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Big Hoosier investor fights Smulyan offer

IBJ Staff report

An Elkhart money manager whose firm is one of Emmis Communications Corp.'s largest investors said in a letter to CEO Jeff Smulyan on Wednesday afternoon that he's misusing his clout as controlling shareholder to try to buy the company too cheaply.

"Jeff, we implore you to be magnanimous," Frank Martin, managing partner of Martin Capital Management, said in the letter. "It is within your power to do what is fair and just."

Frank Martin says in the letter that his firm intends to vote against Smulyan's proposal to purchase the 83 percent of the company he doesn't already own for \$15.25 a share, or a total of \$471 million.

Martin Capital Management owns 2.7 million Emmis shares, or 7.2 percent of shares outstanding.

Emmis announced May 8 that it had received Smulyan's buyout offer and that the board had appointed an independent committee to review it.

In Wednesday's letter, Martin takes issue with Smulyan's statement in the May 8 announcement that he "will not agree to any other transaction involving Emmis."

Smulyan, 59, can swat down any offer that might surface, even a more lucrative one, because Emmis' corporate charter gives most of his shares extra voting power in almost all circumstances. Because of that extra power, his voting control is 67 percent.

The sole exception is when he's voting on his own buyout proposal. That means outside shareholders have the firepower to shoot down Smulyan's offer but not to approve any alternative that might emerge.

In Wednesday's letter to Smulyan, Martin wrote that because of the extra voting power, "you have effectively negated the safeguards inherent in a system that depends on checks and balances."

Martin Capital isn't the first major investor to line up against Smulyan's bid. Affiliates of Noonday Asset Management of Charlotte, N.C., which owns 3.1 million shares, or 9 percent of the shares outstanding, said in a May 12 SEC filing that it plans to "urge the board of directors not to accept this offer at this price."

Martin Capital is a low-profile, value-investment firm with an exemplary record. The firm, which has \$700 million in assets under management, posted an annualized return of 15 percent on its equity investments for the 10 years that ended last December. That compares with an annualized return of 9.1 percent for the S&P 500.

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