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# IRupdate

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# SHOWING YOUR METAL

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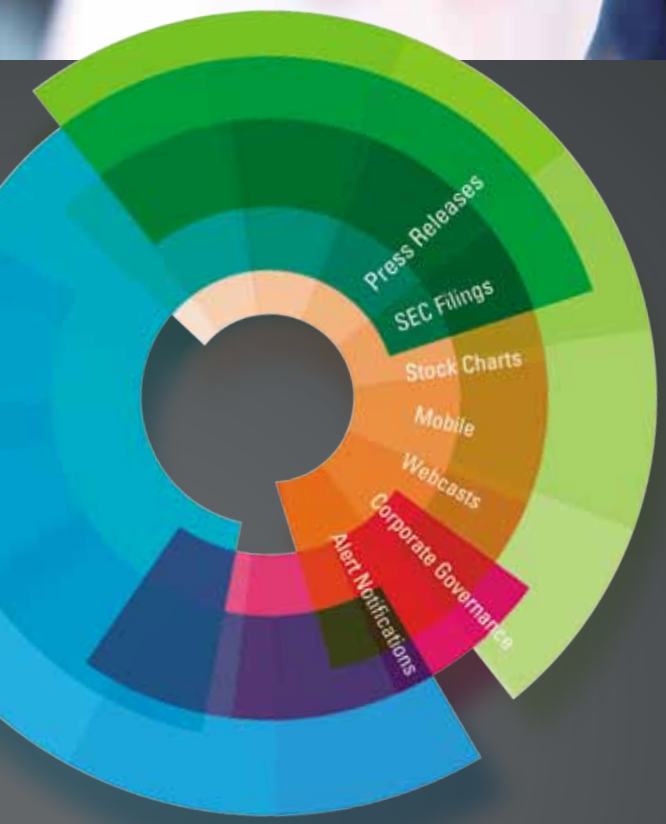


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Founded in 1969, the National Investor Relations Institute (www.niri.org) is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts and other financial community constituents. NIRI is the largest professional investor relations association in the world, with more than 3,300 members representing over 1,600 publicly held companies and $9 trillion in stock market capitalization.

**About *IR Update***
*IR Update* is published monthly by the National Investor Relations Institute as a service to its members.
ISSN 1098-5220
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# Corporate Membership Package Offers Terrific Value

My January "At the Bell" column noted the updates to NIRI's membership structure as part of our OneNIRI strategic plan. One update that many practitioner members will find exciting is the new Corporate Membership Package. This option allows companies to provide benefits and resources to their entire IR team, including administrators, analysts, managers, their treasurer, and even their CFO at a very economical corporate rate.

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I suggest that you consider this option if you have multiple practitioners in your organization who would benefit from the many advantages of NIRI membership. For more information, contact Dave Meisner, manager, membership development and Web content, at dmeisner@niri.org or (703) 562-7671.

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# SHOWING YOUR METAL

Traces of minerals in electronics and other consumer products may seem small, but they're a big deal to the SEC, which is rolling out a disclosure mandate on conflict mineral sourcing. Make sure you're ready.

By Ted Allen

Within the thousands of pages of the Dodd-Frank Act, there is a new disclosure mandate that may prove more costly and onerous for many U.S. companies than almost any other part of the law.

Section 1502 of the law requires companies to disclose their use of so-called "conflict minerals" from the Democratic Republic of Congo (DRC) and adjoining African nations. The first conflict mineral filings, which cover the 2013 calendar year, are due by May 31, 2014.

This provision, which was added to Dodd-Frank by then-U.S. Senator Sam Brownback (R-KS), seeks to reduce the flow of funds to armed groups that have been smuggling minerals and terrorizing the Congo region.

This new mandate covers gold and the minerals used to produce tin, tantalum, and tungsten; these metals are used in electronics, automobiles, manufacturing, and many consumer products. The Securities and Exchange Commission, which adopted a final disclosure rule in August 2012, estimates that about 6,000 issuers will have to evaluate their products and review their supply chains for conflict minerals.

The SEC projects that it will cost companies between $3 billion and $4 billion to comply with this mandate during the first year, although some industry groups warn that these costs could reach as high as $16 billion.

While most IR professionals won't be responsible for gathering this information, they need to be aware of this new disclosure mandate and may be part of the team that is addressing the rule's multiple compliance challenges.

Although this issue is not on the radar screen of most institutional investors, IROs may receive more questions from shareholders about compliance costs and their company's mineral sourcing practices as the May 2014 compliance date draws closer.

One of the most challenging aspects of this rule is its expansive reach, which goes

well beyond manufacturing and mining companies to impose costs on many retailers. There is no exception for companies that use minute quantities of these minerals, although scrap and recycled metals will be exempt. The rule includes foreign private issuers, smaller reporting companies, and emerging growth companies, which have been spared from (or given more time to comply with) other Dodd-Frank disclosure obligations.

## Don't Wait to Get Started

If your company hasn't started the process of complying with this rule, it should not wait any longer, IROs and legal experts say, even though the compliance deadline is one year from now.

"It seems like a long way away, but there is a lot of complexity in the supply chain, with multiple steps and many middlemen," Robert Williams, vice president for investor relations at Dell, said during a NIRI webinar in late January. "I encourage people to engage now and think through" the process for complying."

"Because of the complexity, it's not something where you can wait until March 2014 to get started," noted Eva Huston, senior vice president for corporate finance and investor relations at Verisk Analytics. One of her company's units, 3E, is gathering data to help companies analyze their supply chains.

A key first step is figuring who will be responsible for overseeing compliance. At most companies, the chief financial officer or the general counsel will take the lead on this issue. However, the IRO, who usually shares responsibility for disclosure, may be asked to participate in this planning. At smaller companies where the IRO also has corporate secretary duties, he or she may be asked to lead this process.

"It's really important to have a cross-functional team in place that includes IR, legal, as well as your manufacturing team and your supply team," Williams said. At Dell, this team is already providing quarterly reports to the company's disclosure committee.

Jane McCahon, vice president – corporate relations and corporate secretary at Telephone and Data Systems (TDS) and a

former NIRI Board chair, said her company is in the process of forming a conflict minerals working group that includes finance, accounting, procurement, legal, IT, and engineering. While her company doesn't manufacture any products, it uses electronic equipment made by other companies to deliver its wireless, telephone, and broadband services to customers.

## Legal Challenge Pending

The conflict minerals rule has been challenged in court by the National Association of Manufacturers, the U.S. Chamber of Commerce, and the Business Roundtable, which argue that the SEC misconstrued Section 1502 and acted "arbitrarily in filling the gaps that remained" in the law. "By refusing to create a *de minimis* exception, requiring companies to undertake an onerous 'reasonable country of origin inquiry,' expanding the rule's scope to non-manufacturers, and providing for an irrational transition period, the Commission greatly multiplied the rule's unprecedented burden on U.S. companies," the corporate groups argue.

Other critics, including SEC Commissioner Daniel Gallagher, warn that the rule will impose a *de facto* embargo on DRC commercial activities and may worsen the plight of the people of the Congo region.

The U.S. Court of Appeals for the District of Columbia Circuit, which will hear oral arguments in this case on May 15, could issue a decision by the end of the summer. While many companies are hopeful that the rule will be struck down, legal experts and some IROs say that most issuers shouldn't wait until the lawsuit is decided to start assessing their potential compliance burdens.

"There's too much lead time involved to wait and see," McCahon said. "It wouldn't be responsible for us to wait, given how complex it could be for us to comply."

Michael R. Littenberg, a partner with the law firm of Schulte Roth & Zabel LLP who advises companies on conflict minerals compliance, has a similar view. "In almost all cases, it's not prudent to wait. Given the complexity of their supply chains, most companies need to start putting together and implementing a compliance plan now," he said.

"There are very few companies where this will be a simple process," Littenberg said, adding that compliance will be especially challenging for manufacturers of automobiles, electronics, and other complex products, which may have supply chains seven-to-nine or more companies deep, as well as for many retailers, which often have a large number of SKUs (stock-keeping units) and ever-changing product assortments and vendor relationships.

Until the legal challenge is resolved, "some companies are taking a more gradual approach" and have focused on assembling a conflict minerals team, and assessing which products may be implicated, but have held off on expending significant efforts on supplier outreach and compliance generally, Littenberg said.

## Not a Concern for Most Investors

One of the more frustrating aspects of this new mandate for IROs is that this rule seeks extensive disclosure about a matter that is not a concern for most investors. McCahon reports that she has never received any questions from TDS shareholders on conflict minerals.

Douglas Wilburne, vice president for IR at Textron and also a former NIRI Board chair, views the rule as a technical compliance issue that has little to do with the information that shareholders need to make informed investment decisions for most companies. He said the rule is a "completely inappropriate exercise of regulatory authority," and places "an enormous burden on public companies. It's one of those issues where you have to scratch your head and wonder, 'How did this get into Dodd-Frank?'"

Most corporate officials would agree, given that just a small number of companies likely will receive investor attention over their conflict minerals.

Littenberg expects that large household names will receive the most scrutiny from non-governmental organizations (NGOs) and socially responsible investors over their disclosures. For some issuers, conflict minerals may become a public relations issue, and those companies may face pressure from social activists to publicly disclose their policies on conflict-free sourcing and compliance efforts well in advance of their first SEC filing, he said.

"You need to get your arms around what portion of your investor base is focused on social issues, and specifically, conflict minerals disclosure," Littenberg said. He observed that, at some companies, investors also may have questions about compliance costs and supply chain risks as the May 2014 deadline approaches. IROs therefore "need to have an understanding of the rule as it applies to their company and be able to answer specific questions that different institutional investors may have," he said.

Even if the conflict minerals rule is invalidated by a federal appeals court, Littenberg said he expects that some socially responsible funds, as well as the NGOs that are focused on this issue, will continue to seek greater disclosure on minerals sourcing and the adoption of conflict-free sourcing policies. "If the rule is struck down, some companies also are likely to receive shareholder proposals on this topic," he said.

In addition to the SEC rule, companies may face pressure from states over conflict minerals. In Massachusetts, legislation

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has been introduced that would bar state purchasing officials from contracting with companies that fail to meet their disclosure obligations under Section 1502.

While the rule will impose significant costs on many issuers, this mandate also is creating business opportunities for auditors, software and data vendors, and suppliers. Williams said Dell is receiving some support from its supply chain. "They are realizing that if they can verify that their minerals are appropriately sourced, they will have a competitive advantage," he said.

## Compliance Challenges

This new mandate is particularly vexing because it requires many fact-specific determinations and doesn't provide bright-line tests to help a company determine if its products are subject to the rule.

"The biggest difficulty is the definitions. There is a lot of uncertainty," observed McCahon of TDS. "It's not clear-cut what is subject to these rules."

The rule calls for a three-step compliance process. The first step is to determine whether the company has any products that are covered by the rule. The mandate applies only to minerals that "are necessary to the functionality or production" of a product, but the determination of whether any mineral is necessary will be a costly product-specific exercise. While tools and catalysts used in production are not covered, it is a closer call whether some product offerings like a movie that is delivered through a physical format, such as a DVD, would be covered.

In addition, the rule is not limited to manufacturers; companies that contract with other firms to manufacture their products may be subject to the rule, based on the degree of influence they exercise over materials, parts, or components.

Once a company determines that it has products that are covered by the rule, it will need to undertake a second step: conducting a good-faith "reasonable country of origin" inquiry. However, the rule doesn't include clear guidelines on what a company must do. The SEC's adopting release states that the reasonableness of that inquiry will depend on various factors, such as the issuer's size, products, and relationships with suppliers.

Finally, if a company concludes that its products likely contain minerals that originated in the DRC or a neighboring nation, it will be required to conduct a supply-chain due diligence inquiry to determine whether the minerals helped finance armed groups. Issuers will have to disclose their findings and their due diligence efforts in a new SEC Form SD and conflict minerals report.

Companies with minerals from the covered countries would have to provide details on the mines or locations where the minerals originated. Companies that conclude that their minerals are "DRC conflict free" would have to include an independent audit to verify their due diligence efforts.

The rule does provide for a two-year transition period for companies that are unable to determine whether specific minerals are DRC conflict-free after conducting their due diligence. Smaller reporting firms will get two additional years to use this "DRC conflict undeterminable" designation. For many companies, the compliance burden will increase significantly once this grace period ends and they have to fully investigate the sources of their minerals. "Year three will be a real game changer," noted Connie Prostko-Bell, who leads the conflict minerals practice at 3E, a unit of Verisk Analytics. "Companies will have to dive deeper into their supply chains."

McCahon said she hopes the SEC will provide additional guidance on the various definitions within the rule. "Not understanding what is subject to the rule makes compliance all the more difficult," she said.

Littenberg said the staff of the SEC's Division of Corporation Finance has been collecting questions about the rule and has put together draft guidance that has not yet been released, but he expects that guidance will not be issued to the extent that doing so could compromise the agency's legal defense of the rule.

Another compliance challenge is that the first conflict minerals disclosures all will be due on the same day -- May 31, 2014, regardless of the company's fiscal year. Many other SEC disclosure obligations are part of a company's 10-K or annual proxy materials, which allows issuers with later fiscal year-ends or annual meetings the benefit of seeing how earlier filers have crafted their disclosure and addressed compliance. After reviewing the first-year filings, the SEC staff likely will issue general guidance to help registrants in the preparation of their second-year filings, Littenberg said.

## Take Notice

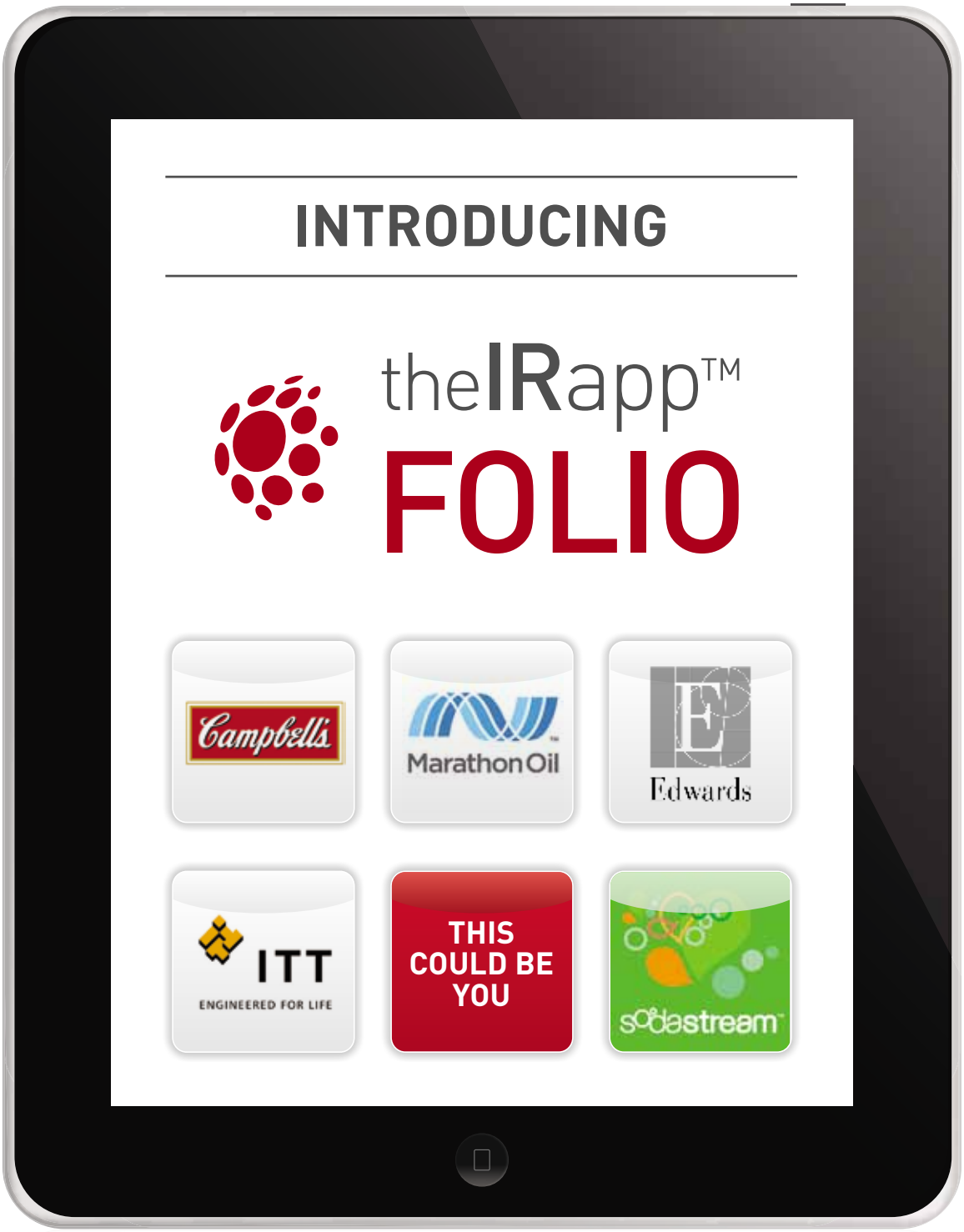
As companies prepare to comply with this new rule, IR professionals should be paying attention, even if they're not getting any investor questions about this issue now.

"It's important for IROs to be part of or at least interfacing with the conflict minerals compliance team," Littenberg said. "It's important to have the IR perspective and for IROs to understand what is required under the rule and the compliance steps being taken by their company."

McCahon has similar advice. "You need to make sure that everyone understands the requirements and is ready to comply." IRU

***Ted Allen*** *is NIRI's director of practice resources; tallen@niri.org.* *Law firm memos and other resources on conflict minerals can be found in the NIRI Presentation and Report Library and the final rule can be found on the NIRI Regulations Web page. Both are located on the NIRI website at www.niri.org.*

# Don't be left out

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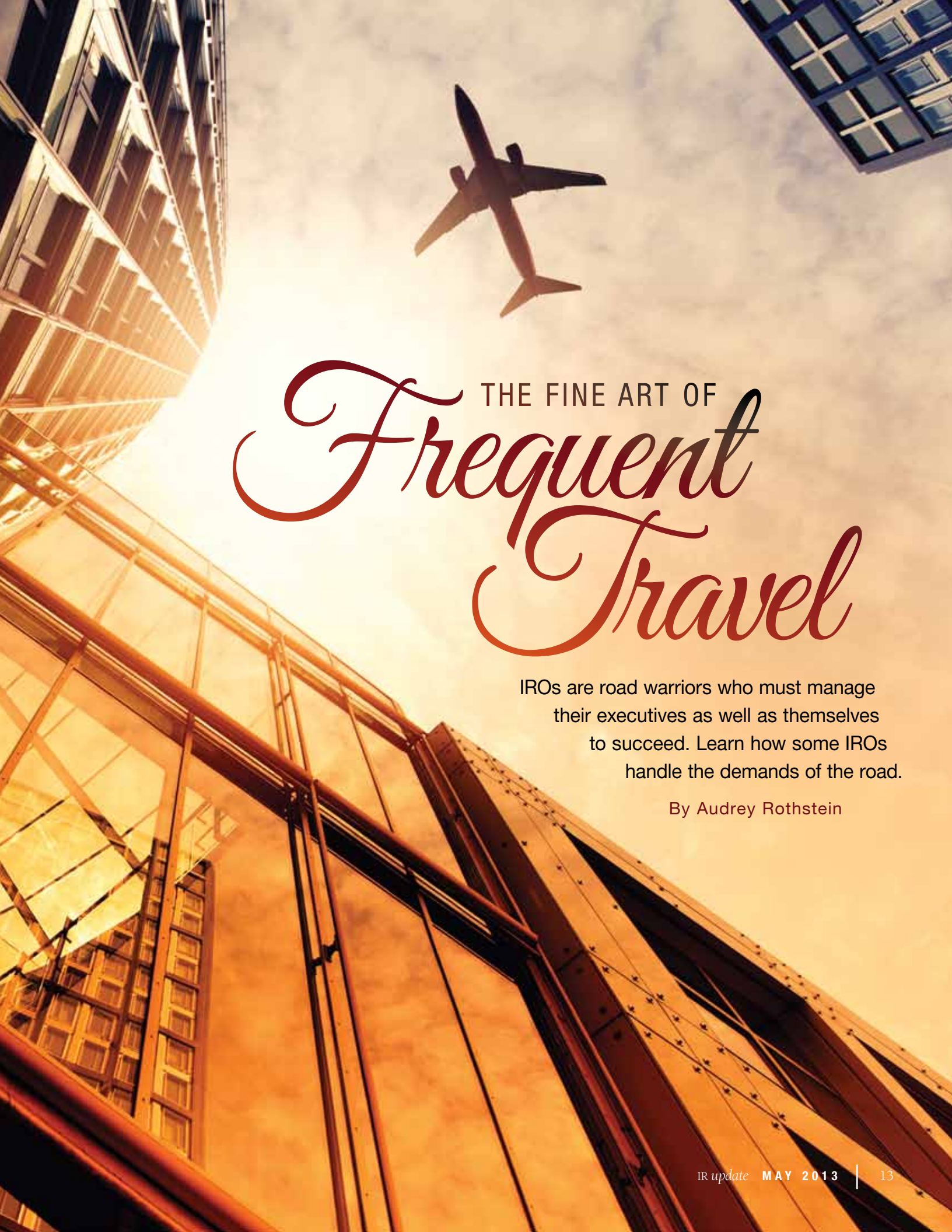

# THE FINE ART OF Frequent Travel

IROs are road warriors who must manage their executives as well as themselves to succeed. Learn how some IROs handle the demands of the road.

By Audrey Rothstein

Carol DiRaimo, vice president, investor relations and corporate communications, Jack in the Box, admits it. She's a CrackBerry – a confirmed BlackBerry addict and proud of it. "It's pretty much attached to my hip," she says.

DiRaimo's BlackBerry is just one tool in her arsenal used to maximize her efficiency on her frequent road shows. The key to making her travel successful? DiRaimo says it's all about the schedule.

Maximizing the value of time spent by company executives on the road requires a keen focus on scheduling, coupled with an understanding of how best to ensure that your executives are on board.

Sam Levenson, who serves as the investor relations representative on the Financial Accounting Standards Advisory Council, advises focusing the schedule on meetings with prospects most likely to be long-term holders of your company's securities. "A common mistake is allowing brokers to dictate the road show, but there's a lot of danger in that," he points out. "Brokers are interested in satisfying their clients' needs versus identifying appropriate long-term shareholders of the company. It's best to team up with brokers to make it work and tell them straight out what your goals are."

Levenson is a firm believer in signing off on every meeting in advance. If meetings are proposed that do not move the company's agenda forward, he advises having the brokers justify their proposed plan. "The bottom line is you have to manage your road show."

## Maximize Your Time Investment

The goal is to maximize the return on the time invested. "One day in New York City is better than three traveling to Chicago, Milwaukee, and Dallas, for example. Also consider going by train from New York to Boston," he suggests. "It is far less stressful than traipsing through LaGuardia and Logan and everyone can recharge themselves and their devices."

Levenson also encourages IROs to think differently about identifying the company's peer sets and consider companies outside of your immediate industry that may have similar financial fundamentals or trading patterns with a high correlation. "You may well identify significant new investor prospects, which will further maximize the value of time spent on the road."

Barbara Gasper, executive vice president and group executive, investor relations, MasterCard, agrees about the importance of IROs managing the road show, particularly with regard to ensuring the best performance of the company's executive. "The brokerage sales force will put together an agenda that is jam-packed. The IRO must push back to set a schedule your company's executive can live with," she says.

Gasper is famous at MasterCard for what her executives call "Barbara's forced marches across Europe." A central consideration for those marches is the need to position executives at their best. That means that if a breakfast or lunch meeting is scheduled, there is time set aside before or after for the executives to eat. "Hungry executives tend to be grumpy executives," she says.

Gasper also ensures that meetings are usually completed by 4 p.m. so that executives have sufficient time to decompress, connect with family back home, and catch up on other things. "In all the years I've been in the business, I can count on one hand the number of times we've had dinner meetings, and those exceptions were with major shareholders or targets who couldn't meet any other time."

When Meg Nollen, senior vice president, investor relations, H.J. Heinz Company, sets out on a road show, she has everything planned down to the moment and all details relating to the itinerary are at her fingertips. She has all the information in her PDA and has a hard-copy backup handy. Everything from flight and hotel confirmation numbers to meeting contacts and phone numbers is easily accessible.

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"I also have information about alternative flights available so that I have a jump start in the event flights are cancelled or delayed due to weather," she says. "Things are moving fast. It's the nature of the beast and you need to touch, move, and confirm instantly."

Nollen's number-one rule on the road is to make your first meeting of the trip a "soft" one. "Don't book your most important meeting first. Give your CEO a practice round, a chance to get the beat down."

She stresses the importance of knowing what your chief executives need. For example, if you know your CEO is not an early morning person, don't schedule a meeting before 9 a.m. The IRO should not be afraid to modify the schedule so the executive is at the top of his or her game. Get the trip "right" so your executives perform well. This is a sales and marketing job and your executives are making the pitch. They need to be at their best, so plan for that.

## Thoughtful Packing

The speed at which IROs and their executives are moving on the road requires not only a carefully prepared schedule, but also thoughtful packing of clothes and personal items as well as presentation materials "Checking a bag is a sin," Nollen says. "Execs don't, so you'd better not."

She stretches her wardrobe by going with a certain color, thereby needing only one pair of shoes. Nollen also suggests saving dry cleaning bags for packing and using them to stack outfits on one hanger in layers. The bags keep the clothing from wrinkling.

While personal items can be replaced quickly, presentation materials may be difficult to replicate and may require postponing or even cancelling the meeting. Always send extra copies to your hotel, the location of your first meeting, or to the sales broker who has arranged the meeting.

## Care and Feeding

Taking care of the needs of your executive is a top priority on the road. Levenson is a strong believer in providing full background reports before each meeting. "They need to know each fund manager's selling and buying patterns, and average holding period. They also need to know whether those you're meeting with have participated in earlier conference calls. Consider calling them before the meeting to hear what they want to talk about. Thorough, detailed prep is essential to the success of each road show," he says.

Nollen sees the IROs' role as protecting their executives. That includes serving as both coach and timekeeper for each of the meetings that takes place. For example, when an executive responds to a question with an answer that is somewhat off target, Nollen coaches the executive privately: "You know how they asked this question? I think they wanted to hear this (response). You (the exec) assumed that they were asking about ABC, but I think they really were asking about XYZ. Why don't you take a moment now or after the next break and elaborate on your answer."

Nollen also tracks closely on the schedule. "You can't get off schedule or you're shot," she says. "IR serves as the bad cop. We need to be the ones who say, 'Let's walk and talk and you can get your last question in on the way to the elevator.'"

## THERE'S A TRAVEL APP FOR THAT

Technology makes travel easier in many ways, and new programs and mobile apps are always appearing. Here are some programs or apps that road warriors swear by to help speed them through security and reduce the headaches associated with frequent travel.

**1. TSA PRE -** TSA Pre✓™ allows select frequent flyers of participating airlines to receive expedited screening benefits during domestic travel. Eligible participants use dedicated lanes for screening benefits, which include leaving on shoes, light outerwear and belts, as well as leaving laptops and 3-1-1 compliant liquids in carry-on bags. Learn more at http://www.tsa.gov.

**2. GLOBAL ENTRY –** Global Entry is a U.S. Customs and Border Protection program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. Though intended for frequent international travelers, there is no minimum number of trips necessary to qualify for the program. Participants may enter the United States by using automated kiosks located at select airports. Learn more at www.globalentry.gov.

**3. TRIPIT –** TripIt organizes travel plans into an itinerary that has all of your trip details in one place. TripIt Pro acts like a personal travel assistant, sending you status alerts and alternate flight options, storing frequent traveler points, and helping you save money on flights. Learn more at www.tripit.com.

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Given the hectic pace, Nollen also stresses the need to provide executives what she terms breathing room. "Respect their privacy. Give them the time they need to call home, talk with their kids and spouses," she says. "No one can be on 24/7."

Taking good care of executives on the road also entails knowing about things like food preferences and any allergies. Gasper recalls one meeting when, "I looked down and saw seafood soup and I knew my exec was allergic to shrimp." She immediately told the waiter to alert the executive who was seated at another table before serving him. "We would have ended up in the emergency room all night."

Gasper recommends the IRO discuss allergies and food preferences openly. "No one thinks it's too much information. Most executives are impressed that you're thinking ahead."

## Out of Office

With so much time spent on the road, IROs are challenged to keep up with the day-to-day office routines such as the handling of phone calls and responding to e-mail. Keeping the communication flowing is an art rather than a science. While some IROs are firm believers in out-of-office responses, others are not.

John Chevalier, director, investor relations, The Procter & Gamble Company, is one of those who doesn't believe in an away-message. "Most people don't care that you're out of the office and they expect you to respond," he says. "We have three people who are designated to speak externally and, at most, only two are traveling at one time. One is left back home and deals with the brunt of the calls coming in." Chevalier is quick to add that he recognizes not all IROs have the luxury of doing that. "I feel for the one-person offices."

Levenson says that most IR departments are generally understaffed and it's hard to keep everything going when you're on the road. He is not a believer in out-of-office messages. "We're in the customer service business and our objective is to be responsive. Someone needs to be in the office to answer questions, say that the IRO is traveling, let the caller know they will pass the question on, and that someone will respond in a timely fashion."

While customer service also is a priority of DiRaimo, she says out-of-office messages are very important when she's traveling and can't respond immediately. "An out-of-office message is most effective when coupled with a good administrative assistant. My assistant helps by screening calls and blocking time in my schedule to return calls as needed."

Gasper says she has a fabulous assistant who goes through her e-mail and figures out what needs to be addressed while I'm traveling. "She knows what to pass to our number-two person and highlights which e-mails I need to respond to sooner rather than later. You really need someone in the office to back you. Otherwise, you're juggling too many balls."

## Managing Stress

Keeping up with office developments while juggling an extensive travel schedule can be stressful, even for the most experienced IROs. Constant travel often means there's little time for exercise, and eating food that's good for your health can be challenging. Chevalier recommends just going outside and breathing in some fresh air. "If you can't get in a full workout, go for a walk," he says. "Plan dinners that are walking distance from the hotel because the fresh air really helps."

DiRaimo tries to exercise when she can. If she can't do a full workout, she may have a set of exercise resistance bands on hand to use in her hotel room. "It also helps if you don't drink too much and definitely don't drink on the plane because that dehydrates you," she says. DiRaimo also recommends drinking plenty of water.

Gasper has worked with a trainer and a masseuse to identify a set of travel-friendly exercises and stretches. "I stretch every morning," she says. "I also try to exercise in the room every other day."

## War Stories

From time to time, IROs need to stretch in other ways to handle the unexpected circumstances that can turn the best-laid plans upside down. Cancelled flights, postponed meetings, shipped materials that don't show up, all require quick thinking in order to minimize the impact on the overall success of the road show. Whether it's a major storm that's preventing flights from taking off or an executive who lost his passport, IROs who can keep their cool as well as their sense of humor will do well.

Gasper recalls one time when she was flying from London City Airport to Frankfurt. While she was waiting at the airport with her executive, the fire alarm went off and they were required to head out onto the tarmac where they waited for about 30 minutes underneath the wing of a large plane. "We didn't get drenched, but we were cold and hungry," she says. "You've got to be able to laugh about things like that. It's a good tension release."

One afternoon just before heading into a meeting, Nollen broke the strap on her shoe. She had no choice but to hobble into the meeting with only one shoe. A driver took the shoe to a cobbler while Nollen was in the meeting so she could make it through the rest of the day. "It's helpful to keep in mind that drivers can be used to do more than drive. They also can pick up items while you're in your meetings – cough drops, aspirin, a sandwich," she says. IRU

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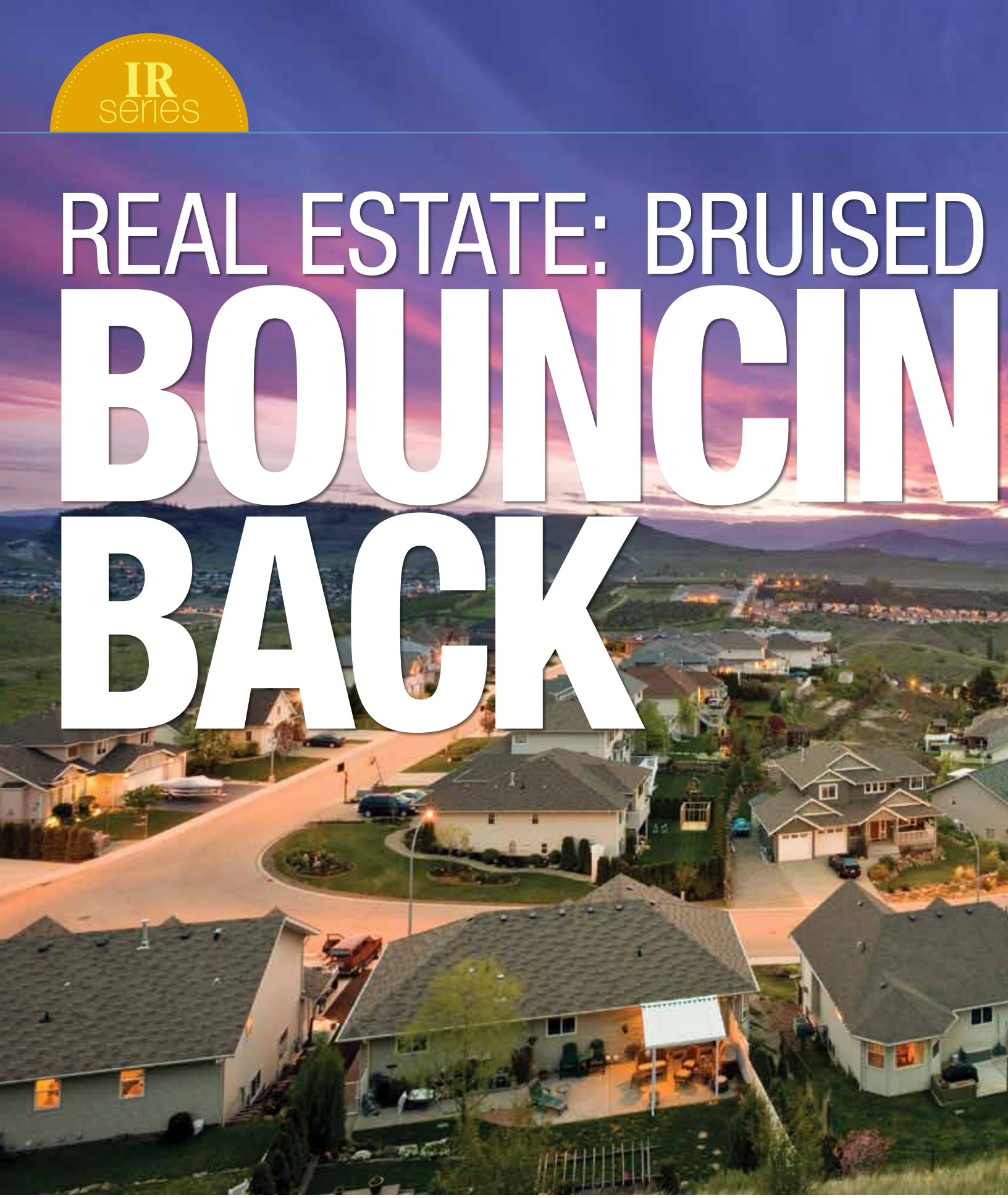
IR series

# REAL ESTATE: BRUISED BOUNCIN BACK



# BUT G

Conducting investor relations in the real estate industry is not for the faint of heart, but long-term investors have helped stabilize the sector and growth is now strong.

By Alexandra Walsh

It is understandable if you view the real estate sector as the poster child for U.S. industries ravaged by the economic downturn. After all, home property values that plummeted during the subprime mortgage crisis in 2008 have yet to fully recover in many regions of the country.

And while unemployment levels scared many Americans and deeply impacted consumer confidence, not everyone lost their job, but most homeowners took a hit.

Like a healthy personal investment portfolio, however, the real estate investment industry is very diversified and it's proven to be remarkably resilient. Some commercial real estate sectors have not only recovered their losses, but have now surpassed previous market cap peaks.

*IR Update* spoke with IROs from three different real estate sectors about how they weathered the economic crisis as well as the unique aspects of running investor relations programs in this industry.

## A Painful Crisis for Homebuilding

"Hell" is how Brent Anderson describes the decline in the home real estate market during his first few years as vice president of investor relations at Meritage Homes, the ninth largest national public homebuilder. Not new to bubbles and busts, Anderson came to Meritage in 2005 from a software company after the terrible bust of the technology sector.

When he got to Meritage, Anderson says the homebuilding market had already crested, stocks had depreciated, and the cracks were already appearing in the walls. "The Meritage stock peaked at $95.28 in July 2005. When I started there three months later it was already down to $62.27, and it kept sliding until it hit $7.82 in January 2008," he recalls.

The difference between the tech bubble and the homebuilding bubble, Anderson explains, was that in tech, when

the customers went away there was nothing – hot sales to no sales. In homebuilding it was more of a gradual decline, giving companies an opportunity to pare back operations. "We shut down operations in the smallest markets in order to lower our cost structure and maintain our presence in the largest and best markets for the long term," he observes.

The other thing that astounded Anderson about the decline was that investors didn't get angry and the banks didn't drop coverage. "It was a very painful time both internally and externally," recounts Anderson, "but rather than get angry, investors were more puzzled and were trying to figure out what went wrong, how much further did the market have to correct, and what lessons were learned."

Anderson adds that during the downturn when the market cap of the homebuilding sector was cut by more than 95 percent from peak to trough, they lost experienced individual analysts who were replaced by junior analysts but didn't cost coverage. "This is a cyclical business and if you can weather the storm and stay in business, the investors will come back."

He adds wryly that despite the lack of trading in the industry, "it's not like the workload went down much. "I got fewer investor phone calls for sure but I still had to put out earnings releases and board reports and the number of investor conferences actually increased." During those tumultuous days, says Anderson, "The numbers were tough to handle, no question, and the story gets more challenging to put together, but it was never tough to come to work."

## Commercial Market Challenges

Barbara Baker, CFA, points out that the recession impacted commercial real estate very differently than the housing market, reminding us that the real estate sector is very diverse. She is vice president of corporate affairs and investor relations for Taubman, a mall Real Estate Investment Trust (REIT) that owns and manages 27 shopping centers in the United States and Asia.

"The mall industry was impacted by tenant sales declines; however tenant rents went down much less," she explains. "The scary thing for us as an industry was, would we be able to refinance loans when they came due? It all came down to the importance of balance sheet strength," says Baker. "That's one of our key messages going forward as you never know when the market will turn down again."

Elizabeth Coalson is vice president of investor relations for Aimco, one of the country's largest owners and operators of rental apartment communities, and also a REIT. "During the recession," she says, "apartment values softened as job losses and concerns over the broader economy impacted apartment owners' ability to raise rents." Operationally, the company focused on keeping its apartments full, controlling operating costs, and reducing overhead.

Coalson goes on to say, "When the credit crisis hit, equity values of companies with higher levels of leverage were hit hard. What was often overlooked by the market, and continues to be somewhat today, is the character of a company's leverage."

Unlike many of its apartment REIT peers, Aimco does not issue corporate debt but instead finances each community individually with a mortgage. Coalson adds, "The risk profile for a primarily non-recourse borrower such as Aimco is very different from a corporate debt issuer. One aspect of our balance sheet strategy is to minimize entity risk by avoiding recourse debt."

But in 2007, Aimco did have a recourse term loan that would come due in 2011, and it seemed to spook the market. "Apartment values were still pretty strong and we accelerated sales of our lower-rated communities and used the proceeds to get the recourse debt off our books."

Today, Aimco owns and operates a higher-quality, more concentrated portfolio, has no recourse debt, and has reduced overall leverage to a level that is in-line with its peers. "Our portfolio and balance sheet are built for the ups and downs of the real estate cycle," says Coalson, "and in apartments, we're looking up for the next several years."

## Industry Hallmark: Long-Term Investors

What is unique about real estate and REITs, says Baker, is that many investors are dedicated real estate investors. "We tend to know these people very well and there are many long-term holders. We work with the same investors for a much longer period of time than most other industries."

What also makes public real estate interesting to Baker is that it has grown so much in a short time. She says small firms have developed into large sophisticated competitors and corporate practices have become increasingly professional and transparent. "When I started at Taubman 18 years ago, there were 175 US REITs representing $44 billion in equity market capitalization. Today, there are about the same number of REITs, but now the market capitalization of the industry is more than $600 billion."

Anderson points out that unlike many industries, real estate is a truly cyclical business. "We deal with the debt markets pretty heavily, and real estate and long-term debt go hand-in-hand," he says. "Because we're capital intensive, it's not about dividends. We harvest cash in the downside of the cycle, turning real estate assets back into cash and not necessarily buying more real estate."

Another aspect of REIT investing that is unique is that, at the highest level, valuation

can be pretty straightforward, according to Coalson. "In general, REIT stocks should trade somewhere around the net asset value of the real estate and other ancillary activities. The public REITs disclose a fair amount of information above and beyond the SEC-required disclosures, which helps analysts build their models with fewer 'black box' types of assumptions."

## A Promising Future

Looking to the future, real estate companies are becoming global competitors, says Baker. "Seven years ago we went to Asia to augment our growth opportunities. We currently lease and manage a mall in South Korea and our first mall in China will open in 2015. This adds a whole new challenge to our investor relations program."

Baker adds that she believes real estate has been a dynamic investment for 20 years and will continue to be so and will be a great place for IR.

When it comes to investing in apartments, the future looks good because demand is strong and predictable, according to Coalson.

"Demand for apartments over the next several years will likely be driven more by demographics than by jobs. The number of people in the prime renter age group is greater than we've seen since the baby boomers came through, which provides strong and predictable demand," says Coalson, adding, "This age cohort is also increasingly delaying marriage and child bearing compared to previous generations, which means they are staying in rental apartments longer."

But age is not everything, says Coalson. "People have to have jobs and today, the college educated have jobs and are doing well. Aimco is designing its portfolio with all these demographics in mind."

Coalson adds that the recovery in the single-family housing market is not a hindrance to her sector and actually helps because it means the economy is recovering and people are getting jobs. "History has proven that the single-family and multifamily housing markets can do well at the same time – it does not have to be one or the other. Apartments are a good place to be, as financing is inexpensive, values are holding up, and lots of people want to rent apartments," sums up Coalson.

Of the homebuilding market, Anderson says there were a couple false starts but by the end of 2011, you could sense a gradual shift, and then in February 2012, "it was like someone flipped a light switch." Anderson says it's tough to put a finger on exactly what changed so abruptly but job growth was slowly improving, consumer confidence was trickling back, and economic numbers were trending well. And with that, traffic levels in new homes increased, contracts went up, and as there is not a lot of inventory, demand turned into price increases.

"We were projecting cautiously that if we were lucky, we might get to 20 percent growth in 2012. In fact, we grew 40 percent with a 13 percent price increase on top of that and it turned out to be a phenomenal year." But Anderson is quick to add that everything is relative. "We're still way short of where the long-term average of the market should be. The long-term average annual rate of new home starts is 1.2-1.5 million homes. Today we build less than half that – we have a long way to go," Anderson points out.

And hanging over the real estate landscape is the unavoidable truth that real estate and long-term debt go hand-in-hand.

"It's scary," Anderson admits. "This country has a lot to figure out in terms of how we're going to control and reduce our debt, but the day of reckoning is coming. The question is what's going to happen between now and then, and what the impacts will be on the financial markets. But for now, we're back in an up cycle. Who knows how long it will last, but I'm enjoying it." IRU

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

## WHAT IS A REIT?

**A REIT –** an abbreviation for a Real Estate Investment Trust – is a security that sells like a stock on the major exchanges and invests in real estate directly, either through properties or mortgages. REITs receive special tax considerations and typically offer investors high yields, as well as a highly liquid method of investing in real estate.

**Equity REITs:** Equity REITs invest in and own properties (thus responsible for the equity or value of their real estate assets). Their revenues come principally from their properties' rents.

**Mortgage REITs:** Mortgage REITs deal in investment and ownership of property mortgages. These REITs loan money for mortgages to owners of real estate, or purchase existing mortgages or mortgage-backed securities. Their revenues are generated primarily by the interest that they earn on the mortgage loans.

**Hybrid REITs:** Hybrid REITs combine the investment strategies of equity REITs and mortgage REITs by investing in both properties and mortgages.

# Engaging Your Company's Board

Learn how IR can serve as a trusted strategic advisor to the board of directors.

**By Tammy K. Dang**

"It's a great way for IROs to make sure that the opinion of Wall Street is heard by the right people who need to take action on those opinions," Laura Graves, vice president of investor relations at Polycom, a communication and video conferencing solutions company, said about presenting to the board of directors.

She, along with David Dragics, senior vice president of investor relations at CACI International, a professional services and information technology company, and moderator Keith Mabee, senior advisor at Dix & Eaton, participated in a February 2013 NIRI- sponsored webinar entitled, "IR's Role and the Board of Directors."

## The 4Ps

According to Graves, an IRO should approach an engagement with the company's board of directors in a professional, strategic, and delicate manner. Your positioning will be based on what she calls the 4Ps: personal experience, perspective, professional role, and political instincts.

- **"Personal experience"** includes your time in the industry working with Wall Street. This experience is built over the lifetime of your career and is what makes you unique.
- **"Perspective"** is your firsthand, daily working knowledge of current sell-side sentiment and buy-side opinion. As the company's main contact with Wall Street, you have an undisputed vantage point to understand, synthesize, and represent Wall Street's point of view.
- **"Professional role"** is your position and responsibility as a business executive of your company. An ability to exhibit understanding of the alignment and interdependencies between the company's strategic plan, each department's functional goals, and IR's daily responsibilities is fundamental to establishing your credibility with the board.
- **"Political instincts"** are important because your engagement with the board means that you're engaging not only with your boss, but your boss' boss and peers. "It's the most politically sensitive situation," Graves acknowledged. "You don't know what you don't know. Approach the situation with a healthy respect that you cannot possibly be aware of every project or side conversation that is occurring within the board of directors. Be humble, transparent, and truthful. Stick to the subject you were invited to discuss, unless and until you are asked for additional perspective or opinion."

IROs will be most successful when they bring a blend of these viewpoints to the

table. Dragics concurs. "Remember the divide between management and the board," he said. "You are the management representative."

CACI's board has an IR committee composed of four directors. Originally formed in the mid-1990s to address issues raised by dissident shareholders and later deactivated, it was reorganized in 2002 with a mission of oversight of the company's investor relations program.

## Adding Value

When dealing with the board, Dragics recommends getting back to basics. The board would like to know things such as how and why the company is valued the way it is. Tell board members how the message to the investment community is being received and understood. "You are the eyes and ears of the investment community," he said. "You are interpreting what you're hearing and seeing in meetings, conversations, and conferences and that is the value-add proposition you bring to the table."

Inform the board of how the company is performing relative to the overall market and its competition. Find out how your competitive peers are performing. Tell the board who owns these companies and their investment style. Educate board members on how your own company conducts outreach to the investment community. "Managing the 'investible' story and investor feedback is all important," Mabee said.

CACI's IR committee has several goals. One is to receive and review information from internal and external sources. Another is to review the IR plan and monitor results of the program and offer suggestions for improvement. Lastly, the committee reviews policies and procedures with regards to CACI's guidance. The actual responsibilities of the committee members are to understand the role of IR at CACI – the IR plan and its objectives – as well as develop and maintain an effective working relationship with the IRO.

According to Graves, opportunities abound for IR to be perceived as a trusted advisor. This includes working with the finance committee on factors affecting valuation, the compensation committee on investor perception and Say-on-Pay issues, and the governance committee on proxy planning and shareholder activism matters.

Engage your company colleagues and partners to support you for a bigger seat at the table or with the board. You will gain their trust by partnering and providing valuable information to help solve strategic problems. Improving the strategic position and reputation of your company is, after all, what an IRO is hired for. The shareholders will thank you for it.

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

> "You are interpreting what you're hearing and seeing in meetings, conversations, and conferences and that is the value-add proposition you bring to the table."
>
> —**David Dragics**, senior vice president of investor relations, CACI International

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

## BOARD COMMUNICATION INSIGHTS

Results of a NIRI focus group on communicating with your board were released in April in a NIRI Analytics report. Visit the NIRI Analytics page at http://www.niri.org/Main-Menu-Category/resource/publications/niri-Analytics.aspx for access to the full results.

**Here are some key findings and advice from the report.**

- IRO interaction with the board of directors is almost entirely at the discretion of senior management.
- Staying within the organizational chain of command is important above all else; including the CFO and CEO in all communication with the board is strongly suggested.
- Credibility-building and earning management's trust should be the foundation for all future suggestions for IRO/board interaction. Confidence in an IRO's writing and communication style is an important first step to board communication.
- Adding value to the IR position is one of the many ways IROs can facilitate trust and build credibility.
- Products an IRO can provide to senior management and the board vary widely. Being wary of inundating the board with too much communication is important.
- In addition to quarterly reports, senior IROs may send their board analyst reports, occasional press releases or research reports, company revenues, summary information about overall shareholder mood, benchmarking and perception studies, and relevant charts and graphs.
- IROs prefer in-person interaction with the board. When that is not possible, conservative use of written communication that includes senior management is suggested.
- Focus group members suggested capitalizing on any informal board interaction opportunities in order to establish connections in situations where formal interactions are not yet available.

# NIRI Announces 2013 Fellows

**NIRI HAS ANNOUNCED** its inaugural class of NIRI Fellows. The NIRI Fellows Recognition Program honors living NIRI members who epitomize the leadership, integrity, involvement, and contributions of investor relations professionals. These individuals 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.

Visit www.niri.org/fellows for more information or to nominate a member for 2014. NIRI Fellows will be recognized each year at the NIRI Annual Conference. The 2013 NIRI Fellows are:

- **Mark Aaron**, vice president, investor relations, Tiffany & Co.
- **Don Allen**, partner, The Allen Group
- **Kay Breakstone,** president, Breakstone Group
- **Sally Curley,** senior vice president, investor relations, Cardinal Health
- **Mickey Foster,** vice president, investor relations, FedEx Corporation
- **Len Griehs,** retired member, formerly with the Campbell Soup Company
- **Jane McCahon,** vice president – corporate relations and corporate secretary, Telephone and Data Systems
- **Dewitt (Dick) Morrill,** president, Morrill Associates (and NIRI founding member)
- **Mark Steinkrauss,** retired member, formerly with Telephone & Data Systems
- **Bina Thompson,** senior vice president, investor relations, Colgate-Palmolive Company
- **Karen Warren,** retired member, formerly with Hasbro

## Charles Triano Appointed to NIRI Board of Directors

NIRI appointed Charles (Chuck) Triano to the NIRI Board of Directors. Triano is senior vice president, investor relations, for Pfizer. He replaces William (Bill) Walkowiak, who retired and stepped down from the NIRI Board earlier this year. Triano's appointment extends until December 2013, when NIRI members will vote to approve him to serve the remainder of Walkowiak's term, which ends in December 2014 at the NIRI Annual Meeting.

NIRI Board Chairman Hulus Alpay, head of investor relations for Medidata Solutions, welcomed Triano to the board and thanked Walkowiak "for his tireless commitment to NIRI and the IR profession over the years."

## Christopher Cox Shares Insights at NIRI Orange County Senior Roundtable

**FROM LEFT:** NIRI Orange County Board members David Erickson, Cynthia Skoglund, Aubrye Foote, Jeanie Herbert, and Craig Barberio welcomed Christopher Cox (center) for a special senior roundtable event at Canaletto Ristorante in Newport Beach, California.

**CHRISTOPHER COX,** former chairman of the U.S. Securities and Exchange Commission and 17-year member of the U.S. House of Representatives, joined the NIRI Orange County (California) chapter in March for an engaging dinner and senior roundtable discussion. The conversation ranged from business to politics; insider trading to the inner working of the SEC; taxes, deficits, and the economy to personal income.

Cox did not set out for a life in politics, but got his first taste working as senior associate counsel to then-President Ronald Reagan. When the 40th District spot opened, Cox rather impetuously took the dive. His political career lasted more than 20 years. He does not advise youth to jump into politics right out of school, asserting that life experience is a key asset in a successful political life.

Now president of Bingham Consulting and a partner in the international law firm of Bingham McCutchen, Cox works with corporate clients on everything from health care reimbursement issues to mergers and acquisitions. Cox is proud of his government services and the contributions he made during the administrations of Reagan, Bill Clinton, George H.W. Bush, and George W. Bush, authoring multiple acts that made it into law, including the Internet Tax Freedom Act and the Private Securities Litigation Reform Act. However, when asked, he said he most wants to be remembered as a good dad, good friend, trusted co-worker, and caring human being.

## Quick Takes

### What have you done to educate executives at your company about the importance of investor relations?

**Hulus Alpay**
Vice President, Investor Relations
Medidata Solutions

▶ "I brought my CFO to the NIRI Annual Conference in Seattle to absorb and experience all that the NIRI community has to offer."

**Karla Kimrey**
Vice President of Investor Relations
Cloud Peak Energy

▶ "It is fun to role-play with them and have them act like they are talking to their competitors. It teaches them how to communicate color without giving away the store."

**Jennifer Driscoll**
Vice President – Investor Relations
Campbell Soup Company

▶ "We share the daily stock price report with a large group of people, share the IR annual plan with the executives who report to the CEO or go on the road, and give speeches at department meetings whenever requested. It's also educational the other way around when we've asked the CFO to see if new board members can introduce us to their IRO (if they have one), mainly to network and get ideas, and secondarily, to find out how the new members think about the function."

**Felise Glantz Kissell**
Vice President, Investor Relations
HSNi

▶ "Showcasing more senior executives at my company to Wall Street – it creates a win-win situation and builds valuable credibility. Executives learn first-hand the complexity of investor relations while the investment community is exposed to our deep bench strength of talent at HSNi."

"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

**Robert G. Berick** has joined Falls Communications to develop a new investor relations practice for the company. He has more than 20 years of capital market and communication experience across a wide range of market sectors, including energy, consumer products, and industrial manufacturing. For the past 11 years, Berick has counseled companies on a wide range of corporate and investor communications issues. From 1997-2001, he was director of corporate communications and investor relations for Scott Technologies.

## Professional Development Calendar

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

### May 2013

**7** Analysts Part I: The Future of the Sell Side webinar

**14** Analysts Part II: The Buy-Side View on Global Equity Markets webinar

**15** Health Care IR Symposium

**21** Global Money Flows webinar

### June 2013

**8** Finance 101, Hollywood, FL

**8** Think Like an Analyst! seminar, Hollywood, FL

**9-12** 2013 NIRI Annual Conference, Hollywood, FL

**24-26** Finance Essentials Intensive seminar, New York, NY

**24-2** IR Wisdom Road Show, Beijing, Shanghai, and Hong Kong, China

# Preparing for Activists

## What IROs can do before the fight begins.

**By Sydney Isaacs**

Should IROs be worried about shareholder activism? Activists won 51 percent of their proxy fights against incumbents in 2012, according to SharkRepellent. But even that number may understate their true influence. Last year, according to proxy solicitor Bruce Goldfarb, a large proportion of companies that faced activists sidestepped a fight by reaching a "settlement."

How can an IRO get ready for activism? The Houston NIRI chapter asked a panel of experts who have deep experience with activists: Jeff Floyd, partner at law firm Vinson & Elkins; Clay Jeansonne, vice president of IR at Linn Energy; and Bruce Goldfarb, president and CEO of Okapi Partners, a proxy solicitor. Sydney Isaacs, senior vice president of the investor relations firm Abernathy MacGregor, moderated the discussion.

### At the Ready

Here are tips that the panelists offered on how to prepare – before and during an activist campaign:

**1. Know your vulnerabilities.** Your best defenses are great relative performance and first-tier IR. But strong results are not always a free pass. Activists today put forward a variety of demands: cash through a dividend or buyback (what management sees as a strong balance sheet could look like dinner to the activist); strategic changes (case in point, Ackman's recent 300+ page "term paper" on Herbalife's business model); a transaction (i.e., spin-off, merger, sale); environmental, political, or social actions; or governance changes (i.e., Say-on-Pay, board structure).

Bottom line: Strong financial performance isn't enough. Know what other factors could make your stock vulnerable.

**2. Know your investor base.** Activists often start with a small, passive position. But these seemingly "passive" investors can and often do take aggressive stances. So how do you know who is in your stock and what their intentions are?

First, ask your proxy solicitor, who is in a unique position to offer insight into what a particular investor may have in mind. Second, ask the investor. Since investors' playbooks can be as varied as their interests, the best way to know what is on their minds is to begin a dialogue. It also establishes a record of responsiveness. Refusing to meet with an investor simply because of his or her history with other stocks gives the investor a clear path to claim that "management is unresponsive and refuses to listen to shareholders."

In addition, that first meeting is a chance for the prepared IRO or management team to illustrate the strength of management's strategy or performance or, at a minimum, try to influence the investor to avoid or delay taking an aggressive public stance. Plus, they may have some good ideas.

**3. Anticipate possible scenarios.** The activist has the advantage of surprise, having prepared for months before even taking a position. Think through every scenario and each of the likeliest demands. Sharpen the company's message to anticipate criticisms and address any red flags before the activist exploits the company's vulnerabilities.

Articulate a clear strategy and track record consistently and effectively throughout all investor communications. Coach the executive team in how to deliver the message – and how to respond to unexpected barbs.

Refusing to meet with an investor simply because of his or her history with other stocks gives the investor a clear path to claim that "management is unresponsive and refuses to listen to shareholders."

**4. Win on message.** All four panelists agreed: Win on the message rather than slinging mud. But maintain strong relationships with the M&A and trade media and be prepared to go off-the-record or on background if needed to set the record straight.

Remain open to making a deal, and evaluate whether there are ways to settle so that the activist can claim victory and go home happy with a portion of the initial ask.

***Sydney Isaacs*** *is senior vice president, Abernathy MacGregor; SRI@abmac.com.*

# 30%

**Q:** According to the buy-side, how much impact does investor relations have on a company's valuation?

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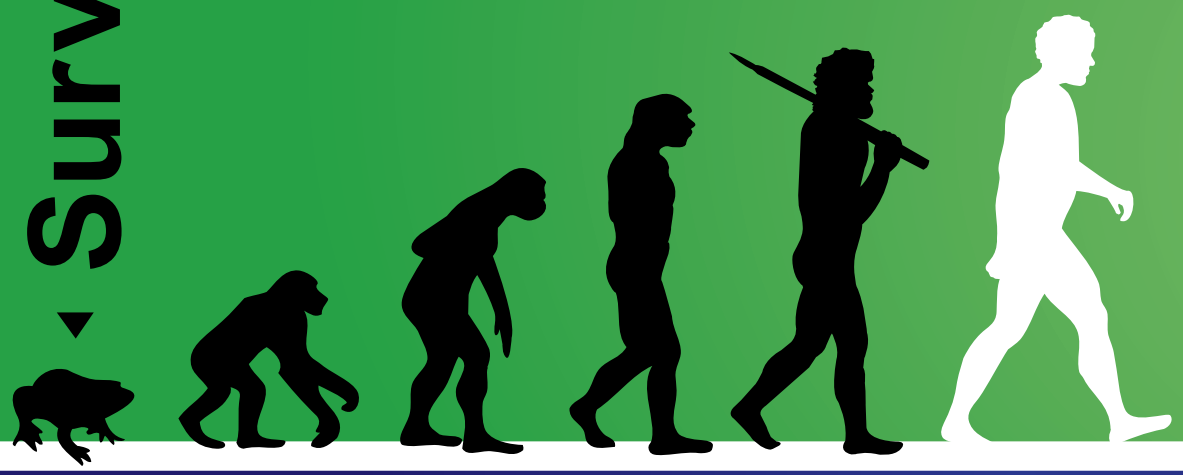
Market Structure Analytics



## Has your IR technology kept up with the times?

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