IRupdate

JANUARY 2013

the voice of the investor relations profession

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WHEN THE CEO DOESN'T "GET IT"

If your CEO doesn't fully understand the role of investors as owners of the company and the importance of good investor relations, it can be a tall mountain to climb.

10 Compensation Lawsuits: A Growing Threat

14 Banking on IR

19 Trends in the Capital Markets

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

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6

When the CEO Doesn't "Get It"

If your CEO doesn't fully understand the role of investors as owners of the company and the importance of good investor relations, it can be a tall mountain to climb.

By Marj Charlier

10

Compensation Lawsuits: A Growing Threat

Say-on-Pay votes are one driver of an increasing number of executive compensation lawsuits.

By Patrick Gallagher

14

Banking on IR

Managing an IR program in the heavily regulated and publicly scrutinized financial services industry poses both challenges and opportunities.

By Apryl Motley

DEPARTMENTS

4 At the Bell

NIRI Updates Its Membership Structure

By Jeffrey D. Morgan

19 Webinar Report

Trends in the Capital Markets

Political and economic uncertainty combined with low investor confidence define today's capital markets.

20 NIRI Now

- Use the NIRI Resource Libraries
- On the Move
- Quick Takes
- Professional Development Calendar

22 Chapter Spotlight

Allow Integrity to Drive Your Business Decisions

A fundamental approach can win the day.

NIRI Updates Its Membership Structure

Happy New Year from everyone at NIRI! I hope 2013 brings you good health and prosperity. The start of the year also begins a new membership initiative as part of our OneNIRI strategic plan.

At the NIRI Annual Meeting on November 28, members approved an update to our membership structure. These changes were based on your feedback throughout our OneNIRI strategic planning over the past two years. This process included surveys, focus groups, online jam sessions, consultation with chapter leaders, and considerable deliberation by the NIRI Board.

An Incredible Value

The regular membership category remains unchanged and serves practitioners, including IROs and counselors. This is our core membership type, representing 87 percent of our members, and the board has set dues at $625 for 2013. When the organization was formed in 1969, dues were $100. Today, even with this slight increase, we are below the same price point adjusted for the cost of living. I find that to be an incredible value, as NIRI has changed a great deal over the past 44 years to provide you with many more membership benefits, services, and connections.

A new membership package option for regular members will be available for those who wish to include their entire IR team as members. This package, priced at $2,995, covers all of your organization's staff involved with IR and even includes one annual conference registration. I think you will find this to be a real value and I hope you will consider it. Because you are supporting NIRI at a higher level, we will provide you with two exclusive advocacy briefings or webinars during the year.

NIRI will also offer a price break for service providers with more than four members in the organization as part of the new structure.

Going Global

The last change is a new option for IR professionals outside of the United States that includes limited access to select NIRI benefits for $195. This will expand recognition of NIRI and also enhance the global investor relations community. This program permits those outside the United States to remain in their local IR societies and stay up-to-date on U.S. investor relations practices for a very reasonable price. We hope that after experiencing NIRI's benefits, these IR professionals will decide to become full members.

In conclusion, I applaud the NIRI Board for its thoughtful deliberations and decision to make these changes. And I thank you for your feedback and participation in the OneNIRI strategic process. These changes position NIRI very well, with membership options for any IR professional, and also provide increased options for local access to the IR community via one of NIRI's chapters. For more information, access the NIRI home page or give us a call.

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WHEN THE CEO DOESN'T "GET IT"

If your CEO doesn't fully understand the role of investors as owners of the company and the importance of good investor relations, it can be a tall mountain to climb.

By Marj Charlier

It can be extremely frustrating. You've attended NIRI seminars. You've witnessed the impact of great investor relations programs on your competitors' stock price. You've commiserated about the challenges you face with your fellow NIRI members. You know what good IR is. You work hard at it.

But your CEO just doesn't "get it."

Perhaps it would help to know you are not alone: "It clearly is not uncommon for good IR intentions to be waylaid by resistant, perhaps introverted, and even arrogant top corporate officers," the Rivel Research Group concluded after conducting a recent survey of 74 executive-level IROs.

And yet, it's clearly important for your success and for your company's valuation that your CEO excel at communicating with investors and analysts. Survey after survey indicates that along with financial performance and good strategy, investors' collective impression of management is key to investment decision making.

"A leading indicator of willingness to buy a stock is confidence in management," says Tom Rathjen, vice president of IR at Accuray. "The Street is looking for integrity, vision, leadership, and the ability to set goals and meet those goals."

IR Update asked several IROs and IR consultants what CEOs or other C-level executives tend not to "get" about IR, and what an investor relations officer can do about it.

The problems these IROs and consultants have encountered with CEOs clustered around three main areas: the gestalt and ethics of IR, understanding capital markets and what drives stock price, and personality and style issues.

Who Owns the Company?

It's not uncommon for CEOs who are new to the role at a public company to find it hard to swallow the fact that they have a lot of eyes and ears paying attention to the decisions they are making. And those observers are not only quick to criticize, they also have an ownership interest in doing so.

"A CEO has to acknowledge and understand that he is not the only one who owns the company, and he is there to serve the investors," says one former IR consultant. "In that regard you have to treat your capital preciously."

This can be particularly difficult for CEOs who started companies that later went public. "One of the hardest discussions I've been involved with was with one of our largest investors," Clint Halverson, vice president of corporate communications and IR at Extra Space Storage, says, recalling a CEO he worked with at one time. "The CEO says 'at my company,' and the shareholder stopped him and says, 'no, it's my company now.'"

"The CEO is in fact CEO of a public company whether [he or she likes] it or not," says Carol Merry, senior vice president, Fahlgren Mortine, an integrated communication firm.

Along with those investors and observers comes their expectations of transparency and consistency, something that can also grate on CEOs who may be accustomed to autonomy, secrecy, and the freedom to change strategy at will. It's not just financial data that investors expect, explained Evelyn Infurna, an executive at Citigroup. and a former IR consultant. It is also "setting realistic goals; articulating how as CEO you will accomplish those goals; meeting, preferably beating those goals; and reminding the investment community of how you performed versus those expectations," she says, adding that such transparency "is an effective way of establishing confidence in strategy and in tactics."

"Some CEOs think 'we've put out the numbers, and we're done,'" says John Palizza, a former corporate attorney, head of finance, and IR professional who now teaches investor relations in two university MBA programs. "But what investors really want to know is where you are going."

Halverson says the CEO of Extra Space understands the concept: "We believe in forming mutually beneficial business relationships. And the only way we can do that is to be transparent."

Stock Price Drivers

CEOs, by nature, are usually optimistic and confident. So it's hard for them to understand why investors aren't giddy about their prospects. "CEOs are in love with their companies, and they don't understand why everybody doesn't want to kiss this girl," says Palizza. While he was running IR at Walgreen Co., his CEO stopped him to ask "Why doesn't everybody own our stock?"

"There are good companies and there are good stocks," Palizza explains. "They're not necessarily the same. Sometimes good companies have stocks that are fully valued and don't represent an opportunity. And CEOs don't get that because they're so focused on their company."

New public CEOs often don't understand that "going out and talking to the investment community doesn't necessarily move the stock price, and it can't do it all by itself," says Merry. "They should be patient."

IROs are familiar with different types of investors and the reasons they buy stocks, and different analysts and why they can recommend a stock one day and slap a "sell" rating on it another. But CEOs don't necessarily "get" that either.

"If the CEO comes from a finance position, they may understand the market," says Rathjen, who worked at both Nasdaq and the NYSE before turning to IR 11 years ago. But for others, the market can be a mysterious black box.

It's not uncommon for CEOs to expect the impossible. How often do CEOs ask, "Who is buying, selling, or shorting our stock today?" asks Brian Turcotte, vice president of finance and IR at Office Depot, in an e-mail.

What CEOs don't know about the markets can be pretty comprehensive: "Who are the players, who is the buy side, what is the sell side, what roles do they play, what impact do they have on the stock and the stock price? Who are the investors you want to have in your stock? Understanding market mechanics and price discovery," says Rathjen. "It can take a while to put those pieces together."

CEOs may also not recognize the market's insatiable appetite for news and reassurance. "They don't understand the need for a constant stream of information. They need to feed the beast," says Palizza. "You can see that from Facebook's IPO. They did the IPO and [Mark] Zuckerman went off on his honeymoon. They probably should have been planning it a little differently."

Personality and Style

Knowing what a CEO needs to do to be effective with investors is one thing, but being able to do it, of course, is another.

"What it comes down to sometimes is personality," says Rathjen. "There are some people who are just outgoing, enjoy the interpersonal conversation and the challenge of matching wits with Wall Street. And then there are people who have a harder time with confrontation, who don't take criticism well."

That's why people with a sales and marketing background often have an easier time embracing the relationship part of the job, he says. "It's a personality and a skill set that's developed through interpersonal interaction on an ongoing basis."

But it can be learned, Rathjen asserts. "It is a challenge, yes, but they can embrace that challenge and do the best job they can."

At the same time, CEOs who are willing to talk with the Street also need to understand the value created by a little scarcity, says Halverson. It's important for the CEO to run the company and let the IR do most of the day-to-day lifting.

Further, no matter how comfortable the CEO is with investors, the relationship has to remain professional. "I've seen CEOs who like to philosophize with the analysts," notes Halverson, who recalled one investor exchange in which the CEO theorized about how "cool" it would be to conduct business on the moon. "It scared the shareholders to death," he says.

"It's easy to get carried away," says Merry, "being too enthusiastic or not enthusiastic enough." The discussion should never be emotional or too personal, she added. "The investors aren't your friends; you don't have to impress them."

Teaching the CEO Good IR

As difficult as it can be to mentor someone who sits a couple of rungs above you on the corporate ladder, it can be done effectively, IR veterans says.

First, the CEO has to buy into the importance of the IR function and the CEO's responsibility for participating. "If the CEO is reluctant to embrace the importance of IR – the IRO has many tools at his disposal to build a body of evidence," says Infurna. It can be done "by way of analyzing peer earnings transcripts, company presentations, comparable valuations and research, and presenting findings to the C-Suite." She added that feedback from respected sell siders and top fundamental holders can also help the IRO make the case for the importance of IR.

Calling in a consultant or executive coach is another answer, but may require a commitment of time or focus that a recalcitrant CEO is reluctant to accept. Informal coaching opportunities may actually work better, says Palizza.

Rivel's survey detailed three main tactics IROs have employed in coaching CEOs:

- **Gathering detailed knowledge about the company's investment appeal and shareholder base and relaying these insights and investor feedback as transparently as possible to senior management – and doing this as proactively and consistently as possible.**

One IRO who responded to the Rivel survey describes his effort as "educating (executives) about the market and the market dynamics and why our stock may be acting one way and peers may be acting a different way. I monitor how proactive our peer group is in terms of investor outreach, relative to ourselves [and participate in investor conferences to gather feedback from the buy side and the sell side]. And that all rolls up into the education aspect and keeping them informed. This gains support for IR because it shows where we are outperforming or underperforming. It allows us to prioritize."

- **Showing the tangible value IR plays in enhancing a company's investment appeal through developing sector expertise and other credibility-raising efforts.**

To do that, one of the IROs Rivel surveyed suggested: "If you establish a targeting program and then you show that either you have been able to maintain the investor targets despite adverse economic conditions or actually increase top targets, then you are showing that they are getting a good bang for the buck for the time that is used for that. I think that helps convince them. I think putting together an overall IR strategic plan at the beginning of every year and showing demonstrated results in each of the objectives that you set will get their support."

- **Demonstrating that key messages are being heard to encourage management support for IR.**

About one-quarter of those IROs surveyed by Rivel reported they track message retention to demonstrate IR effectiveness.

One of the best times to discuss best practices and the capital markets, Palizza believes, is when IROs and CEOs are traveling. "You're on the plane; sketch it out. . . this is how it works. There's a whole range of things they don't understand." He suggests the IRO start with the most important concept of valuation, that "past performance plus future plans equals value."

Merry advocates using investor interactions as teaching opportunities. After meeting with investors, she says, "Don't get in the car after the meeting and say: 'That went okay.' Break it down, talk about what went well, where we weren't comfortable. If you wait until next week when you're back in the office, it's stale."

Merry also recommends getting the company's legal team to help coach the uninitiated CEO on disclosure issues. "IR has some credibility with the C-suite, but legal has a different kind of credibility. With the two working together you have better credibility with the CEO and they'll take disclosure issues more seriously."

In the end, success at coaching "comes down to coachability," says Rathjen. "Are they willing to dedicate the time" to understand the capital markets and the impact of IR? "It helps if they are willing to be coached. But it's up to the IRO to be respectful and diplomatic in coaching. You don't want to make that CEO feel like they're ignorant," he cautions.

Then again, there are CEOs who aren't going to "get it," no matter what an IRO does. "If the CEO is not able to work with the investment community, it's because he doesn't want to," Palizza observes. "They've had people say yes to them so long, they don't want to hear criticism." In that case, he and others suggest finding someone else in the executive suite to substitute for the CEO in interacting with the investment community. Often, the CFO, COO, or another senior executive will have a different view of the markets and a different skill set. Leave the CEO out, bypass him or her, advises Palizza.

On the other hand, if a CEO does make progress and becomes an IR ally, the IRO's job can be transformed, says Rathjen. "It's like being able to drive without the parking brake on. The effort is lessened and more streamlined. You can move forward more quickly when the CEO understands the IR function." IRU

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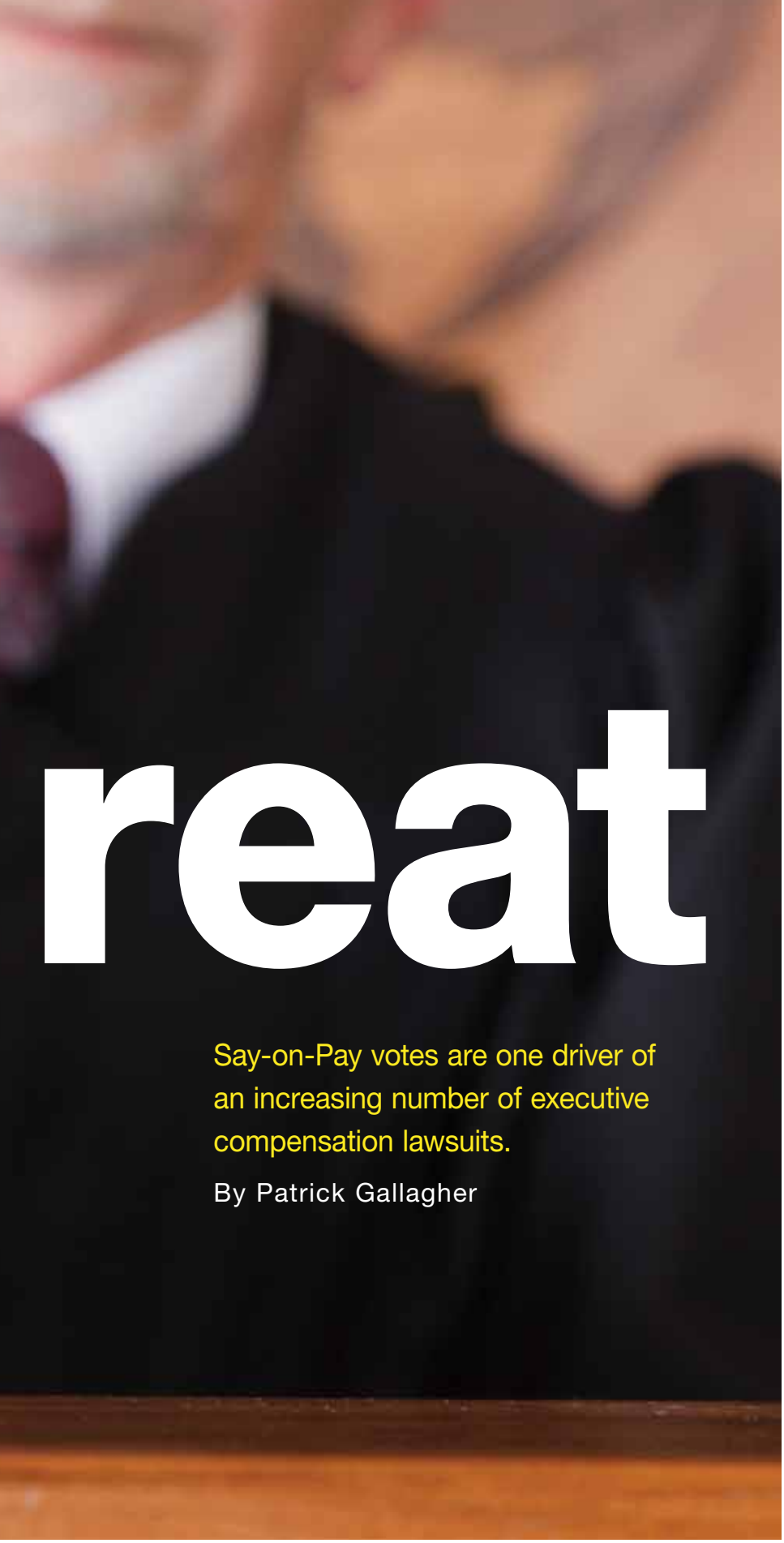
COMPENSATION LAWSUITS: A GROWING Th



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Say-on-Pay votes are one driver of an increasing number of executive compensation lawsuits.

By Patrick Gallagher

Investor relations officers know that dealing with securities lawsuits is an inevitable cost of doing business as a public company. Earnings restatement? Expect lawsuits. Sharp drop in the stock price after an adverse earnings report? Expect lawsuits. Announce a merger or acquisition? Expect lawsuits. But propose a new executive compensation plan in your proxy statement and get sued? Don't be surprised.

Various plaintiff law firms, most notably Faruqi & Faruqi, issued more than 30 notices of investigation related to executive compensation during 2012 and filed suit against more than 20 companies, including Microsoft, Cisco, and Clorox.

These executive compensation suits represent "a new growth area for the plaintiff bar," says Robert Daines, a professor of law and business at Stanford Law School, who recently co-authored a major study on litigation challenging merger-and-acquisition deals.

Say-on-Pay Opens Door

The initial flurry of new executive compensation-related lawsuits appeared in the 2011 proxy season as a result of the shareholder "Say-on-Pay" vote mandated by the Dodd-Frank Act. The boards of companies that failed to receive majority shareholder support were sued for breach of fiduciary duty for being unresponsive to their shareholders.

Courts have dismissed most of these cases early in the proceedings because the plaintiff failed to allege facts in addition to a failed shareholder Say-on-Pay vote sufficient to rebut the business judgment rule presumption afforded to a board's decisions or failed to make demands on the companies before bringing suit, as required in shareholder derivative actions, says David Zagore, a partner with Squire Sanders. (In a derivative action, shareholders bring suit against the directors and/or officers on behalf of the corporation.)

These suits had another defect: Dodd-Frank states very clearly that a negative Say-on-Pay vote is not binding on the company and does not create or imply any change to the board's fiduciary duties. So it was perhaps not surprising when plaintiff's bar introduced a new strategy during the 2012 proxy season.

YOU ARE UNDER INVESTIGATION

A merger-objection or executive-compensation disclosure lawsuit often begins with a news release from a law firm announcing it is investigating a company's board of directors for potential breaches of fiduciary duties.

As some companies have found, just this announcement can be problematic – even if a lawsuit never follows. Employees, customers, small shareholders, and others are not aware that dozens of identical "investigations" are announced every week during proxy season based on nothing more than the announcement of a merger-and-acquisition transaction or the filing of a proxy statement that includes an executive compensation proposal. These stakeholders just see the report about your company.

One firm that was the target of such an investigation learned that managers at a major customer were alarmed to learn of the news and unhappy that the company had not advised them about what they presumed was a serious corporate matter. One of the managers asked in an e-mail that was forwarded to the company if they should be looking for another supplier.

On the chance this was not an isolated event, the company decided to distribute the standby statement and Q&A it had prepared to all employees with a message from the CEO and encouraged sales and customer service people to be on the alert for possible customer concerns.

Source of Leverage

The new strategy evolved from lucrative merger-objection lawsuits, where timely filing gives the plaintiffs leverage by threatening to delay or even derail an acquisition, says Christina Costley, an attorney with Katten Muchin Rosenman.

Similarly, when companies are targeted with one of these executive compensation disclosure suits, they need to consider whether defending the lawsuit might mean postponing the annual meeting, potentially disrupting business to be transacted. For many companies in this position, settlement is the path of least resistance, says David Priebe, a partner at DLA Piper.

The plaintiff bar's new approach does not focus *per se* on the Say-on-Pay vote or the company's proposed compensation or stock plan, but rather alleges breach of fiduciary duty due to insufficient disclosure. The complaints often cite dilutive increases in the number of shares available under a proposed equity incentive plan. Some cases have asserted the need for additional detail regarding the peer group selection and the recommendations of outside compensation consultants.

Pressure to Settle

One of the first of these suits to come before a court was filed by Faruqi & Faruqi in the Superior Court of California in Santa Clara County in March 2012 against Brocade Communications. The suit alleged insufficient disclosure regarding a proposed increase to the number of authorized shares available for grant under Brocade's equity incentive program.

On April 10, just two days before Brocade's scheduled shareholders meeting, the judge issued a preliminary injunction, saying he thought it was reasonable for shareholders to see the same information the board of directors had, says Priebe. The next day Brocade announced a settlement under which it disclosed its internal projections regarding future stock grants and agreed to reimburse the law firm up to $625,000 in attorney fees. During the next few months, three other companies settled similar cases by agreeing to additional disclosures and paying attorney fees, according to Costley.

As Daines points out, in both the merger-objection suits and the newer executive compensation cases, the plaintiff firms typically aren't looking to litigate for a big payment. Their objective is a quick settlement for additional disclosure and reimbursement of attorney fees.

The rationale for these claims is troubling, observes Priebe. "None of these complaints have alleged any misstatements, just insufficient information. It is a slippery slope. Regardless of how much information a company may disclose, a plaintiff may assert that even more is required. And paradoxically, a company that chooses to disclose more rather than less may find that this only prompts further requests for even more detail."

Priebe also questions the need for an injunction in these cases. "If shareholders believe there is insufficient information, they can simply vote against the proposal or abstain, which counts as a 'No' vote. This is a self-correcting problem."

Brocade an Anomaly?

The Brocade case was a wake-up call, but it is beginning to look like it may be an anomaly. Several attorneys point to the Symantec case, filed by the same plaintiff firm in the same Santa Clara Superior Court in September 2012. In October the court denied plaintiff's attempt to delay the Say-on-Pay vote due to inadequate disclosures, finding no precedent for such an injunction. Tellingly, several attorneys point out, the court heard an expert opinion from Daines, who concluded based on his survey that

Symantec's disclosures were in line with Dodd-Frank and at least as detailed as those made by other companies in its industry.

Defendants have also fended off the plaintiffs in three other compensation disclosure cases that went before a judge in 2012.

In a case filed in January 2012 against Amdocs Limited, plaintiff claimed inadequate disclosure related to an increase in the number of shares available under an equity incentive plan. After the defendants had the case removed from state to federal court and opposed plaintiff's request for a preliminary injunction, plaintiff voluntarily dismissed the claim.

In October, defendant AAR Corporation prevailed in a suit filed just four business days ahead of the company's scheduled annual meeting. The plaintiff sought to enjoin the Say-on-Pay vote alleging that the proxy statement omitted material information regarding peer companies and fees paid to a compensation consultant. The case was removed to federal court, and at a hearing, the judge denied plaintiff's motion for a temporary restraining order, according to Costley, whose firm represented AAR.

Most recently, the plaintiff in the claim filed against Microsoft in October withdrew the suit several weeks ahead of the company's November 28, 2012 annual meeting.

Looking Ahead

Most of the experts we spoke with expect these compensation disclosure investigations and lawsuits will continue in the 2013 proxy season, but they regard the trend in these recent cases as favorable to corporations.

Zagore of Squire Sanders says it has become a lot more difficult for plaintiffs to survive a motion to dismiss in these Say-on-Pay and executive-compensation disclosure suits, as compared with the merger-objection suits.

"The sale of a company has always been one of those major events where courts view it as fair for shareholders to ask the board to explain the basis for its decision," he says. "Now we are seeing many more breach of fiduciary duty suits involving day-to-day events. Courts have commonly found that executive compensation decisions made by independent directors fall within the protections afforded by the business judgment rule. Compensation is inherently business judgment."

Priebe believes that these recent dismissals and withdrawals may have sealed the deal. But if not, he says, once a case gets to Delaware it will become clear whether these theories have validity and what information companies need to include in their disclosure. It would shorten the process if one of these cases came before the court in Delaware, but as far as he knows, that has not happened. The plaintiff law firms appear to have purposely avoided Delaware, even though more than half of all public companies are incorporated there. IRU

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THE TRIAL LAWYERS' MERGER TAX

Litigation involving mergers and acquisitions of U.S. public companies is keeping a whole lot of courts and attorneys busy. According to a 2012 study conducted by Stanford Law Professor Robert Daines and the commercial litigation consulting firm Cornerstone Research, 91 percent of acquisitions of U.S. public companies valued at more than $100 million in 2010 and 2011 elicited multiple lawsuits, usually in multiple jurisdictions. That was up dramatically from just about half of such transactions in 2007.

According to the insurance analytics firm Advisen, these merger-objection lawsuits rarely block the deals or result in meaningful payouts to the shareholders. The suits are often settled before a deal's closing in exchange for a few extra disclosures in deal documents and reimbursement of plaintiff's attorneys fees plus, on occasion, a cash settlement. The attorney fees range from roughly $400,000-$500,000 for typical cases up to several million dollars for bigger cases. The U.S. Chamber of Commerce has dubbed these settlements "the trial lawyers' merger tax."

One company has said enough is enough. According to a recent Thomson Reuters news report, after Intel announced its $7.68 billion acquisition of McAfee in 2010, the inevitable shareholder suits followed. Yet there was no quick settlement. Instead, the boards of the two companies elected to litigate. And they won. A state court judge in California tossed the shareholders' class action this past November, more than a year after the deal closed and more than two years after the litigation began.

"Intel decided it didn't want to pay extortion every time it acquired a company," Intel counsel Wayne Smith of Gibson, Dunn & Crutcher told Thomson Reuters.

Despite Intel's stand, the trial lawyers' fees and rising defense costs in these merger-objection cases are getting the attention of D&O insurers, says Kevin LaCroix, executive vice president of OakBridge Insurance Services, a division of RTS Specialty, and author of the D&O Diary Blog.

"We are seeing upward pressure on rates as underwriters take into account the loss costs they are incurring in this category due to the accumulation of smaller losses," he says.

IR series

BANKING ON

Managing an IR program in the heavily regulated and publicly scrutinized financial services industry poses both challenges and opportunities.

By Apryl Motley

The news for investors in financial institutions hasn't been particularly great of late. "It's more difficult when we don't have great returns or numbers to give people," says Jason Korstange, senior vice president and director of corporate communications for TCF Financial Corporation, a national bank holding company, "but you have to be honest and paint the picture as it stands and highlight how we hope to improve."

Low earnings, heightened regulatory scrutiny, and public outrage have been the issues du jour for the banking industry since the beginning of the economic crisis in 2007. In the minds of many, the term "banking" has become synonymous with bailout.

"We had to retell our story to Main Street and the investment community to set us apart from Wall Street banks getting bad press," acknowledges John Oxford, vice president and director of external affairs for Renasant Corporation, the parent company of Renasant Bank and Renasant Insurance.

Public opinion aside, financial institutions of all sizes and specialties have managed to operate successfully in a very difficult environment. Take the case of State Street Corporation, which was founded as a bank in 1792 and today operates as a provider of custodial and administrative services to mutual fund companies, corporations, unions and nonprofit organizations.

"It was a stressful time for banks," State Street's vice president of investor relations Kevin J. Brady says of the economic crisis. "Rumors moved the market instead of reality, so we had to be even more diligent in communicating messages to investors."

Indeed it was the worst of times for many banks, which are significantly fewer in number than they were five years ago. According to the Federal Deposit Insurance Corporation's historical trends as of June 2012, 92 and 31 banks failed in 2011 and 2012 respectively, compared to only three in 2007.

What's more, in 2007 there were 8,534 depository institutions (commercial banks and savings institutions) in operation compared to the 7,179 in operation as of Nov. 1, 2012. Of these, approximately 1,100 FDIC-insured financial institutions are publicly traded companies.

In the aftermath of the economic crisis, IROs at financial institutions have worked diligently to distinguish their companies from the bad actors in the industry that have come under regulatory and public scrutiny. "We kept reminding investors of our story and differentiating ourselves," says Lynell J. Walton, senior vice president and director of investor relations for Old National Bancorp, the largest financial services bank holding company headquartered in Indiana.

"During the economic crisis, all banks were being painted with a broad brush," she continues, "but we were fortunate. We had bolstered our IR activities prior to the crisis and were well-known in our market as a traditional community bank."

Ramping Up Communications

As a result of the crisis, IROs at financial institutions identified the need to be more proactive in their communications and expand their audiences.

Polishing presentations. "We are constantly refreshing our presentations to focus on what's top-of-mind for investors," Walton says. "For example, we had a tough summer in Indiana with no rain. We do agricultural lending, so we addressed this issue in our presentation."

In addition, she notes that conducting lots of one-on-one meetings with investors has given her "insight into what to cover during our next presentations at conferences. If they have questions, others probably do as well."

Given the need for more proactive communications with investors, Walton says it's helpful that she handles all shareholder and investor activities. In 2004 the bank's new CEO recognized the importance of IR and put everything that touched shareholders under Walton's leadership. "Prior to that, different functions were dispersed throughout the bank," Walton explains. "We want to ensure consistency in messages to all our constituencies."

Playing offense. Despite the crisis, Renasant Bank continued growing its brand with both Wall Street and Main Street, and consistency in messaging was key. Oxford was proactive in communicating about the bank's newest ventures, such as its partnering with the FDIC to take over a failed bank.

"Two years ago, we acquired Crescent Bank & Trust in northern Georgia," he says, "which showed the Street that we were strong enough to do this, but we had to explain how we were going to integrate this acquisition into our company and turn around a failed bank."

When the issue of charging fees for debit cards made headlines, the company saw another opportunity to distinguish itself in the marketplace and build investor confidence. "We went on the offensive about not charging clients for debit cards," Oxford says.

"Outrage at Wall Street banks for being greedy was prevalent in the media," he continues. "We came out on the opposite end and ran an ad campaign saying we wouldn't be charging for debit cards." Taking this position drew more customers to the bank and grew non-interest income, which Oxford says "played well with the investor community."

Doing more. "Our proactive communication was heightened by issues driven by the crisis," State Street's Brady says. "You had to be extra vigilant about how you articulated what was going on with the company."

He points out that "there was so much speculation going on, and in many instances the facts were getting distorted. We had to have concise messaging designed to clearly articulate the company's position. People were selling first and asking questions later."

While increased communication was definitely coming from IR, Brady says that perhaps there could have even been more "proactive communications during the crisis." His ongoing challenge is "dissecting issues and figuring out how to communicate them and then actually putting [his] foot on the pavement to deliver the message."

However, with this challenge also comes the most rewarding part of his job. "When you see the end result of communicating effectively after the release of weaker-than-anticipated quarterly results, you feel gratified," Brady says. "You can't control the results, but you can make sure the messages are communicated effectively."

Engaging employees. "It used to be an easier story to tell," TCF's Korstange acknowledges. "Now there's more to tell, and we're really focusing on internal communications with our employees in addition to communicating with analysts, investors, and shareholders."

To that end, Korstange hosts lunchtime seminars for bank employees to "help everyone understand what IR is about and how they can get information about TCF's quarterly results." He leads them through earnings releases and explains how they are distributed. Employees are also encouraged to listen to earnings calls.

"We want them to understand IR," Korstange says. "We give them a road map to find more information about the company and how investors perceive it. If we get this information out, employees will become more interested in the bank."

Korstange, who also is responsible for public relations, says the bank's commu-

nication with employees and other constituencies have evolved out of the need to "portray what the company is going to be doing in this challenging and ever-changing environment."

Proactive Investors

Given recent events, it comes as no surprise that investors in financial institutions have become more proactive as well. "Our investors are more engaged than ever in how State Street is doing [financially]," Brady notes. "We have to provide more details to investors because they want to dig deeper and deeper on all aspects of the business."

Brady expects this trend to continue as investors continue to "demand heightened transparency. They are willing to push for transparency."

"We can't communicate enough," Oxford says. "We have to tell our story over and over again. We have to be in front of the press and investors." He notes that "investors are empowered on the retail side, and they want and deserve more information about the company.

"We had a good story to tell, so we hit the road to visit with investors," he continues. Renasant has both institutional and retail investors. According to Oxford, the company has "never cut its dividend, which keeps the retail investor base happy."

At the same time, he acknowledges that numerous challenges are ahead, particularly on the regulatory front: "There are still hundreds of regulations to come. In particular we are trying to determine how the Consumer Financial Protection Bureau will affect our bottom line and ability to market products and services. Investors will need to understand this as well." Oxford has met with the agency twice to discuss his company's concerns.

Investors in Old National Bancorp also demonstrate inquiring minds. The company's investor base is 65 percent institutional and 35 percent retail. "They are extremely astute and intelligent – continuously studying and analyzing financial services and institutions all over the world," Walton observes. "Investors have to understand the global economy and we learn a lot from meeting with them."

In general, investors will continue to be more engaged than ever before. "You're going to have more activist investors," Brady predicts. "They are going to continue to be more active than they have in the past, which is going to take up more of management and IR's time. We're all going to have to become even more engaged."

Entering the Field

For IROs working in the financial services industry, this level of engagement requires having a firm knowledge of their institutions' balance sheets and other financial statements. Most have some background in banking, accounting, lending, or some other related area. However, other traditional IR skills are still highly valued as well.

"Focus on [learning] your balance sheets and understand the financial statements. You need to have great command of them because the people calling you do," advises

THE CEO FACTOR

Much like their colleagues in other sectors, IROs in the banking field have a variety of direct reporting relationships when working with the CEOs of their companies. Some like Lynell J. Walton, senior vice president and director of investor relations for Old National Bancorp, report directly to the CEO.

Others such as Jason Korstange, senior vice president and director of corporate communications for TCF Financial Corporation, report directly to the CFO. In either case, IROs working in banking say the CEO's active participation in IR is critical.

"While I report directly to the CFO, I have a lot of dealings with the CEO because we go to conferences and talk to investors," Korstange says. "In the financial services industry, with there being so much going on with a lot of regulations and laws, the CEO's participation in IR is important."

"Our CEO takes an active role in IR to communicate what these particular laws and regulations mean to our company," he continues. "It's an ever-changing horizon that we're dealing with. What we plan to do in one quarter might change in the next few quarters." At the same time, he observes that "all senior management should be involved in IR because one person can't do it all."

Walton enjoys "having the opportunity to work with senior management and our board. Not a lot of people get to do that on a daily basis, and I learn a lot from them. It's critical that IROs have access to senior management and the board. A seat at the table is so important for [our] role."

For his part, Oxford says "IR starts and stops with the CEO. Everything we do flows through him. Working with him is a team effort between our CFO and me. Our CFO explains numbers and the financial side. My side is communications and channeling our message. And our CEO is the chief storyteller and spokesperson."

Brady, who began his career in IR at a major insurance company. "Put your time in on the financial side, but it can't hurt to have background in the PR and writing aspects as well."

Here are some other suggestions for IROs interested in pursuing careers in the banking sector.

- **Gain practical knowledge.** "You feel more comfortable," says Korstange, who began his career at TCF in 1985 as a commercial lender before being asked to head IR in 1999. "Investors sense that, and you have more credibility."
- **Understand how your company makes money.** "Investors want ROI (return on investment)," Oxford says. "That's what creates value for shareholders." Oxford's father worked in IR for a major corporation, and he himself served in public affairs positions within both the public and private sectors before working in the banking field.
- **Get that seat at the table.** "It's extremely important to have access to senior management," says Walton, who initially worked part time in both accounting and IR at her bank and credits its CFO with being very supportive of the transition to her full-time role in IR. "You need to understand what's going on throughout the institution," she adds.
- **Learn how to write.** "Being able to take numbers and put them into words that people can understand is so important today," Oxford notes. "You must be able to explain your company's financial results in a real-world context and be a storyteller for your brand."
- **Expect to wear many hats.** For Oxford, IR is about one-fourth of his job. He points out that, depending on the size and structure of their institutions, IROs in the banking sector can expect to serve in numerous capacities. "I wear so many different hats," he explains. "I deal with everything from meeting with the press to talk about bank security to discussing how to market a new deposit product and interacting with investors about our quarterly earnings."

"WE HAVE TO PROVIDE MORE DETAILS TO INVESTORS BECAUSE THEY WANT TO DIG DEEPER AND DEEPER ON ALL ASPECTS OF THE BUSINESS."

– **Kevin J. Brady,** vice president of investor relations, State Street Corporation

On the Horizon

As the economy improves and the financial outlook for banks with it, IROs working in this sector see themselves managing more of everything, especially more deliverables, more technology, and even more transparency.

"I could see a time where there might be more monthly deliverables," Korstange says. "For instance, analysts are currently guesstimating new loan originations on a monthly basis."

"There are all different kinds of models that the analysts are using to estimate results for deposits, commercial lending, and other parts of our business," he continues. "Keeping up with them is another interesting part of the IR position, and in the near future, we might be giving updates more than every quarter."

Walton makes a related observation about using virtual meetings to communicate with investors. "I see technology driving more of the changes in my world," she says. "Investors are more open to attending meetings via video conference. We could host an Analyst Day and have no one physically at HQ.

"Even with the amount of travel we do, we can't see everyone," she continues. "It could broaden our reach. Not all investors have the budget to travel to every conference, and we may have to go to them virtually. [Yet] some form of face-to-face contact is extremely important."

Oxford foresees technology's continued impact on transparency as well. "New shareholder activism combined with technology will result in even more transparency," he predicts. "From their 401(k)s to major stocks, people – both institutional and retail investors – are watching all of their investments more closely."

Banking regulatory agencies will be watching more closely as well. Many of the regulations required by the Dodd-Frank Act are still in their infancy, but are expected to have long-lasting impact on how financial institutions operate and manage their financial results.

Despite the challenges on the horizon, IROs in the banking sector remain optimistic about the future. "I love the financial services industry," Korstange says. "It's interesting to see how we're working through the current situation, but we will work through it." IRU

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Trends in the Capital Markets

Political and economic uncertainty combined with low investor confidence define today's capital markets.

"An understanding of capital markets trends is clearly vital to the IR community as it influences and can often dictate the nature of our communication efforts, even if you don't work for a global bank," said Philip Talamo, director of investor relations at UBS AG.

Talamo moderated a panel that included Richard Barry, vice president and floor governor at the New York Stock Exchange Euronext; Stephen Chalmers, managing director of new listings at The NASDAQ OMX Group; and Alex Kramm, analyst at UBS AG, on the November 2012 NIRI-sponsored webinar entitled, "Capital Markets Trends."

Political Overhang

According to Chalmers, 2012 has been plagued with uncertainty due to it being a presidential election year along with a looming fiscal cliff. Investors have been unsure of how Congress and the White House would resolve the more than $500 billion in tax increases and across-the-board spending cuts scheduled to take effect after January 1, 2013.

Results of uncertainty include investor sentiment at a 10-year low; consumer confidence low with a slight rebound; the Chicago Board Options Exchange Market Volatility Index (VIX), a popular measure of the implied volatility of S&P 500 index options, also at almost historic lows along with a 12.5 percent decline in trading volumes across exchanges for third quarter 2012. "You're not likely to spend money until you know what's going on; you're not likely to invest until you know what the trading landscape or markets look like," Chalmers said.

Kramm, who covers exchanges, eBrokers, and asset management stocks, has seen a sell-off of special dividend paying stocks in anticipation of capital gains taxes going up. "There will be a shift again for people looking for other assets," Kramm said.

Fundamental Analysis

Barry believes that investors will get more clarity in the marketplace. "On a macro basis, we'll see less correlation (stocks moving up or down together) and fundamentals will matter more," he said. "There's a lot of performance anxiety on a lot of money managers' part, which attests to a lot of the big swings we've seen on the downside and the upside."

"Value investors, in times like these, are certainly more willing to still use hard fundamental analysis and try to figure out where are the winners and losers," Kramm said. "A lot of hedge funds certainly trade the macro themes, sometimes very short-term oriented."

Market Structure

Technology has also driven short-term strategy with high-frequency trading (HFT). According to Barry, in the current market structure model with no centralized point of sale, speed trumps best price. Every trade is a high-speed trade. However, the difference between high speed versus high frequency is that HFT uses sophisticated technological tools and computer algorithms to trade securities on a rapid basis.

> "There's a lot of performance anxiety on a lot of money managers' part, which attests to a lot of the big swings we've see on the downside and the upside."
>
> —**Richard Barry**, vice president and floor governor, New York Stock Exchange Euronext

With macro themes dominating the buying and selling decisions of investors since the 2008 crisis, Kramm, as a fundamental research sell-side analyst, hopes to see a return to more fundamental analysis of investment decisions.

In this climate, investor relations needs to differentiate its company story by getting rid of the misconceptions. Educate investors as to why the turmoil in Europe will not affect their company or why the fiscal cliff is not an issue because the company is a strong growth story.

"On any given day, 60 to 70 percent of the volume can be done by these high frequency traders who are basically trading a number and may not even know your corporate charter," Barry said.

He adds that with more of the market trading done in dark pools, institutional block trades unavailable to the public and facilitated away from the central exchanges, there is very little transparency. He emphasizes how important it is that IR

Continued on page 20

Use the NIRI Resource Libraries

TO KEEP MEMBERS INFORMED on IR developments, NIRI has created a library of presentations, reports, articles, and other resources. NIRI's **Presentation and Report Library** includes links to reports on third-party websites as well as copies of slides and video replays from NIRI chapter-hosted events. This library is organized by topic area. Another valuable resource is NIRI's **Sample Document Library**, which includes templates, plans, and policies. Members can download any of these documents for reference and revise them to meet their needs. If you have any sample documents you would like to provide to enhance this library, send your documents to Ted Allen, NIRI's director of practice resources, at tallen@niri.org.

NIRI's **eGroups Document Resource Library** is a document resource compiled from the members-only online eGroup discussions based on subject matter.

For access to these resources, go to http://www.niri.org/findinfo/Sample-Documents.aspx.

Webinar Report, continued from page 19

understand how stocks are trading, why the markets are moving, and know where to get answers to questions for the C-suite.

Investor Asset Allocation

In terms of investor asset allocation, year-to-date there has been about $100 billion in outflows from U.S. mutual funds with equity funds gaining $12 billion in inflows and more allocation to international and emerging markets funds.

There is also a bulk of new money: $300 billion is going to fixed income and $50 billion is going to hybrid investments (assets with equity and debt features). The baby boomers' transition from growth to income has driven some of this, but the bigger driver has been significant losses on the equity side from the past decade. "Investors are shell-shocked," Kramm said.

Chalmers believes that after getting through some speed bumps, five years from now the capital markets will be higher than today's levels. "The markets have historically shown a tremendous amount of resiliency," he said.

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

*Contributed by **Tammy K. Dang**, manager, professional development, at NIRI; tdang@niri.org.*

On the Move

Lisa Rose has been named to head the investor relations practice at Dix & Eaton. She has more than 20 years of corporate and consulting experience and as a senior managing director of the firm is a member of its leadership committee and board of directors. Before joining Dix & Eaton, Rose was with Associated Estates Realty Corporation, where she served as manager of investor relations.

Deirdre Skolfield, CFA, has joined SYNNEX Corporation as director, investor relations. She previously held senior IR roles at IROptimization.com, SFN Group, MicroStrategy, InteliData Technologies, On Assignment, WorldSpace Satellite Radio, and Local.com Corporation.

Dennis Walsh has been promoted to senior consultant & director of social media at Sharon Merrill, a communications advisory firm. He will lead a new social media for investor relations consulting service for the company called Socialize IR. Before joining Sharon Merrill in 2005, Walsh was an analyst at Thomson First Call. He currently serves on the board of directors for the NIRI Boston chapter.

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

Quick Takes

Management experts often talk about "leading from the middle." How do you do that?

Muriel S. Lange
Investor Relations Manager
American Water

▶ "Constant vigilance in discovering what is new. That means new rules and new technology, which adds value to organizations with fast-moving leaders. They rely on 'more' from the middle in our current environment. Senior management, and also the board, appreciates frequent, current reports."

John Hyre
Director, Investor Relations & Corporate Communications
Commercial Vehicle Group

▶ "A CIO I once worked with depicted our company's information technology efforts as 'leading edge,' but not 'bleeding edge.' That was expanded to be sound business advice across the board. By staying in front of the curve, and also maintaining stewardship of resources (and risk), we achieved solid business performance in just about all we did."

Julie Tracy
Senior Vice President, Chief Communications Officer
Wright Medical Group

▶ "It's about making decisions and being willing to get in the middle of the action to drive change by thinking and doing things differently. Put yourself out there! If you feel your ability to lead is hindered by lack of positional authority, then read Capt. D. Michael Abrashoff's book, **It's Your Ship**. He broke rules and pioneered new practices in a military hierarchy – if it can be done there, then it's possible in your organization."

Elizabeth Bauer
Vice President, Investor Relations
CSG Systems International

▶ "I believe that leading from the middle means asking the tough questions, coming up with solutions to problems versus just identifying problems, being an advocate for those who are working hard and achieving results, and being a mentor to those who need help to realize their full potential."

Professional Development Calendar

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

January 2013

6-9 Fundamentals of IR seminar, Santa Monica, CA

10 Regulations 101 seminar, Santa Monica, CA

11 Writing Workshop for IR, Santa Monica, CA

14-15 Finance Essentials for Energy IR seminar, Houston, TX

17 The Jobs Act webinar

29 2013 Proxy Season: Get Prepared webinar

February 2013

5 High-Frequency Trading – Why Should IR Care? webinar

19 IR's Role and the Board of Directors webinar

March 2013

12 Dealing with Fixed Income Shareholders webinar

April 2013

23 Engaging the SEC webinar

May 2013

7 Analysts Part I: The Sell-Side webinar

14 Analysts Part II: The Buy-Side webinar

21 Global Money Flows webinar

June 2013

8 Pre-Conference seminars, Hollywood, FL

9-12 NIRI Annual Conference, Hollywood, FL

Allow Integrity to Drive Your Business Decisions

A fundamental approach can win the day.

Are you ethical?

That is the question that kicked off a recent NIRI Dallas/Fort Worth chapter meeting.

"Ask anyone in your office, on the street, or in a boardroom and they'll tell you that they are the most ethical person they know. These are the same people who think they are skinnier than they really are, have more hair than they really do, and are better looking than they deserve credit for. But in many day-to-day decisions they, indeed most of us, can be influenced to veer outside of the lines," said Michael Maslanka, ethics coach and employment lawyer at Constangy Brooks & Smith, LLP in Dallas.

Maslanka was recruited to help chapter members stay on the straight and narrow by sharing the tools and tips from his white paper, "Ten Plus Rules of Ethical Decision Making." While Maslanka often shares the white paper and his lessons within legal circles, this was the first time he shared his lessons with the investor relations community.

Integrity is Key

Maslanka's first piece of advice: Take the word "ethics" out of our vocabulary. Decision makers and their advisors should instead be driven by business integrity, their brand's identity, and their personal honor. He explained that this approach takes everyone back to the fundamentals and shared that, in his more than 30 years of practicing law, he most often sees people get into trouble over something very simple, rather than the complicated issues one might expect. Maslanka used several anecdotes to bring to life several key tips and tools and reminded us that ethics is about the fundamentals, and about doing the little things properly.

His first story demonstrated an important and valuable tool called "prospective hindsight," which is the practice of imagining that an event or decision already has occurred and identifying future outcomes of the event/decision. As an example, Maslanka recounted a conversation with a lawyer who, upon discovering a piece of damning evidence not yet seen by plaintiff's counsel, declared, "This must be destroyed. It's a smoking gun."

In his story, he reminds his colleague of fundamental ethics using the prospective hindsight technique. Maslanka played the scenario out to one potential conclusion. "What if we destroy this document? Our client gets called to testify. He gets asked whether any documents were developed about the issue in question; and he says, 'Yes, but it was destroyed.' What do we do then?" The answer becomes obvious.

Prospective hindsight gave Maslanka an alternative communication approach, reminding his peer about the straight-and-narrow path, versus the ill-conceived notion of destroying evidence. As part of this story, he emphasized to attendees that using prospective hindsight allows professionals to remind versus lecture, which is key in these situations. "Don't be the ethics police," he said. "It's better to avoid lectures when addressing most ethical conundrums."

Allow Sufficient Time

Maslanka's presentation also called attention to several additional factors that can complicate decision making. He urged NIRI members to remember a common saying, "Beware of the greatest enemy of integrity-based decisions: time pressure." Maslanka used the Challenger Space Shuttle disaster to illustrate his point. He explained that the calamity was partially caused when time pressure caused the mantra at NASA's Mission Control to morph from "Can you prove this is safe to launch, because if you can't, we're not" to "Can you show me launching isn't safe, because if you can't, we're launching." The message from this history lesson is painfully clear: Don't let time drive your decision making.

NIRI members clearly benefited from Maslanka's insights on these issues as well as his 30+ years of counseling clients – expertise he shared during an entertaining presentation punctuated by good questions from attendees. In addition to presenting some critically important information, Maslanka reminded chapter members to think in terms of "integrity," use prospective hindsight in decision making, and invest the time necessary to make the right decisions. He shares additional valuable information and insight on his blog, Work Matters (http://www.texaslawyer.typepad.com/work_matters).

*Submitted by **Lee Anne Sexton**, senior director, sales, Global Capital Markets; leeanne.sexton@rrd.com.*

NIRI Professional Development Seminars

- High-Frequency Trading – Why Should IR Care? webinar
  - February 5
- IR's Role and the Board of Directors webinar
  - February 19
- Dealing with Fixed Income Shareholders webinar
  - March 12
- Engaging the SEC webinar
  - April 23
- Analysts Part I: The Sell-Side webinar
  - May 7
- Analysts Part II: The Buy-Side webinar
  - May 14
- Global Money Flows webinar
  - May 21
- Pre-Conference seminars
  - June 8, Hollywood, FL
- NIRI Annual Conference
  - June 9-12, Hollywood, FL

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