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SEPTEMBER 2013

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SOCIAL MEDIA: **CAUSE FOR PAUSE**

Surveys show
that IROs are
slow to sign on.



12 NIRI 2013 Conference
Builds Value

16 Review of the 2013
Proxy Season

22 NIRI Recognizes Leaders
at Awards Program

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About Niri

Founded in 1969, the National Investor
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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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Relations Institute. All rights reserved.

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6

Social Media: Cause for Pause

Surveys show that IROs are slow to
sign on.

By Marj Charlier



12

Niri 2013 Conference Builds Value

New initiatives kept the energy high and
promoted learning at this year's meeting.

By Matt Bruschi



16

A Review of the 2013 U.S. Proxy Season

Most companies received greater
investor support on executive pay, but
other governance challenges remain.

By Ted Allen

DEPARTMENTS

4 At the Bell

Sell in May and Go Away?

By Hulul Alpay

22 Spotlight on Chapters

Niri Recognizes Leaders at
Annual Conference

20 Niri Now

- Niri Ethics Council Plays Crucial Role
- IR Research at a Glance
- Niri eGroups Moves to New Platform
- Quick Takes
- Professional Development Calendar



Sell in May and Go Away?

What happened to “Sell in May and go away?” The old adage refers to a seasonality trend going back to 1950 reflecting depressed investment returns from May to October relative to the rest of the year.

Like many rules of thumb, it doesn't always work, and it certainly hasn't this year. The markets have been extremely active this summer, with indices marking records on very healthy trading volumes.

And it means we, as IROs, remain equally active, which can be a blessing and a curse. We're obviously happy to be needed, but we hope our constituents recognize our need for summer vacations and a time to recharge. I took a little time off following our second quarter results to travel abroad, and hope you found some downtime as well.

The spring and summer months were also high season for association conferences, and NIRI was no different. The NIRI Annual Conference in June was another resounding success. We provide a brief recap in this issue of *IR Update*. If you missed the conference, session replays and materials are now available at www.niristream.org.

The markets have been extremely active this summer, with indices marking records on very healthy trading volumes.

In this issue we also cover one of the hottest topics at the conference, social media. As you know, the Securities and Exchange Commission released guidance on the use of social media for disclosure earlier this year, and NIRI released the results of our recent

social media use survey at the annual conference. We've taken a look at the topic from a variety of perspectives, and hope the article is helpful in guiding your disclosure program.

One trait of top-performing IROs is the ability to “see around corners,” and we've written our third feature to give you a leg up in this regard. With the bulk of the 2013 annual meetings now behind us, this is a good time to consider lessons learned from the past proxy season. This article should arm you, your corporate counsel, and your C-suite with information that your team can use to your advantage in 2014.

I wish everyone the best for a relaxing end of summer. As always, I look forward to kicking off the 2013-2014 NIRI chapter programming year in September. Please don't hesitate to contact me, the NIRI Board, or any NIRI staff member with your questions, suggestions, or comments.



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SOCIAL MEDIA: CAUSE FOR PAUSE

Surveys show that IROs are slow to sign on.

By Marj Charlier

With all the chatter about social media these days, IROs might be excused for having the impression that everyone else is doing it.

That, however, is not the case.

According to survey results released at the NIRI Annual Conference in Florida in early June, most IR officers aren't using social media channels to disseminate information to investors, and more than half of those who don't use it say that's because they see no interest for the channel on the part of investors. "It is clear that social media does not yet have a role in an IRO's daily functions," NIRI concluded in its summary.

The survey, titled "Social Media Use in Investor Relations," also indicated that nearly half of IROs intend to reassess the issue over the next year, due in large part to the recent Securities and Exchange Commission statement issued on April 2, 2013. The statement came after the SEC examined the Netflix CEO's Facebook post about subscriber numbers and confirmed that Regulation FD applies to social media and other emerging means of communication used by public companies the same way it

applies to company websites. The SEC noted that company communications made through social media channels could constitute selective disclosures and, therefore, require careful Reg FD analysis.

Nearly 75 percent of the 227 IROs who responded to the NIRI survey in early May said they don't use social media. And, no matter how the data was diced, NIRI reported that the results didn't vary much – whether by market cap, geography, or member type (counselor or corporate), although larger companies are slightly more likely to use social media.

Preliminary data from 385 of the 533 IROs interviewed by Rivel Research in late June ratifies the NIRI findings. In that telephone survey, nearly 70 percent of respondents said they do not use social media to disseminate investment information.

IROs who did identify themselves as social media users in the NIRI survey, said earnings information is the most popular form of information disseminated through social media channels, followed by events, press releases, presentations, annual reports, annual meetings, financial information, fact sheets, SEC filings, changes in management, stock info, corporate governance data, FAQs, proxy issues, and long-term goals, in that order.

The NIRI survey identified the top five social media channels used by IROs as Twitter, webcasts, LinkedIn, Facebook, and StockTwits. (The definition given for “social media” in the survey did not list “webcasts” as a social media channel. If it had, more IROs would probably have identified themselves as social media users. The option of “webcasts” was offered in a list of possible channels only to those who had already identified themselves as social media users.)

About two-thirds of social media users have formal social media policies that prescribe expected employee behavior on social media channels, the NIRI survey found. And, IR consulting firms are more likely to have a social media manager on staff than are corporate IR departments.

“I would say that I was a bit surprised by the decidedly anti-social-media results in the survey,” says Tony Takazawa, vice president of IR at EMC Corp., and a critic of social media use by IR. “I guess that the pro-social media folks and the consultants are a lot louder than the rest of us.”

He may have a point there. Nearly all of the companies that have traditionally been in the business of distributing standard press releases over their wires and to the news media worldwide are gearing up to offer – or are already marketing – products and tools for managing social media. It’s easier to sell a product – whether Coca Cola or social media tools – if the world is convinced everyone else is doing it.

An Evolving Area

Still, while slightly more than half of IROs surveyed said they don’t intend to revisit the question of whether to use social media over the next year, chances are all IROs will have to re-evaluate their positions on social media usage sooner rather than later. Not only are social media channels themselves constantly evolving, so are the vendor offerings that allow IROs to manage those chan-

nels, making it a less time-consuming and labor intensive effort.

Of course, some companies are already making extensive and effective use of social media in reaching their investor audiences. Dell, which has a comprehensive social media program utilizing StockTwits, a blog, and a video blog among other channels, is using social media to improve the efficiency with which it is able to respond to the myriad investor questions and requests it receives daily. “We believe there are lots of different media we can use to be more productive and efficient and to reach our shareholder base in a productive manner,” explains David Mehok, executive director of investor relations.

And even if companies aren’t distributing information through social channels now, they should at least be “listening” to what’s happening on social media channels today and learning what’s being said about their organizations, says Tom Beckett, senior vice president of marketing at Business Wire.

“Companies should get into listen mode,” he contends. “They should be looking at social media before there is a crisis. Talk to PR, what resources should they have? They should get a sense of what conversations are happening and on what platforms so they know what the most relevant platforms are, learning who is the audience, what kinds of content are they interested in, who’s talking about them now.”

As IROs, their management teams, and outside IR and legal counselors wrestle with social media, they will need to weigh a bevy of issues, including privacy and security, simultaneity, consistency, utility and the overall attitude the company projects through its channels, all the while keeping an eye and ear out for future SEC statements, guidance, and decisions on the subject.

The SEC’s brief statement on the use of social media isn’t helping anyone figure this all out, cautions John Viglotti, vice presi-

dent at PR Newswire. “A lot more needs to be done in terms of providing additional guidance on the use of the (social media) channel” to meet Reg FD standards, he said in a webcast organized by Commpro.biz late in April on the subject.

Jeff Corbin, CEO of KCSA Strategic Communications, a public, media and investor relations firm based in New York, was similarly critical of the agency in that webcast: “By not giving any further guidance, I believe [the SEC] creates a huge amount of ambiguity for investor relations professionals,” he said. In a letter to the SEC following its statement, Corbin wrote: “Social media is a great way to communicate and one that I wholeheartedly embrace. It would be a shame if companies refrained from using it simply because of the lack of clarity on how to do so for fear of violating Reg FD.

“The SEC should provide guidance on the use of social media similar to what they did in 2008 with respect to the use of corporate websites,” Corbin said. “They should say ‘this is how it can be used and what companies should be thinking about in its use.’”

Need for a Policy

With or without SEC guidance, companies need to adopt a social media policy and program that is conceived with just as much thoughtfulness as is given to policies that govern the dissemination of 8-Ks, 10-Ks, and formal press releases, observes Kenneth Florin, a partner in the law firm of Loeb & Loeb and chair of the firm’s advanced media and technology practice.

But, surprisingly, more than half of the respondents in the NIRI survey who use social media said their postings are held to a lower standard of internal review than other disclosures. “They tend to see it as something informal,” Florin explains. “Not everything needs to be reviewed by teams of lawyers, but if it’s not, then there ought

to be rules about what can and cannot be revealed through the channel with very clear boundaries.”

That lack of thoughtful and comprehensive policy development in IR departments worries Corbin. The very day after AP’s Twitter account was hacked and used to send a false tweet about a White House attack, *The Wall Street Journal* asked several corporate IR practitioners if the hacking would affect their usage and practice of social media for corporate disclosures. They all denied any such musing. The rapidity with which they responded “no” surprised Corbin.

“We are a thoughtful industry,” he observes. “I think many are reaching haphazard conclusions on their use of social media without fully thinking it through. We need to slow down.”

Key Issues to Address

A social media policy needs to settle some key questions: What behavior can investors expect and rely on regarding disclosure? How will the company ensure that it simultaneously releases its news to all of its selected outlets at once? How can the company protect itself against hacking and hoaxes so that investors can rely on the legitimacy of social media messages?

As the SEC noted, a company should inform investors what channels it intends to use for disclosure. A press release through its established distribution channels or an 8-K can satisfy that notification, but once the company has set those expectations, it needs to do what it says and do so consistently, Corbin believes.

To this point, in a jointly sponsored NIRI and Society of Corporate Secretaries and Governance Professionals webinar on the topic, speaker Jim Brashear, vice president, general counsel & corporate secretary, Zix Corp., noted, “I think you do have to pay attention to the 2008 guidance

(SEC Guidance on the Use of Company Websites) when the SEC says it is going to consider – in analyzing the effectiveness of the public dissemination via social media channels – whether the company has a pattern or practice of using the social media channels, whether they are the predominant methods used, or whether they are just the supplemental method. You have to wonder how effective is this prophylactic filing that says, ‘We might use social media channels’ if the company doesn’t actually use them.”

David Hudson, managing director for Nasdaq’s Corporate Solutions, suggests the best strategy is a broad one that uses a variety of media, all of which cross-reference each other. “When disclosing material information – broadcasting, not narrowcasting is the key – it’s that broad, simultaneous distribution that needs to happen, with plenty of cross-linking to a deeper set of information to avoid issues inherent in the medium,” he wrote in an e-mail. “Naturally, a press release is a good, standard part of any such strategy.”

To master simultaneity, companies can use one of several new social media tools, such as those now offered by their wire distribution partners and exchanges. But managing those channels may still require IR staffs to bulk up. Companies like Dell that use social media extensively have individuals assigned specifically to tweeting and blogging.

To maintain security, a company needs to “establish controls over who owns the channels” at the company, advises Bechtold of Business Wire.

Jim Delaney, CEO of Marketwired, notes, “By adding additional layers of authentication, the security risks often associated with social media can be mitigated, ensuring that information remains secure and only those with authorization are able to access wire and social media distribution tools.”

But, for safety measures to work, the investment community will need to be more astute. Rivel, which also interviewed 350 buy-side professionals on social media in its June survey, found that, of the 41 investors interviewed who use Twitter feeds as a

SOCIAL MEDIA AND REG FD

An April NIRI webinar titled, “Social Media and the SEC,” provided a comprehensive overview of the legal and compliance issues involved with moving into social media for corporate disclosure. In the webinar, speakers reviewed use of social media in the context of the Securities and Exchange Commission’s Netflix Report of Investigation, and made the following relevant points:

- Communications made through social media should be examined for compliance with Regulation FD.
- The SEC’s 2008 Guidance on the Use of Company Websites provides the relevant analytical framework to assess whether information is being disseminated consistent with Reg FD.
- Social media may be used as a primary means of complying with Reg FD if the information is disseminated through a “recognized channel of distribution,” and the webinar speakers reviewed the relevant factors from the 2008 Guidance applicable to this determination.
- Webinar speakers recommended that companies view the SEC Report as a catalyst for reassessing which disclosure methods are most appropriate for complying with Reg FD.

This webinar may be accessed via the archived webinars page of the NIRI website: <http://www.niri.org/ArchivedWebinars>.





“THERE IS A GENERATIONAL SHIFT THAT MEANS SOCIAL MEDIA USE FOR A SOURCE OF INVESTMENT INFORMATION WILL INCREASE.”

– MARKETWIRED

source for news, 56 percent follow up on tweets by clicking on a link included in the Twitter feed. If the tweet is a hoax, the link may well be, too.

To further protect against hoaxes and unauthorized use of the channels, observes Viglotti, a company should clearly state its communication policy and follow it. Then, investors will be able to ferret out hoaxes. For example, if a company says it will simultaneously release its news on Twitter and through PR Newswire, a Twitter post that isn't backed up by a PR Newswire release can be dismissed by the market.

Lack of Demand

Given the significant effort required to execute a social media plan, it's no wonder most IROs aren't rushing in. Add to that deterrent the possibility that no one is paying attention to social media anyway. The NIRI survey found that the number-one reason IROs don't use social media is because they see no demand from their investors. Other surveys back that up.

Marketwired found that the 120 financial market participants it surveyed in April use social media considerably less than other sources – such as press releases, news stories, analyst reports, or corporate websites – to glean information about companies.

The company countered that sobering finding with an optimistic note: “There is a

generational shift that means social media use for a source of investment information will increase.” It found that 70 percent of younger investors (40 years old and under) thought the SEC statement on social media would be beneficial for investors, compared with only 33 percent of those over age 65 and 51 percent of those between the two age groups.

Corbin Perception's recent survey of 87 global buy-side professionals found that 52 percent of investors “utilize social media as part of their research process,” whereas Rivel's preliminary data from 239 investors showed that 68 percent of the buy side never use social media at work. (Corbin Perception is not affiliated with Corbin of KCSA.)

Every survey of the buy side reviewed for this article indicated that at least one-third of investment firms disallow the use of social media on company computers, although the Marketwired survey also found that 40 percent of those blocked from social media sites by their firms have seen colleagues use their personal electronic devices to check social media channels.

Takazawa of EMC did his own survey of 1,000 of his investors, and found “there is no demand” for disclosure through social media. “We do not get any requests for this form of information dissemination,” he says. “One would think if they valued it and wanted it, they would speak up.”

He believes the lack of interest on the part of investors is due to the overwhelming amount of information and sources they already have to follow. “They can't keep up with the scale of data coming at them, and as in most systems like this, the things floating around become more noise than useful.”

However, Mehok of Dell points out that his company is using social media channels because “our investor base thinks it's important.” Twitter feeds regarding recent earnings reached 32.6 million Twitter users, including the company's tweets and follower retweets, he says. And face-to-face feedback from institutional investors indicates they find Dell's blogs and video blogs useful, he adds.

Although the surveys show varying degrees of investor interest, most of them point to another cause for pause: Even those who pay attention to social media channels don't put much credence in much of what they see. “Interestingly and somewhat concerning, 92 percent (of respondents) consider the information gleaned from social media sites as either somewhat or not at all reliable,” Corbin Perception found.

Still, advocates like Marketwired's Delaney thinks more IROs will begin to use the new social media channels over time, as Dell has. “Some IROs are embracing it as a move toward building an authentic, trustworthy brand,” he says. “We recognize IROs and CEOs are not going to get there overnight. However, the thought leaders are listening so that they can launch, leverage, and lead on social media. We are very excited about the SEC [announcement], because it allows IROs to provide more financial information to analysts, investors, and the business community.” **IRU**

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NIRI 2013 CONFERENCE BUILDS VALUE

New initiatives kept the energy high and promoted learning at this year's meeting.

By Matt Brusch



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Nearly 1,300 IR professionals gathered in June at the NIRI 2013 Annual Conference in Hollywood, Florida to increase their knowledge, expand their professional networks, and enhance their impact. In short, they met to build their value.

And that is exactly how the 2013 Annual Conference Committee planned it beginning in July 2012, when it settled on the conference theme of “Building Value: Knowledge | Network | Impact.”

Led by co-chairs John Chevalier, director, global investor relations, The Procter & Gamble Company; and Angie McCabe, vice president, investor relations, HealthNet, the conference committee’s dedicated volunteers presented attendees with three exciting days of idea sharing, networking, and fun.

Responsive to attendee feedback from previous conferences, and in the interest of continuous improvement, the conference committee worked on several new initiatives to continue increasing the value of the meeting, and keep the energy level high.

So this year’s event featured one high-value daily general session and introduced topic-specific breakouts with topics defined by attendees and facilitated by peers. In addition, TED-inspired sessions throughout the agenda provided attendees with a different experience from panel conversations. Beach volleyball and a beach walk were fun events added to increase the opportunities for networking.

Plus the 2013 conference included a wealth of other new and traditional learning, networking, and fun events: the Services Showcase Exhibit Hall, Global IR Summit and Reception, Senior-Titled Lunch, NIRI Signature Event, NIRI Senior Roundtable Breakfast, Breakfast Briefs, Lunch and Learns, Golf Classic, Fun Run, Yoga, and more.

Survey data confirms that attendees were very happy with the new ideas and with

the conference overall. However, the biggest buzz may just have been generated by news of the 2014 location: the Bellagio in Las Vegas!

Session materials and replays are available free to attendees, and for purchase to non-attendees at www.niristream.org.

Conference Highlights

With 35 professional development sessions, Sunday and Wednesday workshops, 20 new participant-defined topic breakouts, and 23 industry breakout discussions, the 2013 Conference offered something for everyone.

A slate of three workshops beginning on Sunday afternoon got the conference off to a fast start. Attendees had the option to learn from experts about road shows, valuation models, and the proxy process. The day’s offering also included the Global IR

Summit with sessions about structuring global IR teams and targeting non-U.S. investors, and a networking reception.

Co-chairs Chevalier and McCabe kicked off Monday morning with a new twist by celebrating the first class of NIRI Fellows. The NIRI Fellows Recognition Program is an honorary recognition program distinguishing those living NIRI members who epitomize the leadership, integrity, involvement, and contributions of investor relations professionals. Eleven luminary NIRI members were recognized for their contributions to the IR community. More information about the program is available at: www.niri.org/fellows.



Above: NIRI Chair Hulus Alpaly (left), and NIRI CEO Jeff Morgan (right) celebrate the new NIRI Fellows Recognition Program with inaugural Fellows class member Len Griehs.



1. NIRI 2013 Annual Conference attendees learning and networking at the Services Showcase Exhibit Hall. **2.** NIRI Chair Hulus Alpaly enjoying conference with fellow NIRI Board member Dennie Kimbrough. **3.** NIRI founder and First Fellow Dick Morrill enjoying conference.





Some of the nearly 1,300 Annual Conference attendees take a moment to meet and greet between sessions.



View of the beautiful south Florida beach from the conference venue.

NIRI Board Chair Hulus Alpay, and NIRI President and CEO Jeff Morgan discussed the state of NIRI, and gave a Washington regulatory recap fresh on the heels of Morgan's congressional testimony on improving shareholder communication.

Moderator Diane Brady, *Bloomberg Businessweek* senior editor; and general session panelists Timothy Ingrassia, co-chairman, global mergers & acquisitions, Goldman Sachs; Jon Moeller, chief financial officer, Procter & Gamble; and Nick Sargen, chief investment officer, Fort Washington Investment Advisors, served up thought-provoking insights into ways companies and IROs can build value in today's global markets from a wide variety of perspectives.

In a fast-paced session, the panel moved from global macro-economic issues down to IR-specific recommendations from the perspective and discipline of each speaker – M&A, long-term investor, and Fortune 500 chief financial officer:

- **On the influence of shareholder activists:**

- » The rise in stock-indexers and closet-indexers, and the growth of proxy voting services that have separated ownership from the act of influencing corporate behavior has led to an environment ripe for noisy activists who feel they can rally passive shareholders for some form of

influence. There has also been a rise in the idea that activists can manufacture returns by simply drawing attention to their involvement. In a flat or nearly flat market, this has a lot of appeal. But in a market with more normal returns, investors are less likely to chase the noise makers.

- » One voice isn't necessarily indicative of the desires of all shareholders, and it is incumbent on IROs to have a good understanding of the shareholder base, and the diversity and variety of its needs.

- **On potential disconnects between management and shareholders:**

- » Shareholders seem most to appreciate the dialogue with management, regardless if management has the "right" answer to shareholder questions. They just appreciate that management acknowledges shareholder concerns enough to have the dialogue.

- » Investors and IR/companies must both continue educating each other about the opportunities, realities, and other issues on either side of the fence.

- » Being in IR right now is incredibly daunting and exciting. IROs build their brand with the knowledge of their companies' business opportunities and strategies, and increasingly that will be a global knowledge and understanding. The better IR can do its role, the fewer disconnects will exist between shareholders and management.

- **On investor outreach:**

- » There is an understandable tendency for companies to focus on existing investors. But companies should also ask who their investors *should* be. Create a discipline or mechanism to force yourself to identify those who could or should be your constituents, and make sure to allocate time to that outreach.

- » Look also to overseas investors, which will be an incredible source of capital over the next 10 years.

Great Options

NIRI conference attendees are often presented with a nice problem – which session to attend? The 2013 conference was no different, and this survey comment sums it up well, "There were a lot of great options, very difficult to choose."

The educational opportunities were many and varied. Presented here are just a few topic-based key learnings. Those interested in a deeper dive should visit www.niristream.org for complete session playbacks and materials.

- **Proxy Process**

- » IR involvement in the proxy process has grown substantially over the past 10 years.

- » Driven by "Say-on-Pay" and shareholder proposals, the process is now extremely high profile, and is another way

for IR to demonstrate value to the C-suite and boardroom.

» The trend of directors meeting directly with investors is growing, but IR must be involved in order to ensure communication compliance.

» IROs should pay close attention to executive compensation, even if their companies received strong support during their past Say-on-Pay votes. Support levels can fluctuate each year depending on industry pay practices and one-time compensation payouts to which investors may object.

• Global Benchmarking

» How companies measure their IR programs varies somewhat between North America and Europe, but the dominant measures tend to be: investor/analyst feedback, composition of investor base, perception studies, market surveys, relative stock price, and volatility.

» Similarly, although the order of precedence differs by region, IR program traits that North American and European investors most value include: accessibility; knowledge of the business/ability to answer questions; communications/disclosure/contact; responsiveness/timeliness; transparency; quality deliverables; proactivity; visibility; consistency; personal relationships; road shows; and investor days.

• Global Disclosure Considerations

» With respect to disclosure, despite the Securities and Exchange Commission's definition of materiality, the real world test of materiality is more likely to be anything that in hindsight resulted in a material change in stock price and/or abnormal trading volumes.

» This need not necessarily be a statement, but may be body language and tone of voice.

» Few if any countries have an equivalent to Regulation FD, but many have

other laws that may easily reach the same U.S. conduct, and that may even apply more broadly.

» Companies should consult with local counsel on specific international disclosure questions.

» Protect yourself: IROs should seek coverage under their company's insurance and indemnification programs covering directors and officers.

• Using Social Media Safely

» Publicly announce that certain information will be posted on a specified Web page.

» Direct investors to a corporate, not personal, Web page.

» Make simultaneous disclosure in an 8-K or press release until the company can verify robust traffic at the specified Web page.

» If all goes well, announce the date when your use of the 8-K/press release backup will be retired.

» Be aware of, and continue to comply with, stock exchange-specific disclosure rules.

• Non-Deal Road Shows

» Most investors find value in hearing management speak in non-deal road shows.

» The corporate executive most investors want to take part in road shows is the CFO.

» Meet with top investors at least once per year.

» If using corporate access, take control of the process: Target your "best fit" investors and approve the meeting schedule.

• Shareholder Activism

» Activists target companies with poor share performance, perceptions of an entrenched board or a board that is not holding management accountable, or significant cash balances.

» The activism environment is changing: the more prominent activist

funds emerged from the downturn well positioned; they are targeting larger-cap companies; many situations are "settled" before a proxy fight; activists do not always seek board seats.

» Each situation requires specific analysis and an understanding of the temperament, tactics, and capabilities of the relevant activist or bidder.


» The first five (of the top 10) "do's" in the IR playbook for shareholder activism:

1. Identify and address potential vulnerabilities – even without an activist in your stock.
2. Assemble your team and hire outside partners.
3. Keep your board informed and constructively engaged.
4. Take the high road: Focus on your company's strengths.
5. Define your core messages/positioning.

Worth the Wait

Final general session speaker Michael Sheehan was clearly worth waiting for judging by the number of attendees happy to stay through Wednesday. The president of Sheehan Associates is known for his communication training work with high-profile clients including corporate CEOs, policymakers, and political leaders such as U.S. presidents.

Sheehan delivered. In an entertaining presentation full of humor, real-world examples, and video clips, the highly rated speaker shared his unique techniques for everyday messaging, handling controversy, and dealing with crises.

Finally, be sure to make your plans now for the NIRI 2014 Annual Conference June 8-11, 2014, at the beautiful Bellagio Hotel in Las Vegas! 

Matt Brusch is vice president, communications and practice information & editorial director at NIRI; mbrusch@niri.org.



In the third year of mandatory Say-on-Pay votes, most U.S. companies appear to be doing a better job of attracting investor support for their executive compensation practices – thanks in part to improved disclosure, greater engagement, and better alignment of pay with performance.

During the spring 2013 proxy season, 76 percent of Russell 3000 index firms received at least 90 percent support, up from 73 percent in 2012, according to a report by Semler Brossy, a compensation consulting firm. Overall, Russell 3000 firms averaged 91 percent support, up one percentage point from last year.

Meanwhile, just 2.4 percent (or 47 companies) failed to win majority approval, down slightly from 2.7 percent in 2012, Semler Brossy reported. Another 6 percent received between 50 and 70 percent support, and can expect to receive greater scrutiny from proxy advisors and many institutional investors next year. Among the factors that contributed to this year's low votes were pay-for-performance misalignment; insufficiently rigorous performance goals; large one-time awards; grants of non-performance-based equity incentives; and poor shareholder outreach or disclosure.

A REVIEW OF THE 2013 U.S. PROXY SEASON

Most companies received greater investor support on executive pay, but other governance challenges remain.

By Ted Allen

Proxy Advisor Role

Once again, proxy advisors played a significant role during the season's Say-on-Pay votes. Institutional Shareholder Services (ISS), the largest U.S. proxy advisor, issued negative recommendations at 13 percent of companies that conducted pay votes this year, down from about 14 percent in 2012. Companies receiving negative ISS recommendations averaged 65 percent support this year, or 30 percentage points less than those that ISS endorsed, according to Semler Brossy.

However, IR professionals should not assume that the proxy firms' advice will be followed by all their investor clients. Of the 261 companies that received negative ISS recommendations during the spring proxy season, just 18 percent failed to win majority support, Semler Brossy reported.

While proxy advisors may have a greater influence at smaller institutions, which have less staff to analyze hundreds of proxy statements, most large institutions have their own internal voting guidelines. During a panel on "Demystifying the Proxy Process" at the 2013 NIRI Annual Conference, John Siemann, executive vice president of AST Phoenix Advisors, said IROs "need to have conversations with their bigger holders" and understand that they have different criteria to evaluate compensation. "It will be your job to understand that, because that will determine how you craft your Say-on-Pay [message]," he said.

So far this year, fewer issuers have responded to negative proxy advisor recommendations with supplemental filings. According to Semler Brossy, 59 companies made such filings after receiving negative ISS reports, down from 100 in 2012. While companies with supplemental filings don't earn more support on average, some governance experts say that filings still can be helpful.

During a July NIRI webinar, "2013 Proxy Season: Lessons Learned," Rhonda Brauer, a senior managing partner at proxy solicitor

Georgeson, said a supplemental filing can provide documentation to help a portfolio manager override an institution's internal voting guidelines and support management. Brauer reminds companies "to be careful of the tone," refrain from "bashing" the proxy advisors, and "be very respectful and explain where the misunderstandings were.

Most of the companies with failed Say-on-Pay votes last year have fared better in 2013, averaging 40 percent more support, according to Semler Brossy. Most of these companies expanded their engagement efforts and adopted substantive pay changes.

Many of them tightened performance metrics, granted more performance-based equity, revised their peer groups, and increased disclosure, according to Equilar, a compensation data provider. Other firms responded by adopting clawback policies or by eliminating pay practices (such as single-trigger severance provisions or tax gross-up payments) to which the proxy advisors and some investors object.

Many of the companies that received more Say-on-Pay support this season also improved their proxy disclosures. One example was Integra LifeSciences, which received 85 percent approval this year after barely passing in 2012. Angela Steinway, Integra's head of IR, said her company added an executive summary, provided details on outreach efforts, and did an in-depth analysis to improve the readability of the proxy statement. "We are seeing a lot of investors who are pushing back and asking for a proxy statement that is more transparent and consistent," Steinway said during a NIRI Annual Conference panel, "The IRO Agenda and the Annual Meeting."

Engaging Investors

While most companies receive overwhelming support on pay each year, corporate governance experts remind IROs not to take investor support for granted. Siemann noted that support levels can fluctuate


broadly each year, depending on the pay practices of the company's industry peers and if there were large one-time payouts to executives. Noting the standard disclaimer in investment documents, "Past results do not guarantee future performance, and that certainly will be the case as you deal with Say-on-Pay," he said.

In addition, companies should not assume that all is well if they obtain proxy advisor support but still receive less than 80 percent approval. A company's long-term investors may have concerns that the proxy advisors have not yet noticed, Kenneth Bertsch, president and CEO of the Society of Corporate Secretaries and Governance Professionals, said during NIRI's proxy season webinar in July.

To effectively engage investors on compensation (and other proxy matters), an IRO needs to know who actually makes the voting decisions. In most cases, it won't be the portfolio managers or analysts who regularly cover the company; many institutions have separate proxy voting or corporate governance teams.

Robert Williams, vice president, corporate financial planning and analysis at Dell, said IROs should try to develop a relationship with these proxy voting contacts. "Call them in October or September – when things are really slow – introduce yourself and get to know them," Williams said at the annual meeting panel at NIRI's Annual Conference. "If you do need them at a time that is really important for your company, you have built that relationship in advance."

Looking ahead to next proxy season, Patrick McGurn, senior counsel at ISS, warns that there may be a record number of companies holding compensation votes in 2014. As the several hundred companies with a triennial Say-on-Pay frequency hold their second pay votes next season (in addition to all the issuers with annual votes), institutions will face a greater voting workload and will have less time for detailed case-by-case analysis. "If a company thinks it may have a



problem, it may be a good idea to start early on engagement,” McGurn said during an Equilar webinar in July.

Activism on Governance Reforms

Another important proxy season concern is shareholder proposal activism, and IROs should be particularly aware of proposals that seek board election changes or enhanced shareholder rights and traditionally receive broad support from investors.

For the second consecutive year, a coalition of public pension funds affiliated with the Harvard Law School’s Shareholder Rights Project has filed dozens of proposals that ask large-cap companies to drop their classified boards in favor of annual elections for all directors. The pension funds withdrew 57 resolutions after obtaining corporate commitments to declassify.

Twenty-eight proposals went to a vote and averaged more than 80 percent support this season, according to ISS data. Most institutional investors now support declassification as a matter of principle, regardless of a company’s performance. “There are good arguments, in my view, for staggered boards, but they’re losing with investors, and I don’t see that changing,” Bertsch noted in the NIRI proxy season webinar.

Likewise, shareholder proposals seeking majority voting in uncontested director elections continue to attract wide investor support, averaging 58.1 percent approval at 28 companies, according to ISS data. These proposals are part of a broader campaign led by the California State Teachers’ Retirement System, which engaged with more than 100 companies this year. While 78 percent of S&P 500 firms have adopted majority voting provisions, only one-third of the Russell 3000 have done so, so small- and mid-cap issuers should expect to see more activism on this issue.

The shareholder proposal that attracted the most media attention this year was the

independent chair resolution at JP Morgan Chase’s annual meeting in May. The proponents, which included labor and public fund investors, argued that separating the roles of CEO and chairman would provide better oversight and reduce the risk of large losses. JP Morgan successfully campaigned against this measure and it earned just 32 percent support, eight percentage points less than a similar proposal in 2012.

The proposal at JP Morgan was part of a wave of 58 proposals on this topic this year. Overall, support for independent chair resolutions declined by 4.5 percentage points to 31.1 percent, although there was majority support at five companies, according to ISS. These results suggest that many investors may be receptive to management arguments against these proposals, especially if there is a lead director with a robust set of duties, unless the company has significant performance or governance problems.

Fewer proxy access proposals were filed this year, as some activists focused on other issues. Eleven proposals went to a vote and averaged 32 percent approval, down from 36 percent in 2012. These resolutions received a majority of votes cast (excluding abstentions and non-voted shares) at Verizon Communications and CenturyLink, which both have a history of labor activism, and Nabors Industries, where an access proposal earned majority support in 2012. All three resolutions were based on the SEC’s invalidated Rule 14a-11 and called for a 3 percent ownership stake for three years.

There was less support (33.8 percent on average) for a trio of proposals filed by Norges Bank Investment Management that sought more permissive (1 percent for one year) thresholds to allow investors to nominate board candidates. Looking ahead, it appears that most companies won’t face the prospect of a successful proxy access proposal in 2014, unless their directors already are under siege by activists.

For the second year in a row, the New York State Common Retirement Fund and other activists filed more than 110 proposals that relate to corporate political activities or lobbying. Resolutions seeking more disclosure of political spending averaged 29 percent support, up from 22 percent in 2012, according to ISS, and activists negotiated agreements with 16 companies.

While support levels for these proposals are modest when compared with most governance resolutions, this issue likely will remain on proxy ballots. A group of law professors and Democratic lawmakers have called on the Securities and Exchange Commission to mandate disclosure, while business groups and Republican lawmakers have argued that such spending is not material. At this point, a new SEC rule appears unlikely, but IROs should be prepared for questions about their company’s political activities.

Opposition to Directors

There has been a marked increase in proxy fight activity in 2013; there were 26 such contests in the first half of the year, up from 19 and nine during the same periods in 2012 and 2011, according to ISS data.

At the same time, there has been less opposition in uncontested board elections. Only 43 directors (out of 14,774 up for election) failed to win majority support, according to ISS data. Eleven of these directors were at S&P 500 firms; the most notable example was Occidental Petroleum where Chairman Ray Irani was ousted.

However, there may be more opposition to directors in the future because of a new ISS voting policy. Starting in 2014, ISS plans to recommend against directors at companies who fail to fully implement shareholder proposals that receive a majority of votes cast. In the past, a shareholder resolution had to receive a majority of votes cast for two years (or approval from a majority of shares outstanding) to trigger this ISS policy.

Continued on page 21

“It is important to work with someone you can trust, who has passion for their work and can function as a natural extension of your IR team.

Corbin Perception satisfies all three of these attributes.”

– Director, IR | Mid-cap Industrial Goods



At [Corbin Perception](#), we recognize the positive impact best-in-class investor relations has on valuation and partner with our clients to develop strategies that unlock value.

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- Investor Presentation Development
- Investor Days
- IR Diagnostic Reviews
- Retainer Consulting

NIRI Ethics Council Plays Crucial Role

THE NIRI BOARD OF DIRECTORS formed the NIRI Ethics Council in March 2002. Comprised of former national board members, the primary functions of the council are to:

- Provide advice and counsel to the NIRI Board of Directors regarding ethical issues, as requested, and recommend appropriate actions the organization may want to evaluate.
- Review the NIRI Code of Ethics annually to ensure it is addressing the needs of the membership and profession.
- Provide confidential advice to the NIRI membership at-large, assisting members with ethical questions and concerns and reaching out to members whose companies may be involved in publicly announced ethical situations.
- Provide recommendations to the NIRI Board concerning the enforcement of the NIRI Code of Ethics. The NIRI Board makes all final determinations regarding ethical matters.

Members may contact council members in confidence with ethical questions or concerns.

NIRI Ethics Council

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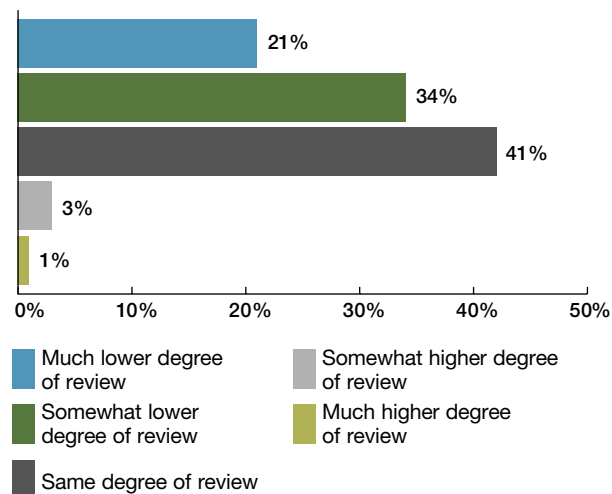
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IR Research at a Glance

SOCIAL MEDIA SCRUTINY

Relative to degree of review used for press releases, or SEC filings in your company, your company's social media postings are held to:



Note: Question was asked of IROs who had previously stated they engage in social media use for investor relations. N=29.

Source: Social Media Use in Investor Relations – 2013 Survey Results. Compiled by NIRI, June, 2013.



NIRI eGroups Moves to New Platform

ONE OF NIRI'S MOST VALUED social media tools just got even better.

NIRI eGroups, the members-only online discussion forum, was the most highly rated social media application in the 2012 survey of NIRI members. As frequent users know, eGroups is a great way to connect and network with other members and receive immediate response to any type of question about IR practice – from small groups to the entire NIRI membership.

But there is always room for improvement. NIRI transitioned eGroups to a new platform in August, rolling out a major upgrade to the service that will provide members with an easier, more intuitive functionality.

Look for the new improved NIRI eGroups on www.niri.org.

Quick Takes

What are some ways to grow and advance your career?



Rob Williams

Vice President, Corporate Financial Planning and Analysis
Dell

► “I challenge people every day to ask themselves, ‘What is your strategic impact on the organization, and when you are gone what will people remember you for?’ If someone can answer that question, they are advancing their career.”



Katharine W. Kenny

Vice President, Investor Relations
CarMax

► “Network! IROs say they don’t have time, or do it only when they’re job hunting. I think they’re missing a bet. My IR network has informed my strategic plan, helped me continue to improve my knowledge base, and given me more confidence to push for program innovation. I believe it not only has helped me grow but has enhanced my professional reputation.”



Don Bullock

Senior Vice President, Investor Relations
Eaton Corporation

► “Be receptive to career opportunities and roles that are not a natural extension of your past experience. A broad range of experiences across different businesses, functions, geographic regions, and cultures will create a portfolio of skills that you can access when you are faced with new or difficult challenges. Developing the competency needed for those new roles keeps you in a mode of continuous learning, which I find invigorating.”

“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.

Professional Development Calendar

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

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

2013 Proxy Season, continued from page 18

Business groups have voiced concern about this stricter policy, noting that a board may decide that it is not in the best interests of all investors to fully adopt a shareholder resolution. ISS has said that it will weigh various factors (such as the company’s outreach efforts) when evaluating partial implementation of a proposal.

During the spring 2013 season, 72 shareholder proposals received majority support. IROs at those issuers should be consulting with management to make sure the company is prepared to make its case to investors if it decides not to fully implement an investor resolution. For those IROs – and those at companies with low Say-on-Pay support – the preparations for the 2014 proxy season should already be under way.

“This is a year-round function now,” observed Siemann of AST Phoenix Advisors. “When your 2013 annual meeting is over, you should begin the process of reaching out to your institutional holders, particularly the ones who voted against you . . . You want to see if there are any potentially recurring issues that you’re going to have to speak to senior management about.” 

Ted Allen is director of practice resources, NIRI; tallen@niri.org. For more insights, listen to a replay of a NIRI webinar, “2013 U.S. Proxy Season: Lessons Learned,” at <http://www.niri.org/Main-Menu-Category/learn/webinars.aspx>.

NIRI Recognizes Leaders at Annual Conference

The annual Individual Leadership Award winners were presented at the Volunteer Appreciation Dinner during the NIRI 2013 Annual Conference. Chapter peers selected award winners in recognition of their outstanding performance during the program year.

The traits of award winners are numerous and varied. But the leaders also share several common characteristics. They:

- possess high integrity,
- instill confidence and enthusiasm,
- act as educators and motivators,
- demonstrate mutual respect,
- support others through appreciation and encouragement, and
- exhibit leadership skills as shown in past service to NIRI National and NIRI chapters.

2012-2013 Individual Leadership Awards

Dennis Walsh and Carlynn Finn – Boston

Beth Carty – Capital Area

Elizabeth Higashi – Chicago

Sarah Graman – Cincinnati Tri State

Sarah Jager – Dallas/Ft. Worth

Sydney Isaacs – Houston

Bruce Burns – Kansas City

Fred Clayton – Los Angeles

Cheryl Gedvila, Eleanor Powell, and Patrick Tracey – New York

Justin Moisio – Orange County

Emily Riley – Philadelphia

Steve Nutt – Rocky Mountain

John Stoepler – San Diego

Marty Palka – Silicon Valley

Matthew Thayer – St. Louis

Jamie Andelman – Triangle

Bernadette McCormick – Twin Cities

Eileen Durey and Katherine Strege – Virtual

2012-2013 NIRI Volunteer of the Year

Maureen Wolff, president and partner, Sharon Merrill Associates

University of Michigan Scholarship Award

Shawn Southard, president, NIRI Philadelphia



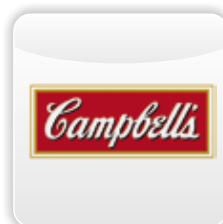
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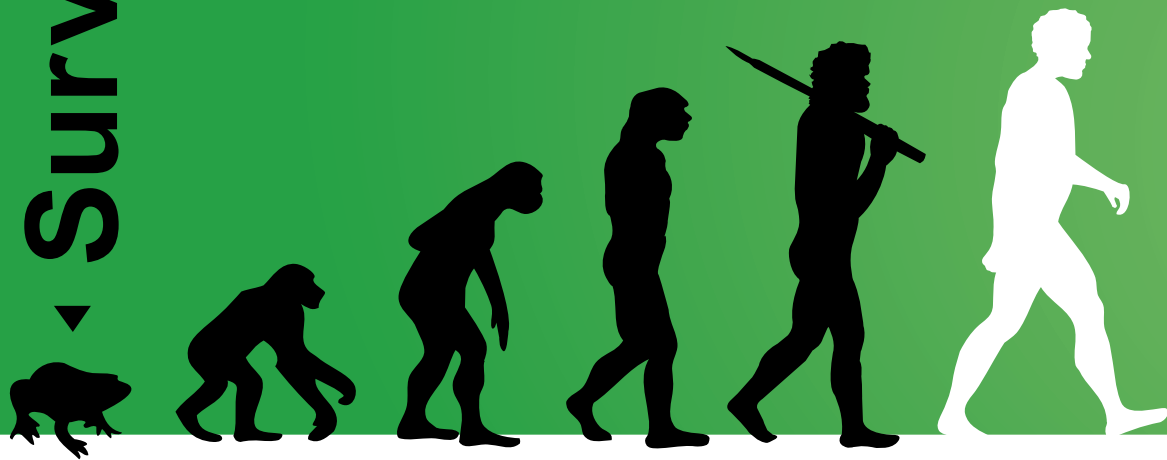


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