

# IRupdate

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## REPUTATIONAL RISK

It doesn't take long to burn a company's reputation. But boards can manage what is seemingly beyond their control.

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Capitol Hill

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Speak

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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.

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# Summer Vacation?

Everyone has a different vision for their summer – but as your CEO, I'd like to share my summer 2013 activities and plans with you, and shed light on some of the ways we're ensuring that NIRI's strong voice is heard far and wide!

**Early June** – I attended the NIRI Annual Conference in Florida. I hope you did, too! It was terrific with great educational content, new and updated service provider solutions in the exhibit hall, and plenty of time for networking with peers. Everyone was also buzzing about NIRI's Annual Conference next year in Las Vegas!

**Late June** – On behalf of NIRI, I participated in our second IR Wisdom Road Show in China hosted by Ipreo. Several hundred IR professionals attended learning about NIRI and global IR practices in Hong Kong, Shanghai, and Beijing, with a special meeting in Taipei with board directors in the region. Many expressed interest in joining their American peers for the Global IR Forum in New York, November 18-20, 2013.

**Early July** – I was off to Brazil to speak to more than 400 IR professionals at the Brazilian IR Institute (IBRI) Conference in Sao Paulo. This was my fourth year as a keynote speaker and another opportunity to share information on global IR practices and NIRI. Attendees from Brazil rank second in number of non-U.S. attendees at the NIRI Annual Conference and may someday overtake our Canadian participants.

**Mid-July** – I attended and moderated a panel at the Society of Corporate Secretaries annual conference in Seattle representing NIRI and the partnership between the IR and corporate secretary functions. This conference helps inform me about many key regulatory, proxy and compliance issues affecting public companies.

**Early August** – I will attend an annual conference for association executives to learn about the latest trends and new services to improve NIRI for all members.

**Mid-August** – I plan to speak about financial communication at a crowdfunding conference in Orlando. This is a developing area for financial communicators and I think it is an area of potential new business for IR counselors and possibly NIRI as well!

**Late August** – As part of the planning team preparing for the 2014 NIRI Annual Conference, I will be spending time at the Bellagio in Las Vegas.

**Late August** – I will attend the 3rd Annual NIRI Energy IR Symposium in Houston. I hope those in this sector will also be there.

In between all of these activities, I also spent some relaxing time at the beach, visiting Mt. St. Helens, and attending my 35<sup>th</sup> high school class reunion. I hope you are having a chance to recharge this summer because September will be here before you know it!



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# REPUTATIONAL RISK

It doesn't take long to burn a company's reputation. But boards can manage what is seemingly beyond their control.

By Keith Mabee



ask a CEO or board chairman what keeps him or her awake at night and you're likely to get any

one of a variety of responses. Economic uncertainties, competitive forces, operational challenges, labor disturbances, supply-chain disruptions, and stock price volatility would be among the most common answers. Risk management and preserving a company's good reputation may not be so top-of-mind, though a strong enterprise risk management (ERM) process can help mitigate the effects of all of the aforementioned concerns.

Recent news coverage has been replete with stories about unforeseen and unprepared-for events that have critically damaged the reputations of companies and even entire industries. Carnival Corp. is reeling from a series of nightmare cruise incidents. Lululemon Athletica's shares plunged after the recall of its unintentionally see-through yoga pants. Seventh Generation had to do a quick reversal when its customers howled about the changes it made to its popular baby wipes.

What these companies are discovering – and what many companies with effective risk management initiatives already realize – is that reputation, which is so vital to the long-term health and value of the enterprise, often hangs precariously as a target for the next crisis. As Warren Buffett has been quoted as saying, “It takes 20 years to build a reputation and five minutes to ruin it.”

Consequently, reputation is a key intangible that must be managed and protected. While reputation is based largely on strong and positive public perceptions, it is often more vulnerable to risk than physical assets because it can lose value rapidly in a crisis scenario.

## Increased Focus on Reputation

Engaged boards and management teams increasingly are making a concerted effort to focus on reputation as an integral element in their overall ERM strategy. Best practice calls for the establishment of a risk management committee to review potential risks to reputation at least once a year, along with other perceived risks, and make preparations to address them. Investor relations officers are ideally positioned to play a key role in these proactive assessments, particularly when it comes to intangibles.

Goldman Sachs is a prime example of a firm that is paying closer attention to its reputation. In his first letter to shareholders as lead outside director, James Schiro says the company's board is “very focused on the reputation of the firm.” He writes that the board's governance committee has been charged with managing the firm's relationships, reviewing its philanthropic and educational initiatives, and guarding its reputation, which it will do through a “public responsibilities” subcommittee.

Research by the Enterprise Risk Management Initiative further underscores that many organizations are increasing their reputational risk management efforts. A recent survey of 148 executives found that 74 percent believe their company's reputation has a high impact on stock price, and 82 percent said their companies were undertaking a substantial effort to manage reputational risk. About two-thirds of the respondents indicated that their companies had increased their investment in reputational risk management and planned to continue to do so. As a result, 61 percent considered their companies to be very effective in managing reputation risk.

Management and boards are intensifying their focus on reputation for a variety of reasons. Research has shown that reputation accounts for 65 percent or more of a company's value (up to 95 percent for the most brand-driven companies), which makes investor perception arguably the most important factor in market valuation.

## Higher Expectations

Public companies and boards today also are being held to higher standards of expectations. Activist shareholders are becoming more aggressive and are using reputational missteps, among other things, to gain greater influence on shareholder voting and strategic decision making. And new channels of lightning-fast communication are disseminating real-time information to a wider range of audiences, making immediate action even more crucial in crisis situations.

“Board thinking is evolving,” says Eleanor Bloxham, chief executive officer of The Value Alliance and Corporate Governance Alliance. “More boards today are recognizing the role of corporations in society and the need for board members to understand how a variety of stakeholders view the organization. It's a 360-degree view of reputation – not a one-dimensional look – that matters to boards today.”

A report by the IBM Institute for Business Value notes that enterprise risk management historically has been viewed as the chief financial officer's domain, probably because all risks ultimately can have a financial consequence. In reality, the report says, less than 20 percent of enterprise risks are directly related to financial, legal, or compliance issues. Thus, risk awareness, ownership, response, and prevention must infuse all aspects of the organization, not just the financial and legal departments.

Such is the case at Nordson Corp., a global leader in precision dispensing, fluid management, and related technologies in a wide range of end markets. “Our behaviors stem from a strong set of company values – excellence, customer passion, energy, respect for people, and integrity – that are continually emphasized in everything we do,” says James R. Jaye, director of communications and investor relations.

“Risk to company reputation is a primary consideration throughout Nordson’s enterprise risk management processes, which we review annually. Our strong reputation and brand is a significant part of our success in the marketplace, and that success translates into value for our shareholders. We believe the best way to protect our reputation is by fostering best behaviors throughout the organization. In sum, we do what is right because it is right, not because somebody is watching, and we’ve found this philosophy to be the best protection for our reputation with all audiences in the event of a crisis.”

## A Tailored Approach

Risk management programs are most effective if they are tailored to a company’s industry and strategic goals. Certain industries and businesses are more susceptible than others to events that can severely and permanently damage reputation. At Cedar Fair, one of the largest regional amusement park and resort operators in the world, the inherent risks of a business with a marketing slogan of “Thrills Connect” are addressed openly by the board of directors and management, and an unwavering commitment to safety is built into the culture.

“Our directors are well aware of the importance of managing risk and ensuring that public perceptions of our parks and operations remain at the highest level,” says Duffield Milkie, corporate vice president and general counsel for Cedar Fair. “Our culture of safety extends from the board, which reg-

## Developing an effective risk management program leads to better decision making, improved communication, positive public perceptions, and a strong corporate reputation.

ularly reviews our progress on risk management and other issues related to reputation, all the way to the ride operators, who know that they are expected to be committed to safety as their top priority.”

H.J. Heinz Co. outlines its approach to risk management in its corporate social responsibility report: “Our approach to risk management enables the Company to meet two primary reputation-related goals, including doing the common thing uncommonly well and helping Heinz maintain the distinction of being the most trusted packaged food company.”

Heinz’s risk management department promotes collaboration across functional areas and geographic regions to identify and generate awareness of potential risks, evaluate and establish acceptable risk tolerance levels, ensure alignment of company policies and best practices, and develop risk mitigation solutions and measurement.


## Proactive Role for Boards

In risk management, it is critical that the board works closely with senior management to coordinate the company’s business strategies in relation to the various identified risks that potentially could hinder the successful implementation of those strategies. As the Enterprise Risk Management Initiative notes, “Boards must strive to proactively identify and evaluate their companies’ risk profiles and accept only calculated risks that are commensurate with their companies’ risk appetites. ... (The

board plays a key role) in fostering a risk-aware culture, setting the company’s risk appetite, and reconciling that appetite with the company’s risk profile.

“Boards must understand all elements of potential risks to align them with their companies’ risk appetites and strategic plans. That level of understanding requires effective communication across the enterprise, which companies can foster by establishing clear channels of communication and identifying risk owners.”

Developing an effective risk management program leads to better decision making, improved communication, positive public perceptions, and a strong corporate reputation. Fostering an open approach to risk management and prevention throughout the entire organization helps build a culture that is prepared to face significant challenges, limit potential damage to reputation, and deliver high value to customers and shareholders.

By openly leading the way in recognizing, addressing, and instilling an appreciation of risk management throughout an organization, directors can comply more fully with their fiduciary duties. Additionally, IROs are uniquely equipped with the strategic, communication, and stakeholder engagement skills to be major contributors to and catalysts for an effective reputational management mindset in their organizations. 

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# NIRI TESTIFIES ON CAPITOL HILL

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NIRI President and CEO Jeff Morgan makes the case to Congress for improved shareholder communication.

By Matt Brusch

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## One of the ways NIRI meets its mission of advancing the practice of investor relations and the professional competency and stature of its members is through advocacy activities.

And in terms of raising the stature of the profession, there are few methods more effective than testifying before Congress. On June 5, 2013, NIRI President and CEO Jeff Morgan did just that.

On that day, the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets and Government Sponsored Enterprises, held a hearing on “Examining the Market Power and Impact of Proxy Advisory Firms.”

Testifying with Morgan were a former SEC chair, a former SEC chief accountant, and representatives from the Society of Corporate Secretaries & Governance Professionals, the Shareholder Communications Coalition, the Center on Executive Compensation, and the Florida State Board of Administration.

According to the Committee Memorandum, the hearing would “examine the growing importance of proxy advisory firms in proxy solicitations and corporate governance, including the effect that proxy advisory firms have on corporate governance standards for public companies, the voting policies that proxy advisory firms have adopted, the market power of proxy advisory firms in an industry effectively controlled by two firms, and potential conflicts

of interest that may arise when proxy advisory firms provide voting recommendations. This hearing will also examine proposals offered by the Securities and Exchange Commission (SEC) that seek to modernize corporate governance practices in order to improve the communications between public companies and their shareholders.”

Both subjects are clearly of keen interest to investor relations professionals, and more broadly, all publicly traded companies. Since most witnesses focused their verbal testimony on the proxy advisory aspect of the hearing, Morgan’s spoken testimony concentrated on improving shareholder communication, including shareholder identification.

What follows is a summary of NIRI’s written testimony highlighting reform recommendations. NIRI members are encouraged to read the complete testimony, including in-depth discussion of each issue posted on the NIRI website at [www.niri.org](http://www.niri.org).

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*Written Testimony of Jeffrey D. Morgan, FASAE, CAE, President and CEO, National Investor Relations Institute, June 5, 2013, before the Subcommittee on Capital Markets and Government Sponsored Enterprises,*

*Committee on Financial Services, United States House of Representatives, hearing on “Examining the Market Power and Impact of Proxy Advisory Firms.”*

## Background

NIRI supports transparent, fair, efficient, and robust capital markets, which are essential to promoting innovation, sustainable job creation, and a strong U.S. economy. Vital to such capital markets is ensuring that public companies can communicate effectively with their shareholders and that investors receive accurate information. We need to have an accurate and transparent proxy system that allows efficient two-way corporate-investor communication and ensures equality among shareholders.

Shareholders are the ultimate owners of our public companies, and they must have accurate and timely information so they can make informed decisions when they buy or sell a company’s shares or cast their ballots at shareholder meetings. IR professionals play a dual role in this important two-way communication process. They work to ensure that all investors have fair access to the publicly available and material information about a company’s financial results, future prospects, and corporate governance. IR professionals also make sure that shareholders’ views are heard by management and directors.

My testimony will focus on two concerns that relate to the ability of companies to reach their investors: 1) the role of loosely regulated proxy advisory firms, and 2) the outdated SEC rules that can prevent companies from effectively communicating with shareholders on a timely basis. NIRI has a long record of seeking reforms on these two issues. NIRI has submitted and also joined other organizations in submitting various comment letters to the SEC on ways to



Congressman Scott Garrett (R-NJ), chairman of the Subcommittee on Capital Markets and Government Sponsored Enterprises for the House Financial Services Committee, asks a question during the hearing.

reform the archaic and complex proxy communication system – an outdated system that has not kept pace with globalization, technological innovation, and in general, more modern times.

## Recommended Reforms for Proxy Advisory Firms

NIRI, as part of the Shareholder Communications Coalition – which also includes the Society of Corporate Secretaries and the Business Roundtable – has urged the SEC for years to take action to address the business practices of proxy advisors. In recent years, there has been a growing chorus of companies and former and current SEC officials who believe that urgent action is needed. Unfortunately, the SEC has failed to act on these critical issues, but we hope that this subcommittee concludes that these reforms should be a greater priority.

The following is a summary of our recommendations:

1. *Proxy advisory firms should be subject to more robust oversight by the SEC.* All proxy firms should be required to register as investment advisers and be subject to the regulatory framework under the Investment

Advisers Act of 1940. In addition, the SEC Division of Corporation Finance, which oversees corporate disclosures and proxy issues, should play a prominent role in providing oversight.

2. *The SEC should adopt new regulations that include minimum standards of professional and ethical conduct to be followed by the proxy advisory industry.* The goal of a uniform code of conduct – which should address conflicts of interest, transparency of processes, and accuracy of factual information – should be to improve the quality and reliability of the analysis and advice provided by proxy advisory firms.

3. *These SEC regulations should require full disclosure of conflicts of interest.* A proxy advisory firm should publicly disclose its relationship with any client who is the proponent of a shareholder proposal or a “vote no” campaign, whenever the proxy advisory firm is issuing a recommendation to other clients in favor of the same proposal or “vote no” campaign.

4. *The SEC should address whether a proxy advisory firm should be allowed to offer consulting services to any public company for which it is providing recommendations on how investors should vote their shares.* If a proxy advisory firm is allowed to offer such consulting services, consideration should be given to ensure there is a complete separation of proxy advisory activities from all other businesses of the firm, including consulting and research services.

5. *Given the tremendous influence of proxy advisory firms, there should be greater transparency about the internal procedures, guidelines, standards, methodologies, and assumptions used in their development of voting recommendations.* This is particularly the case where the advisors apply policies without taking into account company-specific or industry-specific circumstances in making voting recommendations. This increased



transparency would enable shareholders and companies to better evaluate the advice rendered by proxy advisory firms. These firms should be required to maintain a public record of all their voting recommendations. The SEC should also consider requiring the disclosure of the underlying data, information, and rationale used to generate specific voting recommendations. These disclosures could be made within a reasonable time after the recommendation has been made and still be relevant and useful to companies, investors, academics, and others who study the influence of proxy firms.

**6.** *Proxy advisory firms should be required to provide all public companies with draft reports in advance of distribution to their clients, to permit companies to review the factual information contained in these reports for accuracy.* Companies should be allowed a reasonable opportunity (such as 48 hours) to conduct this review and to respond to any factual errors. The SEC should consider whether to require proxy advisors to include in their reports any information they receive from a company, or, at a minimum, indicate in that report that a company disagrees with a particular factual assertion.

**7.** *Proxy advisory services should disclose publicly and promptly any errors made in executing or processing voting instructions on a particular proxy vote.*

## Recommended Proxy System and Shareholder Communication Reforms

The current shareholder voting and communication system is more than 30 years old, and is a product of regulatory evolution rather than a thoughtful, forward-thinking design. NIRI, alone and together with other groups, has called for the following regulatory reforms to the current U.S. proxy and shareholder communication system:



NIRI President & CEO Jeff Morgan testifies on behalf of NIRI.

**1.** *Improve institutional investor equity position (13f) reporting.* The ownership reporting rules under the Section 13(f) reporting scheme should be amended to improve the timeliness of 13(f) reporting from 45 days after the end of the quarter to two days after the end of the quarter. Reporting rules should be strictly enforced with meaningful penalties for non-compliance.

As part of Dodd-Frank, Congress directed the SEC to consider rules for a similar regime for short position disclosure every 30 days, so an evaluation of the entire 13(f) disclosure process follows logically.

NIRI joined with the New York Stock Exchange and the Society of Corporate Secretaries and Governance Professionals to provide the SEC with a comprehensive slate of related reforms in a Feb. 1, 2013, letter. More timely information is important because it will:

- a. Increase transparency about company ownership for the market overall.
- b. Improve the dialogue between companies and their investors.
- c. Help companies to better prepare for their annual meetings.
- d. Help address corporate governance concerns.
- e. Better correlate ownership reporting rules to other SEC-based reporting requirements.


f. Recognize and capitalize on advances in technology that make timelier reporting possible.

**2.** *Enhance the U.S. proxy system.* Despite the SEC's laudable 2010 proxy system concept release, we have seen no action on any comments. NIRI submitted a comment letter with a comprehensive list of recommendations to improve several aspects of the U.S. proxy system, including those that will benefit corporate-shareholder communication.

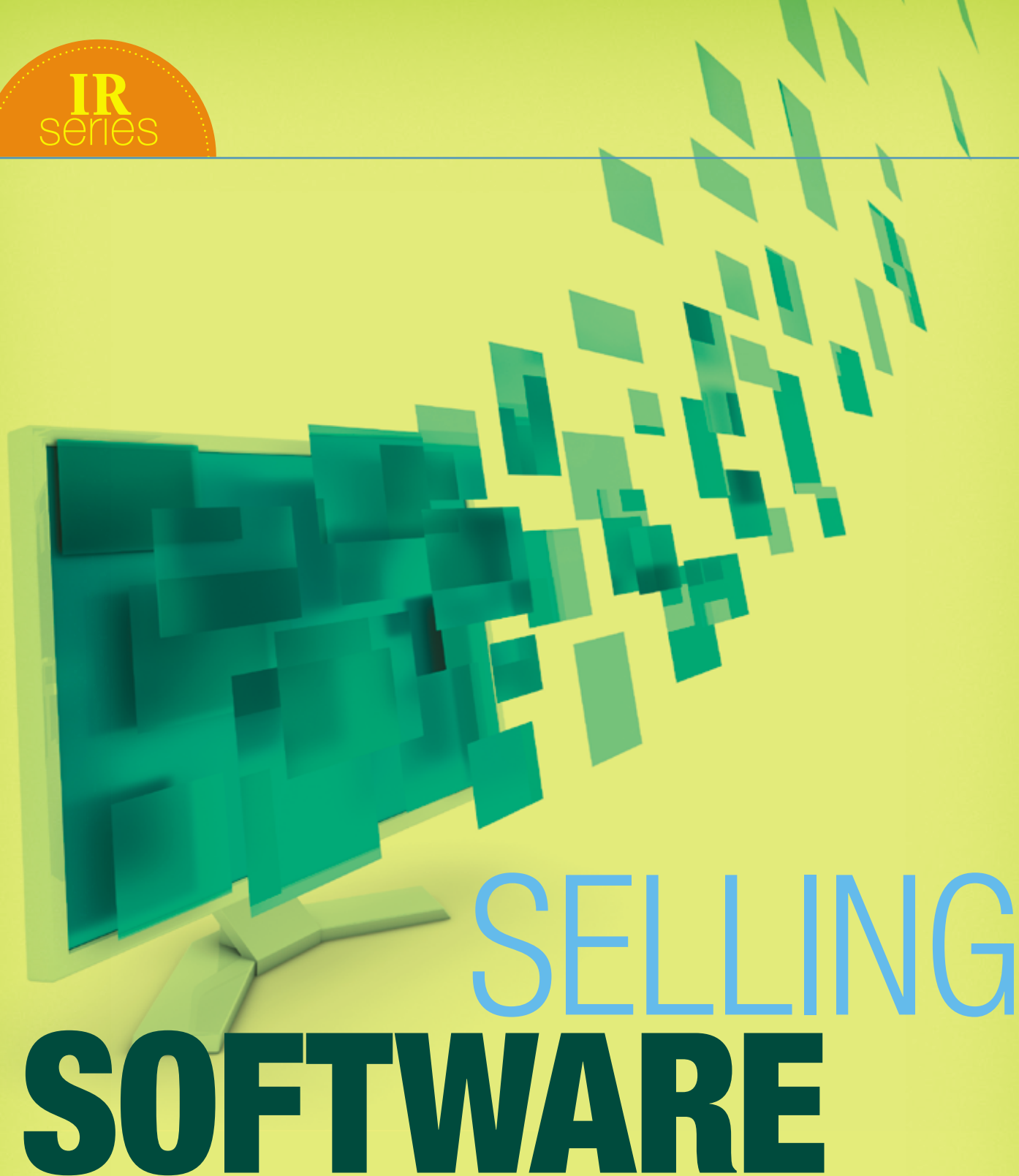
## Modernize the System

It is critical that we have an effective proxy system that is free from conflicts of interest and that allows for timely, efficient, and accurate shareholder communication. Equally important is a proxy system that is transparent and accurate to ensure equality among shareholders. A modernized institutional disclosure system that allows companies to communicate effectively and efficiently with investors would increase public confidence in the integrity of the U.S. securities markets and potentially help pave the way for accelerated growth and innovation.

As noted in the U.S. House of Representatives Report for the Shareholder Communications Act of 1985:

"Informed shareholders are critical to the effective functioning of U.S. companies and to the confidence in the capital market as a whole. When an investor purchases common stock in a corporation, that individual also obtains the ability to participate in making certain major decisions affecting that corporation. Fundamental to this concept is the ability of the corporation to communicate with its shareholders." 

**Matt Brusch** is vice president, communications and practice information & editorial director at NIRI; [mbrusch@niri.org](mailto:mbrusch@niri.org).

An abstract graphic featuring a light green computer monitor on the left. From the screen, a series of teal-colored squares of various sizes and orientations float outwards towards the top right corner of the page, creating a sense of digital data or software components.

# SELLING SOFTWARE

**IROs in the dynamic software industry wear many hats as they educate colleagues and investors about their companies.**

By Apryl Motley

If you're like Jeremiah Sisitsky and you enjoy "digging into all different areas of a company's business, taking a tour of a data center one day, listening to customer support calls on another, and educating sales staff about what it means to be a public company on the next," then a career as an investor relations officer in the software sector might be for you.

Sisitsky joined Constant Contact five years ago as the company's first in-house investor relations staff person. Prior to that, he worked in IR for two other technology companies. The best part of his current job is being able to see the big picture of the whole enterprise.

"I see the entire organization and help the analyst and investor community understand what's going on at the company," Sisitsky says. Like most IROs in the software sector, he faces the challenge of working in what he characterizes as a "highly dynamic and evolving industry."

For example, Constant Contact has significantly more employees today than when he first started with the company, which means his role as internal educator has expanded. "I interact with every employee about what it means to be a public company," Sisitsky explains.

"We want people to feel empowered, but understand what information they can and cannot share externally," he continues. "Crafting those external messages has been challenging in a marketplace where so many companies have categorized software as a service, but are focused on very different markets. When I have conversations with analysts on both the buy and sell side, software is a pretty all-encompassing term."

It is within this context that Sisitsky and his colleagues offer their insights on the opportunities and obstacles they encounter managing IR programs in an industry as broad as the software sector.

## Building IR in Times of Flux

It's not unusual for IROs working in the software sector to join their companies during times of significant change and expansion. In some instances they are brought on board to guide their organizations through the IPO process. Such was the case for CSG Systems International's Elizabeth Bauer and Workday's Michael Haase.

Initially hired to manage marketing for the provider of business support solutions, Bauer was appointed to handle communication and IR when the company went public in 1996. She left the company 10 years later but returned in 2009.

Today, Bauer serves as senior vice president of investor relations and strategic communications and continues to build an IR program for CSG that she describes as having "more of a communications slant than a financial focus."

She says this approach has served the company well since it went public. "In the 1990s, it was difficult for software companies to demonstrate value to shareholders," she says. "Our CEO and CFO wanted to emphasize our sustainable business model and tell that as well as the technology story."

Haase, who serves as Workday's vice president, investor relations and treasurer, was also able to play a key role in shaping his company's initial IR strategy.

"It was great being a part of the IPO team," he says. "After 20 years of running IR programs at fairly large public companies in the technology sector, it was a very rewarding experience to help take Workday public and then establish and manage the IR, treasury, and tax roles."

As part of that process, Haase was keen to expand his role beyond IR with the provider of cloud-based applications for human capital management and finance.

"In my career, I have typically had additional responsibilities to my IR role," he explains. "In fact, with my finance background, I have insisted on having more responsibilities than just IR." While Haase acknowledges that having multiple roles is challenging, he says doing so also "offers significant opportunities, including career flexibility, and has improved my IR skills. Having past and current experiences running financial planning and analysis, treasury, and tax has helped broaden my financial background, which has improved my financial communications to the Street."

When Jamie Andelman joined SciQuest as its investor relations director two years after the company went public, he took a slightly different approach to his role. As the company's first full-time IR person, he focused on "instituting best practices and maximizing the value of the time his CFO and CEO spent on IR."

Those practices were certainly put to the test. Soon after Andelman began his tenure, SciQuest bought two companies. "Some investors didn't understand why we acquired these businesses," Andelman explains. "There were concerns about making short-term investments to generate long-term value."

"These acquisitions were done in relatively quick succession, and a few investors worried that we had bitten off more than we could chew," he continues. "Even though SciQuest talked about investing in these areas prior to the announcements and we provided a strong strategic rationale for each, there were lots of questions."

One of the more important topics that Andelman discusses with investors is the inherent trade-offs between profitability and growth. Fortunately, he says, "The CEO and CFO believe in openness and transparency. They are willing to have a dialogue with investors who may not initially share

their views. The CEO and CFO present their case well, and they also listen.”

As part of the company’s overall IR strategy, Andelman says that a lot of his time has been spent on targeting investors to make the best use of the executive management team’s time. Doing so means that “when the CEO and CFO get engaged, they are more likely to be talking to the right people, and I’ve built a platform to facilitate a strategic dialogue.”

## A Seat at the Table

Similar to IROs in other sectors, Constant Contact’s Sisitsky wanted to work for an organization where IR has a seat at the strategic table.

“We get brought into the conversation about corporate strategy fairly early,” he says. “Some IROs have to fight to earn a seat at the table. One of the reasons I decided to come here was that they placed a value on IR.”

When the IR function is valued, IROs are able to create more value, says Adelman, noting that he wants “to be in front of investors pre-qualifying them before they have a conversation with the CEO or CFO.

“IR is increasingly being allowed to have a seat at the table, which is a good investment for companies,” he continues. “It improves the ability to position the company with Wall Street, and it better leverages the executive team. In addition, better-informed IROs can bring back the right market-based information to help keep the leaders informed and potentially make better decisions.”

Workday’s Haase also emphasizes the importance of using management’s time wisely. “Very often less is more,” he says. “Instead of doing 12 investor conferences a year, doing four or five augmented with a very targeted non-deal road show is often far

more beneficial and a better use of executive management’s time.”

“If the executive management team is being asked to participate in an IR event, they should understand why they are there, why they are meeting with each firm, and how all of this fits into the company’s overall IR objectives,” he continues.

CSG’s Bauer says the involvement of the company’s CFO and CEO in IR has remained steady through the years. “Investors appreciate consistency. In addition, our CEO and CFO have never shied away from being in front of investors during difficult times,” she continues. “Our approach of having a very present and transparent management team has been an advantage.”

## Working in a New Analyst Universe

IROs in the software sector want investors to see the advantage of investing in their companies, but they are challenged to find ways to distinguish them from others in a crowded marketplace.

“One of the things about the technology and software sector is that there are lots of small companies,” Andelman says. “The analysts in this space cover a lot of companies, and you have to be able to answer most, if not all, of their questions real-time if you want to have credibility. With that said, occasionally telling someone, ‘I don’t know, but I will find out and get back to you,’ can increase your credibility.”

A trend for IROs that’s likely to continue is the necessity of educating analysts on their companies’ business models as well as their end users/markets. “Oftentimes not only do I have to educate them about why we’re different, but I provide them with an understanding of a marketplace with which they may not be familiar,” notes Sisitsky. “They may not understand how small busi-

nesses make purchasing decisions.”

Further, as Bauer notes, “many software companies are finding it challenging to find growth. In a telecom market that is slow growing, how do you re-engineer your balance sheet to show or bolster growth?

“At a time when growth is difficult to find, many companies are looking at acquisitions in a manner that warrants organic growth,” she continues. “For the IR person, the challenge is not getting caught up in the headline or the cool, fancy term of the day. It’s a fine balance between how you differentiate your company and outline your value proposition to the end market.”

At the same time, the number of companies analysts follow has increased greatly while the amount of face time IROs and other members of the management team get with them has decreased.

“The buy side and sell side have had the universe of companies they cover grow exponentially,” Bauer notes. “At conferences, you now have a full day of 20-minute meetings versus a full day of one-hour meetings, which is a massive challenge for all companies. The role of IR has to change as the demands on the buy side grow.”

“One of the larger movements impacting IR during my career has been the shift in analysis from the sell to the buy side,” Haase concurs. “In the 1990s, institutional investors were generally reliant on the sell side for information on their pool of companies. During the 2000s, we experienced a big shift to more analysis being conducted from the buy side, and now it is rare to find an institutional investor without teams of analysts.”

According to Sisitsky, along with this increase in the number of companies analysts follow, there have been an “increasing number of channels with which the analyst community consumes information from companies and other sources.”



"For example, I am constantly monitoring our blogs and our competitors' blogs," he continues. "It is up to the IRO to understand those sources, monitor them, and actively participate in those conversations."

## Some Career Advice

The same might be said for starting an IR career in the software sector. IROs working in the field say it's up to you to learn the industry. They offer these suggestions for getting up to speed.

**Learn the language of software and technology by talking with as many people as possible who are already working in the industry.** "Every industry has its own language and way of speaking about things, and software is no different," Sisitsky says.

"Talk to people working in the software space. They can give you perspective and help you learn that language," he continues. "I have found the IRO community to be very open and helpful. Reach out to the other NIRI members working in the software space."

**Ensure that your strengths match with the company's.** One way to accomplish this task is to "think about the three primary objectives of the company that you're interested in," Andelman advises. The worst thing you can do is join the wrong company; a lot of growth companies sound great," he continues. "It's worth taking a step back and looking at the bigger picture. If you can crystalize the key drivers of value, you can often make better decisions about your future."

**Understand your business model.** "The quickest way for an IR practitioner to lose credibility with the investment community is to not be able to help them with the financial dynamics of the company's business model," observes Haase.

"Understanding your company's products and technology is obviously important, but investors understand that the IR team might not have the deep technology background to get into the nuances of software code, micro-processor design, and so forth, and are happy to discuss these points with others on the technology team," he continues. "However, they do not want to rely solely on conversations with the CFO to get their financial questions answered. IR has to be able to communicate all aspects of the financial model."

**Become an objective subject-matter expert.** "The first thing would be to become an expert in your product and your competitors' products," Bauer says. "However, don't believe your own marketing materials. Investors care about how you generate shareholder value and not how you generate product."

"Don't become a marketing puppet," she continues. "Become an expert in technology and how it enhances shareholder value and not how it can save the world."

Perhaps, the best advice of all is to always be on the lookout for opportunities. For example, Andelman suggests reaching out to small companies that might be ready to enhance or replace an outsourced IR function: "I identified SciQuest before they decided they needed a full-time IRO."

## A Dynamic Future

The software sector will likely be a significant source of career opportunities in the future for IR professionals and their counterparts in other related fields.

To remain competitive, IROs in the software sector, or those seeking to enter it, must be future-focused and strategic. "The challenge of software is that it's a very dynamic industry," Andelman says. "So no matter how strong the strategy and technology are, there will be unforeseen events. Therefore, many

investors put a lot of emphasis on the quality of the management team and the degree to which the company is differentiated.

"It's very important for IR people in tech to make sure they have strong strategic skills and are able to clearly present the company's competitive advantages," he continues. "In a high-growth industry, much of the value is generated in the future, which makes the dynamics of IR in tech different than in a more mature industry."

Haase agrees that more change is on the horizon. "Over the next five years, the software space will continue to see a shift to more software-as-a-service offerings," he says. "Instead of buying and implementing software on their own premises, cloud-based offerings (such as those from Workday, Salesforce.com, etc.) will continue to proliferate, driving continued strong interest from the investment community and creating more and more interesting IR careers."

There's likely to be more competition for jobs as well. "Growth is so hard to come by in mature markets," Bauer notes. "As you look at the role of IR, you're going to see an increasing number of people from buy and sell sides and investment banking getting into this profession."

And why wouldn't they? "One of the reasons why it's so rewarding to be in IR in the software industry is that companies tend to evolve and be dynamically changing," Sisitsky observes. "It's a great challenge and opportunity to dig into the business and understand the core drivers and try to stay ahead of the organization as it changes and evolves."

"There's a lot of change and things move very quickly," he continues. "IROs can integrate and evolve as the company evolves." **IRU**

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# Engaging the SEC

Learn what IROs can do when dealing with the SEC.

By Tammy K. Dang

**I**f there is an inquiry from the SEC enforcement staff, whether it's formal or informal, it needs to be taken very seriously," said Michael Diver, partner at Katten Muchin Rosenman about the Securities and Exchange Commission.

Diver, along with Barbara Gasper, executive vice president and group executive of investor relations at MasterCard, and moderator Mary Beth Kissane, principal at Walek & Associates, shared their insights on how to deal with the SEC on an April 2013 NIRI sponsored webinar entitled, "Engaging the SEC."

The enforcement division of the agency is resource-strapped, so an alarm bell should go off if a company receives a call from an enforcement lawyer or examiner. The SEC does not allocate enforcement time and resources on a whim.

"IROs need to understand that even though their job is to be responsive, in instances like this, they and their executive team need to get the right parties together quickly to decide what an appropriate response is and to be able to do it in a timely manner," Gasper said. "If nobody else brings it up, then you should make sure you're the one that says 'Look, I do this for a living, but we're dealing with the SEC and it's a totally different ballgame and we need to get the lawyers involved.'"

Gasper herself was deposed by the SEC in the first Regulation FD case involving Raytheon's CFO, though she wasn't involved in the actions that led to the case. The case happened in early 2001 when the CFO provided full-year earnings-per-share (EPS) guidance during an investor day meeting that was webcast. He provided no 'color' as to the pattern of how that full-year number would roll out.

Two weeks after that meeting, the CFO proactively reached out to the sell-side analysts covering Raytheon to discuss the quarterly cadence of the EPS guidance, which was turning out to be different from the company's internal forecasts. One analyst at a major firm took down its estimate and reported that on the morning call.

**The enforcement staff can get frustrated if they determine that the company is not responding completely and promptly to their requests.**

The firm's sales force then encouraged its institutional investors to sell or short Raytheon's stock. The stock dropped 6 percent that day, catching the attention of the SEC. Since Gasper had left Raytheon before the CFO made any proactive calls to analysts, she was never a direct participant in the investigation process that Raytheon's management went through.

## Areas of Concern

According to Diver, there are three broad areas of concern that are most directly related to IROs. One is very simply when the SEC staff suspects the company may have misled the marketplace about a material aspect of its business or financial condition. This type of inquiry may extend to situations where management has given its view of a particular issue facing the company, but may not have shared the entire picture with analysts and investors.

Another area of inquiry that IROs should be particularly sensitive to is Reg

FD. The SEC routinely investigates potential violations of Reg FD, where a company representative has had a one-on-one communication with an analyst or large shareholder. IROs should know that the SEC can prove a Reg FD violation without establishing an intent to selectively disclose material information. Negligent or even unintentional conduct can give rise to a violation.

Finally, IROs should realize that insider trading continues to be an enforcement priority and insiders may be subject to

scrutiny and "tipping" liability under the insider trading laws.

Diver also noted that the SEC has adopted a whistleblower program under the Dodd-Frank Act, which has created significant financial incentives for individuals to report potential securities laws violations directly to the SEC.

## IROs and the SEC

Diver recommends cooperating with the SEC. The enforcement staff can get frustrated if they determine that the company is not responding completely and promptly to their requests. If an SEC request is mishandled at the outset, it may be difficult for a company to regain its credibility and establish trust with the SEC staff.

According to Kissane, this is all the more reason why it's important that IROs have a seat at the table. "This is such an important topic to cover with IROs because they are often not aware of the tremendous pressure

*Continued on page 21*

## Dick Morrill Speech Highlights Induction of First Class of NIRI Fellows

**THE FIRST CLASS** of NIRI Fellows was installed at the NIRI Annual Conference in June 2013. The Fellows are NIRI members who epitomize the leadership, integrity, involvement, and contributions of investor relations professionals. They have made significant contributions to the betterment of the profession and NIRI throughout their careers. They are also called to continued service as content leaders, selection committee participants, authors, and thought leaders in NIRI and the investor relations profession.



Among them was Dewitt (Dick) Morrill, president, Morrill Associates, who is a NIRI founding member. He gave an inspiring and humorous speech

filled with interesting stories and insightful comments about the IR profession. The following is the text of his speech:

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Thank you Hulus, Jeff, and assembled guests.

I want first to congratulate you and the selection committee for your grasp of the natural sciences, awarding an anthropological relic like me the honor you are bestowing.

I cannot express my appreciation adequately, nor my amazement and downright awe at being singled out for this very prestigious award. It belongs not just to me but to the handful of pioneers who established investor relations as a primary function of the chief executive's office.

I am thinking of Glenn Saxon (manager of investor relations at General Electric and one of the NIRI founders) in particular, whose vision it was to build a professional organization large enough – as he put it –

“to have some clout” politically, responsible as an education institution, and ethical as a public trust. Those were the foundation stones of NIRI, and I believe events have proven quite powerfully that the vision was both the right one and one carried out in practice with great skill.

That requires me to recognize Lou Thompson (former president and CEO of NIRI from 1982-2006) for his leadership in bringing the vision into reality. IR has “brand” recognition in the markets, in the regulatory authorities, and in Congress, and perhaps even in the executive suite. NIRI also has a brand of its own, firmly enough established that I believe it has a very long life ahead of it.

Many of you may not know that our profession started out as part of the broad range of *public relations* activities. Several of our founders were former newspaper or wire service writers and editors. And we saw the PR lads drumming up excitement over stocks without any understanding whatsoever of the securities markets nor any awareness or even concern for the damage they could do to the individual investor or the companies in which they had invested.

We seriously feared a replay of the 1929 crash and the terrible antagonism toward the whole business system it engendered – and which was eagerly fanned by dedicated opponents of free enterprise.

In short, our motivation was to prevent the loss of public confidence in our securities markets that would once again put our corporate employers in dire risk of extinction.

You may think I am inventing history here, but that is truly how dangerous the politico-economic climate was in those days. But we fixed that, you may want to say – with the Securities and Exchange Commission and new laws. It just couldn't happen again, now could it?!



Well, it lasted a long time. Since the mid-1960s, the markets have gone through several steep declines: The Savings and Loan scandals of the mid-1970s, a very deep drop in 1979-80, another in 1989-91, and all of us are aware of what happened with the rather shallow dot-com bubble and the Enron scandals. But the economy recovered and the markets recovered, and between 1980 and 1999 we had the longest bull market in history.

But finally – and most furiously – the government-engendered destruction of our real estate markets brought on a true meltdown of our financial system. We are in a depression, obscured by the nice warm feeling of excess money and insanely low interest rates that have destroyed the lives of anyone depending on fixed income for retirement.

Depressions occur only when there is a *destruction of wealth*. That is exactly what has happened this time, but not in any of the previous bear markets since 1929.

To cope with the presumed failures of the banks and Wall Street, we are being swaddled in layer upon layer of new regulations to prevent this awful stuff from ever happening again, and I do like your votes.

Does all this really change our role? Newton told us that for every action there is an equal and opposite reaction. We can learn to live with regulation knowing that ways around it will be found over time. We are still responsible for sound, solid, enlightened, and imaginative communication *between* management and the investing world, here in the United States, yes, but now around the entire globe.

*Continued on page 20*

*Fellows, continued from page 19*

We continue to be *transponders*, both sending and receiving signals, and making sure management is tuned in close and careful to the messages we pick up about how our companies are run and how much faith exists out there that we will be around a decade hence.

In concluding, I want to relate the best piece of advice I ever heard. I joined a little company called Indian Head in 1960. On the first day, almost before I got my overcoat off, the president asked to see me. "Dick," he said, "I want to talk about our public relations policy." I waited for a 10-minute discourse, but he sped right along.

"Our public relations policy is simple. We tell the truth. If we can't tell the truth, we say nothing. Life is too short to fill it up with lies and wondering which lie you told to whom and when or why you told it. Stick to the truth and you will do just fine here."

Later I recall Irving Pollack, the tempestuous head of the SEC Division of Corporation Finance, saying, "If you don't want it on the front page of *The New York Times*, don't say it."

IR is the apostle of full, fair, continuous, complete, and timely communication with investors. It represents the conscience of the company. And the fact that it still does, and perhaps even more prominently than in the beginning, is an achievement of which all of you and this extraordinarily well-founded organization can take enormous pride.

Three hundred years ago, Adam Smith – and I knew Adam Smith – said the "unseen hand of the market" works only in free markets that have "moral clarity." So, the more moral they are, the freer they are. The less moral, the more likely we will have a meltdown of confidence brought on by scandals like those that mark the disaster from which we are still trying to recover.

## On the Move



**Laurie Connell** was appointed to lead the new Washington, DC office of MacKenzie Partners. As executive vice president

of the firm, she is part of the mergers and acquisitions and proxy contest team. Connell has been with MacKenzie Partners for seven years. Before joining the firm, she was director of investor relations for MCI for nearly 14 years.



**Jim Buckley** has been named senior vice president of investor relations and corporate communications at Clean Harbors. He

was previously executive vice president and partner at Sharon Merrill Associates, where he worked for 19 years.

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## Quick Takes

What's the best technology tool you use in your job and why?



**Jennifer Driscoll**

Vice President – Investor Relations  
Campbell Soup Company

► “My best tool is a hands-free telephone headset, which leaves my hands free to find numbers in stacks of binders and makes sure earnings days aren’t a pain in the neck. When I’m on the road, my iPhone and a super-light Dell XPS are important. I like the instant-on feature and ability to see who else from work is online at the moment. Productivity goes up too when I plan out some work to do on the plane.”



**Hulus Alpay**

Vice President, Investor Relations  
Medidata Solutions Worldwide

► “Hands down, it is my iPhone and the cloud. The two are such a powerful efficiency duo.”



**Dmitry Kushnir, CFA**

Corporate Director, Investor Relations  
Agnico Eagle Mines Limited

► “Yahoo Finance because it is fast, full of content, and accessible from anywhere.”

*Webinar Report, continued from page 18*  
that can be brought to bear during an investigation,” she said. “The power of the regulators, the power of the prosecutors, how these things unroll, and how long they take. The process can be really daunting to a career.”

IROs are all on the front lines of company communication and might end up as a critical witness in the SEC process. This is why they should not engage in substantive conversations with the SEC staff without appropriate counsel. From the SEC standpoint, there are several theories of secondary liability to pursue individuals, including IROs, for a company’s securities laws violations. For example, an individual may be charged with causing or aiding and abetting a disclosure violation. “There is no recognized ‘good soldier’ defense in the SEC enforcement setting,” Diver said.

NIRI also has an Ethics Council that IROs can contact with questions. Visit [www.niri.org/ethicscouncil](http://www.niri.org/ethicscouncil) for more information about the Ethics Council. For more information about future webinars, visit [www.niri.org/webinars](http://www.niri.org/webinars).

*Contributed by **Tammy K. Dang**, manager, professional development for NIRI; [tdang@niri.org](mailto:tdang@niri.org).*

## Professional Development Calendar

For program information and registration, visit [www.niri.org/calendar](http://www.niri.org/calendar).

### August 2013

- 12** Finance 101 seminar, San Francisco, CA
- 13-14** Finance Essentials seminar, San Francisco, CA
- 15** Think Like an Analyst! seminar, San Francisco, CA
- 20** Effective Ways to Work With the Media webinar
- 27** Communicating a Company Crisis Internally and Externally webinar
- 28-29** The 3rd Annual Energy IR Symposium, Houston, TX

### September 2013

- 22-25** Fundamentals of Investor Relations seminar, Boston, MA
- 23** Senior Roundtable In-City Meeting, Boston, MA
- 26** Writing Workshop for Investor Relations seminar, Boston, MA
- 27** IR Road Shows seminar, Boston, MA

### October 2013

- 8** Planning the Annual Meeting webinar

### November 2013

- 13-14** Finance Essentials seminar, New York, NY
- 15** Shareholder Activism webinar
- 18-20** Global IR Forum, New York, NY

### December 2013

- 4-6** Senior Roundtable Annual Meeting, Miami Beach, FL
- 12** What’s Coming in 2014? webinar

# Effective Shareholder Accountability

Corporate board members share insights on strategies.

By Julie MacMedan and DeLise Keim

The NIRI Los Angeles chapter and the Southern California chapter of the National Association of Corporate Directors convened a joint meeting in early April to hear the perspective of leading board members of publicly traded companies on the topic of “Board Accountability to Shareholders.”

This joint meeting of corporate directors and investor relations officers highlighted the increasing interaction between the two as a means for board members to have a better understanding of investors’ perspectives about their companies.

The panel, moderated by DeLise Keim from Keim Strategic Communications, consisted of four directors who serve on the following company boards:

- **Linda Griego:** CBS Corp., AECOM, and three funds managed by the Capital Group - American Balanced Fund, Income Fund of America, and International Growth and Income Fund.

- **Bonnie Hill:** The Home Depot, Yum! Brands, AK Steel Holding Corp., and California Water Service Group.

- **Julie Hill:** WellPoint, Lord Abbett Family of Funds, and Lend Lease Corp., Ltd.
- **Wendy Webb:** Jack in the Box.

## Working With the IRO

These board members strongly advocated building a direct relationship with the company’s IRO and, in some cases, the company’s top shareholders, as a means to mitigating potential crisis situations.

“I’ve had very productive meetings with shareholders that were made possible with the advice and counsel of an outstanding IR professional,” noted Hill. “The value added through this relationship is extremely helpful.”

## Direct Investor Access

Today, more shareholders expect access to the board. The panel’s opinion on this varied from making the lead director available, if necessary, to engaging top shareholders regularly.

Each panelist agreed that early engagement with shareholders is a good way to diffuse potentially disruptive situations. The panelists cautioned that meetings with investors should



From left to right: Linda Griego (seated), DeLise Keim, Wendy Webb, Bonnie Hill, and Julie Hill (seated).

only be conducted after management’s blessing and with significant preparation, including counsel from the IRO.

In regard to working with proxy advisory services, the panel emphasized the importance of obtaining a copy of both ISS and Glass Lewis reports, reviewing them for factual accuracy, and engaging in a dialogue with the advisory firm if there is a misunderstanding. They all shared the view that proxy advisory services have become more straightforward and easier to work with over the past few years and that they are doing a better job of discussing their findings with companies.

## Some Key Advice

When asked to leave the audience with one final piece of advice to help with effective shareholder accountability, the panel wholeheartedly recommended that board members get to know their investor relations officer. They emphasized that the IRO’s direct access to shareholders can provide timely, unfiltered information that can be very important to the board member, particularly in times of crisis.

**When asked to leave the audience with one final piece of advice to help with effective shareholder accountability, the panel wholeheartedly recommended that board members get to know their investor relations officer.**

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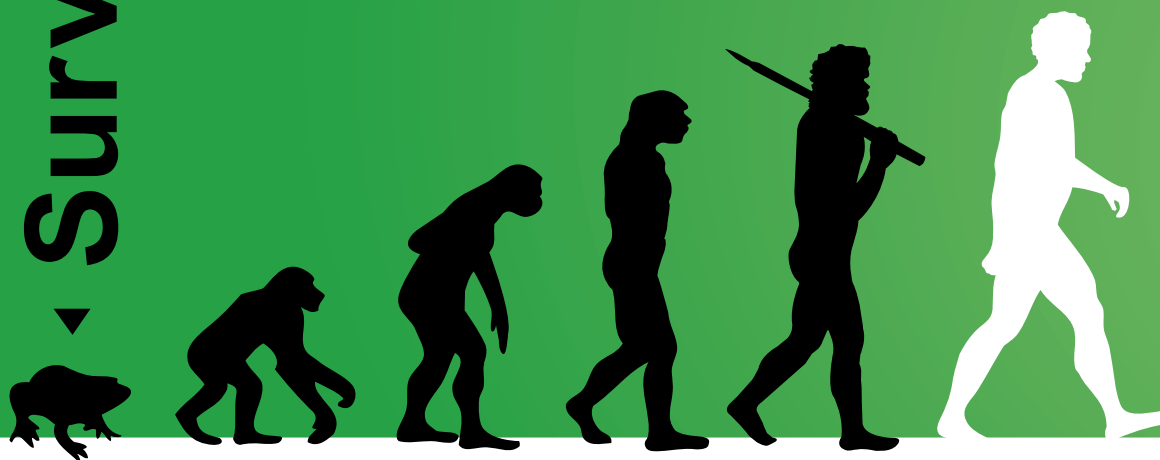
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