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NOVEMBER 2012

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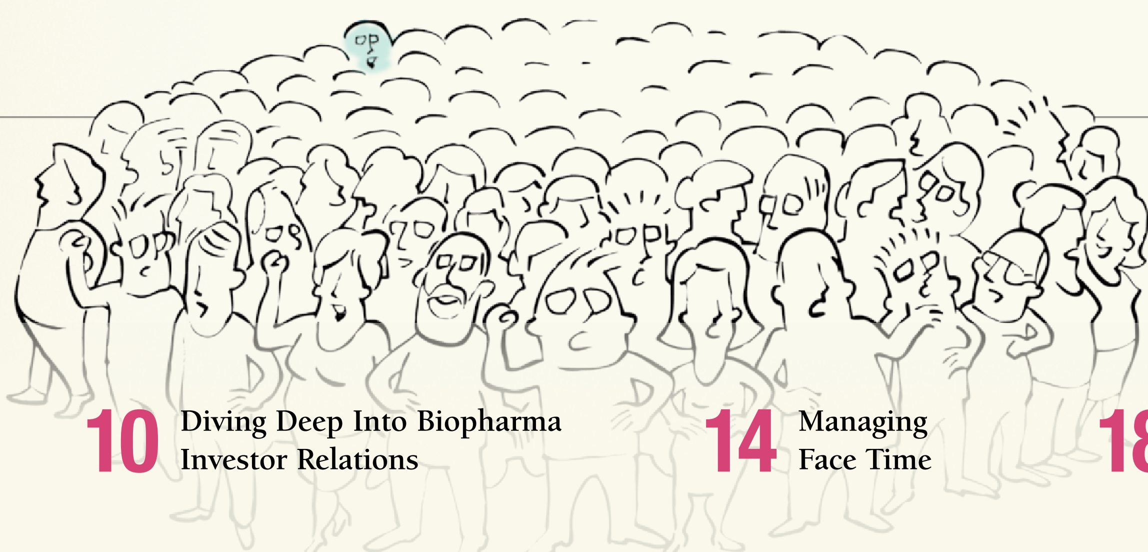
DEALING WITH GADFLY INVESTORS

Individual shareholder proponents **can't be ignored.**



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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 3,300 members representing over 1,600 publicly held companies and $9 trillion in stock market capitalization.

About *IR Update*
IR Update is published monthly by the National Investor Relations Institute as a service to its members.
ISSN 1098-5220
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DEPARTMENTS

NIRI Fellows Program Launched

New Corporate Dues Structure Under Consideration

Our "OneNIRI" strategic plan is almost 1 year old and this month two items are worth discussing.

First is the newly launched "NIRI Fellows Recognition Program." Approved by the NIRI Board of Directors in June, NIRI Fellows will honor NIRI members who epitomize the leadership, integrity, involvement, and contributions of the best among investor relations professionals. Nominations for this annual program will be accepted through the end of each calendar year (visit www.niri.org/fellows to nominate a colleague).

New NIRI Fellows will be selected each spring by a selection committee and then honored at the NIRI Annual Conference. NIRI members often mention how grateful they are to have the NIRI community to lean on throughout their career for advice and counsel. I am so pleased that we now have a way to identify and recognize our profession's luminaries.

Second, the NIRI Board in September discussed our recent member satisfaction survey in which almost 30 percent of NIRI members provided very useful feedback. My thanks to everyone who participated, and I was delighted with the high marks you gave the organization. I was also grateful with the comments, suggestions, and assistance in allocating our resources so we can continue to best serve your needs in the future.

The survey reinforced the concept that after more than 40 years it is time for NIRI to update its membership structure to reflect a more contemporary view of our capital markets and the larger size of some IR teams. While the current "regular" individual member type will be maintained, **the NIRI Board is considering adding a corporate dues structure to cover all IR team members of an organization, as well as providing a basic global option for NIRI involvement.**

Before the NIRI Board approves these new options, some minor changes to our bylaws will be necessary, changes that NIRI members must approve through our annual proxy process. ***Members are the shareholders of NIRI* and we need your vote on the current proxy** for incoming board members and for changes in the bylaws! To vote your proxy, sign in to www.niri.org, click on your name at the top of the page, click the link to "My NIRI," and then click on "My Transactions."

Thank you – your vote will ensure we have sufficient votes to approve our new directors and changes in the bylaws. The NIRI Board will consider new memberships options at its December meeting, so look to hear more about this in early 2013.

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DEALING WITH GADFLY INVESTORS

Individual shareholder proponents can't be ignored.

By Ted Allen

When an IR officer receives a call from a retail investor, the first reaction may be to put off addressing that shareholder's concerns, given his or her already full workload.

However, that could be a mistake. Some individual investors – who often are derided as "gadflies" – have become quite proficient at filing shareholder resolutions that likely will appear on a company's proxy statement. Some of these proposals have a significant chance of winning majority support from investors, even though the proponent may own a miniscule stake.

In the future, the company's directors could be put in the uncomfortable position of having to implement the governance changes sought by retail activists, or face negative recommendations from proxy advisors and the potential embarrassment of a majority withhold vote.

In recent years, retail activists have consistently accounted for the lion's share of shareholder proposals at U.S. companies. In 2011, individual activists filed 358 proposals, far outpacing religious groups (194) and labor funds (130), according to FactSet Research's SharkRepellent.net website.

In 2010, individuals filed 494 resolutions, almost as many as those submitted by religious groups, labor funds, and public pension funds combined. While some of these proposals were omitted after corporate challenges or withdrawn, the remainder still had a major impact on corporate proxy statements and future governance practices.

"Issuers don't like them, but [retail activists] play a significant role in the shareholder proposal ecosystem," said Francis Byrd, a former New York City pension fund official who now leads Laurel Hill Advisory Group's corporate governance practice. "They need to be taken seriously by your company's entire proxy team, which includes IR."

Likewise, James McRitchie, a shareholder activist who publishes the CorpGov.net blog, advises IROs to pay attention to these investors. "They put up proposals and other people vote for them. You should treat them with respect," he said.

In 2011, individuals (and their families) accounted for four of the five most prolific proposal filers, according to FactSet Research. Those retail activists included John Chevedden, a retired aerospace engineer from suburban Los Angeles, whose family filed 70 resolutions; William Steiner, a retired staffing company executive from Great Neck, New York, and his son, Kenneth Steiner; Denver-based activist Gerald R. Armstrong; and octogenarian activist Evelyn Y. Davis, who has a history of scolding chief executives during annual meetings.

DEALING WITH GADFLY INVESTORS

These activists have significant influence on companies despite their small stakes, because the Securities and Exchange Commission's shareholder proposal rule, Rule 14a-8, sets a very modest ownership requirement – a $2,000 stake held for at least one year – to submit a resolution. This minimum threshold is far lower than in other markets, such as the United Kingdom, where an investor needs to hold a 5 percent stake (or amass a group of 100 investors) to submit a shareholder proposal.

In 2007, corporate advocates urged the SEC to raise this ownership threshold and take other steps to rein in shareholder proposals, citing the increasing costs and staff time required to deal with these resolutions. Activists, including labor funds and religious groups, urged the SEC to maintain the status quo.

The filing of shareholder resolutions by individuals is not a new phenomenon. In 1942, the SEC adopted its first rule to allow investors to submit proposals that companies had to hold votes on. As longtime governance advocate Nell Minow recalled in a 1992 paper for Lens Investment Management, the SEC adopted this rule primarily because of the efforts of the Gilbert brothers, who started filing proposals on executive compensation and other governance issues in 1932. "It was corporate gadflies who made the whole system possible," she wrote.

Significant Influence

Another reason that these activists have a significant influence is that many of them file proposals on topics such as board declassification, majority voting, or the repeal of supermajority voting rules that have broad appeal among institutional investors. When the proxy voting team of a large institution evaluates a proposal that seeks a well-known reform like declassification, the identity of the proponent usually isn't a factor. "On many of these proposals, it doesn't matter who is submitting them," Byrd observed.

In recent proxy seasons, individual proponents have accounted for at least half of the proposals that earned majority support. According to the Manhattan Institute's Center for Legal Policy, 102 of the 350 proposals filed at Fortune 200 firms by Chevedden and his allies since 2006 have won majority support. While virtually all of these resolutions are nonbinding, they can't be ignored.

Institutional Shareholder Services (ISS), the largest U.S. proxy advisory firm, typically will recommend against an entire board if it fails to implement a shareholder proposal that received a majority of the votes cast "for" and "against" for two consecutive years, or received support from a majority of the shares outstanding.

Many institutions have voting guidelines that are similar to this ISS policy, and routinely will vote against directors who ignore majority-supported proposals regardless of how well the company has been doing financially. Consequently, many issuers ultimately adopt the governance reforms sought by individual activists to avoid continued opposition from ISS and institutional investors.

Retail activists also have shaped corporate governance by crafting proposals on new topics that are later embraced by larger investors. Byrd said the activists have acted as "a mini-vanguard of ideas," and have "provoked thought among institutional investors." As Byrd recalled, Davis was an early pioneer of proposals that related to corporate political activities, which has become a significant proxy ballot issue in recent years.

Before the 2009 proxy season, Chevedden and other activists filed more than a dozen proposals that asked companies to reincorporate to North Dakota, which had adopted a law that mandated proxy access and other shareholder rights. In 2011, Chevedden and the Steiners helped resurrect written consent proposals, which hadn't appeared on proxy ballots in more than a decade.

More recently, Chevedden and other activists filed a novel proxy access proposal that includes an alternative ownership threshold to permit board nominees by groups of at least 50 (or 100) investors who each own a $2,000 stake. In addition, McRitchie has crafted a new proposal that seeks to encourage competition to proxy advisors.

Meanwhile, companies and their lawyers have had to work harder to obtain permission from the SEC's Corporation Finance Division staff to exclude these proposals, as the retail activists have learned from past SEC no-action rulings and revised their resolutions accordingly.

"They have become increasingly sophisticated; [their] proposals are better written than they were 15 to 20 years ago," said Keir Gumbs, a former SEC attorney who is a partner with the law firm of Covington & Burling LLP. "They follow the staff rulings on proposals as closely as outside counsel and companies do."

In recent years, companies have increasingly raised proof-of-ownership and other technical objections in an attempt to omit proposals filed by retail activists. Before the 2009 proxy season, more than a dozen issuers argued without success that Chevedden, who represents the Steiners, the Rossi family, and other activists in no-action matters, was violating the SEC's rule that limits an investor to one proposal at each meeting.

The issuers alleged that Chevedden was using his fellow activists as his alter egos to file multiple proposals at the same company, which the investors denied. In 2010, Apache Corp. decided to bypass the SEC staff and obtained a ruling from a federal judge in Houston that Chevedden had not provided sufficient evidence of ownership. The SEC staff has since clarified its rules on proof of ownership.

Costs Imposed on Companies

Given that their influence far outweighs their economic stake, these gadfly investors have become a source of frustration for many IROs, corporate secretaries, and board members.

"They have polluted the shareholder proposal process," Amy Goodman, partner in the law firm of Gibson Dunn & Crutcher, which represents companies in no-action requests, told the *Los Angeles Times*.

Gumbs points out that the activists' efforts impose costs on other investors. "For a $2,000 stake, it can cost a company $15,000 to $20,000 to respond," he said. "It would be nice if these investors took these costs into consideration before filing." In response, the activists point out that companies don't have to challenge so many proposals, or they could find less-expensive lawyers to do so.

Companies also are frustrated by some of the tactics of the retail activists. Unlike many religious or environmental groups that file proposals on climate change or social issues, the individual activists who file governance resolutions typically are not willing to negotiate or withdraw their proposals.

Whereas many labor and public pension funds often try to engage before filing, retail investors typically submit their proposals without trying to negotiate with the company. This approach frustrates officials at those companies who make an effort to engage with investors so that their proxy statements are not cluttered with multiple shareholder proposals. However, McRitchie points out that most of the governance issues (such as declassification and majority voting) are rather "black and white," and thus there is less room to negotiate.

In response to activists' proposals seeking a 10 percent standard for shareholders to call a special meeting, some companies have lowered their thresholds to 25 percent. That hasn't deterred the activists from continuing to seek a 10 percent standard, but those proposals have received less support at companies that have taken this action.

While Davis announced her retirement from activism in July, it appears that Chevedden, the Steiners, Armstrong, and other activists will remain active on both new and more established governance issues. After losing a series of no-action rulings last winter, the activists revised their proxy access proposals and overcame recent no-action challenges by Medtronic, Forest Laboratories, and H&R Block, and may file more of these resolutions for 2013 annual meetings.

At this point, it appears unlikely that the SEC will take any action to limit shareholder resolutions. Noting that the financial crisis disillusioned many retail investors, Byrd said the ability of individuals to file proposals helps maintain investor "faith in the system.

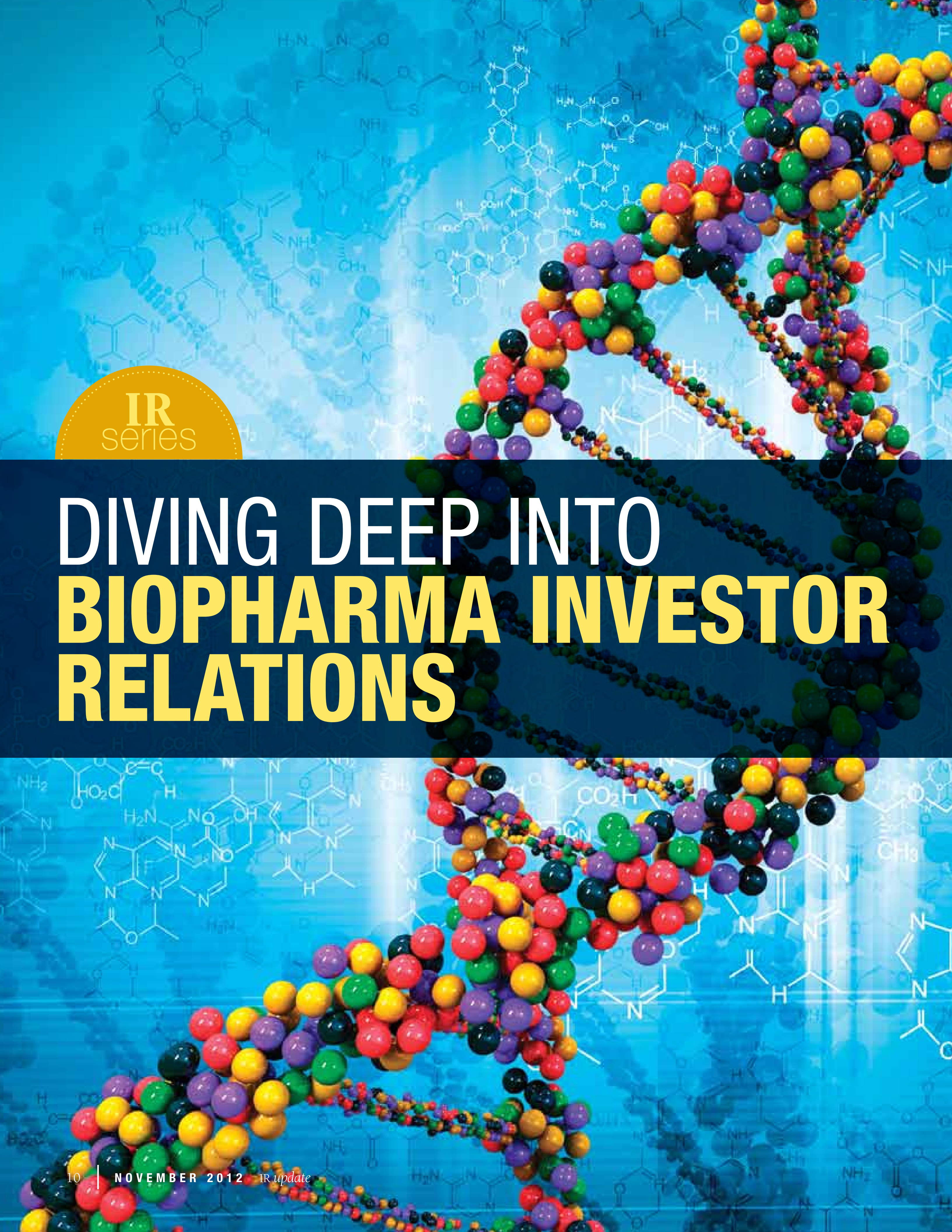
"It lets them know that their voice can be heard, even with a small stake," he said. "It's something that we're all stuck with." IRU

__Ted Allen__ is NIRI's director of practice resources; tallen@niri.org. For more information on corporate governance and advice on dealing with gadfly investors, please visit NIRI's Presentation and Report Library.

ADVICE FOR IROS

The following insights may come in handy when you're dealing with activist investors.

- Not all retail investors are potential activists. Some are retirees or former employees who have a long-term connection with the company and may just want an audience. Returning their phone calls, and "treating them more kindly tends to be more effective," said Keir Gumbs, a former SEC attorney who is a partner with the law firm of Covington & Burling.
- The professional activists are "tougher" to deal with, Gumbs said. They are less likely to withdraw their proposals, and they often return year after year with new issues, regardless of the company's actions or financial results, he noted. If engagement is not going to be productive, a company's only recourse may be the SEC's no-action process, which the firm's in-house or outside counsel typically handles.
- The resolution topic really matters. If the activist is filing a proposal that seeks a new or less-popular reform, then a company should have a good shot of persuading many investors to oppose it. If the retail shareholder seeks a well-established change like board declassification, it's highly unlikely that the company can persuade its institutional shareholders to oppose the resolution.
- Take activists and other retail investors seriously. Francis Byrd of Laurel Hill Advisory Group recalled the advice from Peggy Foran, the corporate secretary at Prudential Financial, and a well-known governance expert: "Try to respond to every shareholder letter unless it is written in capital letters or in crayon."



IR series

DIVING DEEP INTO BIOPHARMA INVESTOR RELATIONS

In an industry marked by a strict regulatory environment, huge capital costs, and long lead times for product research and development, implementing an IR program has unique challenges.

By Alexandra Walsh

EDITOR'S NOTE: With this issue, *IR Update* launches the first of several occasional feature articles that will examine the unique perspectives of investor relations in different industries. This article takes a deep dive into the biopharmaceutical industry with four experienced biopharma IROs, who share their insights about what it is like to practice their trade in this industry.

Few sectors hold as much promise for providing future economic leadership for the United States as the research-intensive biopharmaceutical sector. This industry is composed of an extensive and diverse group of companies ranging in size from small start-up firms to multinational, multibillion dollar corporations. These companies provide the resources – both human and financial – that drive the discovery, development, testing, and production of new medical treatments.

This diverse industry, perhaps best described as the life sciences industry, incorporates a wide range of pharmaceutical (pharma), biopharmaceutical (biopharma), and biotechnology (biotech) interests, according to Derek Cole, vice president of investor relations and corporate communications at ARCA biopharma and NIRI chairman. The industry includes medical device, drug, and diagnostic equipment manufacturers, to name a few.

Anna Sussman, senior director of investor relations at Clovis Oncology, explained further: "Big pharma in broad strokes is your Merck and Bristol-Myers Squibb – big established companies with billion dollar drugs that are household names."

She noted that biotech companies such as Amgen and Genentech were once small companies based on biologic drugs that they developed and are now big established companies that have billion dollar drugs, but are still considered newer entities.

"Biotech/biopharma tend to be companies developing compounds in the earlier stage. They're companies whose market cap ranges from billion dollar to penny stocks depending on where they are in development," said Sussman.

Heather Savelle, senior director, investor and public relations/corporate communications for Targacept, works for one of those companies. Her niche in the industry is biotech; smaller biotech companies usually haven't yet commercialized their products.

"Everything is based on the promise of something working. The drugs are still in development, unlike the pharma companies, which have plenty of products on the market," she explained.

WHAT MAKES BIOPHARMA UNIQUE

A heavily regulated field. "Our industry is impacted every step of the way by how highly regulated it is by the Federal Drug Administration (FDA)," said Amy Sullivan, vice president of IR and corporate communications for Amag Pharmaceuticals.

She explained that a lot has to happen before a drug compound enters human beings. While still in the test tube, it has to be deemed effective against a target. Then in animal testing, it needs to be determined that the drug works, if it is tolerated and at what dose, and then clinical development begins and eventually the drug is tested on humans. "These programs can take years," said Sullivan, "At the end of the day, not that many drugs get approved."

Timeline and cost. Clearly two things that are different in the biopharma industry are timeline and cost. Cole explained that in the biopharma industry, from concept to commercialization is an eight-to-12 year process and an $800 million-to-$1.2 billion dollar investment.

"That's a long time and a lot of money and how you plan for that and how that plays into investor relations, and how you raise the money is an issue in itself," said Cole. "When you look at capital markets today, the mismatch of industry timelines versus investment time horizon is a pretty significant issue for the industry and IR within the industry."

"What we focus on is capital -- it drives everything. In the biopharma sector we talk a lot more about story and development and clinical work and what phase you're in. Because of those timelines, we focus more on story than revenue generation, at least until you reach commercialization," said Cole.

From discovery to commercialization. The transition from the discovery/development stage to commercialization, at least for the biotech companies, is another unique aspect of IR in biopharma.

"A company that is research-driven is typically burning and raising capital at a fairly rapid pace until [it reaches] the commercial stage, and then everything changes in the way [it's] analyzed and valued," according to Sullivan, who added that many companies fall down at this stage. "They're excited, the Street is excited, there are huge expectations at launch, and then the drug doesn't meet those expectations."

At the point where the commercial stage begins, the focus turns to the fundamentals -- how to grow the top line and maximize the bottom line -- and often the company is not ready, noted Sullivan. "There's so much detail and visibility on how money is spent, pricing decisions, and how the product is going."

Clovis Oncology is gearing up for the transition from development to commercialization. "Clinical trial results are due the fourth quarter of this year, and if the data are good, we plan to aggressively build our sales force," said Sussman. This is a big change for our company, but we've got a proven management team and that's part of our track record of success so far."

Sussman said the change for her will be reflected in the topics of conversation. "Currently investors are interested in the pipeline for all three of our products in development. If the data are good, then there will be considerable interest in the regulatory filings, launch plans, and progress on building our commercial organization."

Health care and politics. Another aspect of biopharma IR is tied to politics – namely health-care reform. "One big thing that came up with health-care reform that impacts our industry is the payer aspect," clarified Savelle. "To sell someone on your development program, a company has to figure out the reimbursement landscape and whether it makes sense from a modeling perspective -- will you get reimbursed?"

Savelle said she doesn't have a lot of spare time to follow politics even though the industry is heavily regulated by the FDA. "NIRI really helps me with its updates on the SEC and FDA. I'm a member of the Boston NIRI chapter and in addition to helping me stay on top of the regulatory arena, the networking aspects are incredibly important. They're a very helpful vocal group of people, and it's amazing to be able to call total strangers and pick their brains."

Cole, who is chair of the NIRI pharma e-group, said IR best practices in general and the pharma e-group and industry roundtable are what he loves about NIRI. "Those who attend – we're clearly in competition for capital and investor attention but you wouldn't know that because of the open dialogue about investment community and best practices. It's a very powerful network and resource for IROs in the biopharma industry."

A SPECIALIZED FIELD

Biopharma's institutional investors are unique in their specialization and laser focus, noted Sussman. "Because of the scientific nature of the subject matter, and the stock price shifts that can result from clinical and regulatory events, biotech is well-recognized as not [being] for the timid investor."

She added that her investors are institutional, with few if any individual investors at this point and adds that the majority of investor company representatives often have many letters, such as Ph.D. and M.D., after their names. "There's a great degree of

expertise within the field on both the sell side and buy side."

Savelle noted that both the sell-side and buy-side analysts talk and can be influential regarding external opinions about any company, good or bad. "My companies have all been small shops and I was the only IR person in-house. I rely on sell-side analysts to help me set up road shows, one-on-ones, and for their research notes." She said she also makes sure all her analysts have the information they need so they can support her with the buy-side analysts. "In general, sell side has a broad reach and that's key for me."

Some of Savelle's key long-term investors are very vocal in their communities, she noted, and can be advocates for the companies they've invested in. "They speak at industry events and roundtables, and they've used anecdotal information about our business model as examples of what they like."

The go-to event for biopharma IROs is the JP Morgan Healthcare Conference held every January in San Francisco. According to Cole, 250 companies are invited to present to investors but it's such a successful conference, other investor banks send their own analysts. "There might be 20,000 to 30,000 investors, equity analysts, and bankers."

Also important to biopharma IROs are the therapeutic disease-specific research conferences. "We're solely focused on oncology so the biggest event for us is the American Society of Clinical Oncology Conference," explained Sussman. "Also important for us are health care-focused investor conferences where we may present one day followed by a day of one-on-one meetings."

GETTING INTO THE INDUSTRY

For those readers who might be wondering at this point how much specialized knowledge is required to enter into, or transition to, biopharma IR, Cole noted that the industry would say it is a perceived requirement. "That the technology is so different an IRO needs to have a science background is a sentiment strongly felt in our industry, but I disagree with that.

"If the analyst really needs to dig that deep, the company's chief science officer can provide that information," countered Cole. "At the end of the day, the IR person, management team, and science officer should be able to get the story down so well that the IR person can convey that story to the outside world."

Sullivan suggested that the priority is for IROs to understand the disease state in which they intend to work. "If interviewing for a pharma company, know the disease state, know the company's products, know the sensitivities of sell-side analysts that follow the company and important indicators of potential success they would look for, and know what the rest of the world knows about that disease state."

A business degree is the best to have for a biopharma IRO, according to Sullivan. "At the end of the day, it's all about business and investors looking for a return on investment."

Some additional advice for IROs considering a move to biopharma? Understand the regulatory environment in terms of the FDA. Understand sensitivities such as restrictions surrounding the commercial promotion of drugs. And be able to communicate effectively about your company and where it fits in your industry, said Sussman.

"But strong investor relations skills should trump industry expertise for this role, I firmly believe that," Sussman added. "If you have strong IR and communications skills, you'll learn about your company, its strategy, business model, and the deep dive to understand the nuances of the industry in which you're operating."

PATHOLOGICALLY OPTIMISTIC IROS

To sum up the biopharma industry, it takes a product eight to 12 years to move through the pipeline, enormous amounts of capital, and for every 1,000 ideas that are reasonable, only one to 10 of those is going to make it into the commercial market. The odds are clearly stacked against a single idea, noted Cole.

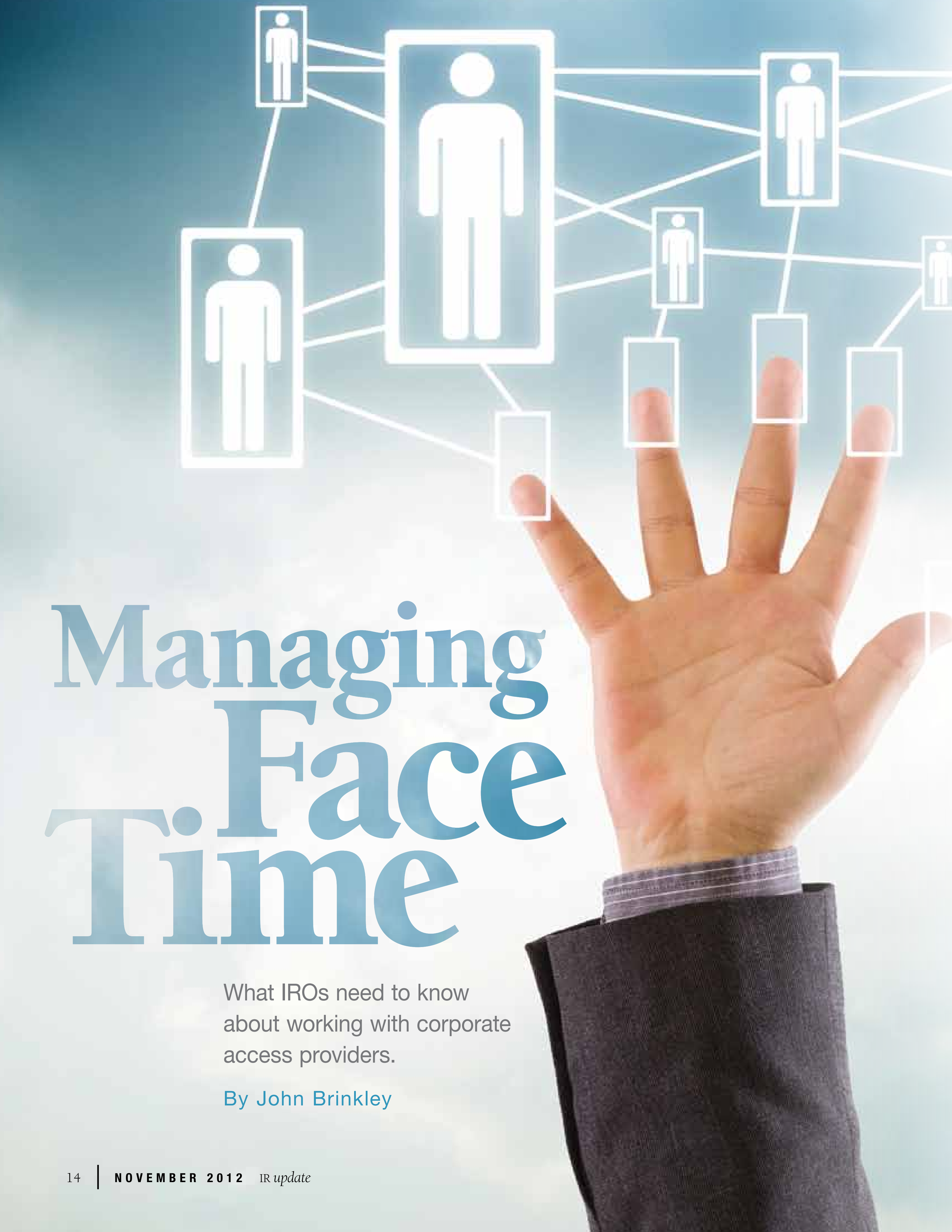
"Given the development timelines, amount of capital required, and low likelihood of success, people in the industry, to quote a colleague, are pathologically optimistic," he joked.

"It's a daunting task for a small or midsized company to move through the space, so you find passionate and committed people in this industry, dedicated to patients," Cole observed. "I get a great sense of satisfaction contributing to an organization that's trying to positively impact patients' lives and their families."

Sussman echoed that sentiment. "I very much like being part of my company and what we're doing in oncology. We're a publicly traded company, of course, with a responsibility to our shareholders, but even more importantly, we have the potential to make improvements in people's lives.

"Everyone has lost someone to cancer, but we have the ability to make a significant impact. I only have to talk to patients to remember why we're doing what we're doing." IRU

***Alexandra Walsh** is vice president of Association Vision, the company that publishes* IR Update*;* *awalsh@associationvision.com.*



Managing Face Time

What IROs need to know about working with corporate access providers.

By John Brinkley

Smart phones, GPS, Wi-Fi, caller ID – these and other modern conveniences make us wonder what we ever did without them.

For sell-side firms, having a *corporate access capability* has risen almost to the same level of importance as those consumer technologies, and has done so in a relatively short time period.

Several profound changes in the ways of Wall Street that occurred at about the same time are behind this development. One is the increasingly technological nature of buying and selling equities, which has dramatically reduced sales commissions to sell-side traders. The other is a government crackdown on unbalanced, and ostensibly unfair, flows of information. These changes increased the need for corporate executives to meet face-to-face with institutional investors, and by extension, the need for someone to arrange it for them.

So, in the middle of the last decade, investment banks started beefing up their corporate access capabilities. All the bulge-bracket firms now offer it. Corporate teams take IROs and company executives on road shows to meet with investors in other cities or countries. They set up the meetings, book the hotel rooms, make the restaurant reservations, hire the car service, and so on. In other words, corporate access has become a service industry unto itself.

Also, technology changes. Decimalization, for example, which took effect in 2000, "closed the bid-ask spread by about 50 percent overnight," said Dan Dykens, president of the corporate access firm Meet the Street. "As trading moved more electronic (via ECNs), pricing came in and volume grew."

Today, he said, "there's less investment banking activity, volumes have come significantly off their high levels, and that's really putting everyone on Wall Street in a position of having to add more value to get that incremental trade."

Communication Restrictions

Regulation FD, which also took effect in 2000, and the global analyst settlement of 2003, restricted avenues of communication among and between Wall Street players. The idea was to ensure that everyone had equal access to the same information, so investors were compelled to go right to the horse's mouth – company management – to get the information they needed.

"When you think about the last 10 years or 12 years that corporate access as a [discrete] function has existed, it's really a result of Eliot Spitzer and everything that happened with Reg FD," said Mark Pellegrino, head of corporate access at UBS Investment Bank. "No analyst should theoretically have any edge on information. So, investors feel like they can get better information just going to the primary source, which is the management."

RBC Capital Markets has had a corporate access function for four years, and already works with hundreds of issuers representing "all market caps and all industries," said Cheryl Gedvila, the firm's vice president for global corporate access.

"Corporate access has over the years become a much more important part of the buy side's research due diligence," Gedvila said. "You've seen over the last 10 years, the buy side bringing more of that research and dedicated analysts in-house. As part of that, it's equally important to them to have management teams come in so they can do their research on companies that they're potentially looking to invest in."

Eye on Research

Most corporate access providers are bulge-bracket firms like UBS. In deciding which one to use, IROs often go with one that performs research on their company.

"I get calls all the time from a variety of firms who are eager to get us on the road," said Tom Rathjen, vice president of investor relations at Accuray, a medical technology company .

"What I do is work with those firms where we have research coverage," he said. "I think there are many benefits of doing it that way as opposed to going out with these firms that will just line up meetings for you. . . . One is that it supports that analyst's work in covering your stock."

Jeff Smith, director of investor relations at FedEx Corp., said sell-side firms started ramping up research coverage at about the same time they started offering the full suite of corporate access services.

"When I first started doing IR (in 1998), there were maybe 10 to 12 transportation analysts," Smith said. "Now in the past 12 months or so we've had around 30. So the access function is something that many of them are trying to use to distinguish themselves from the crowd."

Take UBS for example. Its corporate access team members strive to provide services similar to what you'd get from the concierge at a five-star hotel. And you don't have to tip them.

"I've got five people on my team sitting next to me with more than 10 years' experience booking road shows," Pellegrino said. In any city they go to, "they know every restaurant, they know where every investor's offices is, they know every car service, they know their drivers by their first names, they know what CEOs want in their lunch, what salad dressing they like."

This level of service makes life easier for IROs who used to arrange these road trips themselves.

Smith said he used to handle road shows himself until FedEx started courting investors in Europe. He said he used a consultant to set up meetings there, "and when we started going to Asia a year or two after that we used a sell-side firm to set up meetings in Asia."

Today, Smith said, "we're pretty proactive about traveling across the country and to Europe, Asia, and Canada. The vast majority of those meetings are handled by the sell side."

He said the exception was when he took his CEO and/or CFO on the road to meet with investors. "We're pretty conservative about putting them out on the road, so generally if we're doing a road show with them, that is something that the IR team is going to set up as opposed to using the sell side."

Addressing Conflict of Interest

Since sell-side firms get paid for their corporate access services through trading commissions – or hope to – there is the potential for a conflict of interest: Will the corporate access team put company executives together with the kinds of investors the executives are looking for, or with investors whom they can count on to trade with them?

Accuray's Tom Rathjen said this was something IROs needed to watch out for when retaining corporate access services.

"What I would suggest is that the IRO control who is going to be targeted, so that the trip doesn't end up being simply a tour of the most active hedge funds working with that individual brokerage firm," he said. "I make that very well-known: Here are the companies we want to see. And then I also make it clear: Here are the types of investors we're looking for. In our case, it's investors who are either growth- or value-oriented that typically have a longer-term investment horizon. I make it very clear we're not interested in seeing the fast-money guys."

Dan Dykens would tell you that the best way to avoid a conflict of interest is to use the firm that he founded, Meet the Street.

IN A PERFECT WORLD

MARK PELLEGRINO, head of corporate access at UBS Investment Bank, shares the following scenario of how a corporate access road show would unfold "in a perfect world."

"Yahoo! says to me, 'UBS, we'd like you to host us on a road show. We're looking to find new shareholders. What do you think?' And I say, 'Okay, I know there are some people who are interested in your stock in Chicago, so why don't we go to Chicago?'

Yahoo! representatives come with us, they do a day of meetings, they do a group lunch in Chicago. They tell their story, they tell everyone why this new CEO is going to change things and why it's a great investment from here on out.

A bunch of those investors say, 'You know, I think it is time to buy Yahoo! stock.' They will call up their UBS sales trader and say, 'You know what, we're thinking of buying Yahoo! Give us 10 million shares.'

So we get a commission on that trade. Yahoo! is happy because it got a new shareholder, we're happy because we got some commissions off the back of it, and the investors are happy because they got to meet with management."

It's more like a dating service than what the big investment banks offer. Meet the Street has a proprietary database with public companies on one side and institutional investors on the other. IROs can pay for access to the database and find attractive investors themselves. At the same time, portfolio managers and analysts can use the site to find issuing companies that interest them.

Krista Tully, senior vice president of sales and trading at Instinet Corporation, which is affiliated with Meet the Street, said a "very common complaint" from IROs was that sell-side corporate access teams kept taking them to see investors they had already seen.

"For example, when they go to Boston, they see the same five clients, the seven same clients over and over again," she said. "Perhaps they just saw them recently and they don't want to see them [again]."

UBS' Mark Pellegrino acknowledged that there was "a bit of a potential for a conflict of interest" in whether a potential investor makes a good equity client for UBS or a good shareholder for the issuing company.

"We think from the corporate perspective in trying to figure out what shareholders and what meetings make the most sense for them," he said.

Accuray's IRO Tom Rathjen said he was sympathetic to sell-side firms' need to generate commission income, so he gives them a little slack in choosing what investors he and his superiors will see.

"From a quid-pro-quo standpoint, I will allow the firm that's taking us around to put in (a meeting with) an investor client of theirs that's particularly important to them, even though it may or may not dovetail into who we would normally look at," he said.

Time Well Spent

Rathjen said the most important consideration in taking a company CEO on a road trip is to make sure the CEO doesn't feel his or her time is being wasted. That means meeting with investors who will serve Accuray's interests.

"The sense I want at the end of the day is that whoever I'm out there with, the CEO or CFO, to say, 'You know this has been a damn good day. We've seen some very good investors who can help us out at some point,' as opposed to, 'What am I doing? I could have been back in my office being much more productive.'" IRU

John Brinkley *is a freelance writer based in Washington, DC; johnb505@gmail.com.*

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Dealing With the Media

Know the steps to take to manage your messages in the media.

"I never let anything come out of my mouth that I don't want to see as a headline," said Kristy Nicholas, director of investor relations at Expedia. "It's a good lesson my mom taught me." Nicholas, along with Michael McCarthy, director of investor relations and government affairs at Ambient Corporation, and moderator Frederick Bermudez, senior manager of public relations and communications at Sandia National Laboratories, shared their insights on two NIRI-sponsored webinars, "Media Part I: Targeting the Media and Pitching Your Story" (August 2012) and "Media Part II: Managing the Media" (September 2012).

Communicating with the media is very similar to communicating with Wall Street analysts, according to Bermudez. "Get back to them in a timely fashion," he said. "It's not only for analysts to write an accurate report, but for the media to write an accurate story." Similar to your analysts, the media wants honesty.

McCarthy added one distinction between the two constituencies. "The media will throw you under the bus to advance their career," he said. "The buy side and the sell side – not so much." They know they have to work with the company in order to stay informed and not get blindsided. The last thing they want is to appear as if they are not informed in front of their clients or investment committee.

Bermudez noted that when it comes to reporting on a story, reporters want access and hopefully, exclusivity to your management team and an engaging personality with credibility. "Reporters want fresh news," he said. "They want the first, the most, the biggest, the costliest, the last – anything that generally ends in '-st' or '-est.'"

Careful Preparation is Key

Targeting any media outlet requires careful planning and preparation. Identify the appropriate outlets the company wants to target and decide whether the message will be more effective in print, broadcast, or online. "The pitch itself, if you're being proactive with a topic you want to see illuminated more brightly, should be short and compelling as to why it's worthy of publication," McCarthy said.

Check whether a reporter favors a certain story line. If that is the case, does that bias work for or against your pitch? Set expectations with management. "Once the pitch is in motion, you're really going to need to be flexible and accommodating with information and messaging as it allows," McCarthy said. Keep in mind the rules of engagement of your company as well as the larger goals and objectives.

Differentiate your story, recommended Nicholas. News is breaking all the time. Depending on what type of reporter you are speaking to, think about how your story is globally and nationally relevant, along with the current state of the economy, industry trends, and hot topics. Engaging the media also means thinking about the downside of the story, which is why doing an interview just to answer questions is never a good idea.

Make it super easy for reporters by giving them press releases, background interviews, and multimedia, if applicable. "Develop that relationship on background so that when you get to the interview, it doesn't feel so formal and cold," Nicholas said.

Follow up on lingering questions, just as you do with investors. According to Nicholas, it's absolutely fine to tell a reporter that you don't know the answer to a question, but will research and follow up. "It's much better to say, 'I don't know' than get quoted and have it wrong," she said.

Know the industry influencers. This includes bloggers who could potentially drive the news. A blogger can get quite a bit of attention from analysts. According to McCarthy, some astute analysts on the buy side are even bypassing sell-side research and using influential bloggers to complement their own research. These bloggers are sometimes easier for companies to access than reporters at traditional news outlets.

Prepare talking points. Take note of recent events. Make sure the executive has media training, whether in a formal or informal practice session. When preparing, set the expectations with the reporter. Know how much time you're allocating and who

MEDIA TRAINING: DO'S & DON'T

DON'TS

- **DON'T** do an interview just to answer questions.
- **DON'T** assume the reporter knows what you are talking about.
- **DON'T** "wing it."
- **DON'T** fill the silence.
- **DON'T** use jargon.
- **DON'T** speculate or answer hypothetical questions.
- **DON'T** say "no comment."
- **DON'T** repeat the negative.

DO'S

- **DO** be positive and honest.
- **DO** have three message points; use your "bridges."
- **DO** be brief: Brevity is king.
- **DO** over-prepare.
- **DO** use stories, analogies and examples.
- **DO** clarify & restate.
- **DO** stay calm.
- **DO** assume recording device is on and working.

will conduct the interview. If possible, get an advanced list of questions. More so in TV than print, the producer will give one set of questions while the anchors on air may ask a different set.

"That's why it's important to know what your key messages are, so no matter what's asked, your executives know what you want them to talk about," Nicholas said. "If reporters ask about something you don't want to talk about or you've been instructed by counsel not to talk about, executives have a bridge to get them back to the messages you want delivered." Know the patterns of the various media outlets.

Plan for the rude or surprise question. Sometimes breaking news occurs and the prepared questions go out the window. "Reporters can make their career on a scandalous story," Nicholas said. "Don't ever let that guard down until you know you are in a private moment," Bermudez warned.

Put executives in a position to be successful. Some C-level executives don't respond well to certain styles of questioning; so put someone else on the team who is better suited to that role. "A prepared executive is always going to present the best perspective and, hopefully, the most insightful quotes," McCarthy said. The preparation is what gives them fodder for insightful conversation and expertise that articulates that quote so the interview is compelling. McCarthy also advises sticking to talking points. "When you start wandering off there, you wind up with more trips to the penalty box than visits to the trophy table," he said.

Preparation is key, especially in a surprise mode. It can be an opportunity to enhance the corporate reputation. "When companies are experiencing adversity and you're addressing an obstacle, that's when the real character comes out," McCarthy said. "Longer term, this is an opportunity for you and the company to build significant equity in your reputation."

Additional Factors

If a story has legs, the media is going to talk to a wide constituency, including suppliers and competitors. If a reporter with a possible story already written in his or her head wants to substantiate a key point, be really careful that it's a point in line with the key messages that you want to substantiate, Nicholas advised. "If you give them a small piece of thread and it's a story that they really want to write, they're likely to pull on that thread and use your quote to accommodate what they want to say," she said. Companies must also be aware that in today's media environment where stories can break online, sometimes faster is better than being right. Reporters can always update and correct it at a later time.

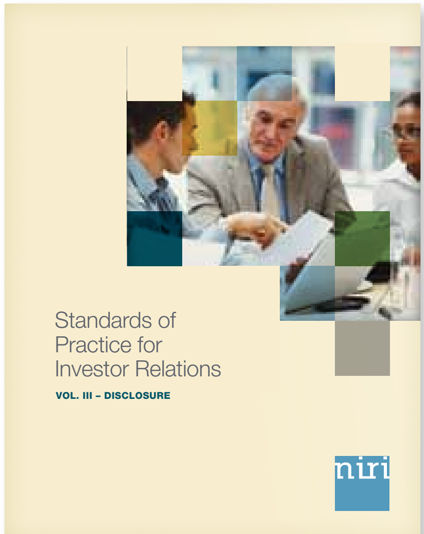
It's always important to understand the circumstances under which discussions with the media are taking place. Planned and/or positive announcements are relatively easy because you can fit those into the core messages as well as highlight company execution and performance. Negative announcements require you to obtain reliable information for the best possible outcome and maybe even painfully admit mistakes. "Sometimes that outcome may be walking away with a pair of black eyes and a bloody nose," McCarthy said.

An investor relations officer's ability to project confidence as the go-to person is just as critical as an executive dealing with the media. "You can't ever manage them, but you can do the best that you can to try to contain their reporting or lead them in the right direction," Bermudez said. According to McCarthy, nobody likes to know they're being managed, but it's critical to be in a position to effectively manage the messaging to achieve the best outcome.

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.*

NIRI Releases *Standards of Practice for Investor Relations Volume III – Disclosure*



NIRI HAS RELEASED the latest version of the *Standards of Practice for Investor Relations, Vol. III - Disclosure*. These new voluntary guidelines replace the 2004 edition of this publication and are updated to reflect innovations in disclosure practice incorporating, for example, the influence of the U.S. Securities and Exchange Commission's guidance on website disclosure, social media compliance concepts, and recent case law.

Members can access and download the document by visiting www.niri.org and scrolling over the green "Resource" box and clicking on "Publications."

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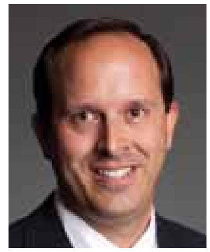
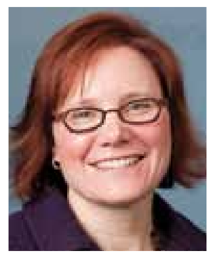
On the Move



Jorge Casado has joined Tutor Perini Corporation, a civil and building infrastructure construction company, as director, investor relations, which is a new position. He was previously with Tetra Tech, a provider of consulting, engineering, program management, construction management, and technical services, for 21 years, where he spent six years as vice president, investor relations.



Cynthia Clayton has been promoted to vice president, investor relations and corporate communications, at Alnylam Pharmaceuticals. She was previously senior director of investor relations and corporate communications. Clayton joined Alnylam in 2005, where she leads investor and media relations, as well as corporate communications and digital strategies. Prior to joining Alnylam, she was director, investor relations and corporate communications, at Synta Pharmaceuticals.

Lisa DeFrancesco has been promoted to vice president, global investor relations, at Watson Pharmaceuticals. She is part of the crossfunctional, multidisciplinary corporate affairs team that is responsible for global investor relations, global corporate communications, and government affairs. DeFrancesco joined Watson in 2009 as manager, investor relations, and was promoted to director in 2010. She has more than 12 years' business experience serving in finance and investor relations roles at Virgin Mobile USA, Realogy, Cendant, and Horizon Blue Cross/Blue Shield/NJ. DeFrancesco began her career on Wall Street as a sell-side analyst at Ladenburg Thalmann & Co.

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Professional Development Calendar

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

November 2012

12-14 Finance Essentials Intensive seminar, New York, NY

14-16 Global IR Practices seminar, New York, NY

20 Capital Markets Trends webinar

28-30 Senior Roundtable Annual Meeting, Scottsdale, AZ

December 2012

4 Sponsor, Exhibitor & Advertiser Thank You Lunch, New York, NY

13 What's Coming in 2013? webinar

January 2013

6-9 Fundamentals of IR seminar, Santa Monica, CA

10 Regulations 101 seminar, Santa Monica, CA

11 Writing Workshop for IR, Santa Monica, CA

June 2013

8 Pre-Conference seminars, Hollywood, FL

9-12 NIRI Annual Conference, Hollywood, FL

Quick Takes

What was the turning point for you that really launched your career?

Gerry Gould
VP-Investor Relations
Haemonetics Corporation

▶ "When the CFO of my company left and put me in charge of dealing with all the investors and analysts. Before that I was an assistant corporate controller; I was able to leave that world for something more strategic, interesting, and exciting – investor relations."

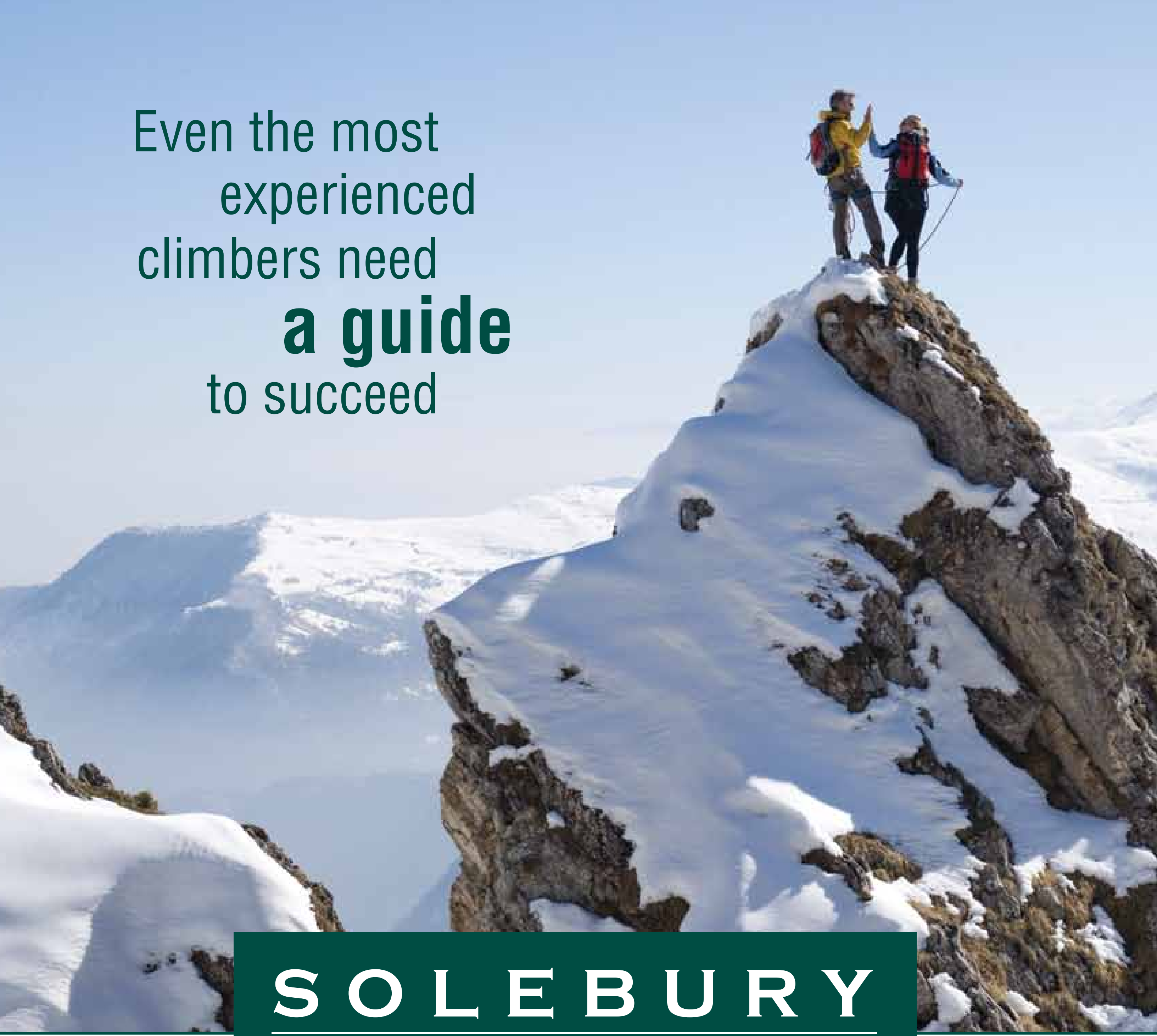
Anne Guimard
President
FINEO Investor Relations

▶ "Probably the fact that I was a Japanese major with a Ph.D. in international finance in the late 1980s. At the time, Japanese financial institutions were ruling the world. I was able to sell equities to Japanese institutional investors and organize road shows, all in Japanese!"

Alan Lindstrom
Director, Investor Relations
Cadence Design Systems

▶ "I had a background in finance and was running financial planning and analysis for a company that was in Chapter 11, headed for Chapter 7. It was time to look around and I talked to a former colleague who was running the IR group at a high-tech company. I kept an open mind about moving into a new field and 12 years later, I'm very happy I made the move to IR."

"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.



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