

IRupdate

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the voice of the investor relations profession

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REGULATORY GROUND ZERO

Washington and IR – what to expect next.

10 A Passion
for Fashion

14 Dealing With Activist
Shareholders

18 Executing a Deal
Road Show

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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. NIRI is dedicated to advancing the practice of investor relations and the professional competency and stature of its members.

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6

Regulatory Ground Zero

Washington and IR – what to expect next.

By Jeff Morgan



10

A Passion for Fashion

IROs find this fast-paced sector challenging, but fun.

By Margo Vanover Porter



14

Dealing With Activist Shareholders

Staying vigilant and proactive is the key for IROs.

By Peter Brinch

DEPARTMENTS

4 At the Bell

Working the Core

By Jeff Morgan

18 Webinar Report

Executing a Deal Road Show

Learn how IR can add value when your company is raising capital or announcing a transaction.

By Tammy K. Dang

20 NIRI Now

- Follow NIRI on Twitter
- IR Research at a Glance
- Quick Takes
- On the Move
- Professional Development Calendar

Working the Core

As we transition from 2013 to 2014, I want to share an update on NIRI. You are our shareholders and our focus is on providing your IR home. As in most years, NIRI has been active in our four core value areas: community, IR practice, professional development, and advocacy. Let's look briefly at highlights from 2013:

Community. Access to other members in a noncommercial environment is one of NIRI's core benefits. I hear time and time again from members about the lifelong connections they've made through NIRI chapters and events like the NIRI Annual Conference. Supporting in-person networking is our vibrant online community hosted in eGroups and on LinkedIn. NIRI upgraded eGroups in 2013 to provide even broader support to the community. And our senior practitioner community, Senior Roundtable, was also very active, holding seven events in 2013.

Professional Development. NIRI provides members with a single source to access a comprehensive menu of IR learning opportunities including webinars that you can participate in virtually, and a host of other events. For example, this year NIRI offered 20 member benefit webinars and 29 seminars; the NIRI Annual Conference had 45 sessions over three days.

On the horizon for professional development will be your ability to become "IR certified" through NIRI. This is an important step forward in advancing the profession and raising the stature of IROs, and it also provides a method of demonstrating IR competencies. NIRI will join many other professions with a certification – CPA, CFA, and so forth – and I expect, over time, the NIRI certification will have similar cachet and recognition.

IR Practice. Members eagerly seek IR practice information. In 2013, NIRI completed and provided nine research reports via an "Executive Alert." In addition to publishing *IR Update* magazine, we also published an updated *Standards of Practice for Earnings Release Content* and expect to release an updated *Standards of Practice – Disclosure* soon. And NIRI's Web-based *Presentation and Report Library* has expanded to include 21 topic sections and hundreds of NIRI and third-party reports, as well as links to NIRI webinars and NIRI Annual Conference session replays.

Advocacy. NIRI continues to represent IR in Washington, raising the value of our profession. In 2013, the NIRI Board and senior staff met with Securities and Exchange Commission staff on several occasions, and I testified before a congressional subcommittee on IR issues. Additionally, we were your voice on matters related to proxy filing fees, proxy advisors, and 13(f) disclosure reform. NIRI most recently submitted comments to the SEC on the proposed pay-ratio disclosures.

NIRI has also been active internationally, broadening our offerings as the global IR community focuses on U.S. practices. Finally, we introduced a new corporate membership package to cover everyone on your IR team.



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REGULATORY GROUND ZERO

Washington and IR – what
to expect next.

By Jeff Morgan

AMERICANS AND IROS HAVE A LOVE/HATE RELATIONSHIP WITH WASHINGTON, DC.

This has come through loud and clear during my tenure as NIRI President and CEO since 2008.

But it's complicated. In speaking with members, you tell me that you can't stand what's happening in DC, yet it's often the first thing I'm asked about, and many of you believe that Washington could do more to help IROs in their jobs.

In surveys, you sometimes say that we talk too much about Washington, yet regulation is ranked as the top topic you want to read about in *IR Update*. Similarly, regulatory sessions often score highest on NIRI Annual Conference attendee surveys.

I understand your frustration and also the inability to look away from the national “train wreck” here in Washington. We are a country with shared concerns, but with serious ideological differences regarding solutions. This plays out in how we choose to allocate federal spending, our views about the fundamental mission of companies, and ultimately in our overall economic growth.

Throw into this mix the notion that regulators (in our case, the Securities and Exchange Commission) have become tools for politicians, and our profession and capital markets are ground zero for what I've been referring to in my chapter presentations as a collision between public companies, DC, and IR.

SEC Staffing and Agenda

To set the stage, let's review recent activity at the SEC. The agency has experienced significant turnover at all leadership levels over the last several years. This unsettled environment has caused some disruptions in the agency's productivity.

The good news is, with the recent appointment of new Chairwoman Mary Jo White, there is now a full complement of five commissioners, with none scheduled to complete their term before 2015. At that point, one commissioner is scheduled to depart each year through 2019.

We've also seen the recent appointment of Keith Higgins, the new head of the Division of Corporation Finance, whom the NIRI Board met with in September. There have been a variety of other recent staff leadership changes as well.

Now fully staffed, I expect the SEC to turn to its outstanding agenda items. Let's review several of these and also a few of NIRI's.

Dodd-Frank

Congress passed Dodd-Frank in 2010, and as of early September and across all agencies involved, about 40 percent of the 400 rulemaking requirements are complete, 28 percent have been proposed, and 32 percent have not yet been proposed.

Notable rulemaking yet to be proposed by the SEC includes rules regarding pay-for-performance disclosure, hedging by employees and directors, and recovery of executive compensation or clawbacks.

The SEC also owes a report to Congress on its study of the costs and benefits of real-time short-sale position reporting, and it may also consider adopting rules on trade reporting, data elements, and real-time public reporting for security-based swaps.

The most recent movement in the Dodd-Frank mandates was the CEO pay-ratio disclosure proposal issued by the SEC in September. NIRI submitted a comment letter, warning that the proposed rule would impose significant costs on issuers while generating disclosures that may confuse many investors and subject companies to unfair peer comparisons. NIRI asked the SEC to narrow the scope of the employees covered by the rule and allow companies to use existing federal wage data to calculate their pay ratios.

Once approved by the SEC (likely in 2014), this disclosure will be used by the press and labor activists to compare and contrast CEO to employee pay. Companies with December 31 fiscal years likely will have to make their first disclosures in the spring of 2016.

I anticipate that corporate comparisons and industry comparisons are just two of the many other ways the media will use this information to create headline-grabbing

news that IR professionals and others will have to address. While institutional investors say they find the information to be of little value, consumers, employees, proxy advisory firms, and others will use this information to evaluate your company.

Public companies also face a Dodd-Frank “conflict minerals” disclosure mandate, which will prove quite costly for issuers that use these minerals and have complex supply chains. Unless blocked by a court, most companies will have to submit new conflict mineral reports to the SEC by June 2, 2014.

Shareholder Transparency

NIRI joined with the NYSE and the Society of Corporate Secretaries & Governance Professionals in February in a petition to the SEC requesting Form 13F reform to reduce the filing period of institutional equity ownership positions from 45 days to two days after quarter end.

We believe the current filing delay withholds timely release of material information from the market; that the original objectives underlying 13(f) support reducing the delay period; that the arguments for maintaining a 45-day delay period are unpersuasive given the advances in technology since rule approval in the 1970s; and that a reduction would better align with public company best practices.

Improved ownership transparency has been a consistent theme in my discussions with members. As such, NIRI has made this one of its primary regulatory reform issues, and has made the case repeatedly to the SEC in our annual NIRI Board/SEC staff meetings.

Just as we would like better investor ownership transparency, the institutional investing community wants nothing to do with this improvement, and will use its own advocacy efforts to fight any changes. So this is a long-term goal for NIRI, but small wins, like the SEC recent change to the 13(f) confidential filings process, show

the SEC is paying attention to this issue. Next year we hope to see the SEC issue a study on short-selling disclosure that would recommend more disclosure, and that would add energy to a full review of shareholder transparency rules.

JOBS Act

Signed into law in 2012, the Jumpstart Our Business Startups Act, or JOBS Act, includes a number of elements that may have a bearing on our profession. It does the following:

- Creates a new category of “emerging growth” companies (with an IPO after December 2011 and less than \$1 billion in sales) that will enjoy some Sarbanes-Oxley and Say-on-Pay exemptions.
- Eliminates the prohibition on general solicitation for Rule 506 Regulation D offerings and sales under Rule 144A.
- Increases the number of investors that a private company may have from 500 to 2,000.
- Creates a new crowdfunding exemption from state and federal securities law registration where issuers and investors may communicate via the Internet in connection with the issuance of new securities provided they meet certain conditions.

The JOBS Act implications are still developing, but my view is that it has the potential to influence IR in several ways. It may:

- Improve the IPO market, leading to more IR jobs.
- Drive demand for private company IR or at least upgraded private company financial communication.
- Lead to larger hedge funds.
- Affect pre-IPO IR, which is changing due to the new confidential S-1 filing option.
- Trigger, many fear, more fraud or boiler-room investment ads, as well as abuse of the “accredited” investor related to the new crowdfunding capital raising process.

Proxy Mechanics

It seems like a lifetime ago that the SEC issued its proxy mechanics concept release in 2010 asking for comments on how to improve the U.S. proxy voting system. The Commission's attention was subsequently diverted to a raft of congressionally mandated Dodd-Frank rulemaking.

The relevant issues included proxy fees, proxy advisors, end-to-end proxy voting integrity, and direct shareholder communication – OBO/NOBO (Objecting Beneficial Owners/Non-Objecting Beneficial Owners). These issues remain outstanding, and NIRI and other organizations like the Shareholder Communications Coalition continue to press for reform.

Current State of Affairs

Fast forward three years and where are we today?

On proxy fees, the NYSE Proxy Fee Advisory Committee (PFAC) recommended new fees (lower fees for large issuers, higher fees for smaller); fee alignment and oversight on Notice & Access fees; stratified NOBO lists enabling issuers to acquire certain portions of their NOBO lists; and an enhanced broker Internet platform, which would provide incentives for brokers to offer electronic proxy voting to their customers.

In October, the SEC finally approved the PFAC proposal. Following this action, a new chapter opens on the next steps required to move toward improved shareholder engagement via proxy mechanisms.

NIRI still desires fee transparency as explained in our March 2013 SEC comment letter. NIRI believes that a third-party audit of proxy distribution fees is the best way to ensure that fees are reimbursed fairly, equitably, and objectively, thereby eliminating the vested interests of those involved directly and indirectly in the process. The PFAC proposal does not include a recommendation to initiate an independent audit of these fees.

PUBLIC COMPANIES ALSO FACE A DODD-FRANK “CONFLICT MINERALS” DISCLOSURE MANDATE, WHICH WILL PROVE QUITE COSTLY FOR ISSUERS THAT USE THESE MINERALS AND HAVE COMPLEX SUPPLY CHAINS.

Without transparency, many issuers will continue to question the accuracy of proxy fees.

Regarding proxy advisor and shareholder communication reform, NIRI testified before Congress on these issues in June. NIRI's concerns about proxy advisory firms stem from the fact that they remain largely unregulated and unsupervised, while substantial concerns have been raised by companies and academics about: (1) a lack of transparency concerning their standards, procedures, and methodologies; (2) the risk that their voting recommendations may be based on incorrect factual information; and (3) the inherent conflicts of interest posed by several of their business practices. In response to these concerns, which have been expressed by other business groups, the SEC scheduled a December 5 roundtable on proxy advisors. We continue to be hopeful that Washington will act to ensure these firms meet minimum standards.

Fundamental Disclosure Reform?


It remains to be seen how many of the above non-mandated items the “new” SEC will address. It is not uncommon for a new SEC regime to turn the page on past priorities and focus on different areas.

So it was with great interest that I read Chairwoman White's October speech in which she seemed to suggest that our current public company disclosure structure is leading to information overload, and that

the SEC might use its JOBS Act emerging growth company disclosure requirements review as a jumping-off point for a broader, more comprehensive review that, “. . . will move us forward on the path to more optimal disclosure. It is an important priority for me.” I am sure you will agree that it is an important priority for NIRI members as well as we move into 2014.

I also expect the SEC, exchanges, and others to continue in 2014 to have discussions and evaluate issues related to how our capital markets function, and how they ought to function in the name of fairness and investor protection. The technical hiccups in our markets during the last several years have highlighted the need for issuers to keep a close eye on these developments.

In conclusion, while Washington is often a source of irritation for us all, it is an area that affects IR and is part of the evolving landscape that also includes the overall evolution in capital markets, changing communication mediums, and changing demands from investors.

The benefit of this ongoing uncertainty is that it has led IR professionals to be highly adaptable to changing expectations. So as we head into 2014, let's hope for productivity in Washington that leads to positive change for IROs, our companies, and the investing community. 

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IR
series

A
PASSION
FOR FASH



IROs find this fast-paced sector challenging, but fun.

By Margo Vanover Porter

Marisa Jacobs gets to indulge her passion for fashion every day at work. “I’ve always loved fashion,”

says the vice president, investor relations, Express. “It would be impossible to do my job effectively if I didn’t have a deep interest in both fashion and the business of fashion because we tend to live and breathe it.

“Having the opportunity to work inside a company that is focused on designing and curating fashion gives me a wonderful opportunity to indulge an interest that I’ve always had.”

Jacobs is the first to admit, however, that retail fashion can be a challenging sector. “It is buffeted by so many factors,” she notes. “Sometimes they are internal, but very frequently external influences cause the business to perform differently and investor sentiment to swing widely.”

For example, Jacobs says, in recent years, high levels of unemployment, the housing crisis, and stock market fluctuations all damaged consumer confidence and inevitably influenced how people felt about their discretionary spending. She also recalls that at the beginning of 2013, when the new payroll tax went into effect, many retailers lamented the toll it was taking on sales as consumers adjusted to lower paychecks. “All of this led to a highly promotional environment, which in turn dampened margins,” she says.

Bob Aronson, vice president, investor relations, Stage Stores, agrees that one of his biggest challenges is trying to explain

the zigs and zags of retail results. “We can be on an upswing,” he says. “We can be on a downswing. We can be inconsistent from quarter to quarter. I help analysts and shareholders understand why one quarter may be one way and another quarter another way in terms of top- and bottom-line performance.”

This year is a perfect illustration, he says. “Stage Stores had just a phenomenal year last year. All the planets aligned, and everything was great. This year, the results aren’t as robust. We had unusually cold weather at the beginning of the year, when we were hoping it would be a little warmer.

“It creates issues if you transition into spring goods, and it’s still too cold to incentivize people to come in to buy spring goods. Then your inventory starts backing up, and you have to be more promotional. One thing leads to another,” Aronson explains. “My job is to communicate outward and explain what happened, whether it be regionally or across the chain, how we are responding, and how the competition is responding.”

Speeding Allowed Here

IROs agree that another factor that makes retail fashion different from other sectors is its fast pace. “You constantly need to reinvent the product of a fashion brand,” Jacobs says. “If you compare fashion to some other consumer products, think about how much more quickly a top goes out of style than a household staple.

“The fact that you did poorly or spectacularly in one year or one season doesn’t guarantee anything going forward. You constantly have to deliver and prove yourself. That does set it apart from other sectors.”

Jacobs, who recently returned to retail fashion after an absence of several years, explains that when she worked in the renewable energy industry, it wasn’t unusual for a project to take 10 years to develop.

“Contrast that to an item of clothing that you might sell for a few months, and then it’s gone,” she says.

The constant race at breakneck speed appeals to Aronson. “This sector changes from season to season and month to month,” he says. “Retail is a fun place to be because there’s never a dull moment.”

Two other factors set this sector apart:

Competition is fierce. “Apparel retail and retail in general is highly competitive,” Jacobs emphasizes. “We market to both men and women in their 20s and 30s. The women’s sector is somewhat more competitive than the men’s sector because of the larger variety of offerings available to women and because women have less loyalty to a brand than men. Our core customers, who are known to have high levels of discretionary spending and care a great deal about their appearance, attract a lot of competition because everyone wants to tap into this highly desirable category.”

Quarterly scorecards make it easy to see how your competition is performing, Aronson explains. “Most retailers report sales and earnings once a quarter,” he says. “If someone becomes hyper-promotional, and they are starting to attract customers, everyone kind of has to follow suit.”

Jacobs has also noticed increased competition from retailers that specialize only in e-commerce – think no bricks and mortar store – and from western European and Asian retailers coming into North America. Likewise, she says, “we are expanding into their territories.”

Santa’s sleigh better be full. “Christmas is everything,” Aronson emphasizes. “Your fourth quarter is typically your highest volume and highest earning quarter. For retailers, the holiday season between Thanksgiving and Christmas – and even after Christmas because you sell a lot of gift cards and people try to scoop up some of those after-Christmas deals – is extremely important.

WHAT’S CHANGED?

Like other sectors, retail fashion has experienced rapid change in the last decade. Here are some of the major developments:

Consolidation. “There was a period when companies were buying up other companies so there are less of us than there were 10 years ago,” Aronson points out. “Another change is we’ve gone to quarterly reporting instead of monthly reporting to help some of the volatility.”

E-commerce. “E-commerce is a really important part of our business,” Pazin says, “because it’s an area that is growing quite rapidly. Consumer purchasing habits have changed quite a bit. Before Amazon and eBay, most people shopped in the big department stores. Many still do—but they’re also going online so it’s important to be in the big wholesale channels, as well as to offer attractive company-owned e-commerce sites. You really have to be connected to every touch point.”

Jacobs estimates that close to 15 percent of Express’ business is e-commerce based, despite a rather late entry in 2008 to the market segment. “We expect it to continue to be an important driver of growth for us,” she says.

Gift cards. In the last decade, gift cards have increased in popularity, particularly for consumers who are shopping for gifts across generations. “If someone comes into your store you want to capture a sale,” Aronson says. “If they don’t know what they want, they can buy a gift card.”

Linda Bandov Pazin, vice president, investor relations and communications, Deckers Outdoor Corp., concurs. "Our business model tends to be heavily weighted toward the fourth quarter," she says.

"The Thanksgiving/Christmas timeframe, including Black Friday followed by Cyber Monday, is a season when people are closely watching weather patterns, traffic in retail stores, and company wholesalers to gauge sales. The fourth quarter alone accounts for over 50 percent of sales so you can see how important that fourth quarter is to investors."

With 106 retail stores, Deckers designs, markets, and distributes footwear, apparel, and accessories for an everyday casual lifestyle use and high-performance activities. The company's brands include UGG Australia, which accounts for 84 percent of overall sales, Teva, Sanuk, Hoka One One, MOZO, Ahnu, and Tsubo.

"We have about 17 sell-side analysts currently following us," Pazin says. "They are putting out research all the time, going into our stores, looking at products, checking on things, and asking how traffic is going."

What IROs Need to Succeed

To succeed as an IRO in the fashion retail sector, you may not need a different skill set but you *will* need to learn the lingo.

"The metrics you use to measure performance in retail are different than other fields," Jacobs explains. "In retail, people talk about things like same-store sales, inventory builds, traffic, conversion, average unit cost, and average unit retail. When we look at our business to examine how we are performing, these are the kind of metrics we examine."

"You would have completely different metrics if you were looking at the banking or housing industry. An IR professional has to be familiar with them [retail metrics]. You couldn't do this job and communicate with

the analysts and portfolio managers if you weren't familiar with these metrics."

Newcomers also need to quickly get up-to-speed on the sector and its companies, Aronson points out. "Investors don't want to waste their time talking to people who can't explain what the company is all about, its strategy, and translate that into what's going on financially."

"When I started at Stage Stores 16 years ago, I didn't know a lot about the fashion retail industry, but I did know how to communicate with the sell side and buy side. IROs get kudos when they can communicate to the outside world about the business, the financials, the balance sheet, the P and L, and explain how strategy can translate to top- and bottom-line growth."

He explains that Stage Stores' strategy is to bring brand names to small markets by opening up 15,000-to-18,000-square-foot stores. "Unlike some of our competitors, 85 percent of what we sell is nationally known brand names and 15 percent is private label."

"Before we show up, consumers would have to drive to the big city to buy the same brands. We bring value and convenience to our markets. That's our niche. We look for areas that are underserved and have limited competition."

Pazin adds that IROs need unfettered access to their management teams to understand what is going on across the company and its brands. "When you have six brands, plus corporate, it's really important to be plugged in, to understand the strategy of each brand, and ensure that overall strategic communications are aligned and core messaging is consistent. Message discipline is very important when every brand has its own identity and culture."

Other tips mentioned by IROs:

Monitor your message. After an earnings call, Pazin recommends that you ask members of the investment commu-

nity what they heard and then compare their answer to the message you wanted to deliver. "Are those two things consistent?" she asks.

"What is the sell side hearing from other investors? Maybe there is something that you're not disclosing that would really help them understand your business. To have that back-and-forth interaction helps to build trust and credibility with the investment community."

Travel to your distant stores. "Most retail companies are global these days because that's where a lot of the expansion opportunities are," Pazin observes. "It's really important to go to those regions so you understand how the merchandising is taking place in individual stores."

"If I look at consumers in Japan and China, the products they buy are different than in the United States. For example, in Japan, men are very fashion forward and very big into color, while men here in the United States like a more masculine feel."

Do your homework about the sector.

In addition to honing the fundamental skills involved in being a good IRO, newcomers should learn as much as they can about the industry. "Read fashion publications, focusing not just on the fashions but also on the business behind the fashion," advises Jacobs.

"What are the trends in consolidation? What is the impact of e-commerce? How is the competitive landscape impacting margins? How is the economy affecting retail? The more you understand the economics of retail the better equipped you are to move into the IR side of retail. It's much more than what's hot in a particular season." **IRU**


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DEALING WITH Activist Shareholders

Staying vigilant and proactive
is the key for IROs

By Peter Brinch





A Sea Change

There is no question that in recent years there has been a sea change in the tactics used by activist investors to achieve *their* stated goal of increasing value for shareholders. Today's reality is that there is no safe harbor for the unprepared public corporation. If warnings are not recognized and heeded, the result is a perfect storm of media and market frenzy—interrupting business and putting a company's management and its growth objectives under a microscope.

Waheed Hassan, CFA, managing director of Alliance Advisors LLC, a firm specializing in contested situations, describes the current landscape: "Activism has become an accepted investment class; activist investors are now targeting bigger companies. Additionally, these investors are getting involved with issues that have been the board's traditional purview. Timken [which spun off its steel business after pressure from two major shareholders in September 2013] was an inflection point and provides a blueprint for targeting operational and strategic issues without being on the board."

So in today's stock markets, any risk, or perception of risk, can lead to institutional shareholders abandoning ship, and leaving the door open for activist investors or hedge funds to step in. Invariably this leads to a disruption of daily operations, and diverts management's focus to the looming crisis, most often to the long-term detriment of retail shareholders.

Although many legal and academic scholars have pointed out that in addition to being at odds with management's fiduciary duties, the *ad hoc* connections and alliances formed between activists, trial lawyers, and issue-advocacy groups often are of little or no benefit in increasing long-term shareholder value.

But the first rule in a free market is that money talks! Today with assets under management over \$65 billion, activist investors

and hedge fund managers are no longer focused on small- and mid-cap companies.

Recent stories in the media document that even blue-ribbon companies with share price performance consistent with their peer group, outstanding balance sheets, and exemplary corporate governance practices can, for any number of reasons, fall victim to activist agitators who initiate proxy battles, shareholder resolutions, and litigation threats.

In its third quarter market capitalization analysis, *Activism Monthly* states that business boomed as 2013 got off to a strong start, showing "the amount of money spent by activist investors acquiring new stakes in U.S.-listed companies had grown by a third."

According to *SharkRepellent*, as of September 2013 there had been 23 contested meetings and an additional 34 this year that were settled prior to the shareholder vote, reinforcing the notion to the market that serious activists with deep pockets and the proper strategy can make any company vulnerable and therefore put it in play.

An article in the May 25, 2013 issue of *The Economist* chronicles the recent travails of several large-cap corporations, among them Sony, Apple, and most recently, Microsoft. Those companies are being badgered by billionaires, hedge funds, and a wide variety of activist investors and interest groups who join forces and try to enlist the support of retail shareholders to promote specific "reform agendas" or "management changes."

Proactive Preparation is Key

Recognizing that activists are building new alliances daily and have the tools, time, and techniques to disrupt their plans and objectives, companies must be proactive and adopt the Boy Scout slogan, "Be Prepared."

Since each situation is unique and the resulting problems are multifaceted and come from many directions, it is absolutely critical for C-suite executives and their IROs to recognize they have a dual

Shareholder activism in the United States began about a century ago, and its history is replete with gadfly characters and miscreants. But as Shakespeare observed, "what's past is prologue." Or to translate into a 21st century sound bite, "you can't fight today's battles with yesterday's weapons."

The weapons today revolve around technology. With the advent of fiber optic cable and commercial satellites, access to the World Wide Web has exploded, making trading in equities markets a 24/7/365 proposition.

The irony is that while the global game has quickened, business is both more complicated and transparent than it was even a decade ago. Access to more information and the ability to repurpose and distribute it instantaneously means that aggressive investors can quickly mount powerful campaigns against a company's management.

DEALING WITH Activist Shareholders

responsibility—to focus on the present and keep their eyes trained on the horizon for pending dangers.

Activist investors typically look for situations where a company's management and/or board are viewed as vulnerable and the stock has underperformed versus expectations or past performance. Then, depending on the situation they have two basic game plans.

Plan A is to take a large, long position in the stock and use outreach tactics such as writing to the board and sending press releases to financial news outlets. This generally attracts speculative interest in the stock and can quickly drive up share price, which allows the activist investors to exit their position at a quick profit or “hunker in the bunker” for a protracted battle to gain some measure of control of the company.

Plan B is to take a short position, then publicly challenge the company's financial controls, accounting policies, product marketing plans, or long-term viability. This plan has the potential to backfire if other large investors rush in to support the company through significant stock purchases.

Regardless of the method an activist uses, Brian Turcotte, vice president of investor relations at ServiceMaster, sees his day-to-day job as: “Communicating the company's message to our constituents in the financial community and bringing the voice of the financial community back to management. But if my company comes under siege, we are prepared to switch gears and expand our communications outreach.”

Gene Grabowski, executive vice president in the Washington, DC office of global communications firm Levick, agrees that this is the proper approach. He says, “In this age of instant transparency, companies must manage the narrative of relevant issues in order to maintain market share and stock value, and ultimately control their own destinies. To ignore this reality is to invite disaster.”

To counter any actual or impending threats, the IRO should remember the adage, “Keep the spectators off the playing field.” Those words, attributed to Norm Augustine when he was CEO of Lockheed Martin Corp., should be the mantra for corporate executives and their IROs. In today's world, if you're going to win for your shareholders, you must keep your eye on the ball, have a game plan, and be willing to get on the playing field.

Communicate Value and Vision

Historically, and especially today, investors are obsessed with quarterly results, so communication with all constituencies is paramount. Even if earnings are off or analysts' forecasts are pessimistic, the overall goal must be one of telling and selling the company's value and vision to the marketplace. If shareholders know there is a plan in place and management can execute, it becomes a solid foundation for fending off the unwelcome advances of activist investors.

Patrick Davidson, vice president of investor relations at Oshkosh Corp., believes, “It's best to recognize your company's value proposition and be prepared for the possibility of activists before they come knocking, otherwise you're playing defense before the game starts.”

Turcotte agrees, especially when changes are in the wind. He suggests, “When struggling or implementing a transformation, before hitting the radar screen of an activist investor, be sure to effectively communicate your company's performance and strategy to large shareholders and widely followed sell-side analysts.”


Hassan believes that since every activist has a different playbook, most companies are at a disadvantage “unless they have someone on senior staff or the board who has been involved with activist campaigns.” So proactively preparing for potential areas of activist criticism is vital.

Grabowski whose firm has played on both sides of the field by representing corporations and activists weighs in by adding, on the corporate side, “Our experience has demonstrated that before a situation becomes lethal, the IRO working on behalf of senior management should assemble a team of in-house staff and outside consultants.

“Generally an outside team consists of senior experts from banking, legal, public relations, and proxy solicitation firms. It's the IRO's job to effectively coordinate both face-to-face and electronic communications efforts among team members. Common sense and special attention must be given to security protocols when using electronic technology. The result should be clear, concise, and consistent communications that detail current activities and possible future scenarios.”

Once the team has been assembled, the first thing to be done is review existing structural defenses and consider new ones in view of both current legislative and regulatory realities. Then, if necessary, the IRO should brief and make recommendations to management.

The plan, which is always a work in progress, should include detailed media tactics and designated spokespersons. It should also document methods and company contacts for cultivating relationships with third parties including institutional investors, sell-side industry analysts, customers, business partners, and any “new influentials” who appear on the scene.

Summing up, Turcotte says, “Don't let it get personal and always take the high road. 

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For more information on this topic, please visit the “Shareholder Activism” section of NIRI's Presentation and Report Library, which can be found at: <http://www.niri.org/resourcelibrary>

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Executing a Deal Road Show

Learn how IR can add value when your company is raising capital or announcing a transaction.

By Tammy K. Dang

Investor relations officers can play a critically important role in a successful deal road show,” said Andrew Siegel, partner at Joele Frank Wilkinson Brimmer Katcher. Siegel, along with moderator Steven Eschbach, vice president of investor relations at Integrys Energy Group, and Jim Collins, managing director in the investment banking division of Morgan Stanley, shared their insights on a July 2013 NIRI-sponsored webinar titled, “The Deal Road Show.”

Get Involved

According to Siegel, an IRO may have proprietary market and company-specific intelligence that can be used to improve the dynamics of a road show. An IRO who is engaged with a “seat at the table” can positively impact any transaction and contribute to its success.

He encouraged IROs to assertively take on a level of ownership, and make their presence felt throughout the entire process, from articulating the transaction

rationale, to developing materials, to mapping out road-show strategy, and beyond.

Collins agreed, having seen the process work best when IR is involved early, taking an active tone, and assisting in the draft of the road-show presentation so that the company’s voice comes through. “The more interaction and collaboration there is between IR, the finance department, and bankers, the better the finished product,” he said.

According to Collins, it’s very helpful for the IR department to provide slides to the bankers as a starting point. IR and the bankers need to stay close to any pro forma metrics being presented.

There will likely be substantial requests for clarification as analysts and investors update their models. Unless the financing is around an unexpected event, there is usually a long lead time as the office of the CFO or treasurer has likely mapped the offering out several quarters in advance.

One key objective to consider as you’re preparing to market a transaction is that it is very important to understand your shareholder base and know where the demand for blocks of stock may reside.

“Investor relations officers know their current and former shareholders better than anyone else and have real-time insights into target investors who may be interested in making an initial investment,” Siegel said. “This information is a tremendous and actionable asset to the investment bankers marketing the transaction.”

IROs can also play an instrumental role in ensuring that the transaction is clearly articulated and well-received by current and prospective investors. “When discussing the use of proceeds for a fundraising, whether it’s just general corporate purposes, paying down debt, or to fund an acquisition, the rationale has to fit within the context of your company’s existing story and resonate with Wall Street,” Siegel pointed out.

Usually, one bank is the book runner and has the mandate to lead the transaction. That bank will set up an execution calendar with timetables. Having a robust dialogue on the road-show schedule and logistics is helpful. Everyone will be focused on placing the new issuance, but it is also important to pay close attention

“The more interaction and collaboration there is between IR, the finance department, and bankers, the better the finished product.”

– Jim Collins, managing director, investment banking division, Morgan Stanley



to those stakeholders who have been long-term investors.

According to Collins, the bankers are focused primarily on placing a new issuance during the financing process. They won't always know your shareholders' stock-specific hot buttons and may not have the same sensitivities as the IR department.

"Pay close attention on the road show to your long-term supporting stakeholders," he said. "That's helpful feedback for the book-building process and the initial road-show schedule, so be sure to be open and communicate about that."

According to Siegel, prepping the executive team is a must. An IRO should prepare the team to expect and respond appropriately to questions on corporate governance, executive compensation, or other issues unrelated to the transaction, but of interest to investors. Insight such as which investors may be upset about the company raising capital or those who may be demanding a big share repurchase will be useful as the management team hits the road.

On the road, the presentation deck changes as it is a living and breathing document. IR's job is to capture the intelligence that will make the IRO and the executive team smarter in the next meeting.

Eschbach agreed. The highlight of his career was in 1998 when he worked at KN Energy (now Kinder Morgan) on a \$4 billion debt/equity offering for the Midcon Pipeline acquisition from Occidental. It included 21 days of marketing both in the United States and Europe with 71 different meetings with two different executive teams.

"As we were getting hit with questions of various sorts, we actually changed the presentation," Eschbach recalled. "The presentation we had on day 1 did not resemble the presentation we had on day 21."

"When discussing the use of proceeds for a fundraising, whether it's just general corporate purposes, paying down debt, or to fund an acquisition, the rationale has to fit within the context of your company's existing story and resonate with Wall Street."

— Andrew Siegel, partner at Joele Frank Wilkinson Brimmer Katcher

Communicate Appropriate Messages

According to Collins, oftentimes, executives want to get messages into the road show that not only need to go through a due-diligence process and be disclosed, but involve intersections of IR, marketing, and legal in the work stream.

"The bankers, particularly in an equity offering, are going to want to make sure that the road-show document can be easily sourced or readily derived from what's in the public domain," he said. "So you want to have a lot of foresight into what's going to be in that eventual deck and work that into the disclosure, whether it is a prospectus supplement or high-yield document."

According to Siegel, train your executives in delivering presentations. "A road show is essentially back-to-back-to-back selling," he said. "That said, a successful IR program that has already built context and laid the groundwork means that when your executive team is on the road selling a transaction, they are essentially closing a deal that the IRO has already pitched in previous meetings, calls, and other interactions with target investors."

IR's work does not end the moment the transaction is priced and printed. After the transaction has settled, the composition of your investor base may have changed sig-

nificantly. Reach out to new and old investors, as well as those who were unable to participate in the transaction.

While their feedback on the deal will be informative, this outreach will also give the IRO an opportunity to address any new questions or concerns. By giving these investors a voice and a clear conduit to reach management and following up on any new dynamics they may want to discuss, these investors may be encouraged to purchase stock in the aftermarket, which will support the stock price.

Do a perception study and gauge how investors received the offering or transaction to better understand their expectations of the company going forward. It is critical that this information be communicated back to the executive team and that you continue to build the story based upon all of the new intelligence you have gathered throughout the deal process.

The next quarterly conference call is a milestone and an opportunity to take the story to the next level by building the company's transaction rationale into your quarterly messages and addressing issues that came up on the road.

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

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

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TO KEEP MEMBERS informed of activity in the IR industry and upcoming NIRI events, NIRI has an excellent Twitter account that is a great resource. By following @NIRI_National, members gain instant access to relevant news from the Securities and Exchange Commission, the latest updates from NIRI, and other significant developments in investor relations.

NIRI also tweets compelling research that members want. For example, on September 25 2013, @NIRI_National tweeted:



“NIRI releases Updated Standards of Practice For Earnings Release Content-designed to reflect the best U.S practice”

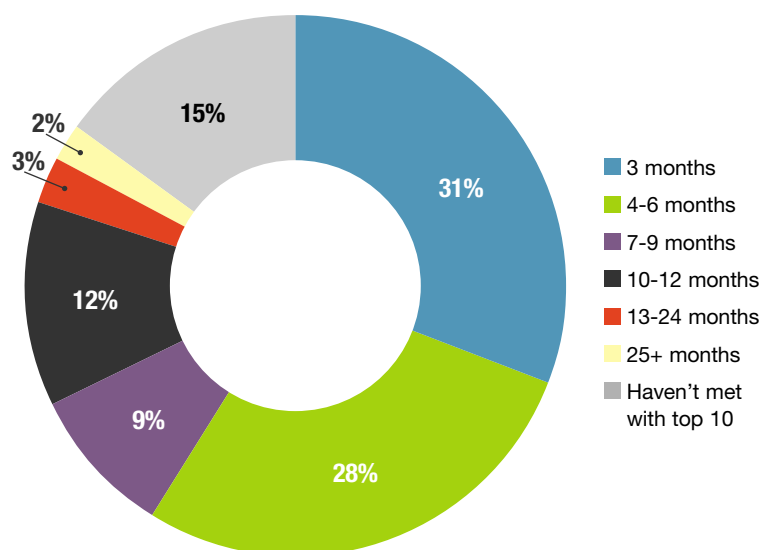
This message linked members to the most recent “Executive Alert” and all pertinent information, with no need to check e-mails. The NIRI Twitter feed also links to the monthly *IR Update* and grants immediate access to the *IR Weekly* newsletter. @NIRI_National is the place to learn about upcoming NIRI seminars, webinars, and NIRI gatherings around the country.

To reach out to NIRI directly via Twitter, tweet to @NIRI_National and NIRI will reply. When discussing IR, use “#NIRI” so other NIRI members can join the conversation and make members even more connected.

IR Research at a Glance

KEEPING UP WITH TOP INVESTORS

In the past _____ months, I have met all our top 10 shareholders.



Source: NIRI Quick Poll, Compiled by NIRI, October 2013. 104 respondents.

Quick Takes

What do you do to relax after a stressful period at work?



Maryellen Thielen

Senior Manager, Financial Communications
The Allstate Corporation

► “Play basketball with my kids. I’m not very good at it, but neither are they – so it doesn’t matter!”

Donna Lipira Derosa

Investor Relations Administrator
DeVry

► “I usually plan a long weekend away. The change of scenery makes for a relaxing time. When I return, I spend time with my one-year-old granddaughter!”



Jenny R. Kobin

Vice President, Investor Relations
Web.com

► “I have found that doing yoga is an ideal counterbalance to the stress and pressure of the IR role. It’s an excellent way to work out and stretch muscles stiff from sitting all day, working on the computer, and/or traveling. Even more important, it helps me to focus, live in the moment, and be calm using breathing techniques that help during stressful times. And these benefits pay off in all my roles – IR professional, wife, mom, and friend.”

“Quick Takes” 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.

On the Move



Frank Scaturro

joined American
Stock Transfer
& Trust

Company as
senior vice pres-

ident of investor relations services
for its Phoenix Advisory Partners
division. He was previously vice
president of Thomson Reuters
Advisory Services. Scaturro serves
as an external advisor to many
Fortune 100 companies and
major stock exchanges.

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

Professional Development Calendar

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

December

- 4** 2013 NIRI Annual Meeting & Luncheon webinar
- 4-6** Senior Roundtable Annual Meeting, Miami Beach, FL
- 19** What's Coming in 2014? webinar

January

- 6-7** Finance Essentials for IR seminar, Santa Monica, CA
- 7-10** Fundamentals of Investor Relations seminar, Santa Monica, CA
- 14** 2014 Proxy Season: Get Prepared webinar
- 28** IR's Role in the IPO Process webinar

February

- 11** Part I: Targeted by Activists webinar
- 25** Part II: Managing Shareholder Activists webinar

March

- 4** Communicating the Company's Strategy webinar
- 11** Institutional Investor Awards webinar
- 18** Think Outside the IR Box webinar

June

- 7** Seminars Prior to the 2014 Annual Conference, Las Vegas, NV
- 8-11** 2014 Annual Conference, Las Vegas, NV

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www.niri.org/conference

Earnings in Motion

The Niri San Francisco chapter staged a mock video earnings call to frame a discussion on how this format can be used in a social media environment.

The opening educational program for the Niri San Francisco chapter 2013-2014 season featured a panel of professionals talking about using video earnings calls streamed over social media.

The discussion was videotaped to demonstrate the production of a mock video earnings call. Niri members who attended observed the actual look and feel of how such a streaming event is produced first-hand through in-house screens.

The panel discussion is available for viewing on the Niri San Francisco website on the "Education" page thanks to the generosity of PRNewswire, which sponsored the event and produced the video. Visit <http://www.webcaster4.com/Webcast/Page/4/2043> to view the mock earnings call and discussion.

Panelists who spoke candidly about their thoughts on social media and investor relations included: Marty Palka, chief intelligence analyst, investor relations, Cisco

Systems; Ryan Batty, director of corporate communications, Polycom; Jason Golz, partner, Brunswick Group; and Alex Wellins, co-founder and managing partner, The Blueshirt Group.

Discussions focused on several issues, including the following:

- Open social platforms evolving into news distribution networks.
- Retail and institutional investors directly using social media platforms to monitor and identify investing options.
- How media and analysts are shaping their coverage of companies, markets, and industries by what they see in social media.
- Industry leaders using social media to communicate directly with investors.
- Understanding and resolving legal issues surrounding social media and investor relations.

Visit <http://www.webcaster4.com/Webcast/Page/4/2043> to view the mock earnings call and discussion.



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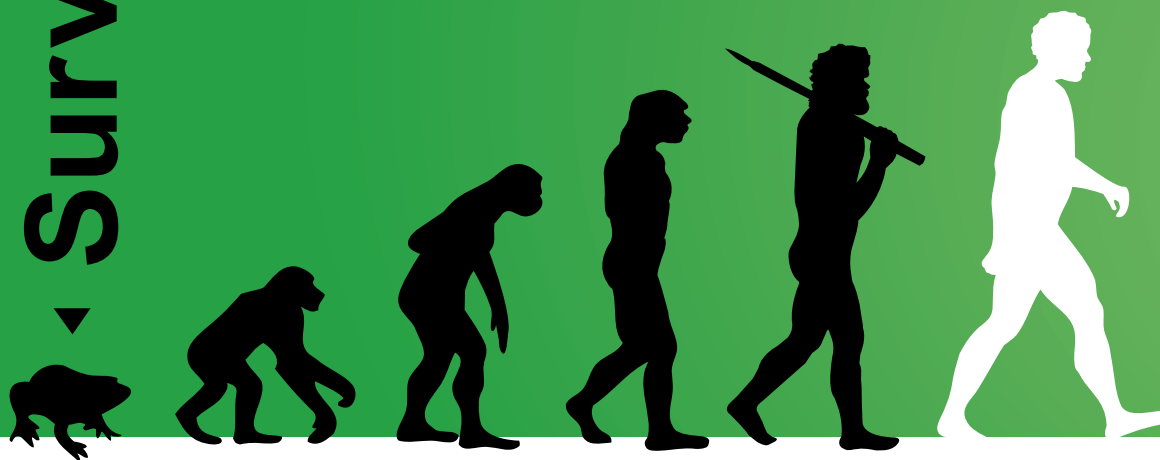
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