expenses by 35 percent and helped to buoy the company's share price.

Mr. Hobbs, known for turning around Intellisync and selling it to Nokia last February, has his own vision and wants to expand into new markets such as wireless devices.

Ramius Capital has another vision—taking the company private. To that end, the fund offered a series of increasing bids—from \$5.05 to \$5.25 per share—to buy the rest of

the company. But Mr. Hobbs' changes at the company buoyed the stock above Ramius' bid, rendering the hedge fund's offer "moot," in Mr. Hobbs' words.

Phoenix's first quarter revenues fell from \$18.6 million in the year-ago quarter to \$9.7 million, but were up 16 percent from the fourth quarter. The company also posted a net loss of \$8 million, or \$0.31 per share, which has widened slightly from \$7.9 million, or \$0.32 per share, in the year-ago period.

"They've been tenacious," Mr. Hobbs said. "They have a variety of plans they use, anywhere from getting management replaced to getting board seats. I'm not particularly worried about that, since they've stated in some materials that they're happy with what we're doing. What concerns me is they don't have the same objectives as some of the other shareholders, and they might have a short-term view of the potential of this company."

While Phoenix's stock price has slipped past the hedge fund's top bid to buy the remainder of the company, Ramius' partner Jeffery Solomon said in a letter to the firm's shareholders that it was premature to "trumpet victory."

"We remind you that, despite initial positive first steps in fiscal year 2004 and early fiscal year 2005, the previous turnaround plan ultimately resulted in significant damage to the company's core business and enormous destruction of stockholder value," he wrote. "We also remind you that the board's two director nominees oversaw and 'rubber-stamped' the prior management's failed execution. Qualified Board oversight is critical to the company's future."

Self-Serving Agenda

Ramius also hasn't lost hope of taking the company private. "History has shown that this board of directors, when faced with the pressures of being a public company, has responded with poor business decisions that have had disastrous consequences for Phoenix and its stockholders," noted Ramius' Jeffrey C. Smith.

In a response to shareholders, Phoenix's Board Chairman David Dury accused Ramius of having a self-serving agenda, namely to "promote a sale of Phoenix to the Ramius Group at a price which your board believes is unfairly low and which would give most of the value of the company to the Ramius Group."

Despite the failed buyout bid, Ramius continues to seek the addition of two executives to the board, indicating it has its own ideas for a turnaround strategy.

One of those is John Mutch, former CEO of Peregrine Systems, which was sold to Hewlett-Packard in 2005 for \$425 million. The other is entrepreneur and investor Philip Moyer, former general manager for global customers at Microsoft.

Analysts who follow the company closely were mute on the board make-up dispute, saying they were taking a "wait and see" approach.

Like most domestic disputes, this one is slated for settlement on Valentine's Day, February 14, 2007, when shareholders are scheduled to vote on board membership.