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AVOIDING THE INSIDE SCOOP

Insider trading cases have peppered the news in recent months, and IROs say the pressure to reveal material information is increasing. NIRI Ethics Council members weigh in on how to handle it.

Letters to the Editor

IR Update welcomes letters to the editor. Please send your questions, suggestions and feedback to arickard@associationvision.com.

About NIRI

Founded in 1969, the National Investor Relations Institute (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 3,500 members representing 2,000 publicly held companies and $5.4 trillion in stock market capitalization.

About *IR Update*

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DEPARTMENTS

NIRI Ethics Council Offers Key Resources

Among the most highly prized attributes of the best IR professionals are their credibility and reputation. Ethics, personal and professional, are part of your core identity. Ethical behavior is also something that is so important to our profession, members of NIRI must sign and abide by an ethics pledge.

This month's issue of *IR Update* includes an article on this important issue. Those interviewed are members of NIRI's Ethics Council, which was formed by the NIRI Board of Directors as an independent council to elevate the importance of ethical issues and provide additional resources to the membership and the board itself. The council acts as an independent committee of the board regarding ethical matters that may arise in the practice of investor relations.

The Ethics Council serves NIRI and the profession in several key areas:

1. Provides advice and counsel to the NIRI Board of Directors regarding ethical issues, as requested, and recommends appropriate actions the organization may want to evaluate.

2. Reviews the NIRI Code of Ethics annually to ensure it is addressing the needs of the membership and profession.

3. Provides confidential advice to the NIRI membership-at-large, assisting members with ethical questions and concerns and reaching out to members whose companies may be involved in publicly announced ethical situations.

4. Provides recommendations to the NIRI board concerning the enforcement of NIRI's Code of Ethics. The NIRI board makes all final determinations regarding ethical matters.

Please take particular note of the third area. As you go about your daily business in investor relations, remember the NIRI Ethics Council is here to help you if questionable situations arise. It is a great benefit of NIRI membership, so please don't hesitate to reach out to this group of peers for assistance. Here are the current members of the NIRI Ethics Council:

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AVOIDING THE INSIDE SCOOP

Insider trading cases have peppered the news in recent months, and IROs say the pressure to reveal material information is increasing. NIRI Ethics Council members weigh in on how to handle it.

By John Brinkley

There has never been a better time for investor relations officers to make sure they have every precaution in place against insider trading violations by their company's employees.

For years, federal regulators have been on the warpath against insider trading by hedge funds and they have results to show for it.

On January 18, 2012, the Federal Bureau of Investigation (FBI) charged seven people with trading on material non-public information or providing such information to investors. That brought the number of people since the investigation began to at least 56. More than 50 have been convicted or pleaded guilty.

The most infamous is Raj Rajaratnam, co-founder of the hedge fund Galleon Group LLC. He was sentenced in October 2011 to an 11-year prison term, the longest ever imposed for insider trading.

The illegal trades uncovered in January were in shares of Dell and Nvidia and reportedly were executed by hedge funds including Level Global Investors LP, SAC Capital Advisors LP, and Diamondback Capital Management LLC. They reportedly netted about $62 million in illegal profits.

Of course, not all insider trading involves the disclosure of non-public, material information to outsiders, and very few of the roughly 8,000 hedge funds fish for information they know they're not supposed to have.

In January 2010, the Securities and Exchange Commission (SEC) charged an executive at Indevus Pharmaceuticals (now Endo Pharmaceuticals) with selling all his company stock upon learning that the Food and Drug Administration was not going to approve a drug that Indevus was hoping to market.

"That's sort of insider trading with a heavy stupidity component on top of it," said David Olson, an IR consultant with The Abernathy MacGregor Group in Los Angeles.

In May 2010, the SEC charged a junior Walt Disney Company employee with offering to sell material information to more than 20 hedge funds. Some of the funds alerted the SEC, and the employee and her boyfriend were soon caught and arrested.

In announcing the January arrests, the FBI warned that its insider trading investigation "is far from over."

The Pursuit of Information

Adding to the pressure that IROs face is the perception that hedge funds and other big investors have gotten more aggressive of late in trying to get their corporate contacts to say something – anything – that will give them an edge over the competition. Some IR professionals say hedge fund executives have been pushing harder to get information that skirts the edge of materiality.

"When we talk to clients and I talk to fellow IR people, I think there's more of a concern that the buy side is slipping," Olson said. "And by that I mean that the buy side is starting to slide back toward some old and not-so-good habits."

Olson, a member of the NIRI Ethics Counsel, said a client told him that "a couple" of hedge funds had called her three or four days before her company was to release its quarterly earnings report and said, "I know your quarter's coming up and I just wanted to fill in the blanks."

A 30-year investor relations veteran, Olson said he thought the recent insider trading cases "have mainly been driven by the buy-side people looking for an edge."

Mark Aaron, vice president for investor relations at Tiffany & Co., said he too had seen a change for the worse in the tactics hedge funds and others use to get information.

"In the retail industry, which I'm in, they will do what are called channel checks – going into retail stores and poking around and maybe talking to retail professionals, maybe trying to chat with the store manager to try to find out how things are going without identifying themselves as investors or analysts. I'm not sure how valuable an exercise that is," said Aaron, who chairs the NIRI Ethics Council.

"I have certainly found that there are many investors who try to be more aggressive with me – not getting the answer they want and rephrasing the question over and over again, thinking they will finally get me to give them the information they want," Aaron said. "They can try to play that game, but they're not going to win that one with me."

Olson said the climate today "is nowhere near as bad as it was" before the Enron meltdown in 2001 and the WorldCom collapse in 2002. Those disasters led to the enactment of the Sarbanes-Oxley Act of 2002, which brought major changes to the rules covering corporate governance.

He said he thought the impetus for the current climate was that "there is so much focus on short term, even more so than we've had over the last 10 years, because of the technological advances in trading, the computerized trading, algorithms, whatever. Everybody's looking for that one little edge."

Another factor is that many of the recent insider-trading cases have involved the use of expert networks, so some hedge funds have begun shying away from using them and some companies now forbid their employees from working with them. That has the potential to put even more pressure on IR officers and senior executives.

Schedule a Policy Review

What it all adds up to is that, in this environment, IR officers would do well to review their policies and procedures on disclosure of information to outsiders and make sure they're watertight.

Olson said they should have firm, written policies on blackouts and should make those policies clear to investors. IROs should tell them "what you're going to do and not going to do during blackouts, and keep repeating it. One thing you might do in this climate is e-mail stockholders and analysts," reminding them when blackouts start and that most topics of conversation will be taboo until they end. "Put everybody on written notice," he said.

Also, "I would become very good friends with your internal or external SEC counsel. If you have any issues, I would have a conversation [with him/her]," Olson said.

Policies and procedures to prevent illegal disclosure of information have to have an internal focus as well as an external one.

"Every company needs an insider trading policy and you need to *train* people on it rather than just hand it to them," said Pam Murphy, vice president for investor relations at Incyte, a pharmaceutical company. "You also need to have clear standard operating procedures in place for who should be blacked out and when. Then you need to be very careful."

As for employees making themselves available to expert networks, "that's something that every company's got to decide for itself," Olson said.

In some cases, talking to investors through an expert network can benefit the company as well as the investor.

"Being part of an expert network might provide you visibility into developments in other parts of the industry that you might not otherwise get as clear a view of," he said.

But it can also lead to trouble. When the SEC charged six expert network consultants with insider trading in February 2011, Enforcement Director Robert Khuzami emphasized that the SEC didn't have a problem with expert networks, per se.

"Today's actions are not a condemnation of all expert-networking firms or the consultants who are associated with them who provide legitimate expertise and experience to assist investors in making investment decisions," he said.

"It's not that expert networks are bad, it's that people get into expert networks and do the wrong thing," Olson said. "What companies should do, I think, is not discourage someone from participating in expert networks, but also just make sure that person knows what the rules are and has a full brief on what constitutes insider trading.

The fund industry seems to agree. They would like the SEC to publish some guidelines on what's in bounds and what isn't.

After the SEC action of February 2011, Managed Fund Association President Richard Baker said in a speech that "our industry would like to know where the sidelines are right now so that we can stay well within them. The trouble is the referees aren't quite clear where those lines are right now."

IROs Are the Best Defense

Ethics Council Chairman Aaron said he doesn't want his employees hiring out to expert networks at all. Tiffany doesn't have a formal rule against it, but when employees tell Aaron they've been approached by an expert network, "I say you just can't do that. We don't allow that," he said.

One value that IR professionals hold dear is this: A company can have the most up-to-date disclosure policies, but those policies are not the best defense against insider trading. The best defense is the wisdom, toughness, and credibility of the IR officer.

"Make sure that on a regular basis you are prepping your senior management team who do speak with analysts on what they can say and what they can't," advised Tabitha Zane, IR officer for Highwoods Properties. "Before you go on the road with your CEO or CFO, say 'the quarter's ending. We can't disclose information about X, Y and Z. Here's what we told them in the past and we can't update that because updating that would be material.'"

She added that when her CEO is on a conference call with analysts and an inappropriate question is asked, "I'll kick him" to let him know the question is off-limits.

If an investor or analyst goes too far in probing for non-public information, "then I think you stop the conversation and even maybe take it up a notch – call the director of research or call the head of the hedge fund and make it very clear that you know what's going on," Olson said.

Aaron had a similar view. "You've got to be courageous and speak up and sometimes challenge things," he said. "Whether it's regarding insider trading or whether it's regarding disclosure, in my opinion there's probably nothing more important than credibility. And if you compromise on that, it's going to take you a long time, if ever, to restore it." IRU

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★ Election Year 2012 ★
THE POLITICAL PURSE

What IROs need to know about corporate political spending and a push for disclosure in the wake of a precedent-setting Supreme Court ruling.

By Lois Yurow

With the election season in full swing, there is an onslaught of advertising that either promotes or disparages particular candidates, policies, or political parties. Elections have always spawned publicity, but this year the ads seem both more plentiful and more emphatic.

The source of this development is clear: the Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*, which held that corporations can use corporate funds for political purposes.

Many companies are using their newfound flexibility to either launch new political activities or expand existing efforts. A study by the Sustainable Investments Institute (Si2) found that, in 2010, roughly 420 companies in the S&P 500 spent an aggregate $1.1 billion on political activity, primarily for lobbying, which totaled $979 million. (The report, *Corporate Governance of Political Expenditures: 2011 Benchmark Report on S&P 500 Companies*, is available at http://www.irrcinstitute.org/pdf/Political_Spending_Report_Nov_10_2011.pdf.)

Based on recent disclosures by political action committees (PACs), a good deal of corporate money is funding organizations associated with specific candidates or parties in this presidential election year.

This trend raises several questions for IROs. Should companies explain their political activities to shareholders? If so, in what detail? And should shareholders have any influence over those activities?

The Impact of *Citizens United*

Before *Citizens United*, a corporation could sponsor a PAC to support candidates and causes, but the PAC could be funded only by employees and shareholders, not by the corporation itself. A corporation also could not engage in any "electioneering communication" (a term defined in federal law) during a prescribed period before voting day.

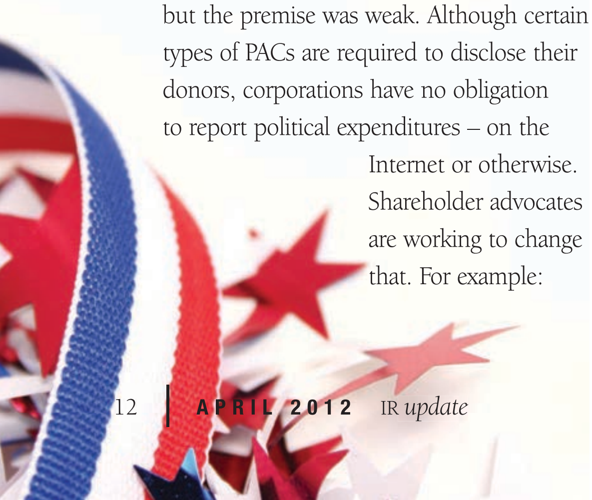
The Supreme Court decided those restrictions violated the First Amendment because they inhibited speech based solely on the identity of the speaker. Under the ruling, corporations still may not contribute directly to candidates for federal office (whether the decision applies to state elections is not yet settled); nor may a corporate-funded PAC coordinate with a candidate.

However, such a PAC can finance an independent campaign to endorse or criticize a candidate or policy right up to Election Day. A lower court decision issued two months after *Citizens United* held that donations to independent PACs – from individuals or corporations – could be unlimited in amount. Today's "Super PACs" were thus born.

One of the losing arguments in *Citizens United* was that, as a shareholder protection matter, corporate funds should not be used for political advocacy. The Supreme Court responded: "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders . . . with the information needed to hold corporations . . . accountable for their positions . . . . Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits." Armed with such information, shareholders could use the "procedures of corporate democracy" to protect their own interests.

Shareholder Advocates Press for Disclosure

The Supreme Court's position seems fair, but the premise was weak. Although certain types of PACs are required to disclose their donors, corporations have no obligation to report political expenditures – on the Internet or otherwise. Shareholder advocates are working to change that. For example:



- Congress has considered at least five bills to require disclosure of corporate political spending and to mandate a shareholder vote on such matters. None have progressed very far.
- Several groups – including law professors, federal legislators, and institutional investors – have petitioned the Securities and Exchange Commission (SEC) to adopt a disclosure rule. SEC Commissioner Luis A. Aguilar recently said the SEC received "tens of thousands of letters" favoring such a rule.
- CalSTRS and CalPERS have called on their portfolio companies to annually report political contributions. The Council of Institutional Investors urges similar disclosure, and also encourages boards to ensure that their companies maintain (and publish) firm guidelines for such contributions.
- An AFSCME-led consortium of institutional investors filed shareholder proposals with 40 companies for the 2012 proxy season urging disclosure of "lobbying expenditures." At the end of January, Institutional Shareholder Services (ISS) reported that it was tracking roughly 100 such proposals (compared to 50 for the 2011 proxy season). The SEC has not permitted companies to exclude these proposals unless they are duplicative or seek reforms that have been substantially adopted already.
- ISS recommends that shareholders vote for proposals to improve disclosure of political contributions and trade association spending. Support for such proposals averaged 30 percent in 2011.

Absent an unlikely groundswell of bipartisan support, we can assume Congress will not adopt any legislation mandating disclosure. The SEC may propose a disclosure rule, but the agency remains overrun by Dodd-Frank-related obligations and cannot do everything at once. Thus, at least in the near term, change is most likely to emanate from shareholder demand. IROs need to be thinking about this possibility.

Weighing Disclosure

Some companies voluntarily explain their political activity, but complete transparency is not the norm. Baruch College and the Center for Political Accountability both independently ranked the S&P 100 companies in 2011 based on criteria such as how detailed their disclosure is, how they make decisions about and monitor political activity, and how easy it is to find that information.

The ranking organizations had slightly different priorities, but only four companies (Colgate-Palmolive, IBM, Pfizer, and U.S. Bancorp) attained the highest scores from both. (Seventeen companies ranked poorly in both indexes.)

Some arguments against disclosure are administrative: Compiling and publishing information, for example, is burdensome. But opposition primarily arises from concerns about retribution or chilling political speech. Consider Target Corp., the poster child of this debate.

Target made a well-intentioned (by all accounts) contribution to an organization supporting pro-business candidates in the company's home state. One of those candidates opposes gay rights, a stance many find offensive and that is contrary to Target's own policies.

After a campaign by MoveOn.org, Target stores were picketed and boycotted, and the company suffered a fair amount of bad press. Disclosure proponents argue that shareholders should have had the opportunity to consider the risks of Target's contribution since they suffered from the reputational fallout.

Opponents, such as the U.S. Chamber of Commerce, respond that allowing share-

holders to challenge a planned expenditure, or even requiring disclosure after the fact, may chill speech that could otherwise benefit the company – possibly because of a narrow concern unrelated to the business.

There is no easy answer to this dilemma, but a politically active company should be prepared to defend every contribution as an appropriate use of the corporate treasury. Even if your company doesn't adopt a formal disclosure practice, assume at least some contributions will become public through other channels.

A politically active company should be prepared to defend every contribution as an appropriate use of the corporate treasury.

Disclosure Options

If your company decides that some disclosure is appropriate, you have many options – at least until Congress or the SEC imposes requirements. Start by identifying what you already report or would not object to reporting. The most common shareholder proposals call for one or more of the following reforms.

Establish and publish a policy for political spending. In its study of S&P 500 companies, Si2 found that 84 percent already do this. From a governance perspective, if your company intends to finance candidates or political parties, you should have a written policy that explains how you will select beneficiaries. The question is whether to publish that policy. Consider that shareholders may be reassured by guidelines that strictly define the scope of your advocacy. Proponents may even agree to withdraw broader proposals.

Establish and publish a policy for spending on lobbying. Thirty-six percent of the S&P 500 companies disclose policies on direct lobbying and grassroots efforts to influence legislation and regulatory policy. A smaller number (24 percent) disclose policies on indirect spending through trade groups and other nonprofit organizations. Since corporate lobbying expenditures historically have dwarfed contributions to candidates or political parties, the arguments for publishing a policy are even stronger than those discussed above.

Identify who can authorize expenditures. Sixty-five percent of the S&P 500 companies already do this. Again, as a governance matter, companies should restrict the universe of individuals who have authority to spend corporate money for potentially controversial purposes. The issue is whether shareholders (and PACs that solicit corporate support) should know who those individuals are.

State how much of the company's dues to trade organizations funds political activity. S&P 500 companies often report their membership in trade organizations, but only 14 percent explain how their dues are used. The shareholder concern here is that an organization may advance arguments that are contrary to positions taken by individual members. For example, several companies withdrew in protest after the U.S. Chamber of Commerce advocated the defeat of climate-change legislation.

Publish a current itemized list of the company's political expenditures. Only 20 percent of S&P 500 companies disclose their specific contributions. The other 80 percent likely have Target in mind. Shareholder advocates consider this reporting critical.

Permit shareholders to vote on proposed expenditures. There are practical arguments against a shareholder vote. For example, at the time you print the proxy, it's hard to predict what political endeavors the company will want to finance. Still, shareholders in the United Kingdom have the right to vote annually on a budget for advocacy spending in the coming year. Actual expenditures are reported after the fact.

Refrain from all political spending. This is the safest strategy. Many companies announce that they will not make certain expenditures (for political advertisements, for individual candidates, etc.). Unfortunately, Si2 found that compliance with those promises was not perfect, which could do serious damage to a company's credibility.

Going Forward

Questions surrounding the propriety and risks of corporate political activity and the need for related disclosure will persist unless the Supreme Court takes the unusual step of reconsidering *Citizens United*. Thus, IROs should help management and the board understand what the issues are and what shareholders want.

To that end, The Conference Board, an independent business research organization, recently published its "Handbook on Corporate Political Activity." This comprehensive report (available at http://www.conference-board.org/politicalspending/index.cfm?id=7639) will walk you through current campaign finance law, explain how and why you should formulate a policy to govern your company's advocacy, and offer insight into what your peers are doing. It would be an excellent starting point for your internal discussions. IRU

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Curtiss-Wright embraced an offensive strategy to win approval for its overhauled compensation plan after a Say-on-Pay vote failed.

By Jim Ryan

As investor relations professionals all know, we are forced to wear numerous hats, the latest of which is corporate governance. Whether you've been entrenched in it for years or just getting your feet wet, the newest addition to our vast array of responsibilities as IROs is here to stay.

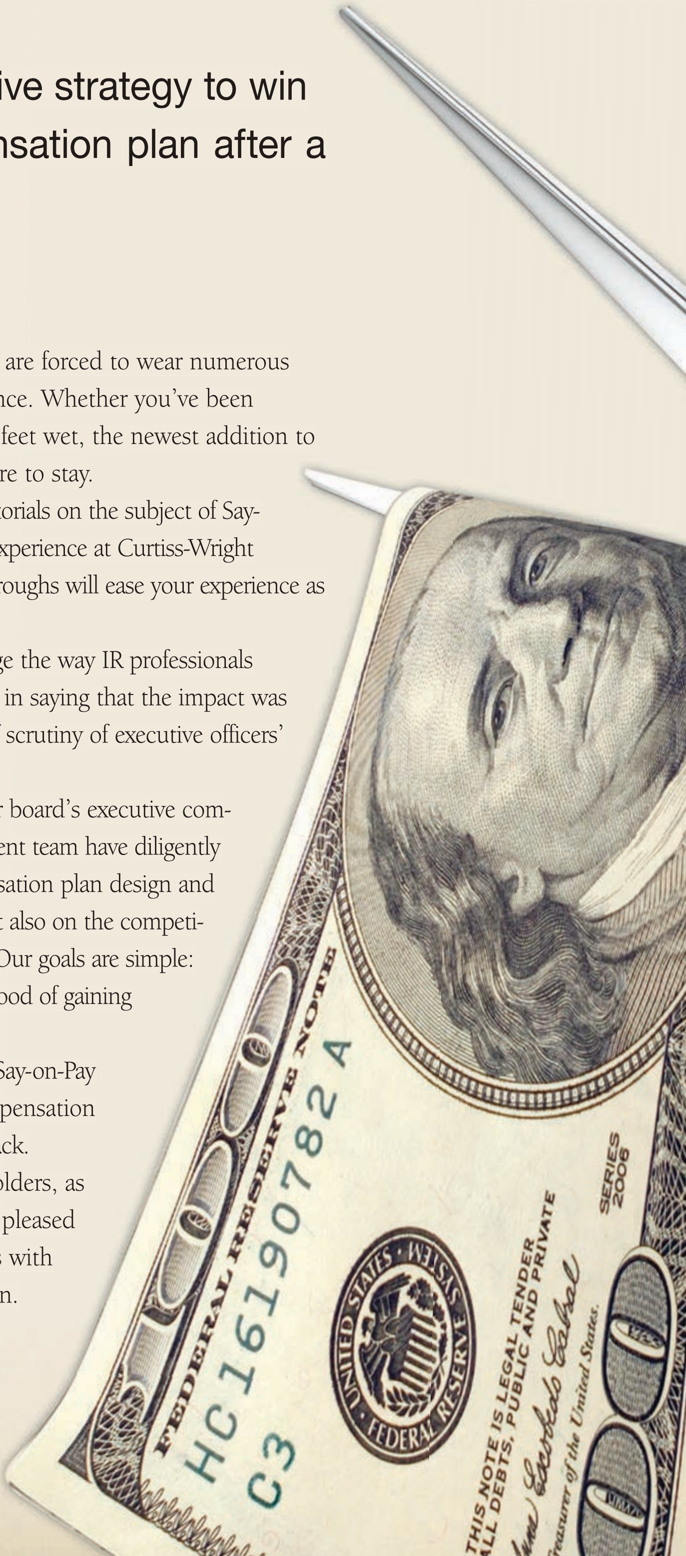
In light of the spate of recent articles and editorials on the subject of Say-on-Pay, I wanted to share a little bit about our experience at Curtiss-Wright Corporation with the hope that some of our pitfalls and breakthroughs will ease your experience as we head into the heart of 2012 proxy season.

There was little doubt that the Dodd-Frank Act would change the way IR professionals look at the proxy season. However, I'm sure that I'm not alone in saying that the impact was more dramatic than initially imagined, given the high degree of scrutiny of executive officers' compensation packages and total stock return characteristics.

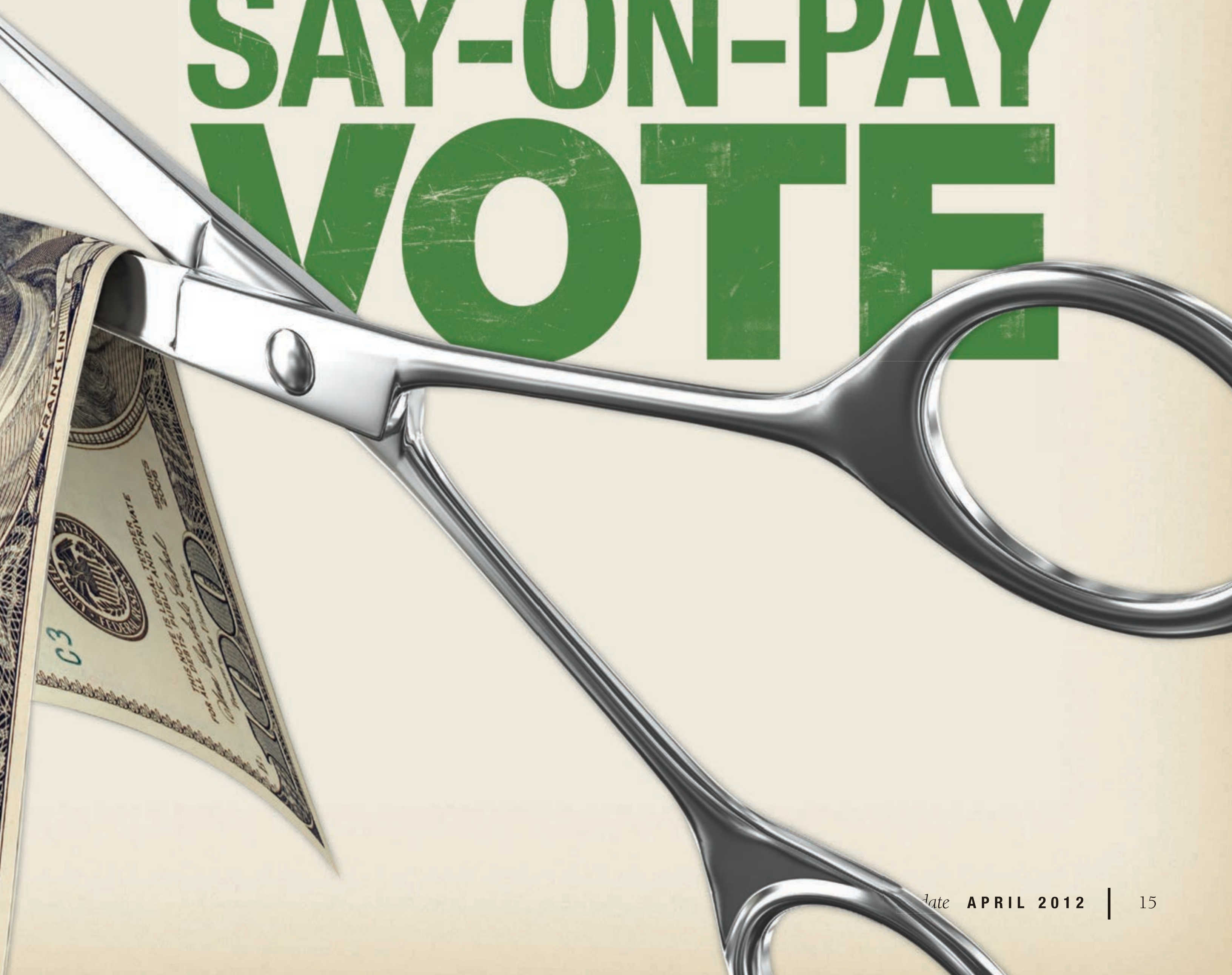
In response to a failed Say-on-Pay vote last proxy season, our board's executive compensation committee, compensation consultants, and management team have diligently worked together to develop numerous changes to our compensation plan design and philosophy. The focus was not only on shareholder concerns but also on the competitiveness and strategy behind our entire compensation program. Our goals are simple: Improve the pay-for-performance linkage and increase the likelihood of gaining favorable Say-on-Pay support in 2012.

We elected to go on the offensive, developing one of the first Say-on-Pay webcast presentations to outline our proposed executive compensation program changes and subsequently to obtain shareholder feedback.

Following numerous conversations with our largest shareholders, as well as leading proxy advisory firms ISS and Glass Lewis, I'm pleased to report that the response has been positive and provided us with some renewed confidence heading into the 2012 proxy season.



LESSONS FROM A FAILED SAY-ON-PAY VOTE



Assessing the Damage

Curtiss-Wright unfortunately fell into the group of more than 30 companies whose pay-for-performance measures were voted down by shareholders. Although we cannot turn back the clock on the Say-on-Pay vote from last proxy season, one of the key takeaways that it provided to Curtiss-Wright was the opportunity to rectify the situation. It provided us an opportunity to get closer to our shareholders – both the investment professionals and the individuals who vote the proxy (sometimes one and the same) – as well as the proxy advisory firms, which will aid our efforts to improve the pay-for-performance linkage and gain favorable Say-on-Pay support.

If you recall from the NIRI 2011 Annual Conference, some key messages yielded by the first year of Say-on-Pay were simply to keep telling the story, be a leader, and align incentives appropriately.

In response to the 2011 vote, we not only wanted to address all of those relevant points, but also be able to tie our response into our overall IR objectives of increased transparency, disclosure, and communication with all constituents to clearly demonstrate that Curtiss-Wright is committed to being responsive to shareholders' views.

Developing Our Response

After much deliberation, we elected to develop a brief presentation that walked through the proposed changes to our executive compensation plan. These changes include, among other things:

- Significant adjustments to short- and long-term individual incentive compensation targets.
- Eliminating the use of stock options in our long-term incentive plan to control the equity "burn rate."
- Eliminating the CEO's change-of-control agreement's single trigger.
- Committing not to offer any new change-of-control agreements with excise tax gross-up provisions.
- A lowered target percentile for named executive officers (NEOs) against a newly selected (and more closely aligned) peer group.

We initially designed our presentation for use during in-person meetings with our top 10 shareholders and the major proxy advisory firms. However, due to the nature of our situation, we were aiming higher, looking for a significant positive change in our outcome for 2012, while simultaneously reaching the widest possible audience. We also wanted to begin this process well in advance of the start of the proxy season.

With little precedent to support such an initiative, we elected to host a webcast presentation in mid-October 2011 to review proposed changes to the executive compensation plan that management intended to include in the company's 2012 proxy. However, in lieu of conducting a live Q&A session, we wanted to contact each of our top shareholders individually to provide adequate time to understand their concerns and answer any questions they had.

Outreach, Outreach, Outreach

We began with our top 20 shareholders, who represented approximately two-thirds of the total institutional ownership of Curtiss-Wright, and particularly those investors who voted "against" our Say-on-Pay. We also determined that a personal invite from the CFO and IRO to join the webcast presentation would convey a strong message of transparency and open communication. In addition, we invited each of our shareholders to conduct individual follow-up calls in the weeks following the webcast to provide their feedback on the proposed changes.

We posted both the commentary and the slide presentation on our website and conducted our call on October 14, 2011. At the conclusion of the webcast, we initiated calls to our shareholders. Each of those calls was conducted with our CFO, corporate secretary, and IRO (me) in attendance.

The discussions went very well. Most, as expected, were very receptive to the proposed changes, as well as the increased dialogue and disclosure. In fact, one of our top five investors shared the following comment with us, saying, "You can't argue against any of the changes; looks fantastic and very shareholder friendly."

We also have provided updates to our board of directors on our progress and continue to do so. The presentation and access to the webcast are still posted on our website's IR section (www.curtisswright.com).

Meeting With ISS

A key initiative in this process was to secure a meeting with ISS, as it represented a significant portion of the outstanding proxy vote for 2011 and had voted "against" for the advisory vote on executive compensation. We began by contacting the research analyst who prepared the Curtiss-Wright report by phone to discuss ISS' ratings and learn more about its philosophy. Executives were very willing to work with us and make themselves available, leading to a face-to-face meeting to discuss the proposed changes with the head of ISS' compensation research team. Curtiss-Wright representatives included our CFO, associate general counsel and assistant secretary, director of compensation and benefits, and two members of our board of directors – both the current, as well as the future, chairperson of the executive compensation committee.

During the meeting, we addressed the various areas where ISS gave Curtiss-Wright a below-average rating. Utilizing our Say-on-Pay presentation, we outlined the numerous compensation plan changes that we were proposing for 2012 and sought ISS' feedback on each of those proposals.

Overall, the meeting was quite positive and informative for our management team and board members, while also providing ISS with a more thorough understanding of our proposed changes. Looking ahead, we remain optimistic that our initiatives will aid our efforts to turn around ISS' opinion on Curtiss-Wright's pay-for-performance linkage.

Getting to Know Glass Lewis

In addition to meeting with ISS, we ideally wanted to conduct a face-to-face meeting with Glass Lewis as well. We reached out to the two research analysts who prepared the report on Curtiss-Wright to discuss their views and observations (Glass Lewis voted "against" for the advisory vote on executive compensation, while also withholding votes for two directors serving on the compensation committee). Not only did they openly accept a meeting, but they later informed us that Glass Lewis welcomes meetings with companies to develop a greater understanding of their philosophies.

So, on the heels of an institutional investor marketing trip to San Francisco, we conducted an open discussion with our Glass Lewis contacts detailing the proposed changes to our compensation philosophy and pay-for-performance packages.

The meeting was very cordial and informative for both sides of the table. While we discussed our proposed changes and walked them through our presentation, we learned a tremendous amount about Glass Lewis' views on corporate governance and how it differentiates itself from ISS and other proxy advisory firms.

Overall, the meeting with Glass Lewis was quite rewarding, with clear messaging and an open, transparent discussion. Our analyst also added some validity to our efforts, noting, "This was the most thorough presentation that they had seen on Say-on-Pay."

What We Learned

Through our conversations, we developed a stronger understanding about the voting process of each of our top shareholders, and where the discretion of those votes lie – with the portfolio manager(s) or the proxy department. In fact, our day-to-day investor contact (analyst, portfolio manager, etc.) had more influence in the voting process than we initially believed. In some cases, that contact had sole discretion for the firm's entire Say-on-Pay vote. The primary takeaway to pass along is that *every firm* uniquely follows a different voting process and you need to find out who has the decision-making authority.

A summary of our key findings is as follows:

- Certain triggers drive the voting decisions for some of our largest holders and proxy advisory firms.
- Several investors clearly stated that they vote *with* ISS and/or Glass Lewis unless the portfolio manager recommends otherwise.
- Some investors followed set guidelines, using ISS/GL as a guide/resource in their voting process.
- Several investors stated that they tend to vote with management on all proposals except compensation – upon which they defer to an ISS or Glass Lewis recommendation.
- Both ISS and Glass Lewis are willing to listen to and work with companies to understand their pay for performance philosophy.

We also were able to openly listen to questions from our top shareholders and hear if the proposed changes would be sufficient to address their concerns (such as a high burn rate, or level of compensation versus peers). In nearly all cases, our changes were widely viewed as a solid improvement over the prior year's plan.

Next Steps

Now that we've made initial contact with the appropriate voting authority at each of our top shareholders and their proxy voters, we intend to maintain a steady, year-round dialogue to discuss any additional changes to our compensation plan design.

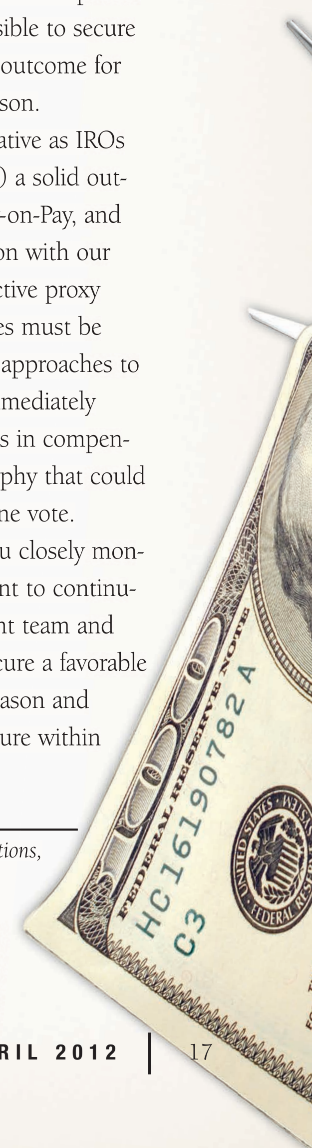
Upon the release of the 2012 proxy, we will pursue calls with both ISS and Glass Lewis to review the updated compensation plans.

Furthermore, we will immediately contact all shareholders with "against" votes in 2011, and reaffirm Curtiss-Wright's commitment to significantly increasing the focus on "relative pay for performance."

Most importantly, we will follow up with as many shareholders as possible to secure a favorable vote and positive outcome for Curtiss-Wright this proxy season.

Looking ahead, it is imperative as IROs that we develop (or continue) a solid outreach plan as it relates to Say-on-Pay, and maintain open communication with our shareholders and their respective proxy voters. In addition, companies must be proactive year-round in their approaches to corporate governance and immediately flush out any potential pitfalls in compensation plan design or philosophy that could lead to a negative or borderline vote. Finally, I recommend that you closely monitor this changing environment to continually educate your management team and board, as it may help you secure a favorable Say-on-Pay vote this proxy season and potentially enhance your stature within your organization. IRU

Jim Ryan *is director, investor relations, for Curtiss-Wright Corporation; jim.ryan@curtisswright.com.*



Dealing With Shareholder Activists

Activist shareholders can stir the pot, but sometimes they can become valued advisors and even board members.

"Activists are looking for an opening or a cause they can rally other shareholders around and then garner some media coverage to put pressure on the board and management teams," moderator Keith Mabee, vice chairman of Dix & Eaton, said on a February 2012 NIRI-sponsored webinar entitled "Governance Part II: Dealing with Shareholder Activists."

Issues that typically attract activists include governance, management changes, financial problems, diminished investor confidence, underperforming assets, and crisis. Panelists Aaron Hoffman, vice president of investor relations and corporate communications at Corn Products International, and Katharine Kenny, vice president of investor relations at CarMax have both dealt with shareholder activists and experienced different outcomes.

When Hoffman worked at Sara Lee, the global consumer-goods company, ValueAct Capital, approached the company due to its low valuation, asset sell-off, massive restructuring, and management changes. Hoffman and his colleagues learned as much as they could about the hedge fund, including its previous and current holdings as well as its historic role as activists.

A Positive Experience

Once they figured out that ValueAct worked quietly with management in a constructive rather than hostile manner, Hoffman's strategy was to treat them like any other investor and allow them to participate in meetings with management. "We tried to keep a good relationship with them," he said.

Surprisingly, Hoffman never dealt with an investor who had no inside information, but knew the company and industry as well as ValueAct's CEO. "ValueAct behaved like a strategic consultant and gave ideas to management," he said. The firm never demanded anything from the company.

The relationship ultimately deepened with the CEO becoming a board member and his company owning enough shares of Sara Lee to become a top three shareholder.

"There are good folks who have genuine intentions and can work positively with the company," Hoffman said, as a result of this happy experience. He recommends knowing who you are dealing with and if possible, avoiding a public fight.

> **"There are good folks who have genuine intentions and can work positively with the company."**
> – **Aaron Hoffman,** Vice President of Investor Relations and Corporate Communications, *Corn Products International*

Kenny, on the other hand, experienced quite the opposite with shareholder activists at her previous company, Massey Energy Company. It became a target due to multiple quarters of poor execution, underperformance, consistently missed guidance, a perception from the "Street" that the company would generate free cash flows and low stock price, along with a highly controversial CEO.

Several activists' hedge funds took 5 percent-plus positions at the coal mining company in the fall of 2005. "The hedge funds originally demanded that Massey significantly lever up in advance of projected cash flows and do a major share repurchase," she said. Massey's response was to authorize a relatively small share repurchase program in November. "Management justifiably didn't want to risk the long-term health of the company to bet on uncertain future cash flows for the obvious benefit of these short-term shareholders," Kenny continued.

A Negative Confrontation

The activists communicated mainly through public letters. The fight turned ugly with the activists accusing the board and management of acting like deer frozen in the headlights and threatened to rally for new leadership. One of them nominated two officers to the company's board of directors in March of 2006 with a promise to accelerate execution of the large buyback after the company refused to comply. A proxy fight ensued. Massey ultimately lost even though it garnered significant shareholder support and hired external partners to help.

Kenny believes reasons for the loss included hedge fund ownership amounting to 40 percent at its height, proxy advisory firm Institutional Shareholder Services (ISS) siding with the activists, as well as the board and management not believing it could lose. Mathematically, the primary reason was cumulative voting in Massey's charter, which allowed a shareholder to vote three times for one director. "The activists and others who voted for them had three times the fire

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OneNIRI Strategic Plan Moving Forward in 2012

NIRI IS MOVING FORWARD WITH ONENIRI STRATEGIC PLAN DEVELOPMENT IN 2012. To help members and stakeholders track the progress, NIRI has established a Web page with updates, information, and resources, including the OneNIRI Strategy Statement, at www.niri.org/oneniri.

The primary goals and objectives of the strategic plan are focused on four areas: 1) membership and community, 2) IR practice, 3) technology, and 4) global IR. The goals and objectives for each area of focus are interrelated. These four primary goals for the plan were subdivided into eight work groups that encompass the body of work for 2012. These groups are:

- Membership structure and dues
- Chapter services
- Practices
- Roundtable
- Fellows program
- Media expansion
- Next generation community
- Global IR

Research in the Membership structure and dues work group is under way; telephone interviews with randomly selected members have been completed, and an online survey of members is moving forward. The Chapter services work group is undertaking a chapter survey and analysis. The Fellows Program work group has established a Fellows Task Force. For updates in each of the work-group categories, please see the OneNIRI Winter update located on the OneNIRI Web page.

OneNIRI 2012-2015 Vision: Build an even more inclusive, networked, global organization – with core competencies of information, practice, advocacy, and community – throughout NIRI to lead the investor relations practice and investor relations professionals.

NIRI Launches IR Today Video Series

NIRI RECENTLY INTRODUCED "IR TODAY," a new on-demand video webcast series. Produced with the generous support of knowledge partner Corporate Board Member, IR Today will educate corporate officers and IR professionals on current responsibilities and issues that impact their relationship with boards of directors and shareholders.

The program will feature interviews with corporate leaders, finance professionals, board members, and investor relations experts who will offer advice and meaningful analyses on regulatory updates, investor relations policies, proxy and annual meeting developments, corporate governance issues, and speakers and highlights from the NIRI Annual Conference.

IR Today is available on the NIRI website (www.niri.org/media/videos), and on the NIRI YouTube channel (www.youtube.com/NIRINational). The webcast program will be approximately 15 minutes in length and air every two months. Each program will be archived for on-demand viewership.

On the Move

Maili Bergman recently joined Live Nation Entertainment as senior vice president, investor relations. She is responsible for the global investor relations program and working with the financial media. Bergman has more than 10 years of financial marketing and investor relations experience across various industries. She most recently was vice president, investor relations for Guess?, and before that director of investor relations and corporate communications for Abraxis BioScience.

Please send "On the Move" announcements to *IR Update* Editor-in-Chief Al Rickard at arickard@associationvision.com.

Webinar continued from page 18

and overwhelmed the votes of the larger and long-term investors," she said.

Kenny learned important lessons, saying "as the IRO, I can create and execute a top-notch investor relations program and make sure management and the board knows what and how investors are thinking.

Kenny agreed with Mabee that not all hedge funds are bad. "It's best to anticipate and prepare well before you could ever become a target," Mabee advised.

For more information about future webinars, please visit www.niri.org/webinars.

Contributed by ***Tammy K. Dang****, manager, professional development at NIRI; tdang@niri.org.*

Quick Takes

How do you explain what you do to friends who have no idea?

John G. Chironna
VP, Investor Relations
Tyco Flow Control

▶ "I simply explain it in terms that they understand. Nearly everyone has a stock portfolio, even if they don't know exactly what an analyst or portfolio manager does. Then it's easy to explain how we interact with the Street."

Jill L. Baker
Corporate Vice President, Investor Relations
PAREXEL International

▶ "I am the company's spokesperson to Wall Street analysts, and to existing and potential investors. I am responsible for things ranging from writing press releases and conference-call scripts, to answering questions from investors via phone, e-mail, and at conferences, to providing strategic and competitive intelligence to senior management."

Shawn Southard
Director of Corporate Communications, Investor Relations
Pennsylvania Real Estate Investment Trust

▶ "I speak slowly and use small words."

"Quick Takes" is a new column in *IR Update* that features brief comments from IR professionals in response to a question. If you would like to be featured in this column, contact *IR Update* Editor-in-Chief Al Rickard at arickard@associationvision.com.

NIRI Career Center

Members can search job listings nationwide and post their resumes free of charge on the NIRI Career Center. A sampling of recent job postings:

- Vice President, Investor Relations (San Francisco, CA)
- Director, Investor Relations (Chicago, IL)
- Director, Investor Relations (New York, NY)
- Manager, Investor Relations (Raleigh, NC)
- Media Relations and Communications (Ashland, KY)

Professional Development Calendar

For program information and registration, visit www.niri.org/calendar

April 2012

17 Global Series Part I: Europe webinar

19 The Annual Meeting webinar

24 Global Series Part II: Asia & Australia webinar

May 2012

8 Global Series Part III: Latin America webinar

22 Global Series Part IV: The Middle East & Africa webinar

June 2012

2 Writing Workshop for IR seminar, Seattle, WA

3-6 NIRI Annual Conference, Seattle, WA

19 Healthcare Industry webinar

25 Crisis Communications and Media Management seminar, New York, NY

26 Finance 101 seminar, New York, NY

27-28 Finance Essentials for IR seminar, New York, NY

July 2012

10 Financial Services webinar

24 Road Shows Part I: Preparing to Go webinar

August 2012

7 Road Shows Part II: On the Road webinar

14 Media Part I: Targeting the Media and Pitching Your Story webinar

20 Finance 101 seminar, San Francisco, CA

21-22 Finance Essentials for IR seminar, San Francisco, CA

23 Think Like an Analyst! seminar, San Francisco, CA

Are *You* the IRO of the Future?

It's time to create your own strategic plan.

As IR professionals, we focus on our *company's* strategic plan. But when was the last time we created one for our *own* careers? How will our profession look in five years, and what are we doing today to prepare?

The Chicago chapter recently asked an IR executive recruiter and two industry veterans to envision the IRO of the future. Here's what they predicted.

What the CFO and CEO Want

Pepper Binner is a senior client partner in Korn/Ferry International's Corporate Affairs Center of Expertise. She is seeing a number of characteristics rising to the top of CFO's and CEO's IRO wish lists.

"CFOs want professionals who understand financials, analysis, and modeling," Binner explains. "Also important is global capital markets experience, and keeping abreast of the complex regulatory environment. Finally, they seek people who have credibility with the Street and [can] deftly manage activist shareholders."

CEOs have slightly different needs. "They're looking for people with the confidence to tell them the truth," Binner states. "CEOs also want an IRO who has more of a marketing orientation and can be an evangelist for the company."

How IROs Can Position Themselves

As NIRI president and CEO from 1982 to 2006, before becoming managing director of Kalorama Partners LLC, Lou Thompson watched the profession evolve. He believes IROs must move from a tactical to a strategic position. "It comes down to how they can add value beyond their traditional functions," Thompson says.

"They must demonstrate their value to the C-suite and the board," he explains. "These people need to know how market factors are affecting the company's share price – near and long term.

"As part of this, IROs also must lead the charge to communicate not only the financial but the broad array of nonfinancial information to investors," Thompson adds. That includes company story lines on sustainability, long-term value proposition, social responsibility, and governance. To support this, he pointed to a study that revealed that more than half of the average Fortune 500 company's market value is determined by this "soft" information.

Develop the Right Building Blocks and Relationships

Before becoming president of Higashi Advisors, Elizabeth Higashi led the IR and corporate communication departments at three Fortune 500 firms. She suggests that the CFA (Chartered Financial Analyst) program is a great foundation for those starting out in investor relations.

Higashi identifies several key qualities that will be critically important: "The IRO of the future will need 1) a broad understanding of financial markets, financial analysis, and accounting; 2) excellent communication and interpersonal skills; 3) the ability to learn quickly and adapt easily; 4) the ability to manage multiple projects and priorities; 5) the willingness to be available and responsive 24/7; 6) the ability to be adept with technology; and 7) flexibility."

She notes that IROs have a unique role in the corporation. "They have the perspective of an outsider, while retaining the knowledge of an insider," Higashi explains. "No person better understands the company's challenges and opportunities."

She suggests that IROs augment this position by building strong relationships with others in the company. "You have to put yourself out there. This can come from rotating among other positions in the company, and volunteering for new assignments."

There *Is* a Tomorrow for IROs

Binner, Thompson, and Higashi agreed that there *will* be an IRO of the future—despite the waning size of the buy side and sell side, and the growing use of indexing and algorithmic trading. They believe there will always be long-term investors who will want to hear a company's investment story from a credible source.

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*Contributed by **Lynne Franklin**, principal of Lynne Franklin Wordsmith; lynne@yourwordsmith.com.*

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