

IRupdate

JUNE/JULY 2013

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JUST SOCIAL, OR MATERIAL?

If employees post “material” information about your company on social media, what can you do about it? Before you take action, stay abreast of recent rulings by the National Labor Relations Board.



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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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Connect at the NIRI Annual Conference

I truly look forward to seeing many of my great NIRI friends in June at the Annual Conference and hope to make a few new ones there this year as well. Having the opportunity to learn and network alongside nearly a third of the membership is what makes the NIRI Annual Conference such a unique and exciting event.

The conference provides all of us with so much opportunity to learn and grow as professionals that I hope everyone reading this letter has the chance to benefit from it at some point in their career, if not every year!

On behalf of the NIRI Board of Directors, I want to thank the many volunteers, speakers, exhibitors, and sponsors for their time, dedication, and support to ensure the 2013 NIRI Annual Conference is better than ever. The high caliber of speakers and attendees at this event is only dwarfed by the endless enthusiasm of the Annual Conference Committee, the co-chairs, and NIRI staff who excel each year by continuously raising the bar to make the event as valuable as possible for all who attend.

This year, all their tireless effort is truly shining through in the form of impressive attendance, exciting speakers, and timely topics. Having personally served on the conference committee, I know how rewarding it is and highly recommend that you consider learning more about how it operates and if serving on it next year is right for you. Just reach out to anyone on the NIRI staff, NIRI board, or me directly for assistance.

As I write this column, I am also still amazed at how rapidly “social media” is transforming our personal lives and now – more importantly for the IR community – how it will impact our professional lives in the years ahead. The Securities and Exchange Commission certainly created a buzz in the investor relations community with its recent announcement outlining new rules regarding the use of social media in disclosure. You can even see a healthy debate on the NIRI message boards about it and just feel the level of interest percolating. My favorite post was from a NIRI member who characterized it as an “and” not an “or,” when it comes to disclosure through a corporate social media account as long as the company informs investors about its social media strategy first.

I can guarantee you there will be plenty of discussion on this topic in Florida, along with a wealth of other topics and events. I look forward to seeing many of you under the sun and the stars of beautiful Hollywood, Florida at the 2013 NIRI Annual Conference!



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JUST SOCIAL, OR MATERIAL?

If employees post “material” information about your company on social media, what can you do about it? Before you take action, stay abreast of recent rulings by the National Labor Relations Board.

By Lois Yurow



Frank comes home from a long day operating machinery at Widgets Galore, a public company, and posts this update on Facebook:

“Never been so tired. We can’t make the new widgets fast enough. My whole section is working overtime and the #&%* manager won’t authorize the OT pay until next quarter! Me and some of the other guys are going to complain to payroll tomorrow.”

Material? Maybe. Can Widgets Galore do anything about it? According to the National Labor Relations Board (NLRB), no.

What IROs Need to Know About the NLRB

The NLRB is the federal agency that interprets and enforces the National Labor Relations Act. The statute was enacted to facilitate union organizing, but Section 7 broadly grants employees (whether union or not) the right to “engage in . . . concerted activities for the purpose of . . . mutual aid or protection.”

As the NLRB interprets Section 7, employees are entitled to talk about working conditions, wages and hours, and management. Section 8 of the statute makes it an “unfair labor practice” for an employer to interfere with those conversations.

Recent NLRB guidance emphasizes that an employee’s right to complain is at least as compelling as an employer’s right to prevent disclosure of business information. That means an employee can make unauthorized comments that may raise concerns under securities law but are protected under labor law. IROs should be prepared.

What the NLRB Considers Unlawful

Doesn’t Widgets Galore have a social media policy that tells employees what to avoid online? Maybe they do, but it’s a good

bet that policy contains provisions that the NLRB believes are unlawful.

The NLRB has issued three memoranda regarding social media. (All three are found easily by searching “social media” at www.nlrb.gov.) The first two memoranda, from August 2011 and January 2012, summarize investigations against companies that disciplined employees for social media activities. The third, from May 2012, focuses on common provisions of social media policies and explains why the NLRB thinks many of them improperly infringe on employees’ rights. This May 2012 memo reproduces one social media policy – Walmart’s – that the NLRB approved in its entirety.

The NLRB’s guiding principle for social media policies is: “Rules that are ambiguous as to their application to Section 7 activity and that contain no limiting language or context to clarify that the rules do not restrict Section 7 rights are unlawful. In contrast, rules that clarify and restrict their scope by including examples of clearly illegal or unprotected conduct, such that they could not reasonably be construed to cover protected activity, are not unlawful.”

Looking at social media restrictions most likely to interest IROs, here is how the NLRB has applied this standard in its three memos:

Confidential, sensitive, and non-public information

CAN prohibit “discussing . . . ‘embargoed information,’ such as launch and release dates and pending reorganizations.”

CAN advise employees to “[d]evelop a healthy suspicion” of third parties seeking confidential information.

CAN “request employees to confine their social networking to matters unrelated to the company if necessary to ensure compliance with securities regulations and other laws,” because “employees reasonably would interpret the rule to address only

those communications that could implicate security regulations.”

CANNOT require employees to “suspend posted communications if the [e]mployer believed it necessary or advisable to ensure compliance with securities regulations, other laws, or in the best interests of the company.” Obviously, this is inconsistent with the ruling above. The reason may be that this restriction was inexplicably coupled with an unlawful requirement that employees discuss work-related concerns with a supervisor before communicating about them online, but the NLRB did not clarify.

CANNOT prohibit employees from “disclosing or communicating information of a confidential, sensitive [nature], or non-public information concerning the company” unless accompanied by “context or examples of the types of information [the employer] deems confidential, sensitive, or non-public in order to clarify that the policy does not prohibit Section 7 activity.”

Truthful, nondisparaging, professional, and appropriate

CAN prohibit “statements which are slanderous or detrimental to the company” if the context makes it obvious that protected discussions are not affected. (This particular policy included “a list of prohibited conduct including ‘sexual or racial harassment’ and ‘sabotage.’”)

CANNOT prohibit employees from making “statements that lack truthfulness or that might damage the reputation or goodwill of the [employer], its staff, or employees,” because such a rule uses “broad terms that would commonly apply to protected criticism of the employer’s labor policies or treatment of employees.”

CANNOT require employees to communicate online in an “honest, professional, and appropriate manner” because “employees would reasonably construe broad terms, such as ‘professional’ and ‘appropriate,’



to prohibit them from communicating . . . about protected concerns.”

Identifying or speaking for employer

CAN require employees “to receive prior authorization before posting a message that is either in the [e]mployer’s name or could reasonably be attributed to the [e]mployer.”

CAN require employees to “expressly state that their comments are their personal opinions,” but only when the comments are about the employer. A policy requiring such a disclaimer in all instances was deemed unlawful.

CAN advise employees to direct all media inquiries to an authorized spokesperson.

CANNOT “[prohibit] employee communications to the media or [require] prior authorization for such communications.” (Another fine line.)

CANNOT prohibit employees from identifying their employer, because that would make it harder for people to “find and communicate with their co-workers.”

Can These Rulings be Reconciled?

If you have thrown up your hands in frustration, that’s understandable. However, Marcia Goodman, a partner in the Employment & Benefits practice group at the law firm Mayer Brown, insists it is possible to craft a social media policy that will satisfy the NLRB and also reduce the employer’s securities law risk.

First, Goodman stresses that employers can prohibit social media activities that would violate state or federal law. That’s helpful to a point, but securities law violations in particular can be difficult to identify, especially in advance.

Second, Goodman reiterates that the NLRB’s primary complaint is with prohibitions it considers overbroad. She recommends that companies incorporate plenty of examples and explanations in their poli-

cies. However, examples need to be what Goodman calls “nuanced.”

Consider Clearwater Paper’s social media policy, which prohibited posting “material nonpublic information or any information that is considered confidential or proprietary.” The NLRB objected to many of the company’s examples: “[I]nformation about company performance, cost increases, and customer wins or losses has potential relevance in collective-bargaining negotiations regarding employees’ wages and other benefits. Information about contracts . . . could include collective-bargaining agreements.”

Similarly, General Motors’ social media policy defined “non-public information” as:

- “Any topic related to the financial performance of the company;
- Information directly or indirectly related to the safety performance of [GM’s] systems or components for vehicles;
- [GM] Secret, Confidential or Attorney-Client Privileged information;
- Information that has not already been disclosed by authorized persons in a public forum; and
- Personal information about another [GM] employee”

The NLRB found this restriction unlawful because the first, fourth, and fifth examples “[encompass] topics related to Section 7 activities.”

How Does the Walmart Policy Differ?

“Nuanced” is the right word to describe the Walmart social media policy. It is not easy to distinguish some of the Walmart language from language the NLRB has criticized.

On the issues an IRO would worry about most, the Walmart policy appears spare. Employees are admonished to “[m]aintain the confidentiality of [Walmart’s] trade secrets and private or confidential information,” with some examples of what those terms mean, and also to “[r]espect financial

disclosure laws,” with a pointed reminder about the company’s insider trading policy.

This might be brilliant. The undeniable purpose of an insider trading policy is to avoid a securities law problem. Even with its inclination toward liberal interpretations, the NLRB is unlikely to find an insider trading policy to be an unfair labor practice. Thus, an employer theoretically can incorporate by reference all of the examples of “material information” and the definition of “nonpublic” from its insider trading policy—many of which undoubtedly include language the NLRB wouldn’t accept in the social media policy itself.

Compliance 101

Of course, like an insider trading policy, a social media policy is worthless unless it is formalized and employees understand it. In a recent survey of participants in a webinar about social media governance conducted by Thomson Reuters Accelus and KPMG, less than 45 percent of the respondents said their companies have social media policies, and only 28 percent said their companies mandate employee training on the specific issue of social media.

Mike Rost, global head of industry analysts at Thomson Reuters, thinks these survey results fairly approximate the status of companies generally. “Most highly regulated industries like banks and broker-dealers have social media policies,” but many other companies do not.

He explains that social media is an emerging risk area; it may take a “trigger event” – such as a Netflix-type investigation involving a low-level employee – to spur most companies to act.

Rost urges companies to do three basic things: 1) Have a social media policy; 2) Make sure employees get social media training; and 3) Regularly update the policy to reflect new technologies and new regulatory developments. ►

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Widgets Galore and Securities Law

Let's go back to Frank. His protected comments might alert the reader to the success of the new widget, and also might suggest that Widgets Galore is violating laws regulating overtime pay. If Frank's post is brought to management's attention, does the company need to react?

There is no specific guidance from the Securities and Exchange Commission on this growing concern. The 2008 Interpretive Release on company use of websites and the recent investigative report about Netflix do not address rogue online comments by ordinary employees. Of course, the most pressing concern is Regulation FD.

Frank's post was not by or on behalf of the company, and Frank is not a senior Widgets Galore official or a regular spokesperson. Eddie Best, co-leader of the Capital Markets and Financial Institutions groups at Mayer Brown, stresses that Reg FD does not cover "the guy on the factory floor." The

adopting release for Reg FD reinforces that point: "An issuer is not responsible under Regulation FD when one of its employees improperly trades or tips."

Moreover, Reg FD only covers communications to securities professionals and company shareholders. Best assumes that Frank's Facebook friends are unlikely to include such individuals.

Does that mean Widgets Galore's IRO can rest easy? Probably, but Best suggests preparing a scaled response, just in case.

First, the company needs to consider whether the information Frank divulged is material. That is a very fact-specific determination that could change daily, but Best notes that "the kinds of information most employees have will generally not be material."

Next, Widgets Galore should assess how broadly Frank's post was distributed. How many people can read his comments? Are any of them likely to attach significance to this particular comment, and either redistribute it or trade company stock because of it?

Unless Widgets Galore decides the post was material *and* likely to be seen by someone Reg FD covers, the company does not need to distribute the information broadly. However, Best says a company spokesperson should be ready with a response – even if it's "no comment" – in the event of a media inquiry. Of course, if there are several media inquiries, Widgets Galore may need to reconsider its decision that no action is warranted.

Two Final Issues

There are two more points that make this discussion more interesting, but also more complicated.

First, in an informal survey of labor lawyers and securities lawyers (none of whom wish to be identified), all agreed that if a public company has to choose between violating labor law with an overbroad social media policy and risking a securities law violation, the labor law repercussions are less onerous.

Second, there is substantial uncertainty surrounding the NLRB's standing. For reasons beyond the scope of this article, the D.C. Circuit Court of Appeals recently declared that the appointment of the current NLRB members was unconstitutional, and that they have no authority to issue or enforce orders. That decision is under appeal, but until the matter is resolved, all NLRB orders since January 2012 are in question. If the current members are reappointed lawfully, they presumably would stay the course in their views of social media policies. There is no telling how new board members would rule.

IROs should determine whether their companies have up-to-date social media policies that comply with NLRB guidance at its strictest, and advocate regular employee training on the potential risks of social media. **IRU**

Lois Yurow is president of Investor Communications Services, LLC; lois@securitieseditor.com.

SOCIAL MEDIA RESOURCES

The law governing company or executive use of social media is a bit more settled. NIRI's website (<http://www.niri.org/>) has a wide range of reports, memos, webinars, and other resources to help members fully understand the IR implications of "authorized" social media use.

Those resources include:

- *NIRI Executive Alert*, "SEC Permits Social Media Use for Corporate Disclosure," April 2013.
- An April 30, 2013 NIRI webinar, "Social Media and the SEC" (www.niri.org/archivedwebinars).
- NIRI's "Standards of Practice for Investor Relations: Disclosure," (www.niri.org/standardsopractice) which discusses best practices on social media (see pages 46-47).
- NIRI's Social Media page (www.niri.org/socialmedia), which includes earlier *IR Update* magazine articles on social media issues.
- NIRI's Regulations page (www.niri.org/regulations), which includes links to the Security and Exchange Commission's regulations and guidance on social media, corporate websites, and Regulation FD.
- NIRI's Presentation and Report Library (www.niri.org/resourcelibrary), which has memos from law firms, IR consultants, and software providers on social media and other disclosure concerns.
- In addition, the results of NIRI's survey of social media practices will be presented at the 2013 NIRI Annual Conference in June.

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What to Do When You Get “The Call”

Securities attorneys advise IROs to say little and listen.

By Marj Charlier

Any investor relations professional who has picked up the phone and heard the caller say, “Hello, this is ____ from FINRA,” knows the feeling: It is something like an adrenaline rush mixed with the mental image of your professional life rushing past you to its demise. Somehow, your hearing goes bad, your reason fails, and your native language suddenly seems unfamiliar to you.

But, fear not, say securities attorneys who’ve counseled companies and their IROs hundreds of times: Most of the time, these calls portend nothing more than an informal investigation triggered by a statistical rise in your stock price. It will be a hassle, but it isn’t quite the disaster you imagine.

IROs aren’t always the first people called at the company when either the Financial Industry Regulatory Authority (FINRA) or the Securities and Exchange Commission (SEC) starts looking into unusual trading activity, possible insider trading, or disclosure regulation violations. Usually, the calls go to the company’s general counsel, says Frank Zarb, partner at Proskauer Rose, LLP.

But, if you are the one to get the call, it’s not hard to know what to do: Basically, it’s say little and listen a lot, advise attorneys.

“Be cooperative, but I wouldn’t advise saying or disclosing much of anything,” says Andrew Moore, a corporate attorney at Perkins Coie. “Be friendly and be in a listening mode.”

“Don’t panic,” he adds. “The investigation may not involve anyone at the company.”

Understanding the Investigation

Who is calling – FINRA or the SEC – usually indicates what kind of issue is under scrutiny. FINRA regulates the behavior of securities firms and their employees, and the SEC regulates company behavior in the financial markets.

If FINRA calls to inform the company of an investigation of trading activity, the IRO can ask what event and date is in question, and whether it is outsiders or insiders they are investigating. “You can ask for specifics: Is FINRA calling about a particular announcement? About a person in the company?” notes Moore. “I wouldn’t answer anything, but you can ask.”

Then, after the initial call, the IRO should inform the company’s general counsel of the call and what he or she learned. The legal team generally will manage things going forward, even though the IRO’s involvement may not end there.

If FINRA is looking into trading activity around a material announcement, for example, an investor relations professional should expect that the company will be asked to identify which company employees, officials, and outside consultants knew about the news before it was disclosed to the public.

After FINRA gets the list, it may send the company a list of individuals who are known to have bought or sold shares around the time of the news. The IRO and other insiders who were “in the know” will be asked if they discussed the matter with any of the individuals on that list.

Sometimes, that’s the last anyone at the company will hear from FINRA. But if it is determined that a company insider either bought or sold shares, or shared inside information with an outside party, FINRA

may pursue the matter alone or together with the SEC.

“I would say the overwhelming majority of times, these investigations don’t go anywhere,” says Brent Fassett, a partner at Cooley, LLP. “The difficulty is they (FINRA) never really tell you. You may get a letter that says, ‘Thanks for your response,’ and after that, never get a formal letter saying that you’re done. It’s difficult to tell whether or not the investigation results in anything, unless you find out somebody at the company is implicated.”

When it comes to calls or investigations by the SEC, the issues companies may face vary widely.

When it comes to calls or investigations by the SEC, the issues companies may face vary widely, says Fassett. “It can be anything from something the company did to something an investor did, to something an independent board member did. The list they might call about is probably as long as their book of regulations.”

But, whatever the issue, his advice in SEC situations is similar to that in FINRA investigations: “Be polite and respectful, and say thank you for the information.” After that, it’s the general counsel’s role to lead the company’s response.

In Defense Mode

Generally, if either the SEC or FINRA conducts an extended, formal investigation, or in the worst case, a prosecution, the IRO typically is not in a position where he or she needs to hire an attorney. The IRO may also

be covered by the company’s D&O (directors and officers) insurance policy.

“While it all depends on the facts in an individual situation, the number of (IR) people who need their own counsel in these situations are very few,” observes Zarb. Still, the attorneys recalled times when senior managements have offered up more junior people in companies as the scapegoat in trading or disclosure violations. Consider getting your own counsel “at the point where you see your interest conflicting with that of the company,” advises Moore. But expect to pay for it yourself, the attorneys warned.

“It depends on the nature of the issue,” says Fassett. “It may be an FD (fair disclosure) case, and an IR person is cited in the initial investigation.” In that case, the investor relations professional is likely to be represented along with the officers of the corporation. “On the other hand, if the IR person is accused of providing tips to a hedge fund, [he or she is] probably not covered.”

Not all companies cover IROs in the D&O policy; and “the IRO should make a point of finding out whether or not they are covered,” notes Fassett. If they are not, they can make an argument to be included. “There’s a case to be made that they should be covered,” says Fassett.

“The general practice is that the IR folks travel with management and are in meetings with investors, and that exposes them to increased liability,” he says. “You are in a risky position. If you have a particularly aggressive CEO, you can have responsibility for his actions without the ability to control his actions.”

Moore agrees: “In FD matters, the SEC sees IR as the gatekeeper. You’re on the front lines.” **IRU**

Marj Charlier is an IR consultant and former head of IR at RealNetworks, Expedia, and Cyprus Amax Minerals Corp.; mcharlier@dc.rr.com.

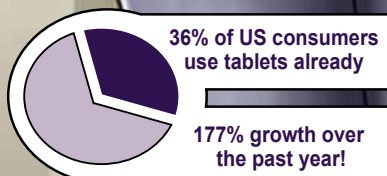
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CONSUMER CONNECTIONS



IROs in the consumer products sector deal with the ups and downs of greater visibility.

By Margo Vanover Porter

On one hand, IROs who work in the consumer products sector are lucky, says Cindy Knoebel, who in March retired as vice president of corporate relations, VF Corporation.

“When you’re fortunate enough to work in the consumer products sector, you have very tangible products that you can associate with your investor communications,” she explains. “People can see them on shelves, shop for them, and use them in their daily lives. That automatically gives you a leg up as opposed to other industries where your product is not as visible or tangible.”

On the other hand, that immediate connection does have its drawbacks, she says. “If I had to pick a particular challenge, I would say the downside would be a higher degree of visibility and vulnerability around things like product failures, recalls, and changing consumer and fashion trends,” Knoebel points out. “When you make a mistake in the consumer products sector, the mistake is magnified.”

She recalls the market and consumer turmoil when Tylenol was recalled decades ago – people still remember it. “When a

product that’s highly visible gets recalled, it creates a huge issue for a company’s reputation. It influences not only what consumers are doing in their day-to-day purchasing behavior but also has a direct impact on the company’s stock price. Some of these product failures or analogous situations in other industry sectors do not get the same level of scrutiny among consumers and investors.”

Popular products can also draw unwanted attention from nongovernmental organizations (NGOs) that want to shine

a spotlight on their causes, she says. “One of our flagship brands, The North Face, is very well-known and highly considered by consumers. Because it is so visible, we find The North Face brand can be a magnet for NGOs that are looking to make a statement about certain causes.”

It’s All in the Name

According to Knoebel, individual investors are comfortable investing in companies whose products they know and purchase.

“If your company’s name is Polo Ralph Lauren, which is a great brand, you’re more likely to get a higher component of individual or retail investors than we at VF Corporation will get because the corporate name is not associated with any of our brands,” she says. “For a lot of consumer products companies, whose names represent a brand or one of their brands, we will see a high level of retail ownership. When people are thinking about stocks they want to own, they tend to have more comfort around companies whose products they can readily identify.”

An \$11 billion apparel and footwear company with platforms in every major market around the world, VF Corporation has a portfolio of more than 30 brands, including Vans, Timberland, Nautica, Lee, Wrangler, and JanSport.

“VF has a negligible amount of retail or individual investors in large part because it’s a holding company with a lot of brands and the corporate entity itself is not well-known,” she says. “That said, institutional investors know VF very well.”

Diane Dayhoff, vice president, investor relations, The Home Depot, agrees that consumers who are individual investors can make life interesting for the IRO.

“The biggest challenge is that most of our individual shareholders are consumers and some of our consumers are shareholders. You actually have people call and start their sentences, ‘I’m a shareholder, and I was in your store...’ and then complete the sentence with varying complaints, such as ‘I couldn’t find the mosquito magnet.’ They feel because they are shareholders, they should have special treatment.”

Waiting on Mother Nature

Jim King, senior vice president, investor relations and corporate affairs, The Scotts Miracle-Gro Company, faces a very different challenge.

“This is an industry, quite frankly, that is not for the faint of heart,” he says. “It’s an industry that is bookended typically by loss quarters. We make all of our money in the peak of the season. The peak of the season being roughly a 12-to-15-week window that begins whenever Mother Nature says it begins.

“I say to investors all the time, ‘The difference between our business and other so-called seasonal businesses is that if you’re in a consumer company or category that’s largely dependent on holiday sales, you know that the day after Thanksgiving every year is when the consumer kicks in. You have that

four-week window and you know what to expect, you know when it begins, you know when it ends.’ Compare that to us. We know one thing for sure. The first day of spring every year is March 20. That may or may not be the actual beginning of spring weather. Sometimes the category kicks in early March, sometimes late March, sometimes mid-April. We never really know.”

King points out that a handful of institutional investors hold a healthy level of Miracle-Gro shares. “The top three investors each own about 10 percent of the company,” he says. “The next two own about 5 percent. The CEO and his family own almost one-third of the company. So between his family and our top institutional investors, you roughly have about 70 to 75 percent of the shares locked up in a relatively limited number of hands. We have enjoyed a very loyal and stable investor base in the 12-year period of time I’ve been here. From that perspective, it makes IR pretty comfortable.”

However, a very different type of institutional investor holds the remaining shares, he says. “I have been on the phone nonstop seven hours yesterday, four hours today, three to four hours on Monday just dealing with a different group of investors, who really drive a lot of the March volume. They are focused on the weather and the next quarter. They are very short term. These are all institutions – some are hedge funds – that understand the complexity and seasonality of our business. They play that seasonality every year, long or short. I hear from the same group – it’s several dozen – every single year at the same time. Then they go away. It’s like clockwork.”

Because the company is almost

exclusively institutionally held, King seldom hears from individual investors.

Strategies for Success

Despite the challenges, these IROs have established successful careers in the consumer products sector.

“My entire career in investor relations has been in the consumer products space,” King says. “As best you can, you need to understand the business model of the customer you’re selling to, understand as much as you can from your marketing and consumer analytics group about the state of the consumer, and understand your own supply chain and the cost of goods and what’s happening in the commodity markets.”

He adds that an IRO in any sector has to stay on top of these data points.

Other techniques and strategies that have proven successful for these three IROs include:

Take investors for a walk. In addition to attending conferences and sponsoring road shows, The Home Depot has discovered that investors and analysts find store walks insightful. “We walk the store and talk about our different products, new innovations, what our associates are seeing, and our business as a whole,” Dayhoff says. “They usually last about an hour and can be a large group or a single investor. Instead of showing off our factory, we show off our stores throughout the year, wherever our investors live.”

Be able to dissect your balance sheet. Knoebel is a CFA with agency experience who has worked on both the buy side and sell side. “That financial experience enables me to understand the point of view I hear and the questions I get in my day-to-day interactions,” she explains. “I can talk up and down a P&L or balance sheet or cash flow statement with great comfort. That



needs to be a given. The first time, someone calls and asks a question about the balance sheet and the IRO has to say, 'I need to go back to finance to get that answer,' I question whether that investor will call again."

Know more about your products than your investors. "You really have to know what's in your stores because there are investors who know your products very well," Dayhoff says. "Investors can check out my products every single day except Christmas. They can be in the stores every

together, we try and think, 'What kind of experience can we provide that's beyond the numbers on the PowerPoint?'"

For example, in 2011 when introducing innovation as one of the company's strategic growth drivers, VF created and curated an innovation gallery with a dozen different exhibits. "We showed how we were bringing our innovation agenda to life, how we were choosing outside partners, what was in the product pipeline, how we were changing internal processes around innova-

esting things you should know specific to the Vans brand.' " That forum, she says, featured skateboarders performing stunts – and wearing Vans shoes, of course.

"We're trying to rise above the clutter, not just within the consumer products sector, but within all of the alternative investments that investors have to choose from," Knoebel continues. "One of the ways we do that is to take our individual brands and dial them up in a way that's compelling to those who are thinking about VF Corporation in total as an investment. If we can pull them into the power of our brands and the long-term growth potential they present, then they can understand why VF is an attractive long-term investment opportunity."

Keep communication candid. "We have a corporate culture that prides itself on very straightforward, honest communication," Kings says. "We're focused on building credibility. To me, nothing is more valuable in IR than maintaining your credibility. If you go back and read our transcripts and look at our history of dealing with Wall Street, you'll see that when we make a bad call, we're willing to say, 'We've made a bad call.'"

"Sometimes when you make a mistake," he continues, "you need to raise your hand and say, 'We made a mistake. If we had it to do all over again, we wouldn't have done it that way.' That happened last year. We made a series of decisions about the approach we would take to managing the business. It didn't go the way we expected. While people were disappointed, they were heartened to see we were upfront and not defensive and ready to move forward. I think both the buy side and sell side would tell you pretty uniformly that it's a refreshing approach." **IRU**

Margo Vanover Porter is a freelance writer based in Locust Grove, Virginia; m.v.porter@comcast.net.

"My entire career in investor relations has been in the consumer products space."

– Jim King, senior vice president, investor relations and corporate affairs,
The Scotts Miracle-Gro Company

day. They sometimes have questions about 'What is better about this product versus another product?' You have to be cognizant that some analysts want you to talk about your vendors and not fall into that trap."

Tell a compelling story. "You can answer all the questions and give the numbers to plug into the models, but you also have to be able to articulate what's behind the numbers," Knoebel insists. "You have to be able to encapsulate the growth story, the investment thesis of your company, in a way that's relevant, understanding, and compelling. If you're just giving them numbers to crank into a model, that will give them a partial perspective. If you can articulate what's behind the numbers and model the trajectory your company is on, that's where you capture their attention."

To do that, VF sponsors analyst days that tell a story. "When we put these events

tion," she says. "We created a whole gallery so investors could understand our innovation agenda."

Aim for a seat at the table. King, who started out handling only IR, now has responsibilities for government relations, corporate communication, internal communication, and board communication as well. "To be successful, you have to be close to the strategy and have a seat at the table with the senior leadership," he says. "You have to be close enough to what's happening in the business that you can adjust your messaging and manage expectations externally."

Sponsor a one-brand forum. "Because we have great brands, we take the opportunity to highlight a specific brand," Knoebel says. "For example, we'll have a North Face-specific forum so people can get a deep dive into the brand. We also created a separate investor session to say, 'Here are the inter-

Communicating With Fixed Income Shareholders

Learn what these investors want to hear about your company's financials.

By **Tammy K. Dang**

“They tend to be a bit more ‘glass half empty,’ so while an equity holder may be willing to occasionally dispense with a thorough discussion of risks in order to talk about the upside, a fixed-income holder is definitely going to be more interested in discussing the risks associated with your plan,” said Karli Anderson, senior director of investor relations at Newmont Mining Corporation, one of the world’s largest gold producers.

She, along with Christiane Pelz, vice president of investor relations at Safeway,

“They’re trying to preempt your next corporate move wherever they feel the risk is.” In AMD’s case, it’s liquidity. Cotter’s conversations with these investors center on the strength of their cash flows, covenants, tax issues, downside risk protection, asset valuation, bankruptcy protections, and lots of scenarios.

Items to Communicate

The top three items Anderson continuously communicates to investors are a high level overview of cash flow for the next

“With the fixed-income community, it’s almost often a game of chess. They’re trying to preempt your next corporate move wherever they feel the risk is.”

— **Ruth Cotter**, vice president of investor relations at Advanced Micro Devices

one of the largest supermarket chains in North America, and moderator Ruth Cotter, vice president of investor relations at Advanced Micro Devices (AMD), a multinational semiconductor company, shared their insights on how they communicate with debt holders on an April 2013 NIRI sponsored webinar entitled, “Dealing With Fixed Income Shareholders.”

According to Pelz, Safeway’s equity investors focus on items such as growth and changes in operating margins while their debt holders often focus on free cash flow, changes in working capital, and liquidity. “They look for stability,” she said.

“With the fixed-income community, it’s almost often a game of chess,” said Cotter.

8 – 12 quarters; the key sources and uses of cash for the next 3 years; and levers that would be pulled if there were significant changes to the macro environment. Newmont, for instance, has a dividend linked to the gold price. Whenever there is volatility to gold, the discussion not only manifests in concerns on the fixed-income side, but also gains momentum with equity holders.

Since fixed-income investors often have less knowledge of a particular industry, given their diverse portfolios, Anderson provides them with a printout showing the gold price forecasts from 20 different banks. This provides data for investors to better adjust sensitivities in their models and form their own opinions.

Since its temporary shift in financial policy beginning in the fourth quarter of 2011, Safeway’s priority for free cash flow has been to pay down a portion of its debt (currently \$5.5 billion) and earn back its stable mid BBB equivalent credit rating across all three U.S. rating agencies, which it continually communicates to investors. Safeway believes it is important for the company to remain investment grade, as the rating gives access to the commercial paper market, which in turn allows the company to manage its cash most efficiently and access debt at a low cost. In fact,

Safeway actually held a separate conference call for debt investors to ensure, in part, this priority was understood.

Safeway also communicates its ability to generate strong free cash flow by posting a 5-year cash flow projection filed with the Securities and Exchange Commission and compares it to its debt repayment obligations.

Education and Transparency

According to Anderson, having a consistent story to share with fixed-income investors will benefit your equity holders along with you and your company. Fixed-income investors are generally transparent in their concerns, but have less knowledge of a particular industry given the breadth of their portfolios. So when one runs into financial trouble, it could lead to more questions and scrutiny on your own company’s financial situation.

You’ll end up educating fixed-income investors about the competitive environment, including liquidity issues and any corporate actions that may not make sense in isolation, according to Cotter. She advised: “Be very familiar with the externally anticipated risks for your company, be able to address them, and provide comfort.”

Tammy K. Dang is manager, professional development, NIRI; tdang@niri.org.

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Quick Takes

What is the best advice you can give to an investor who fears the sometimes fickle turns of the stock market?



Jill L. Baker

Corporate Vice President, Investor Relations
PAREXEL International

► “There is no reward without risk.”



John G. Chironna

Vice President, Investor Relations and Treasurer
MSC Industrial Direct Company

► “If your research is based on sound fundamentals and you have confidence in the executives running the company, don’t sweat the volatility in today’s equity markets.”

Gerry Gould

VP-Investor Relations
Haemonetics Corporation

► “Be a true investor for the long term. Be a long-term investor and not a short-term market timer or speculator. The economy will cycle around.”

Professional Development Calendar

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

June 2013

- 4** Global Investor Targeting webinar
- 8** Finance 101, Hollywood, FL
- 8** Think Like an Analyst! seminar, Hollywood, FL
- 9-12** 2013 NIRI Annual Conference, Hollywood, FL
- 24-26** Finance Essentials Intensive seminar, New York, NY
- 24-28** IR Wisdom Road Show, Beijing, Shanghai, Hong Kong, China

July 2013

- 18** 2013 Proxy Season: Lessons Learned webinar
- 23** The Deal Road Show webinar

August 2013

- 6** Communicating a Company Crisis Internally and Externally webinar
- 12** Finance 101 seminar, San Francisco, CA
- 13-14** Finance Essentials seminar, San Francisco, CA

On the Move



Ron Schneider joined the RR Donnelley Global Capital Markets Group as director of corporate governance services. Schneider

has been involved with proxy solicitation and investor relations for over 30 years, most recently with AST Phoenix Advisors, and is a former director of the NIRI New York chapter.



Peter Schuman was

promoted to senior director, investor relations at Atmel Corporation. He joined Atmel in July 2010 as

director, investor relations. Before that Schuman was manager of investor relations at Intel Corporation from 2007-2010. He also served on the NIRI Silicon Valley chapter board for five years.



Julie Lorigan joined

Corbin Perception as senior vice president, business development. She has more than 25 years of investor

relations and strategic communications experience and most recently spent more than 13 years as senior vice president of investor and media relations at The Talbots. Lorigan is a former board member of the NIRI Boston chapter.



Dennis Walsh was

promoted to vice president of Sharon Merrill Associates. He has been with the communication company

for eight years and has gained national recognition for his expertise in the use of social media for investor relations. He serves on the board of directors for the NIRI Boston chapter.

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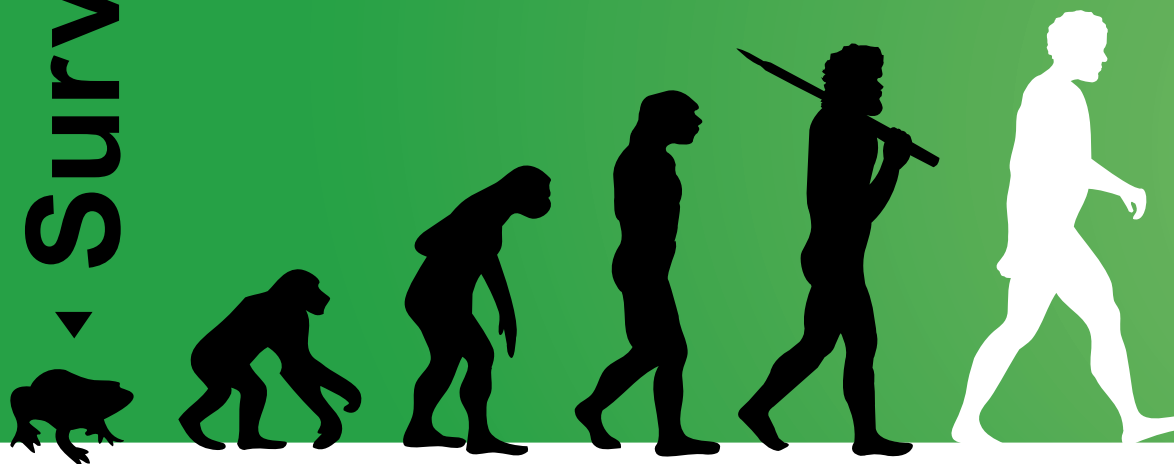
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