

TAKING DOWN  
THE "MERGER TAX" 18

MESSAGING LESSONS FROM  
SUNDAY TALK SHOWS 24

A CONVERSATION WITH VANGUARD  
CEO BILL MCNABB 30

# IR UPDATE

THE VOICE OF THE INVESTOR RELATIONS PROFESSION

JANUARY/FEBRUARY 2018

## THE MiFID II EFFECT: RESEARCH IN FLUX

MiFID II regulations are now the law of the land across Europe, sparking change in the sell-side research business as banks and brokerages forge fee-based research models.

National  
Investor  
Relations  
Institute  
[www.niri.org](http://www.niri.org)



# Missing Something Vital?



**With massive outflows of investment from active to passive strategies, are you practicing IR the way you always have?**

It's critical for IR to adapt to market changes. *Knowing when it's about you – and when it's not – is vital.* Market Structure Analytics help you track passive investment and other behaviors driving your stock price. You'll have the answers management wants when the stock moves unexpectedly. Help your Board better understand how your

stock trades in a market where fundamentals are often subordinated to robots and computer models. Measuring market behaviors is an essential IR action leading to better decisions about how to spend your time and resources. *You can continue to ignore the passive investment wave, but having no answer when the CEO asks is...awkward.*

Call **303-547-3380** or visit **ModernIR.com**



**ModernIR**  
Market Structure Analytics™

**President and CEO**

Gary A. LaBranche, FASAE, CAE

**Vice President, Strategic Communications**

Ted Allen  
tallen@niri.org

**Editor**

Al Rickard, CAE  
arickard@assocvision.com

**Art Direction**

Thor Design Studio  
colby@thor-studio.com

**Letters to the Editor**

*IR Update* welcomes letters to the editor. Please send feedback to arickard@assocvision.com.

**About NIRI**

Founded in 1969, the National Investor Relations Institute ([www.niri.org](http://www.niri.org)) is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. NIRI is the largest professional investor relations association in the world, with more than 3,300 members representing over 1,600 publicly held companies and \$9 trillion in stock market capitalization. NIRI is dedicated to advancing the practice of investor relations and the professional competency and stature of its members.

**About *IR Update***

*IR Update* is published by the National Investor Relations Institute as a service to its members.

ISSN 1098-5220

© 2018 by the National Investor Relations Institute. All rights reserved. For change of address, contact:

NIRI-IR Update  
225 Reinekers Lane, Suite 560  
Alexandria, VA 22314-2875 USA  
Phone: (703) 562-7700  
[memberservices@niri.org](mailto:memberservices@niri.org)  
[www.niri.org](http://www.niri.org)

**Advertise in *IR Update***

With a monthly circulation of 3,500, *IR Update* is an economical method to reach IR professionals. For more information on ad rates and sponsorship opportunities, please e-mail Aaron Eggers at [aeggers@niri.org](mailto:aeggers@niri.org).



2017 Senior Roundtable Steering Committee Chair Greg Secord (center) and incoming Committee Chair Matthew Stroud (right) were instrumental in leading the committee's efforts to compile an excellent slate of speakers at the 2017 Senior Roundtable. They are shown here at the event with NIRI Board Chair Lee Ahlstrom, IRC. [READ MORE ON PAGE 10.](#)

**12 SELL-SIDE ANALYSIS**

## The MiFID II Effect: Research in Flux

MiFID II regulations are now the law of the land across Europe, sparking change in the sell-side research business as banks and brokerages forge fee-based research models.

**BY AL RICKARD, CAE**

**18 LEGAL ISSUES**

## The Uphill Battle to Take Down the 'Merger Tax'

A potential clampdown on meritless merger objection lawsuits hasn't played out as hoped.

**BY PATRICK GALLAGHER**

**24 COMMUNICATIONS**

## Messaging Lessons From the Sunday Morning Talk Shows

IR professionals should know their company's message, customize it for their audience, and encourage C-suite executives to practice the delivery of key themes.

**BY ROSS LEVANTO**

**4 At the Bell**

► Beginnings

**BY GARY A. LABRANCHE,  
PRESIDENT AND CEO  
NATIONAL INVESTOR  
RELATIONS INSTITUTE**

**6 NIRI Now**

► NIRI Elects New Board Members, Creates New Board Seats

► NIRI Names New Senior Roundtable Steering Committee Chair and Members

► On the Move

► Professional Development Calendar

► IRC Program Implementing Major Enhancements in 2018

► NIRI Senior Roundtable Offers Networking, Industry Insights

**30 Spotlight on Chapters**

► A Conversation with Bill McNabb, Vanguard CEO and Chairman

**BY THERESA MOLLOY**

# Beginnings



**Gary A. LaBranche,  
FASAE, CAE**

President and CEO  
National Investor Relations  
Institute  
glabranche@niri.org

**J**anus is the ancient Roman god of transitions, gateways, and other passages. While January is actually named after Juno, it is hard not to think of Janus as we start a new year. He was known as the god with two faces, as he could look both forward and backward in time. Such vision would certainly be a helpful skill for everyone reading this inaugural 2018 issue of *IR Update* magazine.

The year ahead will offer changes and challenges

for investor relations professionals and the companies that they serve. The advent of CEO pay ratio disclosure will make headlines, as pundits and activists name and attempt to shame their targets with incendiary misinterpretations of data. The inexorable changes brought about by MiFID II will restructure sell-side research coverage. The mid-term Congressional elections in November will bring even sharper discourse and evermore intensity to our national policy debates.

One wonders if Janus would shut his eyes in his struggle to make sense of it all.

I hope you won't look away, as this issue helps shed some light on some of these issues. MiFID II, which will be the topic of the year, is explored, as is the potential for paid research, in this month's cover story. Further insight can be found in the Spotlight on Chapters article on page 30 summarizing the recent NIRI New York program featuring Bill McNabb, just before he retired from his role as CEO of Vanguard. And to keep your eyes on the horizon, spend some time with the article on page 18 on the efforts to rein in frivolous lawsuits over mergers, an important issue with national implications.

You'll likely spot a few familiar faces on the pages within, especially on the wonderful two-page photo essay from the recent annual meeting of the Senior Roundtable (SRT) on page 10. (If you are an IR practitioner with 10 years of experience, please learn more about how you can apply for SRT membership at [www.niri.org/srt](http://www.niri.org/srt).)

2018 is also a gateway of sorts for NIRI, as it leads up to the 50th anniversary of the Institute's founding. Plans are being developed now, but I see a celebration of both the past and the future of NIRI and of the IR profession in our future.

Our new year of change also includes shifting the publication schedule for *IR Update* to six times per year. The magazine will be larger with more content, and we will continue to provide you with valuable insights to enhance your role as an IR professional. We also plan to offer a new daily newsletter and regular podcasts, plus an expanded lineup of NIRI webinars and seminars to help you stay informed.

So, eyes forward! Onward, with courage, into 2018. Make Janus proud. 





Thursday, March 22, 2018  
Cipriani Wall Street, New York

magazine

# IR Magazine Awards US 2018

## Celebrating IR excellence

In 2018, for the very first time, we'll be presenting two types of award categories: researched and nominated, celebrating the success of both individuals and companies that are leading the way in IR across the US.



Visit [irmagazine.com/usawards](http://irmagazine.com/usawards) for more information and to book your table now!

# NIRI Elects Board Members, Creates New Board Seats



Patrick Davidson



Jennifer Driscoll



Jeffrey K. Smith



Ruth Venning



Michael Becker

**N**IRI members elected four new directors to four-year terms on its Board of Directors at the NIRI Annual Meeting in November 2017. They include **Patrick Davidson**, vice president, investor relations, Oshkosh Corporation; **Jennifer Driscoll**, IRC, director of investor relations, E. I. DuPont; **Jeffrey K. Smith**, IRC, CFA, staff director, investor relations, FedEx Corporation; and **Ruth Venning**, executive director, investor relations, Horizon Pharma.

NIRI members approved a bylaw amendment to create a new Associate Member Director seat to represent the views of NIRI service providers. **Michael Becker**, executive vice president, international business strategy, Business Wire, was elected to this new position and will serve a two-year term. NIRI members also voted for a bylaw amendment to create an 18th board seat for the outgoing Board chair to provide continuity in leadership.

NIRI President and CEO Gary A. LaBranche, FASAE, CAE, said, "It gives me great pleasure to welcome these accomplished IR professionals to the NIRI Board of Directors. They will play a critical role in helping the Board to provide strategic guidance to ensure the long-term vitality of our organization and the IR profession."

LaBranche added, "I would like to thank those Board members who are stepping down after their dedicated service to NIRI: David Calusdian, Angie McCabe, and Nils Paellmann. We owe them a debt of gratitude for their service to our members and the IR profession."

"I also want to thank outgoing Board Chair Valerie Haertel for her steady leadership over the past year as NIRI has completed a CEO transition, revitalized its professional development offerings, and expanded its advocacy efforts," LaBranche said. **IR**

**CALENDAR**

These upcoming events provide excellent professional development opportunities for NIRI members. Learn more at [www.niri.org/full-calendar](http://www.niri.org/full-calendar).

**JANUARY****JANUARY 18, 2018 • WEBINAR****ARE WE MANAGING THE STREET OR IS THE STREET MANAGING US?**

The modern landscape of earnings guidance continues to evolve and is always full of pitfalls. And when analyst expectations and company performance don't line up, where do IROs draw the line between keeping investors and sell-side analysts informed and providing too much disclosure before earnings are released? Hear from a panel of experts on how to navigate these challenges.

**MARCH****MARCH 12, 2018 - NEW YORK, NY****UNDERSTANDING CAPITAL MARKETS**

Gain an understanding of how the capital markets big picture fits together, including how and why companies issue shares and bonds, how they are traded, and how listed companies are expected to communicate.

**MARCH 13-14, 2018 - NEW YORK, NY****FINANCE ESSENTIALS**

Learn the basics of financial markets, corporate finance, financial statements, and valuation. This course provides IROs with the confidence to participate in financial discussions and engage with investors, analysts, the business media, and the C-suite.

**JUNE****JUNE 10-13, 2018 • LAS VEGAS, NV****2018 NIRI ANNUAL CONFERENCE**

This is a must-attend event for anyone associated with the investor relations profession. The world of IR and the entire capital markets ecosystem is changing rapidly and dramatically. NIRI is the best and most efficient way to understand the unknown and maximize your impact. **IR**

## EDITORIAL ADVISORY BOARD



**Matthew Stroud**



**Deb Wasser**



**Cindy Klimstra**



**Chris Stent**



**Tabitha Zane**

Geoffrey Buscher  
*Expeditors International*

James Farley  
*Investment Technology Group, Inc.*

Patrick Gallagher  
*Dix & Eaton*

Eileen Gannon  
*Workiva*

Rebecca Gardy  
*SecureWorks Corp.*

Heather Kos, IRC  
*Ingredion*

Gregg Lampf  
*Ciena Corporation*

Nicole Noutsios  
*NMN Advisors*

Evan Pondel  
*PondelWilkinson*

Jim Storey  
*Premier Inc.*

Wendy Wilson  
*The Bon-Ton Stores*

Theresa Womble  
*Compass Minerals*

## NIRI BOARD OF DIRECTORS

Lee M. Ahlstrom, IRC, Chair  
*Paragon Offshore*

Ronald A. Parham, Chair-Elect  
*NW Strategic Communications*

Valerie Haertel, IRC,  
Immediate Past Chair  
*BNY Mellon*

Liz Bauer  
*CSG Systems International, Inc.*

Michael Becker  
*Business Wire*

Patrick Davidson  
*Oshkosh Corporation*

Jennifer Driscoll, IRC  
*E. I. DuPont*

Shep Dunlap  
*Mondelēz International*

Hala Elsherbini  
*Halliburton Investor Relations*

Sidney G. Jones  
*Genuine Parts Co.*

Gary A. LaBranche, FASAE, CAE  
*NIRI*

Jason Landkamer  
*Fluor Corporation*

Carol Murray-Negron  
*Equanimity, Inc.*

Melissa Plaisance  
*Albertsons Companies*

Greg Secord  
*Open Text Corporation*

Jeffrey K. Smith, IRC, CFA  
*FedEx Corporation*

Julie D. Tracy, IRC  
*Wright Medical Group N.V.*

Ruth Venning  
*Horizon Pharma*

Mark Warren  
*Vulcan Materials Company*

# New SRT Steering Committee Chair and Members

**N**IRI recently named a new chair and four new members for its Senior Roundtable (SRT), Steering Committee. The new chair is **Matthew Stroud**, senior advisor, Arbor Advisory Group.

New members of the committee include **Deb Wasser**, IRC, executive vice president, Edelman Financial Communications & Capital Markets; **Cindy Klimstra**, managing director, Clermont Partners, LLC; **Chris Stent**, founder, Mission Street Capital Advisors, LLC; and **Tabitha Zane**, vice president, investor relations, TopBuild. 

## ON THE MOVE



**Paul Surdez** is the new vice president of corporate affairs and investor relations at Envigo. The appointment is a result of Envigo's merger agreement with Avista

Healthcare Public Acquisition Corp., which envisions Envigo becoming a publicly traded company. Surdez previously led IR programs at Laboratory Corporation of America (LabCorp) and Covance.



**Roger Clark** is the new senior vice president, investor relations, at Time Inc. He succeeds Jaison Blair, who has taken on new responsibilities overseeing aspects of the company's strategic transformation program. Clark has more than 20 years of financial leadership and IR experience and was most recently chief financial officer at United Enterprises Corp.



**Alexandra Deignan** is the new head of investor relations at Lazard Ltd. She has more than 20 years of experience in investor relations and investment banking and was

previously vice president, investor relations, for Schnitzer Steel Industries from 2010-2017. She also served as director of investor relations for Curtiss-Wright from 2003-2010 and in the investment banking division of Salomon Smith Barney, from 1998-2002. She began her career at Daniel J. Edelman in 1993. 



**Brandon Korbey** joined Morrow Sodali as director of business development – West Coast. The company supports companies around the world in their shareholder engagements. Korbey was previously vice president of sales and field marketing for Boardvantage, Inc., where he helped companies choose, implement, and adopt board portals.

# IRC Program Implementing Major Enhancements in 2018

BY IMAN HANNON

**N**IRI is introducing major enhancements to the Investor Relation Charter (IRC®) program early this year to increase the value of the credential and to improve the experience for IRC applicants.

## Trademark

NIRI is pleased to report that the U.S. Patent and Trademark Office has placed the IRC® certification program mark on the Principal Register. This mark will protect the accomplishments and reputation of IRC credential holders, in addition to providing NIRI with federal safeguards of its proprietary rights to use this mark.

## Credential Engine Registry

The IRC is now included in the Credential Engine Registry, a new, centralized online credential-finding tool that provides access to credentialing information, and allows educators, employers, students, and professionals to easily find relevant credentialing program information. This search engine will also enable individuals and organizations to search and compare credentials, just as travel apps are used to compare flights, rental cars, and hotels. Visit [www.credentialfinder.org](http://www.credentialfinder.org) and search for the Investor Relations Charter (IRC) under "Credentials" or for the National Investor Relations Institute (NIRI) under "Organizations."

## Digital Badges

NIRI plans to introduce digital badging to the IRC program. Simply put, a digital badge is an indicator of accomplishment, expertise, or skill that can be displayed, accessed and verified online. The IRC badge will include the competencies demonstrated to earn the IRC certification. It allows IRC holders to easily share their accomplishment with their social and professional networks via LinkedIn, Facebook, and Twitter. Digital badging lets IRC holders instantly turn their moment of pride into clicks!

## Letter to Employer

To highlight the importance of the IR core competencies, and to continue broadening awareness of the IRC credential and investor relations within C-Suites, NIRI will be including in the enhanced certification welcome kit a congratulatory letter directed to the employers of new IRC holders notifying them of the certificant's accomplishment.

## Personal Press Release Template

Introducing a personal press release template to new IRC holders in 2018. This tool will enable IRC holders to easily create press releases to promote their achievements and help broaden awareness around this new professional credential.

## Reduced Waiting Period

To give IRC applicants more flexibility, the waiting period between the final exam application deadline and the start of the testing window has been reduced to three weeks from six weeks. Here is the new 2018 exam schedule and application deadlines:

INITIAL APPLICATION DEADLINE	FINAL APPLICATION DEADLINE	TESTING WINDOW
January 12, 2018	February 9, 2018	March 3 - 10, 2018
April 27, 2018	May 25, 2018	June 16 - 23, 2018
September 25, 2018	October 23, 2018	November 13 - 20, 2018

## Test Center Network Expansion

NIRI's testing partner, PSI, has expanded its test center network to approximately 300 centers within the United States and 35 countries around the world, giving examinees much more flexibility in finding a convenient exam location. Most of these centers are PSI-owned and the proctors are PSI employees.

## Instant Exam Scoring

Waiting to receive exam results is difficult. Starting this year, IRC candidates will receive provisional examination results before leaving the test center. Official results will continue to be released within a reasonable time after the exam for quality check purposes.

Look for more updates throughout 2018 in the new IRC section of NIRI's *IR Update Weekly* e-newsletter.

NIRI extends its appreciation to the hundreds of members who volunteered thousands of hours to develop this program, and to all IRC holders who have shown exemplary leadership and support by taking the exam and becoming Investor Relations Charter holders. 

---

**IMAN HANNON**, CM is director, certification for NIRI;  
[ihannon@niri.org](mailto:ihannon@niri.org).



# DISCOVER

JUNE 10 - 13, 2018 | WYNN LAS VEGAS | #NIRI18

**REGISTER BY MARCH 31  
FOR ADVANCE REGISTRATION RATES  
[www.niri.org/conference](http://www.niri.org/conference)**

**For sponsorship opportunities, contact Aaron Eggers at [aeggers@niri.org](mailto:aeggers@niri.org).**

# NIRI Senior Roundtable Offers Ne

The 2017 NIRI Senior Roundtable was held November 29-December 1, 2017 at The Montage in Laguna Beach, CA.

The event was an opportunity for experienced IR practitioners to network and learn from leaders across the capital markets sector, including institutional investors, legal experts, a sell-side activism expert, current and former corporate CEOs and CFOs, a crisis management expert, and more.

Economist Brian Beaulieu, CEO of ITR Economics, delivered an optimistic forecast of economic growth during the next decade.

Steven Barg, co-head of M&A solutions at Goldman Sachs, and Sebastian Niles, partner at Wachtell, Lipton, Rosen & Katz, talked about seizing the narrative about your company to effectively engage with activists in a session moderated by Matthew Stroud, senior advisor at Arbor Advisory Group.

These were among the many informative sessions offered. NIRI invites IR practitioners with at least 10 years of experience, to learn more about the Senior Roundtable and apply for SRT membership at [www.niri.org/srt](http://www.niri.org/srt). **IR**



▲ 2017 Senior Roundtable Steering Committee Chair Greg Secord of Open Text Corporation (center) and incoming Steering Committee Chair Matthew Stroud of Arbor Advisory Group (right) with NIRI Board Chair Lee Ahlstrom, IRC, of Paragon Offshore.



▲ Sarah Keohane Williamson, CEO of Focusing Capital on the Long Term (FCLT) Global, spoke about the challenges of "short-termism" driven by quarterly guidance, consensus estimates from analysts, and the constant pressure to hit these numbers. She is working to change this dynamic using strategic conversations and practical tools and approaches designed to encourage long-term behaviors in business and investment decision-making.



▲ The Montage in Laguna Beach provided a scenic oceanside venue for meals, social events, and relaxation.



▲ The far-reaching effects of MiFID II on the capital markets – especially in research – were analyzed by (left to right) Matt Lyons, senior vice president and global trading manager at the Capital Group; Mark Pellegrino, managing director and head of the market solutions group at Balyasny Asset Management L.P.; moderator Sam Levenson, chief executive officer at Arbor Advisory Group; and J.T. Farley, managing director, investor relations and corporate communications, at Investment Technology Group, Inc.

# Tworking, Industry Insights



▲ Senior Roundtable attendees enjoyed beautiful sunsets over the Pacific Ocean.



▲ Helio Fred Garcia, president of Logos Consulting, talked about what drives trust in organizations and how effective crisis response can be a competitive advantage. He noted that the number of CEOs and executive teams that are unprepared for crises is “startling,” based on real-life examples of several companies that recently faced crises. He delivered an in-depth review of crisis response strategies and practices.



▲ Career advancement strategies were discussed by (left to right) Jim Hinrichs, former CFO, Alere and CareFusion; Randi Paikoff Feigin, president and CFO at Arx Pax, Inc.; Terry Huch, vice president, supply chain, CF Industries; and moderator Elizabeth Higashi, CFA, vice president, investor relations, Herc Holdings, Inc.



▲ The importance of environmental, social, and governance (ESG) issues continue to rise. For example, 10 percent of 401(k) investments in Vanguard funds are in sustainable funds. A panel including (left to right) Jane Okun Bomba, executive vice president and chief administrative officer at IHS Markit; Guillaume Mascotto, vice president, investment stewardship at American Century Investments; and moderator Sally Curley, IRC, CEO of Curley Global IR, LLC, offered ideas on how to position your company for better ESG ratings from investors.



▲ Members of the NIRI Rocky Mountain Chapter gave Jane Okun Bomba (second from left) a “Rocky Mountain Sendoff” in honor of her retirement from IHS Markit, where she was EVP and chief administrative officer. She told NIRI members during a session that she was delighted to spend her last day on the job with her professional colleagues at the Senior Roundtable. Joining Bomba in the photo were Ann Tyler Scott of Ball Corporation (far left), Karla Kimrey of Lincoln Churchill Advisors (second from right), and Kevin Kim of Molson Coors (far right).



▲ Mark Seligson, president at Big Pivot Partners, displayed his musical talent in leading his band, “Really Classic,” as they played popular hits at the closing night dinner.

# THE MiFID II EFFECT: RESEARCH IN FLUX

**MiFID II regulations are now the law of the land across Europe, sparking change in the sell-side research business as banks and brokerages forge fee-based research models.**

BY AL RICKARD, CAE

**W**hen the Markets in Financial Instruments Directive (MiFID) II regulations took effect in Europe on January 3, 2018, it signaled a global shift in how equity research will be handled.

While European investment banks move aggressively to unbundle trading commissions and research fees to comply with the new rules, the global nature of trading means that banks and brokerages everywhere are also moving toward this new model.

So what will research look like going forward? Will banks sell their research a la carte? To what extent will buy-side fund managers pay a fee for research? What price points will the market bear?

Will some mid-cap and small-cap companies be forced

to pay for their own research to generate adequate analyst coverage of their firms?

A shakeout in the volume of sell-side research has been underway for some time, with MiFID II accelerating the trend. If this means the number of analysts covering the most popular large-cap companies goes from 40 to 20, that's likely not a problem. But if a mid-cap or small-cap company covered by 4-5 analysts suddenly has only one analyst (or none) covering it, they need to look at new options – possibly including paying for research themselves.

## An Uncertain Future

Faced with more questions than answers at this early juncture, no one claims to know how it will ultimately play out.

The Securities and Exchange Commission (SEC) recently resolved a conflict between European and U.S. rules regarding paid research when it announced a 30-month suspension of a provision of the Investment Advisers Act of 1940 that prohibits U.S. banks and brokerages from charging fees for research unless they register as investment advisors. This provided some clarification – at least for the short term – but uncertainty still remains.

Matt Lyons, CFA, senior vice president and global trading manager at the Capital Group, predicts that the transparency in research costs required under the new regulations “will cause a sea change in what investment clients think about research.” His buy-side firm manages \$1.5 trillion in assets.

Lyons offered this comment as part of a session called “The Creeping Role of MiFID II” at the recent NIRI Senior Roundtable, where Sam Levenson, CEO of Arbor Advisory Group, moderated a panel that also included Mark Pellegrino, managing director and head of the Market Solutions Group at Balyasny Asset Management; and J.T. Farley, managing director, investor relations and corporate communications at Investment Technology Group, Inc.

Describing the impact of MiFID II on the sell-side, Theo O’Neill, IRC, vice president of investor relations for Corbin Advisors offered his views recently in a NIRIVirtual Chapter webinar on *The Evolution of Sell-Side Research*: “It’s like being in a room blindfolded with an elephant and trying to describe what the elephant looks like.”

Drawing conclusions from the SEC action, he said, “European banks will extend their paid research model to the United States because of the SEC ruling; it is a lot easier to make research an unbundled paid product on a global basis. The fees will likely range from free to a couple hundred thousand dollars per year. But no one knows what research is worth because it has always been a cost center and not a revenue generator.”

## Erosion of Sell-Side Research

As a former sell-side analyst and banker who cov-

“It is widely recognized that investment managers are currently awash with an oversupply of duplicative research reports, much of which is considered of questionable value. We predict a decline in global research spend of up to 25-30 percent by 2020.”

— Benjamin Quinlan,  
CEO and managing  
partner, Quinlan &  
Associates

ered technology stocks for 25 years and worked on the buy side for four years, O’Neill has seen the long-term erosion in sell-side research firsthand. “Of the 10 investment banks I worked for, seven no longer exist,” he reports.

“MiFID II may well lead to further disparity between large cap and small cap companies,” Levenson noted at the NIRI Senior Roundtable session. “If you are a large or mega-cap company and have 40 analysts covering you, then a reduction to 20 may not be all that impactful. If you are a small-to-mid-cap company with three analysts and some or all of them go away, it is a real challenge. The onus will be on the IRO to drive a proactive IR program, delivering the right message to the right audience – and to do so without very little support from the banks.”

“The baseline expectation seems to be that research-related revenue will decline about 30 percent with a similar reduction in the head count,” adds Brendan Metrano, vice president of investor relations at DHI Group, who also spoke on the NIRIVirtual Chapter webinar. He moved from the sell side to an investor relations position in late 2016 after spending 10 years in equity research.

A study by Quinlan & Associates, a strategy consulting firm specializing in financial services, chronicled the continuing decline in sell-side research in its 2016 report, “Research in an Unbundled World,” which provides an outlook for sell-side research providers now that MiFID II is in place.

“It is widely recognized that investment managers are currently awash with an oversupply of duplicative research reports, much of which is considered of questionable value,” author Benjamin Quinlan, CEO and managing partner of Quinlan & Associates, writes in his introduction to the report. “We predict a decline in global research spend of up to 25-30 percent by 2020.” (In the same report Quinlan also noted that research budgets had already declined 20-25 percent from 2012-2016.)

Despite these forecasts, Metrano predicts that the impact will take a long time to play out. “Businesses are hesitant to change until they are forced to,” he notes, “and there is a huge sell-side research infrastructure in place, so banks will probably

innovate a little in pricing and how they market research. Eventually it will cull the herd, as there is definitely excess capacity in sell-side research."

"We anticipate major disruptions to the competitive landscape," Quinlan writes in his report. "Global investment banks will need to narrow their coverage universe, given the inability to monetize lower-value content. Tier-2 providers will find the new competitive environment even more challenging and may be forced out of the market altogether. However, given the low barriers to entry, we are likely to see a proliferation of independent research houses, led by one or more 'star analysts' specializing in particular sectors or geographies."

### **Changing Research Buys from Asset Managers**

Peter Molloy, CEO of Edison Investment Research – the largest player in the issuer-funded research market in Europe and one of the largest in the United States with 420 corporate clients – believes "fund managers will scrutinize the top three research houses" as they winnow down research sources for large-cap market coverage. "This will accelerate the pressure on research in the United States for small-cap and mid-cap companies. Banks and fund managers will allocate most of their budgets to large-cap research, so it will make it more challenging for small-cap companies to receive coverage."

Quinlan pointed to certain independent research providers in his report such as Wolfe Research (covering utilities, transport and energy) and Zelman & Associates (covering housing and homebuilding) that have "made a notable mark in their chosen sectors" that they market to the buy side.

He predicts that "buy-side research budgets will increasingly evolve into specialized service pots, with fund managers choosing firms for their specific service niches: for example, Bank A for its political connections in China and Bank B for its access to deal flow."

But while this model suggests that institutional investors will pay for sell-side research on a fee basis, there are limits to the volume of research

**It is unclear whether U.S.-based asset managers will follow suit and at what level they will pay for research. What is more certain is that they will place a high value on ROI to justify external research spending they make in an unbundled environment where they will face increased scrutiny from investors.**

business and the price points that the buy-side may be willing to pay.

Molloy explains, "Regulation is forcing and moving the purchase of research to fund managers, but our view is that banks have massively overestimated the willingness of fund managers to pay for research. It will be a big wakeup call for banks when fund managers are not paying. If funds paid the equivalent amount for research as they previously through commissions out of their P&Ls it would decimate their profit margins."

Farley, speaking at the NIRI Senior Roundtable, believes that "large companies such as Schroders and T. Rowe Price will pay for research out of their P&L, but smaller companies can't do that."

O'Neill notes that some buy-side investors "indicated they are not going to pay for research and are going to hire people internally and do it that way. That is definitely going to happen for a lot of investment houses." Lyons agrees this is the case.

A recently published survey called "MiFID II & Research" conducted by *Institutional Investor* magazine in collaboration with ONEaccess (A Visible Alpha Company), and Substantive Research found that 52 percent of fund managers (90 percent of those surveyed were from Europe) plan to pay for research from their P&Ls, while 29 percent plan to use research payment accounts (RPAs) – a mechanism created by MiFID II, 14 percent plan to charge clients, and 5 percent are not sure.

It is unclear whether U.S.-based asset managers will follow suit and at what level they will pay for research. What is more certain is that they will place a high value on ROI to justify external research spending they make in an unbundled environment where they will face increased scrutiny from investors. Duplication of research will be reduced and the buy side will put a higher premium on high-quality, differentiated research.

We value and pay for outside research providers; currently we receive research from over 420 providers," Lyons says. "The ultimate objective is to produce superior results for our clients. Whatever we need to achieve that goal we will acquire. We are in an equilibrium discovery mode – we will get offers

and we will pay based on what we see the value is."

Among the predominately European asset managers surveyed by *Institutional Investor*, 75 percent plan to reduce their external research budgets paid to investment banks under MiFID II – nearly half of them plan cuts of more than 20 percent. About half of fund managers (53 percent) plan overall reductions in their external research budgets. Meanwhile, 80 percent say their internal research budgets will stay the same and 20 percent say these will grow.

### **Issuer-Paid Research**

So if banks cut back on much of their research and buy-side investors pay only limited amounts for external research, who will pay for the rest of the smaller-company research that nearly everyone in the capital markets sector agrees is needed? Some point to corporate stock issuers – especially mid-cap and small-cap companies – which lays the problem squarely at the feet of investor relations professionals.

"If you are a mid-cap or small-cap company, your life is going to get a lot harder," Levenson told IROs at the NIRI Senior Roundtable.

"Most IROs are very reluctant to adapt to the change," notes Peter Sidoti, founder of Sidoti & Company, LLC, an equity research firm focusing on small-cap companies. "It is hard to pay for something you have always gotten for free."

"We may fight for airtime and coverage more than we did before because companies that previously used commissions to pay for research may fold up their tents and go home," says Farley, whose company is only covered by three analysts but is not paying for research. "I hope it doesn't come to that."

While some point to the perception that research paid for by a company is inherently biased, Sidoti observes that in the United Kingdom, company-sponsored research is a well-accepted vehicle with hundreds of companies covered.

"Conflicts abound everywhere," Sidoti admits, but he argues that if research companies come to be respected as "honest brokers," investors will recognize that they provide credible securities



research. He draws an analogy to the debt markets, where debt-rating companies such as Moody's Investors Service and S&P Global Ratings are paid by issuers to produce reports.

"Many are looking only at one side when criticizing paid research, which has a long positive track record and yet is criticized," he adds. "Anyone who is involved in the securities research industry knows that it is rife with potential conflicts. Rules and regulations put in place by the Sarbanes-Oxley Act of 2002 (SOX) and the Financial Industry Regulatory Authority (FINRA) have mitigated – but clearly not eliminated – these conflicts. The cost of running a research department is enormous and most brokerages cannot afford to bear them unless the research leads to seven- or eight-figure investment banking fees."

"Nowhere has this dynamic had a greater impact than in the small-cap arena, where large banks have all but stopped offering coverage and smaller houses carefully consider whether an investment banking fee is on the horizon before they cover a company. Brokerages do earn sales and trading income from providing small-cap research, but given the influx of passively managed funds, lower trading volume and declining commissions, payments from active money managers cannot sufficiently subsidize their research efforts."

### **New Research Company Models**

New types of firms are emerging to serve the needs of the changing research market.

For example, OTC Markets Group, a New York-based company with a \$326 million market cap, launched its online "Research Marketplace" in 2016 to serve the needs of microcap companies that needed analyst coverage. It contracts with Sidoti, Edison, and ACF Equity Research to provide coverage to its clients and is considering a few additional research providers for potential inclusion in this carefully vetted group.

Jason Paltrowitz, executive vice president, corporate services at OTC, explains that in the rapidly changing research market, small-cap company CEOs who faced disappearing analyst coverage were often victimized by "bad actors,"

# A SQUEEZE ON CORPORATE ACCESS

**W**ith the decline in sell-side research coverage comes a reduction in buy-side corporate access through brokers, mostly for smaller companies. But corporate access is valued highly by the buy-side and issuers want exposure to asset managers.

"The vast majority of institutional investors are not going to make a purchase decision without having first met with the management team, and that is doubly

true for smaller cap companies," notes Sam Levenson, CEO of Arbor Advisory Group. "That said, if you are a smaller cap company, the days of phoning an analyst covering your company and asking them to set up a roadshow may soon be numbered. We believe that, in the post MiFID II world, there will have to be more direct interaction between issuers and investors without the banks acting as a liaison."

An Ipreo Special Report, *MiFID II: A Check on Reality*, which surveyed 50 institutional investors, supports this view, noting, "With the expected increase of responsibilities falling onto the IR function, respondents expect companies to grow their IR teams in order to deal with an increased volume of requests and ensure that outreach remains unaffected."

"Corporate access is being clearly separated from research," says Peter Molloy, CEO of Edison Investment Research. "A lot of MiFID II is about not having any inducement tools, so investors will be more likely to speak with management directly or through an IR agency. We expect U.S. banks to find roadshows to be less profitable."

The Ipreo report predicts, "Brokers may focus their activities around the most profitable events

for top-tier clients, leaving smaller stocks and/or less popular sectors with less coverage and marketing. In response to these changes, there is an expectation that IR will need to undertake more of these activities themselves (both marketing and event execution)."

One European mutual fund investor commented in the Ipreo survey, "It is a new situation and a lot of work that is done by entire industries is falling back into

the IR department. IR teams will be swamped with requests. It would be poor corporate governance if companies are not prepared. Companies need to expand their IR teams to deal with MiFID II."

John Dwyer, senior research analyst, Celent, who wrote a report titled, *From Corporate Access to Direct Access: The Implications of MiFID II on Corporate Access*, adds, "When regulatory change and technology meet a process, such as corporate access, which has friction and fundamental pain points, then business models and operational practices will transform.

"Corporate access has the potential to morph into something direct in nature and thus be characterized by much improved flow of information, data, communication, capital, and alpha. Given this potential the buy side, sell side, and corporate constituencies should get on board."

Nevertheless, panelists at a session at the NIRI Senior Roundtable highlighted the fact that brokers are not going away and there is still value in having a relationship with the Street. And even though there may be fewer opportunities for roadshows, identifying the top sell-side thought leaders and going on the road with them can be a good strategy.

**"Corporate access has the potential to morph into something direct in nature and thus be characterized by much improved flow of information, data, communication, capital, and alpha."**

- John Dwyer, senior research analyst, Celent

prompting the launch of his firm to provide a credible alternative for issuer-paid research.

"There are hundreds and even thousands of research providers," he observes, "and you have to peel back the onion on those providers to see who the good ones are." Some criteria for quality providers include giving proper disclosures, understanding editorial guidelines, charging for research in advance (not after research is written), not making buy/sell recommendations, and not taking equity compensation.

OTC even pays two research companies itself to cover its own business. "We want to eat our own cooking and improve our reach to the buy-side," Paltrowitz notes. His company has grown to a \$300 million market cap and he notes that the market ecosystem requires third-party coverage.

"These research providers talk to us, hear our story, look at our filings, and put all this in a format that the buy side is used to receiving," Paltrowitz says. "Because of this, we have more exposure to the buy side than we ever had before. Fund managers call us and are joining our earnings calls. The research has opened up our company to investors that we never would have found on our own."

Eric Langan, CEO of RCI Hospitality Holdings, Inc., a Houston based company with a market cap of more than \$300 million that trades on Nasdaq, says this about the research it pays Sidoti to conduct: "Our relationship is no different than what it would be with any brokerage firm analyst. The analyst has taken the time to learn about our company and visit our subsidiaries. The reports, estimates, and valuation have all been independently developed."

Scott Powell, executive vice president and head of investor relations for VolitionRx Limited and chief financial officer at Volition America, explains that for his smaller public company (\$88 million market cap that trades on the NYSE American exchange), "paid-for research was a way for us to increase our analyst coverage and try to reach a wider institutional and retail investor audience. Issuer-paid research is not really biased in my experience and has become much more accepted by investors in recent years. Our paid research

analysts ask us challenging, probing questions and produce very rigorous, thoughtful research."

## "Paid-for research was a way for us to increase our analyst coverage and try to reach a wider institutional and retail investor audience."

- Scott Powell,  
executive vice  
president and  
head of  
investor relations,  
VolitionRx  
Limited and chief  
financial officer,  
Volition America

### Exchange-Based Research?

In looking to the future, Sidoti points to the potential of the paid-research model used in the debt markets.

"Companies today pay Moodys, S&P, and Fitch to rate their debt," he explains. While this rating system was criticized in the wake of the financial crisis nearly 10 years ago, it has since come to be regarded as a more credible and reliable rating system in this sector.

"We expect that these organizations or an agent (such as an independent IR firm, an exchange like Nasdaq, NYSE, or IEX) will now need to pay for equity research," Sidoti adds. "But the product will need to come from a reliable source. That is the model used in European and Asian countries.

Molloy reports that his firm, Edison Research, is already working with four exchanges – Deutsche Borse, Singapore Exchange, Tel Aviv Stock Exchange, and the New Zealand Exchange – to provide research for small- and mid-cap companies.

"These and other exchanges recognize that they face a challenge if many of their listed companies lose coverage, so if the markets don't have a solution they have to develop their own solutions. Otherwise they don't really function well as a stock market."

Sidoti sees solutions like this coming to the United States: "The good news is that Wall Street is amazingly resilient and new business models are likely to unfold. Management teams and investor relations professionals will need to adjust to new paradigms that will surely emerge, but we expect that as research providers, management teams, investor relations firms, and investors embrace these new models, the benefits each will derive will be significant." **IR**

---

**AL RICKARD, CAE**, is president of Association Vision, the company that produces *IR Update* for NIRI.

# THE UPHILL BATTLE TO TAKE DOWN THE **'MERGER TAX'**

**A potential clampdown  
on meritless merger  
objection lawsuits hasn't  
played out as hoped.**

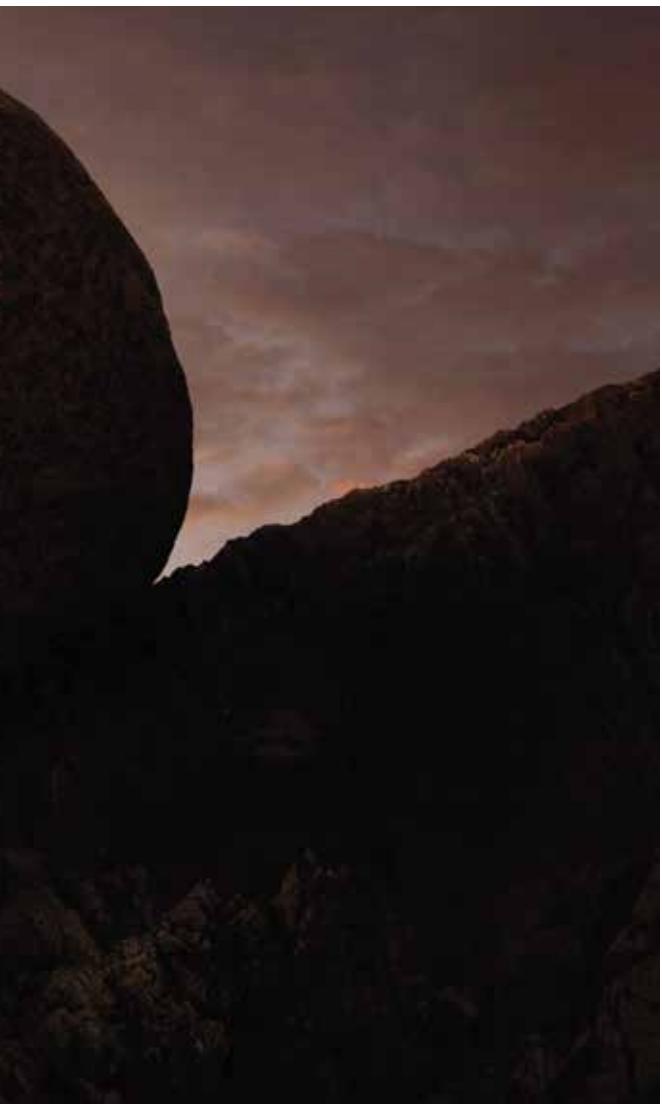
BY PATRICK GALLAGHER

**M**erger objection class-action lawsuits have been the bane of U.S. public companies for nearly a decade. Each year from 2009 through 2015, somewhere between 84 percent and 94 percent of all merger transactions over \$100 million were challenged by at least one shareholder class-action lawsuit, according to the economic and financial consulting firm Cornerstone Research (*see the "The Merger Tax: Do a Deal, Get Sued" chart*). The percentage dropped sharply in 2016 then resurged last year to the 90 percent range. This is the story behind those numbers.

The "strike suits" seek to enjoin the merger, claiming that the target company's disclosures

were insufficient and that the directors breached their fiduciary duty by following a flawed sales process and failing to get the best price. The buyer sometimes gets sued too.

Few corporate defendants want to take a chance on derailing a transaction, so the vast majority of these suits have resulted in quick "disclosure-only" settlements that rarely provide any monetary compensation to shareholders. The defendants agree to make supplemental disclosures – which are often immaterial – in exchange for a global release from all claims related to the deal, and the plaintiffs' lawyers receive a lucrative six-figure fee, often in excess of \$500,000.



### Chancery Court Takes Action

Frustrated by the growing volume of deal litigation “beyond the realm of reason,” the Delaware Court of Chancery – where, prior to 2016, most of these cases had been filed – moved to rein in non-meritorious merger suits beginning in late 2015. In its January 2016 rejection of a proposed settlement in the acquisition of Trulia Inc. by Zillow Inc., the court declared that future disclosure-only settlements “are likely to be met with continued disfavor” unless the supplemental disclosures provide a “plainly material” benefit to the shareholders and “the proposed release is sufficiently narrow.”

The *Trulia* decision was widely viewed as likely to make plaintiffs’ law firms more selective in the

cases they chose to file, and make Delaware a less-friendly venue. The early numbers bore out a pullback by plaintiffs’ law firms. According to Cornerstone, the percentage of M&A deals challenged by shareholder litigation fell to 64 percent in the first half of 2016 compared with 84 percent for all of 2015.

A *Law 360* article in May 2016 reported that “some on the plaintiffs’ bar worry that the legal landscape is leading to a place where such litigation is snuffed out altogether.” A May 2016 corporate law firm paper was provocatively titled “The Death of Merger Litigation?”

Corporate-side advocates were further heartened in June 2016 when the influential (now retired) federal judge Richard Posner in the U.S. Seventh Circuit Court of Appeals (which encompasses Illinois, Indiana, and Wisconsin) overturned a lower court’s approval of a \$370,000 disclosure-only settlement in the deal that created Walgreens Boots Alliance Inc. “The type of class action illustrated by this case – the class action that yields fees for class counsel and nothing for the class – is no better than a racket. It must end,” Posner wrote in the majority opinion.

It didn’t end. Plaintiffs’ lawyers simply changed their strategy.

### Detour around Delaware

As a result of *Trulia*, says Cliff Brinson, a securities litigator at Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, in Raleigh, NC, “Cases that had been funneled into Delaware were now funneling out of Delaware” and into federal courts and courts in other states.

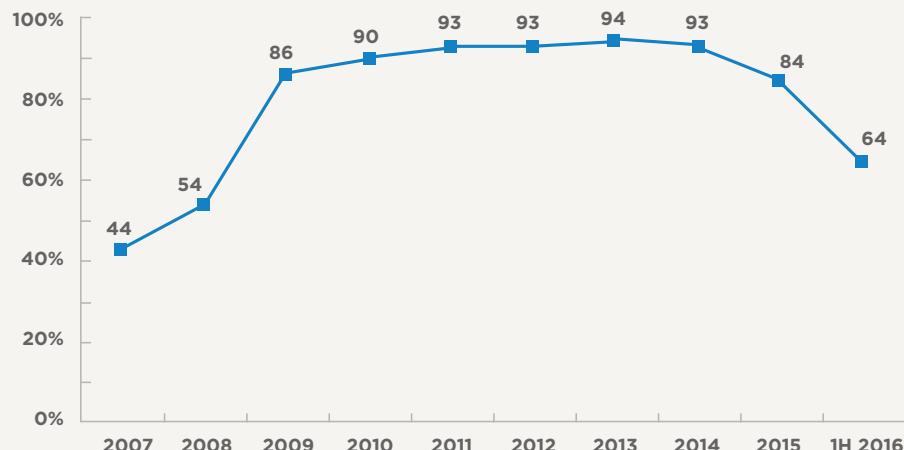
Over the fourth quarter of 2015 and the first two quarters of 2016 combined, just 26 percent of M&A-related litigation was filed in Delaware, down from 61 percent over the first three quarters of 2015, according to Cornerstone. And that trend has continued into 2017. Meanwhile, federal M&A filings quintupled from just 17 cases in 2015 to 85 in 2016, and the number is on track to top 200 in 2017. Presumably, a large number of these cases would have been filed in Delaware if not for *Trulia* (see the “Out of Delaware and Into Federal Courts” chart).

Don Tucker, also a securities litigator with

“Traditionally, plaintiffs’ lawyers have not liked securities law claims because there are all sorts of defenses under federal law against them. But they’d rather do that than take their chances in the Delaware Court of Chancery under a traditional merger law case.”  
- Cliff Brinson, securities litigator, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

## The Merger Tax: Do a Deal, Get Sued

**FIGURE 1 Percentage of M&A Deals Challenged by Shareholders (by deal year)**



Source: Cornerstone Research, <https://www.cornerstone.com/Publications/Reports/Shareholder-Litigation-Involving-Acquisitions-2016>

Smith Anderson, explains that litigants have the option of filing these merger lawsuits in the defendant's state of incorporation (often Delaware) or in its principal place of business, or they can recast these state law causes of action as federal securities claims. Many Delaware corporations have adopted forum-selection bylaws designed to force cases to Delaware, but these bylaws cannot prevent plaintiffs from filing under federal securities laws.

"Traditionally, plaintiffs' lawyers have not liked securities law claims because there are all sorts of defenses under federal law against them," says Brinson. "But they'd rather do that than take their chances in the Delaware Court of Chancery under a traditional merger law case."

Since *Trulia*, only a handful of disclosure settlements have been approved by the Delaware Court of Chancery, according to Anthony Rickey of Margrave Law LLC of Georgetown, Del. Meanwhile, outside of Delaware, plaintiffs' lawyers continue to seek, and receive, six-figure fees.

### Mum's the Word

"Clearly, what the parties are looking for is a court that will approve their settlement and either disregard or not be aware of *Trulia* in the first place," says Sean Griffith, professor of law at

Fordham Law School and director of the Fordham Corporate Law Center.

Griffith played a key role in the events in Delaware. He filed an amicus brief in *Trulia* and his earlier objection to a 2015 merger settlement that was a precursor to *Trulia* is credited with guiding the court's understanding of the issue.

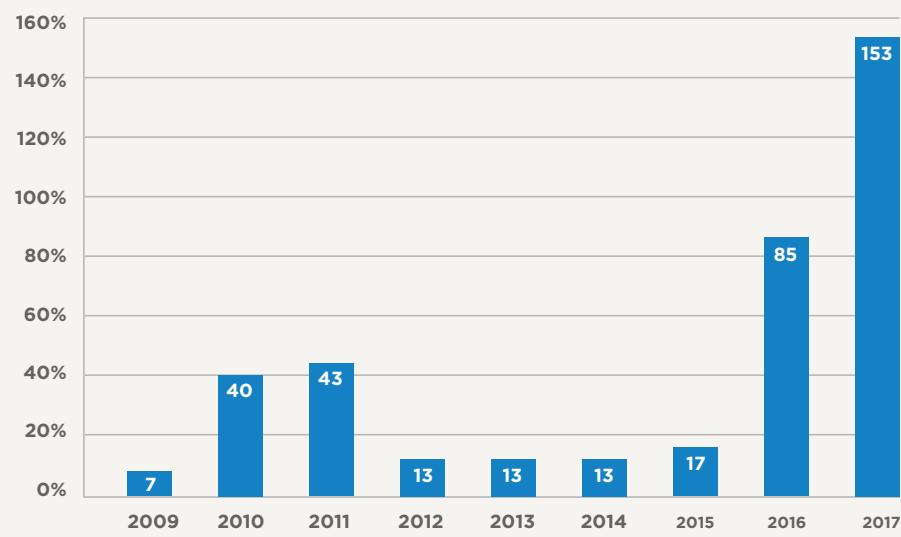
The problem is, as Griffith wrote in a January 2016 paper, "Non-Delaware judges are, after all, plenty busy and have no special reason to remain abreast of developments in the Court of Chancery. They must rely on the parties for information concerning the relevant legal standards. At settlement, however, there is no adversarial process. Because both parties to the settlement want it to be approved, neither has any interest in raising *Trulia* to the non-Delaware judge."

Margrave Law's Rickey, who has represented objectors, including Griffith, in opposition to disclosure settlements across the country, elaborates on these points. "If plaintiff's counsel presents a disclosure settlement outside of Delaware, more often than not, no objector appears, and *Trulia* is, at best, mentioned in passing in plaintiff's papers. Sometimes it isn't mentioned at all. Frequently, the court then gives its approval without discussing *Trulia*," says Rickey.

Opponents of frivolous merger litigation have

**Since 2009, the vast majority of M&A transactions exceeding \$100 million have attracted litigation as a matter of course. The drop-off in the first half of 2016 reflects the initial impact of *Trulia*. For 2017, the percentage is expected to return to the 90 percent range.**

## Out of Delaware and Into Federal Courts



**Federal M&A filings quintupled from 2015 to 2016, and the number is on track to top 200 in 2017 (results shown through the first three quarters for 2017). Presumably, a large number of the filings in 2016 and 2017 would have been in Delaware Chancery Court if not for *Trulia*.**

made some progress beyond Delaware and the Seventh Circuit. One superior court in New Jersey and one in Connecticut have adopted the *Trulia* rationale, and the North Carolina Business Court warned that it may do so in future disclosure-only settlements that come before it. More recently, California's Santa Clara County Superior Court, whose jurisdiction encompasses much of Silicon Valley, appears to have embraced the *Trulia* standard.

For the most part, however, the plaintiffs' bar's strategy of avoiding Delaware and downplaying *Trulia* has worked. And class plaintiffs' newest tactic – "mootness resolutions" – is proving even more effective.

### The Mootness Workaround

In mootness resolutions (which are, legally speaking, not settlements), the plaintiffs' complaints are limited to disclosure claims "in the hope of having defendants moot such claims with supplemental disclosure," explained Edward Micheletti and two co-authors all of Skadden, Arps, Slate, Meagher & Flom LLP in a November 2017 article published on *Lexology*. "This, in turn, opens the door for plaintiffs to [voluntarily dismiss the case and then] make an application for 'mootness fees' for creating a disclosure 'benefit.' Sometimes, the parties are able to negotiate an agreed-upon mootness

fee, while other times such fees are contested and require judicial resolution."

These federal mootness cases create a strong incentive for defendants to settle quickly, wrote John A. Neuwirth and three colleagues from Weil, Gotshal & Manges LLP in a November 2017 article in the *New York Law Journal*. In Delaware, they explained, defendants have an opportunity to thwart a frivolous action at the outset by opposing a motion for expedited discovery. But in federal court, more often than not, the first time the parties will appear in front of the judge is at the preliminary injunction hearing. "That increases the stakes for defendants, because, if defendants proceed to a preliminary injunction hearing, there is a risk (however small) that a transaction can be delayed or enjoined."

Mootness cases tend to pay less than disclosure-only class-action settlements, but for the plaintiffs' attorneys, the strategy has a lot of offsetting advantages. Because there is no class-wide release of claims, mootness resolutions do not require court approval or notice to the putative shareholder class. Mootness cases also involve less work, and the shorter process usually means a quicker payout and minimal risk of attracting an objecting shareholder.

"This tactic has spread like wildfire and has

**"It ends up being like a game of Whac-a-Mole. You think you're changing a court's mind, and the plaintiffs just go somewhere else."**

**- Sean Griffith,  
director,  
Fordham Corporate  
Law Center**

enabled a dramatic uptick in merger strike suit filings," says Ted Frank, director of the Center for Class Action Fairness (CCAF) at the Competitive Enterprise Institute, a Washington think tank. It was Frank who filed the objection in the *Walgreens* merger case that alerted the court to the *Trulia* precedent. "Instead of settling merger strike suits, plaintiffs dismiss with the understanding they will apply for mootness fees of hundreds of thousands of dollars per merger."

The mootness strategy makes sense for the plaintiffs' lawyers, says Kevin LaCroix, executive vice president of RT ProExec, an insurance intermediary firm in Beachwood, Ohio, and editor of the blog, The D&O Diary. "The firms filing the suits are opportunistic. These tend to be small players that have no intention of carrying these cases through. You can make a good living on \$300,000 or \$400,000 at a time."

#### An Uphill Battle

With the number of federal M&A filings setting new quarterly records during 2017, and with Delaware mostly relegated to the sidelines (Griffith notes that the Chancery Court's low pay-scale for mootness fees is now driving plaintiffs' filings to other courts), any hopes that *Trulia* would quickly turn the tide have faded.

Griffith says that since *Trulia*, he has objected to settlements in federal courts in Boston and Indiana, and state courts in Florida, New York, New Jersey, and California. Some were successful, and some not. Currently, he says, his focus is mostly on cases at the appellate court level and giving talks at judicial conferences. "It ends up being like a game of Whac-a-Mole. You think you're changing a court's mind, and the plaintiffs just go somewhere else," he says.

"It's an uphill battle all over the country," says Frank. "There are so many judges that don't have a lot of experience with these cases. We have to be very selective. We don't have the budget or time to take on every case. What a plaintiffs' law firm gets in one of these cases might be two years of my budget."

Frank believes nothing will really change until the courts crack down on the plaintiffs' lawyers

filing these "abusive" lawsuits. "We're asking for larger relief, for actual sanctions, actual disciplinary proceedings."

Griffith is a bit more optimistic. "There is some evidence that over time, *Trulia* made its way," he says. "And so hopefully judges will get tougher on mootness fees. At some point, the returns on this litigation have to go down so low that the plaintiffs' lawyers are not interested in bringing it anymore. But that hasn't happened yet. There is still a deal tax, deals still get held up, and companies are still paying ransom."

#### End-run Around Walgreens

Amid new talk of the need for federal legislation, Griffith and Frank continue their quests to drive a national consensus across the federal courts over the next year or two or three. In September, Frank moved to intervene in a federal case in the Northern District of Illinois involving the now-consummated acquisition of Akorn, Inc., by the German drug company Fresenius Kabi AG.

According to a CCAF news release, Frank's filing claims that the award of \$322,500 in mootness fees "constitutes an end-run around *Walgreens'* precedent and also appears to violate the Private Securities Litigation Reform Act (PSLRA) and basic principles of federal class action law."

Frank ultimately hopes a favorable court decision in this case will enjoin or at least discourage the filing of frivolous strike suits nationwide. But the first legal hurdle is whether he even has standing to intervene in a case that has since been dismissed. As a result, pursuing a federal solution may be a better long-term strategy to curb these merger suits.

As Weil's Neuwirth and his co-authors wrote: "Given the practical ease (and relatively modest cost) of mootness resolutions of federal court actions, merger-related securities class actions are not likely to abate unless Congress acts to curb the practice, just as it did in enacting the PSLRA." **IR**

---

**PATRICK GALLAGHER** is senior advisor with Dix & Eaton; [pgallagher@dix-eaton.com](mailto:pgallagher@dix-eaton.com)



**"Having the IRC designation is a game changer for the profession. If you want to grow and progress in your investor relations career, you *must* sit for the IRC exam."**

Kathleen Till Stange, IRC

VICE PRESIDENT,  
CORPORATE & INVESTOR RELATIONS  
FBL FINANCIAL GROUP, INC.



# IRC Certification is EVOLUTION

**irc** INVESTOR  
RELATIONS  
CHARTER™

Register now to take your  
knowledge to the next level.  
[www.niri.org/certification](http://www.niri.org/certification)

niri

# MESSAGING LESSONS

**IR professionals should know their company's message, customize it for their audience, and encourage C-suite executives to practice the delivery of key themes.**

BY ROSS LEVANTO

**S**unday talk shows exhibit the epitome of messaging discipline. A politician accepts an invitation to serve as an interview subject, and an anchor or reporter asks a series of questions intended to educate the viewer on policy.

Listening carefully to the politician, the viewer typically hears the same message over and over again. Indeed, whatever the politicians are asked, they typically pivot their answer back to one of a few key ideas. Often the questions themselves are never answered.

The politician comes to the interview with an agenda, and the interview is a way to make sure that agenda is advanced. It seems that simple.

The Sunday talk show is an extreme example of many messaging concepts that are important for investor relations professionals to understand. Keeping the concepts in mind, and putting in place best practices, will translate into a better understanding of your organization's mission by key stakeholders and investors.

## Create Your Message

No politician comes onto a talk show on Sunday without having a message in mind they want to convey. Similarly, you should have a clear sense at all times as to the messages you would like to deliver to key audiences through your work.

For starters, what is a message? It's something that defines your company's purpose, the value it brings to stakeholders it serves, and the differences between your company and the competition. It is important that a message be "pithy," avoid

jargon, and use language and examples to make the prose as relatable as possible.

Oftentimes, messages are organized to answer three questions: What does the company do?

What are the benefits of what the company does, and how is what the company does different or better than other ways of doing it (or the competition)?

From these three answers, one can create a story sheet that becomes a guide for external communications.

Many IR professionals work alongside PR teams that also manage message creation. It is essential for IR and PR to be aligned in this effort. An IR professional should check with the PR team to see if a messaging architecture or story sheet has been created for an organization. If centralized messaging does not exist, suggest a brainstorm to walk through the creation of a story sheet.

## Know Your Audience

The company's centralized messaging, whether it is housed in a story sheet or some other architecture, should be presented in any external conversation. However, it can be customized depending on the audience you are trying to reach. IR professionals are speaking to investors or those who advise investors; company messages should be tailored to that audience.

More often than not, an IR person is messaging to a portfolio manager, who cares about how the company is a stylistic and market cap fit for their portfolio, and how the company is positioned and differentiated to grow revenue.

# SONS FROM THE SUNDAY MORNING TALK SHOWS



# DEFINING YOUR INVESTMENT THESIS

By Kelly P. Hernandez, IRC

It is critical to work alongside your company's PR team to create a concise core message that defines your company's purpose, the value it brings to stakeholders, and the differences between your company and the competition.

But messages will be tweaked to match different audiences, and as an IR professional it is important to create an articulate "investment thesis" that will mirror your company's core message and tailor it to the needs of the investment community.

An investment thesis is simply one sentence which an analyst could state to a portfolio manager that would define the company and indicate why the stock is likely to increase in value from today's levels.

Key factors that should be addressed in creating the investment thesis include:

- Stylistic fit for the portfolio (value/growth/GARP)
- Market cap fit for the portfolio (small/mid/large/mega)
- The company strategy
- The differentiator (what the market is missing that will drive stock appreciation)

Here are three examples of what an investment thesis may look like:

- A mid-cap oil service company at historic low valuation, set to grow revenue and earnings above peers and market in 2018.
- A large-cap IT services company in the midst

of a turnaround, trading at a significant discount to peers.

- A small-cap software company early in our lifecycle, expecting double-digit five-year revenue CAGR in a subsector with a high level of M&A activity.

Every aspect of the investment thesis must be credibly presented through informative messaging. For example, the mid-cap oil company investment thesis example above includes eight key message components that define the company's profile, value, and relevant timeframe:

- Mid-Cap
- Oil Service Company
- Historic Low Valuation
- Set to Grow Revenue
- Set to Grow Earnings
- Above Peers
- Above Market

## In 2018

Once the investment thesis is defined, it is important to support each component of the message as well as the over-arching thesis with supporting data, third-party references, and where appropriate, demonstrated results. Then you will be in position to effectively drive your key messages to the investment community, tailoring it and tweaking it as needed to meet specific audiences.

---

**KELLY P. HERNANDEZ**, IRC, is senior vice president of investor relations at Leidos; [kelly.p.hernandez@leidos.com](mailto:kelly.p.hernandez@leidos.com).

For that reason, an effective messaging architecture would introduce the company and provide its benefits and differentiation (from the story sheet), and then would outline an IR message to stress the opportunity for investors.

The most important aspect of any message is to present points supported by evidence. If a company says it's innovating

in a market, supporting points should outline innovation the company is driving. If a company says it is set to grow from a historic low valuation, one should have publicly disclosed financial information to support that claim.

On Sunday political talk shows, political guests have a message they want to convey that is concise and differentiated,

and they are almost always talking to a specific audience. Sometimes it's their voters, but usually the audience consists of political partners or other elected officials the guest is attempting to work with to reach a political outcome. That's why we hear so often language like "If only I could work across the aisle" or "work with my partners In Congress."

Certainly, not many IR teams work in the heightened communication environments represented by the political world, but we can all learn from how talk show guests consider their message and audience. And how the message they are delivering connects back to larger campaigns. The way they answer any question with the message they want to convey points to the next lesson, where one learns to own the agenda.

### **Own The Agenda**

One of the most common recommendations PR people make to their clients or executives is to enter any meeting with an external audience with a clear goal of what is to be achieved to the benefit of the company. It sounds simple, but often this process is overlooked. Or the goal is not concrete enough. Relationship-building is the standard catch-all, as in the understanding that a given meeting is meant to build a relationship with a reporter. To challenge ourselves, PR people instead identify the specific storyline that the reporter – based on a keen understanding of their coverage area – would want or need to cover based on the discussion.

Similarly, IR professionals should set concrete goals for the application of the messages they are presenting. Is it to push for a specific result from a portfolio manager? Is it to increase coverage of a company direction or success point that highlights a part of the overall message? How is that goal applicable to the audience hearing the message, based on a thorough understanding of the audience?

An "agenda" is not a dirty word; it should drive a discussion so that the delivery of key messages leads to a welcomed outcome. Just as a political talk show guest enters an interview with an agenda in mind, so should IR professionals approach an external discussion, an earnings call talk track, or any other application of company messages, with an agenda in mind.

What is exciting for the communications world today are the vast additional methods for carrying your message and owning your agenda. In the late 1990s, during the tech boom, the only real way to effectively connect with large audiences was through professional journalists. Today, we have company websites and blogs, social media channels, and online forums.

Truth be told, professional journalists are still vital to

this effort, and studies show that the most shared social content originates from professional media outlets. However, integrated communications programs consider tactics modeled by "PESO," or paid, earned, shared, owned. A mature communications program will execute a program that earns media coverage, publishes web content that is owned by the company, encourages sharing of content through social media, and evaluates opportunities for cost-effective online paid tactics that accentuate earned or owned content.

No IR professional is expected to master all channels for delivering your messages. However, having an understanding allows one to ask about these channels and tactics as part of campaigns intended to drive given messages or aiming for a given result. Again, consider your company's structure and other internal audiences that are responsible for efforts across the PESO model. An integrated effort will help to own the agenda.

### **Practice, Practice, Practice**

PR professionals that have experience with both the public and private sectors often talk about how the spotlight is far more intense on public officials than on companies or their executives. As a consequence, elected officials are forced to practice their communications skills on an almost daily basis.

The adage that practice makes perfect is not entirely applicable to message delivery, because in communications one is always practicing. You practice in internal meetings, during tours with external audiences, and even in conversations with friends. It is very true that practice makes one better. And we all need to practice.

Many organizations will hire evangelists based, in part, on their ability to present and deliver messages, and their skills within media interviews. When it comes to IR messages, audiences will want to hear from C-level executives, especially the CEO. And while many CEOs may not like to be the public face for their organizations, to some extent it comes with the role. With practice, they can always get better at it.

PR professionals talk about how CEOs that are very good at presenting are often the ones most willing to practice. Practice comes in many forms:

- Walking through key messages: basically, how one would deliver key messages.
- Addressing tough questions: preparing responses and feeling comfortable with them.
- Body language: getting comfortable with how one sits, talks, and interacts with the interviewer.
- Establishing a voice: Scripted answers are not good; a subject needs to be comfortable delivering messaging in their own voice.

# Message Components of an Investment Thesis

*Every aspect of this investment thesis must be credibly presented through informative messaging.*

**Sample Investment Thesis: "A mid-cap oil service company at historic low valuation, set to grow revenue and earnings above peers and market in 2018."**

- |  |   |
|--|---|
| <p><b>① Mid-Cap</b></p> <p><b>② Oil Service Company</b></p> <p><b>③ Historic Low Valuation</b></p> <p><b>④ Set to Grow Revenue</b></p> | <p><b>⑤ Set to Grow Earnings</b></p> <p><b>⑥ Above Peers</b></p> <p><b>⑦ Above Market</b></p> <p><b>⑧ In 2018</b></p> |
|--|---|

This content is based on material developed and presented by Kelly Hernandez, IRC, during the September 2017 NIRI Fundamentals of Investor Relations Seminar.

The best practices are for a specific external conversation. There's no doubt that the subjects on Sunday talk shows prepare for each appearance (at least the ones that perform well). Practices for specific conversations are informed by knowing the venue, the participants, and the general premise for the conversation.

Briefing information is essential to inform specific conversations. The best external meetings follow detailed briefings and practices; "winging it" is not practical. Comprehensive briefings include an understanding of the meeting participants, their reasons for being in the meeting, and an understanding of what their objectives are. Once this information is understood, a practice can cater to this understanding to best deliver a given message.

## Bridging and Deflecting

Politicians often bridge and deflect, which means they answer a tough question by "bridging" back to a message they would rather deliver. For example, if asked about a controversial decision in the past, a common response would be "I am focused on the future, and the reason I am here is to..." While an effective tactic, such efforts often leave the viewer scratching their heads, wondering if the subject ever really answered any question.

IR professionals certainly do not want portfolio managers or even reporters leaving conversations scratching their heads. And while bridging is a key tactic even in IR discussions, you should be prepared to directly answer difficult questions, such as ones about past poor performance. You should be honest about what the company has done and will do moving forward. Unlike the Sunday talk show circuit, your meetings are not intended to deliver soundbites, but rather to make sure external audiences understand your organization's vision and value proposition.

## Consistent, But Flexible

Consistency is a key to IR messaging. No one likes surprises. Follow-up conversations within an IR context should focus on what an organization said it would accomplish, the results toward those accomplishments, and what the organization is doing to further reach them.

At the same time, messaging is a living, breathing concept. Messaging should be tweaked or revised based on changes in attitudes among key constituents, chief among them customers. Often, as a company sees success, it will notice new benefits of its solutions that are best incorporated into overall messaging.

Often communications teams will set regular check-in points for messaging reviews. These are not meant to be complete overhauls, but rather exercises to refresh the messaging based on input from numerous company constituencies, including sales, marketing, customer support, and IR.

We have a love/hate relationship with politicians. And while Sunday talk shows demonstrate best practices for message discipline, we should focus on what we like and dislike about these appearances. We like the clear, concise messaging. We don't like how subjects often are aggressively evasive in being "honest" when the questioning gets tough. Take these likes and dislikes to heart in your IR messaging and messaging-delivery strategies. You may not win an election, but you will see benefits from providing a greater understanding of your company's vision and strategy. **IR**

---

**ROSS LEVANTO** is a senior vice president at Highwire PR;  
[ross@highwirepr.com](mailto:ross@highwirepr.com).

## NIRI PROFESSIONAL DEVELOPMENT

### ARE WE MANAGING THE STREET OR IS THE STREET MANAGING US?

JANUARY 18, 2018

WEBINAR: LIVE 2:00–3:00 PM ET

Earnings guidance continues to evolve and be full of pitfalls. And when analyst expectations and company performance don't line up, where do IRO's draw the line between keeping investors and sell side analysts informed and providing too much disclosure before earnings are released?

### UNDERSTANDING CAPITAL MARKETS

MARCH 12, 2018\*

NEW YORK, NY

Gain an understanding of how the capital markets big picture fits together, including how and why companies issue shares and bonds, how they are traded, and how listed companies are expected to communicate.

### FINANCE ESSENTIALS

MARCH 13, 2018\*

NEW YORK, NY

Understand the essentials of finance that you'll need to communicate your company's financial story effectively, including shareholder value, accounting, corporate finance, and company valuation.

### NIRI ANNUAL CONFERENCE

JUNE 10-13, 2018

LAS VEGAS, NV

Register now for the world's largest investor relations education and networking event and discover why #NIRI18 is the must-attend event for IR professionals.

\*Additional course dates available

For the full NIRI calendar visit [www.niri.org/learn](http://www.niri.org/learn)

IRC® credential holders can earn up to 4 professional development units (PDUs) per day at NIRI professional development events. IRC-credentialed volunteers and speakers may also earn PDUs.



BILL MCNABB, CEO and Chairman of Vanguard (left), and NIRI President & CEO Gary LaBranche held a wide-ranging discussion on issues facing the IR profession.

# A CONVERSATION WITH BILL MCNABB, VANGUARD CEO AND CHAIRMAN

BY THERESA MOLLOY

In November 2017, William “Bill” McNabb, CEO and Chairman of Vanguard, joined NIRI President & CEO Gary LaBranche, for a “fireside chat” that was hosted by NIRI New York and the New York chapter of the Society for Corporate Governance. Affable and candid, McNabb shared his views about many issues impacting the investor relations and governance professions.

Vanguard’s assets have quadrupled since McNabb took the helm in 2008. Vanguard is the second largest asset manager in the world with \$4.8 trillion in assets under management.

Modestly, McNabb attributes much of Vanguard’s success to the growing popularity of low-cost index fund investing. Vanguard operates under a mutual ownership structure, mean-

ing the company is owned by its funds, which in turn is owned by the funds' shareholders – owners and investors are one.

The mutual ownership model drives Vanguard's strategy with a laser focus on cost management and improving shareholder returns, McNabb said. "If you want to predict our next move, think about what would benefit our funds' shareholders" he noted. Vanguard leverages its growth to reduce cost, enhance customer service, and invest in technology – leading to higher potential returns for its funds' investors.

A great deal of responsibility comes with Vanguard's success. Vanguard cast 171,000 proxy votes and hosted 1,000 board and management engagements with its funds' portfolio companies. A team of 25 manages the entire operation under Glenn Booraem, head of Vanguard's investment stewardship practice.

### **Shareholder and Corporate Engagement**

McNabb reflected on the remarkable progress he has witnessed over the last five years regarding company responsiveness to shareholder engagement, which he attributed to many of the event's attendees. His annual letter – required reading for any IRO – highlights key themes of importance to Vanguard's stewardship efforts. McNabb shared that the early letters generated very few responses.

Today, not only have the number of corporate responses increased, the letters reflect a great deal of thought and consideration about the issues. Mostly, the meetings are an opportunity to establish a two-way dialogue, not in reaction to proxy issues.

McNabb sees this as a "healthy trend," and is optimistic that "we will look back on this period as a seminal time where the emphasis shifted back to longer term value creation from a period of excessive short-termism." McNabb sees engagement as a significant catalyst for the tide change.

### **Shareholder Activism**

With \$3.2 trillion in equity funds, the Vanguard stewardship team is likely the first stop during any activist campaign. McNabb noted that when engaging with an activist, "we listen carefully." The team considers whether the activist's investment thesis is "constructive and long-term oriented." The activist should also be "transparent about how they engage with the target company." From the portfolio company, the team expects receptivity to the activist's ideas, and they look for a history of proactive engagement with long-only investors well before the activist is in the stock.

For Vanguard, it all goes back to viewing the world from a

long-term lens. McNabb pointed out that in Vanguard's 2017 annual report, the focus is on big governance principles. "We believe that companies that are better governed over the long run produce better results."

### **Director Engagement**

Much has been debated about director engagement with shareholders. McNabb's expectation is that upon request, independent directors will meet with the Vanguard stewardship team. These are not discussions about the day-to-day corporate operations. As "near-permanent investors," the team is interested in hearing from the board about the company's capital allocation strategy, talent development, and the board's financial and risk oversight role.

### **Environmental and Social Issues**

Vanguard's views about board diversity and climate risk were prominently featured in its 2017 annual report. McNabb noted board composition is an important theme for Vanguard, and explains that gender diversity has been shown to have a positive effect on shareholder value. Looking at board composition broadly, McNabb adds race, ethnicity, skills and experience as key barometers for diversity.

This year for the first time Vanguard supported several climate-related shareholder proposals. As an investor, Vanguard believes that for a number of its portfolio companies, climate change is a strategically important issue. Vanguard's decision to vote with the shareholder proponents was driven by the view that these companies' boards lacked adequate disclosure describing their assessment of climate change as a business risk, its impact on asset valuations and long-term shareholder value.

### **IR and Board Engagement**

McNabb views directors as "shareholders in the boardroom." In this context, IR plays a critical role as the facilitator of the dialogue between directors and shareholders. Whether communicating with an active or index investor, IR understands their company's strategy, financial operations, and increasingly, their corporate governance profile. McNabb sees the IRO as integral to the active and open communication between investors, the board and the company. **IR**

---

**THERESA MOLLOY** is vice president, corporate governance at Prudential Financial and a NIRI New York chapter board member; [theresa.molloy@prudential.com](mailto:theresa.molloy@prudential.com)

50%

# OUR PERCEPTION STUDIES:

RESEARCH-BASED INSIGHTS RESULTING IN ACTIONABLE STRATEGIES THAT UNLOCK VALUE

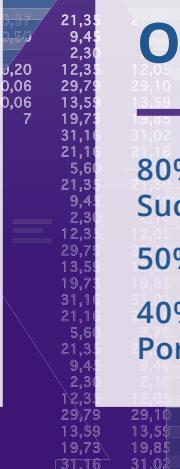
## 10 YEARS RESEARCH

7,600+ Interviews  
500+ Companies; 30% S&P 500 Representation  
60+ Benchmark Measures



## RESULTS-ORIENTED

80% Investor Priority Success Rate  
50% Attribution Rate  
40% of Interviews with Portfolio Managers



Our proven methodology, proprietary analytics database, trusted reputation and in-depth experience generate a foundation of unique insights. This marriage of research and rigor delivers comprehensive, actionable recommendations resulting in internal and external value creation.

### What our clients say:

"Corbin provided a comprehensive report that was highly knowledgeable about the current state of our business, accurately reflected and validated shareowner sentiment and contained concrete suggested actions."

VP, IR and Corp. Comm. | Large-cap Technology

### What investors say:

"I have participated in several Corbin perception studies over the years. More recently, I've seen Corbin's influence as a consultant and advisor to some of the companies in which we have invested. Corbin knows these businesses well and I have been impressed by their clear and effective communication with the investment community."

Portfolio Manager | Core Value Investment Advisor, \$8B AUM

If it's **CORBIN**, it's **ACTIONABLE**.

**CORBIN**  
ADVISORS  
INSIGHTS • STRATEGY • RESULTS

Perception Studies | Investor Presentations | Investor Targeting & Marketing  
Investor Days | Specialized Research | Retainer & Event-driven Consulting

Join the growing list of progressive companies who are partnering with Corbin Advisors to realize value creation.

[CorbinAdvisors.com](http://CorbinAdvisors.com) | (860) 321-7309