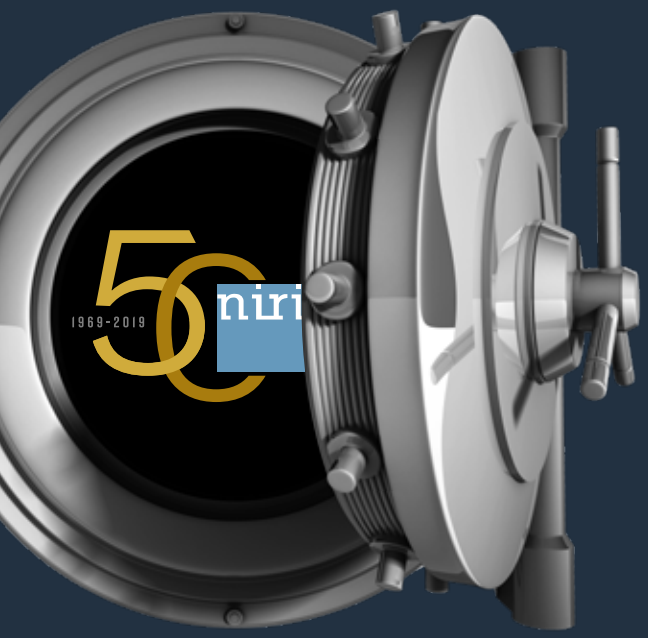


1990 TO 2010: "THE MORE THINGS CHANGE..."

NIRI members experienced profound change over two decades, but persevered to advance the profession during times of crisis. BY DOUG WILBURNE

"Plus ça change, plus c'est la même chose."

Jean-Baptiste Alphonse Karr, French critic, journalist and novelist (Nov. 24, 1808 – Sept. 29, 1890)

"The more things change, the more they continue to be the same thing," a phrase coined in 1855 by Jean-Baptiste Karr and a theme that aptly describes the dynamic changes that characterized NIRI during the 21 years spanning 1990 to 2010.

NIRI members experienced and effected many profound changes during what turned out to be a very challenging period. But to NIRI's credit, it also remained resolute in its dedication to and advancement of the foundational concepts of professional integrity and the concept of full and fair disclosure.

The 1990s began with the reunification of Germany, the launch of the Hubble Telescope and the peak distribution of the *Encyclopedia Britannica*. The biggest hit single in 1990 was "Nothing Compares 2 U," recorded by Sinead O'Connor (written by Prince). In July of that year, Iraq invaded Kuwait, causing oil prices to increase, which led to a mild recession with the S&P 500 dropping 73 points, which was a whopping 25 percent at the time!

Embracing Corporate Governance

1990 also could be seen as the year that investor activism came into its own. The reality of a growing and strong body of shareholder support for corporate governance and social responsibility was evident in the fact that a record 285 governance resolutions and another 290 proposals covering social issues were tendered by shareholders in that year.

Yet, as hard as it may be to believe now, the investor relations profession at that time had not embraced its destiny to be front and center on this important shareholder topic, generally relegating governance issues to the province of the corporate secretary's office.

In fact in 1990, Nell Minow, president of Institutional Shareholder Services, observed, "…a number of investor relations people contacted to receive ISS materials said they weren't responsible for proxy issues."

This changed mightily, as isolated shareholder activism occurrences evolved into an ongoing, pervasive corporate governance environment. NIRI responded with articles, conference calls, seminars, and discussions on how IROs should be driving the internal discussion and serving as the face of the company in communicating with shareholders.

NIRI pushed the envelope of IRO best practices for managing shareholder governance, advocating

for leadership in this domain from IROs. By April 1998, then-NIRI chair, Tim Cost declared that IROs should "isolate (governance issues), test them, and radio them back to management – try to get in front of the wave."

By the 2000s, corporate governance had become a year-round activity for most IROs. In 2007, Pat McGurn, executive vice president and special counsel at ISS, observed, "Directors (and CEOs) are looking for IROs to keep them out of trouble with activists, investment professionals, and the media. Given your daily interaction with the buy- and sell-side, you are both an early warning signal of oncoming problems and the first line of defense."

Chapters Become Cornerstones of NIRI

The 1990s also saw the role of chapters and their relationship with NIRI strengthen under the nurturing leadership of Sue Nunn, vice president of chapter development.

The first NIRI Chapter Awards were presented at the 1996 Annual Conference. It was Boston that won the coveted, first "Best Overall Chapter" award. The importance of chapters was emphasized by Karen Wharton, then-NIRI chair in her March 1999 letter to members: "[The NIRI] local chapter has provided the opportunity to build relationships with other investor relations professionals. The ability to call on NIRI members, making use of invaluable knowledge and experience of our peers, can make a huge difference…"

The Science of IR

While there has always been a huge art component involved in the proper conduct of investor relations, the 1990s saw NIRI making major strides in codifying the science of the profession. According to Hank Boerner, editor of NIRI's *IR Update* in the 1990s, "In the early days of NIRI, it was a little bit of 'fly by the seat of your pants.'"

But, after a three-year effort by a task force of NIRI members, in late 1993, the organization finalized a new set of operating standards known as "NIRI's IR Body of Knowledge," representing the first comprehensive resource guide of information supporting the practice of investor relations. 1993 was also the year that NIRI moved to an all-inclusive annual format for its conference from what had been a format of two smaller conferences each year.

Describing these accomplishments, Debbie Mitchell, NIRI chair in 1993, said, "The IR Body of Knowledge, coupled with our extensive seminar program and annual conference has brought NIRI to a new and significant level… NIRI has established itself as the most comprehensive and credible source of education and information on the practice of IR in the world."

In 1994, to augment its highly successful "Introduction to IR" seminar, NIRI introduced its seminal "The Theory and Practice of Investor Relations Seminar," a week-long, advanced executive investor relations education program at the University of Michigan School of Business Administration. Under the capable leadership of Beth Carty, NIRI vice president of professional development, this seminar was instrumental in accelerating innumerable IR careers. NIRI also established the prestigious Senior Roundtable in 1994.

NIRI also tackled the important issue of corporate disclosure policies in the 90s. It seems silly now to even imagine a company not having a written disclosure policy, but when Larry Bishop, eventual head of IR for Boeing in the 1990s, was interviewing for the job in 1991 and asked Boeing's chief financial officer for a copy of the company's disclosure policy, he was greeted with a blank stare. The company didn't have one!

Moreover, according to a NIRI survey conducted in 1994, due to the fear of shareholder class-action suits, corporate disclosure practices were often overly driven by legal departments and aimed at minimizing disclosure, completely counter to NIRI's fundamental principle that forthcoming disclosure is the only path to full and fair shareholder valuation. NIRI strongly advocated for a better disclosure environment and clear, written policies that placed the IRO front and center with a "seat at the table."

In early 1995, working jointly with the Association for Investment Management and Research

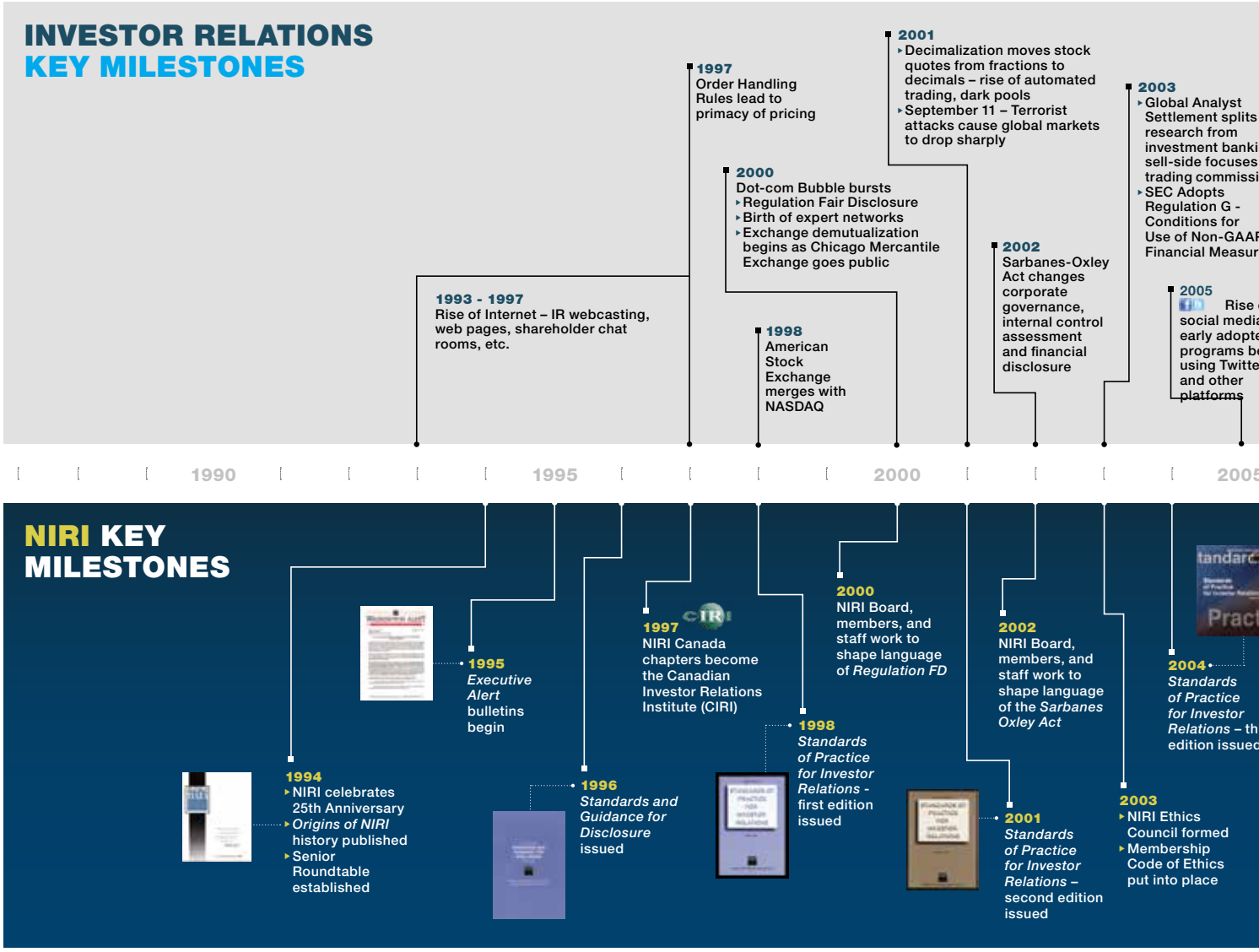
In 1998, NIRI published its first edition of the *Standards of Practice for Investor Relations*, which covered the entire realm of the investor relations function.

(AIMR, now the CFA Institute), NIRI published the first-ever "Standards and Guidance for Disclosure." The 30-page treatise codified the path for conducting an effective disclosure process and recommended every company have a written disclosure policy. NIRI provided a copy of its guidance to every NIRI member and sold 10,000 additional copies to non-members. The standard was also distributed by AIMR to its 26,000 members.

Then, in 1998, NIRI published its first edition of the *Standards of Practice for Investor Relations,* which covered the entire realm of the investor relations function. Each NIRI member received a free copy with an additional 3,000 copies sold, demonstrating the acute need for this definitive source of modern IR practice.

The guide began by detailing the responsibilities of the IRO. These included being an "integral participant" in driving corporate strategy, providing market intelligence to management and the board, and making sure management is kept fully informed on the information provided to the market. According to the *Standards*, "Knowing what one should not say is just as important as knowing what to say."

A key chapter in the book described the IRO's duty to represent the company credibly and objectively. The handbook also highlighted that a company's disclosure policy be based on a commitment to full, fair and consistent disclosure and



achieving realistic investor expectations.

With this impressive and growing collection of resources, Len Griehs, chair of NIRI in 1998, declared, "Capturing the spirit of the newcomer and combining it with the experience of the veteran…we are a winning organization."

A Safe Harbor for Disclosure

During the mid-1990s NIRI also led a landmark effort to change securities laws to address the burgeoning number of class-action shareholder lawsuits being filed against companies. Plaintiff lawyers were using companies' statements about future estimated performance to allege that companies were willfully misleading investors, which in turn was stifling the practice of proactive disclosure.

NIRI and other professional organizations, including the American Institute of Certified Public Accountants, recognized that there was a clear need for a "safe harbor" to provide legal protection to allow companies to be forthcoming with forward-looking information to facilitate the valuation process for the investing public.

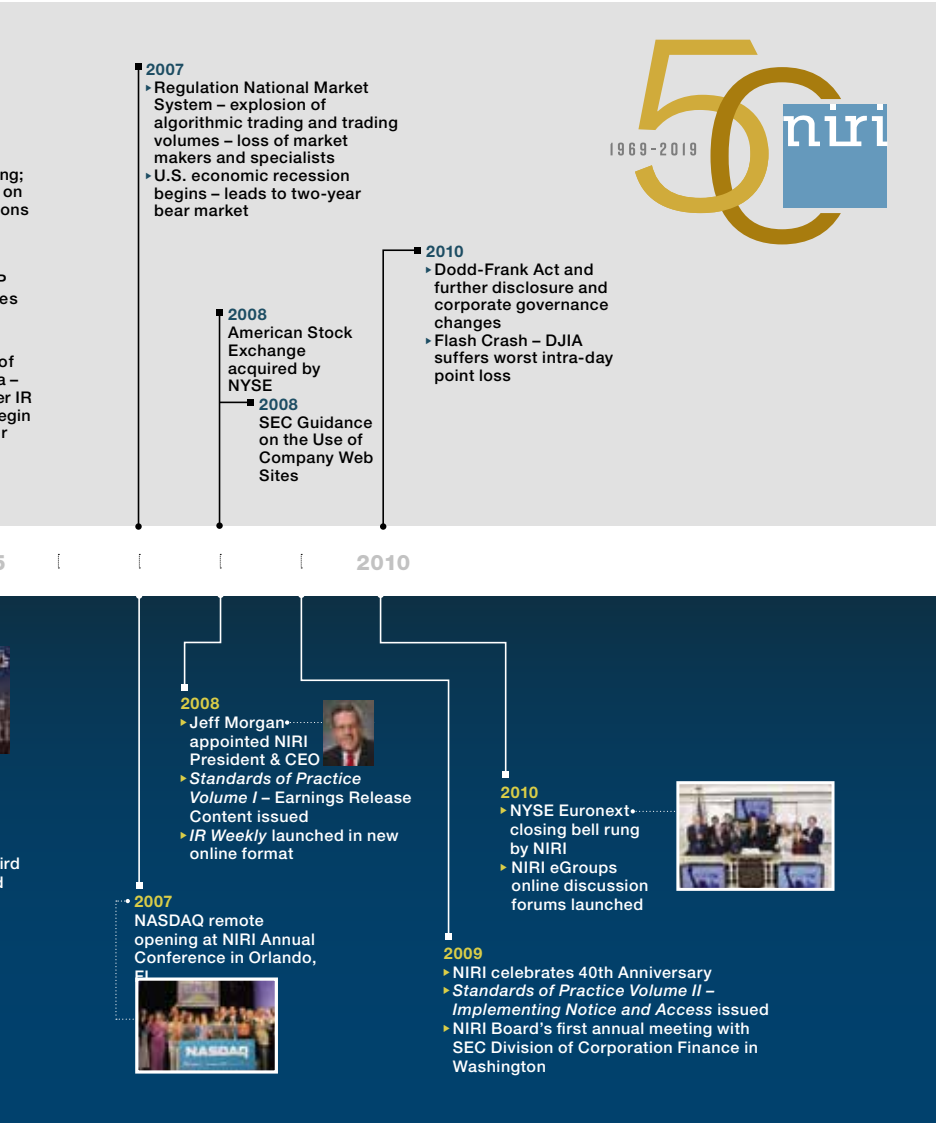
A business coalition was formed and NIRI CEO Lou Thompson was the coalition's lead spokesperson, communicating the need for a safe harbor provision. He conducted multiple press conferences, spoke at forums, and held numerous meetings with the SEC and legislators. The coalition prevailed with the passage of Private Securities Litigation Reform Act of 1995.

After passage of this landmark law, Lou wrote to NIRI members declaring, "The safe harbor was created to free up much needed information for the investment community which companies were reluctant to discuss publicly out of fear of litigation. Now that we have protection, we should start using it to *communicate,* not to obfuscate."

NIRI Drives Disclosure with Reg FD

In 1998, SEC Chair Arthur Levitt asked Thompson to review a now–famous speech Levitt was about to give to a gathering of the Financial Executives International, in which Levitt declared war on the "game of winks and nods" that prevailed between companies and analysts with respect to earnings guidance.

While NIRI had always admonished that companies should always avoid selective disclosure, the prevailing practice of managing earnings expectations by privately walking analyst estimates up or down by a few pennies was in actuality giving certain analysts and their firms early information on expectations to the disadvantage of other analysts and firms, as well as to great disadvantage of a large and growing number of active, individual investors who had been enabled by the internet and new retail trading platforms. Levitt's speech, aided by NIRI's review, kicked-off a multi-year process to find a workable way to level the playing



field among all market participants.

Thompson worked closely with the SEC staff to help craft a practical rule that would still support an open dialogue with analysts and investors. Thompson and senior IROs met with SEC staff members to role-play the way an IRO could converse with an analyst without disclosing material, non-public information. The exercise disabused misconceptions and helped SEC staffers understand the nuances of interactions between IROs and analysts.

Finally, in August of 2000, the SEC published Regulation Fair Disclosure (Reg FD). For the most part, the final language reflected the significant input and influence that NIRI had had in the process. The SEC even cited NIRI as a significant resource in developing the final rules. However, there was one section, not actually in the code, but in the promulgation commentary that caused considerable concern among companies and IROs:

> "When an issuer official engages in a private discussion with an analyst who is seeking guidance about earnings estimates, he or she takes on a high degree of risk under Reg FD… This is true whether the information about earnings is communicated expressly or through indirect 'guidance.'"

The impact of Reg FD on the IR profession was likely the single largest of any regulatory change in the history of NIRI.

NIRI's advice to IROs was direct: "It appears that expressing comfort with analysts' estimates is no longer possible and that one's ability to 'walk the Street' up or down with respect to earnings estimates is also history."

The impact of Reg FD on the IR profession was likely the single largest of any regulatory change in the history of NIRI. NIRI quickly shifted its focus from influencing and informing the regulatory process to interpreting, communicating and assisting investor relations professionals with implementation in each of their companies.

NIRI issued a nine-page set of Reg FD guidelines, circulated numerous letters, published frequent articles in *IR Update,* hosted conference calls, conducted seminars and programs, and extensively covered the topic in subsequent annual conferences.

One year later, NIRI issued the second edition of its *Standards of Practice for Investor Relations,* incorporating all aspects of complying with Reg FD. Over the ensuing years NIRI carefully monitored and reported on enforcement of Reg FD and provided survey-based advice on Reg FD best practices.

Ready to Do Battle

The strides NIRI made in the 1990s were remarkable and quite timely, because going into the next millennium, the profession was about to face perhaps its biggest market challenge ever.

In 1999, Pokemon fever gripped the United States, the U.S. Senate acquitted President Clinton of perjury and obstruction of justice, Wayne Gretzky retired from the National Hockey League, and Cher topped the charts with "Believe." And what was gripping every IRO's attention in 1999? Y2K, of course!

The investing world was paranoid that the end of the world was near and billions were spent on Y2K software upgrades. IROs were busy drafting and communicating Y2K risk factors and their company's mitigation plans. As the New Year passed, we discovered that the supposed Y2K bug did not cause impending doom.

Instead, right under our noses, the so-called, "Dot-com" technology crash officially started on March 10, 2000, when the Nasdaq Composite index, which included most internet-based companies, reached its peak at 5049.

Add to that the tragic 9/11 terrorist attacks in 2001, major accounting scandals at companies such as Enron, Worldcom, and Adelphia Communications, and rising interest rates. The world fell into a significant recession and bear market that lasted through September 2002, in which U.S. investors lost $7.3 trillion in market value. Confidence in public investing had plummeted.

To address the fraudulent misconduct by companies such as Enron, NIRI undertook a massive effort to re-emphasize member commitment to the NIRI Code of Ethics. The code was rewritten and an Ethics Council was instituted in March 2002 with Jane McCahon as its first chair. NIRI's new Ethics Council gathered for a weekly conference calls. They

took turns writing articles in *IR Update*, brought in ethics professors to speak at conferences, and flew to chapter meetings to give ethics presentations.

The new code was sent to every existing member with a requirement to sign it and it was incorporated into all new membership applications. By March 2003, every new and existing member had signed NIRI's new Code of Ethics.

In the meantime, financial markets and economies were facing unprecedented uncertainty. As a result, many companies began to eliminate disclosure of forward-looking information, with the likes of Coca-Cola deciding to no longer provide earnings guidance. The free flow of information critical to market confidence and fair valuation had constricted to a trickle in many cases. NIRI's board and staff did not sit idly by. In fact, NIRI programming and outreach was in high gear.

A NIRI road show, "IR in Tough Times," was developed and delivered at chapter meetings and presented in webcasts. Programs, panel discussions, and articles on how to restore confidence were a regular occurrence during late 2000 through 2002. A series of papers were authored by Thompson covering topics such as, "NIRI Ten Point Program to Help Restore Investor Confidence," "Earnings Guidance – Pros & Cons" and "NIRI Guidelines to Improve Earnings Releases."

Thompson's advice on guidance was clear: "It is important that NIRI encourage IROs and their corporate peers to provide the substance investors will find useful and present it in a transparent manner."

Jane McCahon, NIRI chair in 2001-2002, echoed Thompson's sentiment, saying, "NIRI must continue its educational outreach to preach the benefits of an open communications effort with the financial community versus the temptation many companies are facing to scale back their IR programs."

Mark Aaron, NIRI chair in 2003-2004, put it this way: "The IR profession is at an important crossroads. It's time to stop finger-pointing and hiding behind rules or getting distracted by them. Either every one of us is a forceful advocate for meaningful disclosure and ethical behavior, or investor relations could become an irrelevant administrative function."

Wit and Wisdom of NIRI Veterans

On the occasion of its 30th anniversary, NIRI produced a 48-minute audio archive of interviews with IR professionals entitled, "The Wit and Wisdom of NIRI Veterans."

Narrated by then-NIRI President and CEO Lou Thompson, it includes IR tales from 11 NIRI veterans, including Bill Mahoney, Carol Ruth, Doug Wilburne, Marge Wyrwas, Larry Bishop, Karen Wharton, and others.

"I have been struck by the fine judgment and good humor our members exhibit during the daily events – and mishaps – as they ply their craft," Thompson said in his introduction. "Here are a few pearls of wisdom told by veterans of investor relations in their own words."

Take a virtual step back in time to listen to the leading IR thinking and insight 20 years ago at www.niri.org/50th, where you can access several historical resources, including this audio series.

Or in the words of Margaret Wyrwas, NIRI chair, 2004-2005, "Never has the voice of the IRO been more important or the representation of shareholder interests been more relevant."

NIRI was truly proactive during this difficult time and provided critical support and advocacy that preserved the credibility of our profession and in many ways, the viability of our capital markets.

Leadership Changes and the 2000s

In February 2005, *IR Update* featured an article on the important role that IROs should play in CEO succession planning and execution. In 2006, NIRI faced this exact scenario as its long-time CEO and president, Lou Thompson, announced his plan to retire. According to Matthew Stroud, NIRI chair 2007-2008, "Lou was the face and voice of NIRI for 25 years. Lou was NIRI."

Filling his large leadership shoes was going to be a difficult task and take some time, but in December 2007, NIRI had its new, permanent CEO in Jeff Morgan. He wasted no time in moving NIRI forward with the following notable accomplish-

ments in his first year:

1. Creation of a permanent research staff position to provide more data-based information about IR best practices and trends affecting the profession.
2. Establishment of a new series of seminars called IR Executive Forums.
3. Expansion of membership in Senior Roundtable.

Other notable events in 2008 included the release of a joint NIRI/CFA Institute study on guidance practices and preferences, which revealed that 64 percent of NIRI respondents were providing earnings guidance, which was up from only 51 percent providing guidance in 2007, representing a reversal of the trend of fewer companies providing guidance.

NIRI also provided survey results on quarterly earnings release practices to the SEC supporting the SEC's efforts to improve the U.S. financial reporting system with the goal of making information more useful and understandable to investors.

While these industry practices activities were occurring, the economy was about to enter yet another significant downturn, this time largely driven by the collapse of housing valuations in the United States. The bursting of the housing bubble at the end of 2008 led to a significant credit crisis that saw the failure of major financial institutions such as Lehman Brothers, Bear Stearns, Fannie Mae, Freddie Mac, Citi Bank, and AIG.

The federal government responded with an unprecedented $700 billion bank bailout and $787 billion fiscal stimulus package. Nonetheless, the U.S. experienced a recession that lasted for about 18 months with a 5.1 percent drop in GDP and a bear market that saw the S&P 500 lose about 50 percent of its value.

Thanks in large part to the lessons learned and codified by NIRI, companies responded with discipline and resolve to maintain open, forthcoming disclosure practices this time around. According to a NIRI member survey published in May 2009, 60 percent of companies were still providing earnings guidance, down only slightly from the 64 percent reported a year earlier and still significantly higher than the 51 percent in 2007.

"I consider the IRO to be the 'keeper of corporate credibility.'"

Jane McCahon, 2001-2002 NIRI Chair

The More Things Change

Coming out of the housing bubble-induced recession, the challenges for IROs to assuage investor concerns were as daunting as ever. According to Brad Wilks, NIRI chair in 2010, "The decade of the noughties (the 2000s) saw the worst performance for equities as compared with any other 10-year period in nearly 200 years of recorded stock-market history…which means that most public companies have failed to deliver significant value to their shareholders…"

But members had their ever-vigilant partner, NIRI, to provide them a bright and constant beacon. As Maureen Wolff, NIRI chair in 2006-2007, explained, "NIRI is the definitive source for how to effectively communicate a firm's value prospects, especially in challenging times. And it is also the IR professional's gateway to a network of literally thousands of other knowledgeable IR professionals."

NIRI's fundamental philosophy was articulated well by Don Eagon, NIRI chair, 2002-2003, when he said, "The fundamentals of IR remain unchanged. In football, it is blocking and tackling that wins games. In investor relations, it is communicating and communicating. But what has changed is that IROs must now go beyond the legal mandates and take a stronger leadership role in clearly defining their companies' business actions and ethical behavior."

Finally, as Jane McCahon put it in her year-end chair letter in 2002, "I consider the IRO to be the 'keeper of corporate credibility.' We should be looking for ways to move our companies closer and closer to a culture that encourages full and fair disclosure and place a high value on credibility."

So it seems, that when it comes to NIRI's basic premise of professional integrity and the concept of full and fair disclosure, "The more things change, the more they continue to be the same thing." IR

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