

NASDAQ'S BLUEPRINT
FOR MARKET REFORM 16

CEO PAY
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THE NIRI ETHICS
COUNCIL 22

IR UPDATE

THE VOICE OF THE INVESTOR RELATIONS PROFESSION | OCTOBER 2017

CHANGING OF THE GUARD

Will you be ready? **When transitions in C-suite leadership occur, IR professionals have an important role to ensure these changes mean opportunities – and not obstacles – for their companies.**

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About NIRI

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

About IR Update

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New leaders usher in a new era for their companies. IR professionals are key players in communicating the merits of these leaders and what it means for the future of their organizations. **READ MORE ON PAGE 10.**

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Moving From Reimagining to Reinventing NIRI



Valerie Haertel, IRC


NIRI Chair
Global Head of Investor
Relations
BNY Mellon

Last year around this time, we talked about how the NIRI National Board was reimagining NIRI for its next stage of growth while we searched for a new CEO. With a strong leader in place, we have been working to strengthen our foundation and create a strategy to enable growth. We have moved from reimagining NIRI to reinventing our organization one action at a time, setting us on a path to be a stronger partner to you — whether you are seeking to network, share IR best practices, or looking for us to be your advocate in Washington, D.C.

In late September, your Board met and voted to update some of the NIRI bylaws to strengthen our governance structure, ensure we remain inclusive, and create a more nimble and dynamic organization. We have taken many steps to further unify our community of practitioners, counselors, and service providers.

The NIRI Board and our chapter advocacy ambassadors also met with lawmakers and SEC officials to discuss our regulatory priorities. In addition to issues such as 13F and proxy reform, our advocacy agenda includes developing stronger alliances with organizations that have similar views on key issues of importance to members. In this issue, we share a Q&A with Nasdaq CEO Adena Friedman on Nasdaq's blueprint for regulatory reform (see page 16). Also included is an article on what IROs should do to prepare for the CEO pay ratio rule as we plan for the next annual meeting season (see page 18).

Additionally, the Board met with NIRI chapter leaders to make sure our strategy continues to reflect the evolving needs of our members. As we enter the last quarter of 2017, our reinvention work continues as we work hard in the final stretch to share the next phase of our One NIRI strategy with you.

The strength of NIRI has everything to do with your engagement and involvement. Please continue to share your thoughts and consider volunteering your time to make us stronger. Thank you for your continued support. 

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stock trades in a market where fundamentals are often subordinated to robots and computer models. Measuring market behaviors is an essential IR action leading to better decisions about how to spend your time and resources. You can *continue to ignore the passive investment wave, but having no answer when the CEO asks is...awkward.*

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Houston-Based NIRI Members Report On Aftermath of Hurricane Harvey

As *IR Update* went to press, Hurricane Harvey had inundated Houston and Hurricane Irma had just ravaged Florida.

In Houston, K. Darcey Matthews, vice president, investor relations, at NCI Building Systems and president of the NIRI Houston chapter; and Lee M. Ahlstrom, IRC, senior vice president and interim CFO at Paragon Offshore, and a NIRI National Board member, both reported that their companies' operations were up and running, although some of their employees had suffered extensive loss of property.

"We postponed our earnings call for a week because we could not get to a central location," Matthews reported. "Two of our NIRI Houston board members also faced mandatory evacuations. For our company, 1,500 of our 15,000 employees are based in Houston, and everyone knows people who were impacted."

"NIRI National donated to the Red Cross to help our region, and we also appreciate the NIRI New York chapter, which reached out to help us and offered to give to charities. So many people locally volunteered to help. I joined a group called Recovery Houston. Everybody is pulling together nicely and helping neighbors." Matthews also expressed sympathy for the residents of Florida and other states affected by Hurricane Irma.


Ahlstrom said a number of analysts reached out to gather donations to help with flood relief.

"The hurricane was certainly an example of why you need a business continuity and disaster recovery plan," he

cautioned. "Make sure you have what you need to keep business operating. And I'd recommend doing a post-mortem after the event to see if your plan worked the way you thought it would."

He reported that some of his company's employees lost cars, houses, and other property. "One gentleman was left with just nine shirts and three pairs of jeans," he said. "We are offering flexible work schedules and giving people to access to what they need, including gift cards so they can replace some essentials in the short-term."

"It's going to be a long time before Houston gets back on its feet. What we found with the last big storm is that a lot of help shows up quickly, but it is an immense logistical issue to make all the repairs and it takes time." After Tropical Storm Allison went through Houston that dumped nearly as much rain as Harvey in a smaller area, Ahlstrom had friends live with his family for nine months.

"But a disaster like Harvey can build camaraderie," Ahlstrom explained. "People reassess their values and what is important. If you came through it with your life and if you lost 'stuff,' it's sometimes helpful to remember that it's just stuff. I'm not trying to minimize what in some cases are tremendous losses of material goods, but you can always get more stuff. The silver lining is that in the aftermath, people from all walks of life come together and work together and put aside trivial issues that people are fighting over. Helping your neighbor is what's important. It refocuses the whole community to put first things first." 

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Q4

A portrait of Remy Bernarda, a woman with shoulder-length brown hair, smiling. She is wearing a dark blue sleeveless top with a green floral pattern. A small circular IRC logo is pinned to her top on the left side.

**“My motivation was to make
an investment in myself.
The IRC not only gave me the
credential and the validation,
but it helped me become better
in my day-to-day job.”**

Remy Bernarda, IRC
SENIOR VP,
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These upcoming events provide excellent professional development opportunities for NIRI members. Learn more at www.niri.org/full-calendar. IRC™ credential holders can earn up to four professional development units (PDUs) per day for attending. IRC-credentialed volunteers and speakers may also earn PDUs. More information is available at www.niri.org/certification.

NOV

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This course will help you gain a good grounding in all aspects of finance needed for IR and corporate communications. In addition to accounting essentials and how to understand earnings releases, we cover capital markets, the perspectives of your key financial audiences, economics essentials, an overview of valuation, and the concept of shareholder value.

NOV

**NOVEMBER 8
NEW YORK, NY**

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NOV-DEC

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CHANGING OF THE

When transitions in C-suite leadership occur, IR professionals have an important role to ensure these changes mean opportunities – and not obstacles – for their companies.

BY APRYL MOTLEY, CAE

Steve Jobs and Apple were synonymous. And Tim Cook had what many industry observers considered a very unenviable task: succeeding him as CEO of the company in August 2011. Although Cook had served as Apple's chief operating officer since 1998, there was considerable speculation from both analysts and investors about whether he would be up to it.

A June 2014 *New York Times* article ("Tim Cook, Making Apple His Own") cited one analyst who "credit[ed] Mr. Cook as having great skills in operations and in managing the supply chain, which entails getting the raw materials and machinery in place to build things — but not with having the vision to design them." The same article noted investors' concern that the company's sales were so large that "it [couldn't] continue to match the growth that brought it

from \$65 billion in sales in the 2010 fiscal year to \$171 billion in 2013." Six years later, Cook is still being compared to Jobs.

While every company's CEO may not be as iconic as Jobs and his or her departure from the C-suite may not be as dramatic, any transition in executive leadership means significant change. However, IR professionals can strategize effectively to navigate both the challenges and potential opportunities that transitions in the C-suite present.

Let the Transitions Begin

So far this year, several companies have named new CEOs, including AIG, Amtrak, Docker, Ford Motor Company, General Electric, General Mills, Haliburton, Honest Company, and Whirlpool.

During the course of their careers, IROs could be faced with managing one or both of the following leadership transition scenarios.

GUARD WILL YOU BE READY?



Strategic Shift

"A new leader with a new perspective may usher in a new era for a company," said Michael A. Steele, vice president of investor relations at Zebra Technologies Corporation. "IR needs to communicate the merits of this new leader and what he or she brings to the table that is best for the company at that time."

At one point during Steele's tenure at OfficeMax (2007 to 2014), the company brought in a new CEO to drive growth. "This executive had a track record of driving growth at companies," Steele explained. "We introduced him through informal group meetings with our covering sell-side research analysts, which were designed to help people get to know the CEO's background, philosophies, and strengths, but not to unveil strategy." Steele also coordinated personal visits to the company's top 10 shareholders.

Then, almost a year later, the CEO gave a presentation during an investor day, unveiling his new plan for the company's five-year strategy. According to Steele, taking this approach "allowed appropriate time for the new CEO's overall view and full assessment of the company to develop."

Unexpected Exit

One day she was reporting to the CFO and the next to the chairman of the board. The CEO was leaving the company as well. That's the situation with which NIRI Senior Roundtable Member Wendy Wilson was presented mid-way through her career. "The board decided that the strategic direction the CFO and CEO were providing didn't match where they wanted the company to go," she said, "so they voted to terminate both of them."

Once the board's decision was made, Wilson was asked to write a press release in two hours announcing their departure. From there, she turned her attention to working with the chairman of the board, who would serve as acting CEO. "I was very fortunate in that the chairman of the board was Wall Street savvy, shareholder- and media-trained," Wilson recalls. "My first task was to introduce him to our primary investors so that they were assured that the company was moving forward in a way that would both protect and grow their investment."

"The
challenge
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in the minds
of investors,
change
equals risk."

- Katy Herr,
founder
and CEO,
Audacia
Strategies

"We made sure that we got in front of primary shareholders within 10 days of the announcement." The chairman was acting CEO for almost a year, and Wilson stayed with the company through this transition and its subsequent merger with another corporation.

Communicating About the Change

Many people believe Tim Cook's first official email to employees as CEO of Apple was deliberately leaked to the press. Leaked or not, this initial message helped set the strategic tone for how the company's change in CEO might be viewed. In part, the email read as follows: "I want you to be confident that Apple is not going to change. I cherish and celebrate Apple's unique principles and values. Steve built a company and culture that is unlike any other in the world and we are going to stay true to that – it is in our DNA. We are going to continue to make the best products in the world that delight our customers and make our employees incredibly proud of what they do."

IR teams may be charged with crafting messages similar to this one, which offers reassurance about the company's future. According to Katy Herr, founder and CEO of Audacia Strategies, every IR professional should be prepared for a transition in leadership, planned or otherwise. "The challenge for IR when major executive transitions occur, planned or unplanned, is that in the minds of investors, change equals risk," she said. "IR's challenge is determining how best to manage that perceived risk."

"When you bring in a new CEO or CFO, you have one chance to make a first impression," offered Theresa Womble, director of investor relations for Compass Minerals. "The biggest challenge is getting him or her up to speed fast enough on the nuances of the company's historical and financial results."

"You want them to command that knowledge and be able to demonstrate it. Initial meetings with investors will focus on why he or she was selected for the role, so there is a small window where your audience will give you a pass."

“Don’t underestimate the impact of messaging to internal and external audiences, such as investors and consumers,” said Evan Pondel, president of Pondel/Wilkinson Inc. “Why is this person being brought in? Who is reporting to him or her? What operations are being consolidated? Is this a turnaround person? These are the kinds of questions employees, investors, and consumers will have.”

“You have to think about all those points of communication. It’s not just about issuing a press release. The IRO needs to be intimately involved in developing messages for both internal and external audiences.”

Those messages need to accentuate the positive. “The biggest challenge is getting your shareholder base to understand the transition in leadership as an opportunity for them to hold onto stock and possibly buy more,” Wilson said. “One of the keys is already having established relationships with investors. I want my shareholders to call me first before they make any decisions about buying or selling stock.”

From Herr’s perspective, leadership transitions present an opportunity to “revisit key messages and strategies for those stakeholders and get back to basics in terms of communicating the company’s vision and purpose while positioning the new leader as the right person at the right time.”

Preparing to Meet the Street

Once the new executive has arrived, the real work of getting him or her ready for investor meetings begins. “In the initial days, the IRO will be marketing the new leader,” Womble said. “You’ll want to highlight their attributes without any comparison to prior executives.”

“Keep in mind that new leaders will be drinking from a fire hose for the first few months while you’re getting them up to speed. Don’t expect it to happen in one day. Develop a schedule, so they don’t get overwhelmed.”

Herr concurred, “To the extent possible, allow the new executive a little bit of time to have internal meetings and customer meetings before heading to the Street. The IRO can observe the

DO’S AND DON’TS DURING THE TRANSITION

DO

Wilson: “Be accessible immediately to everyone internally and externally.”

Pondel: “Be intimately involved in the communications aspect.”

Herr: “Think about how the new leader fits into the company’s overall strategy.”

Steele: “Introduce the CEO early in his/her tenure when he/she is not expected to provide a full evaluation of the company strategy and financial goals.”

Womble: “Hold a full rehearsal of your first earnings call.”

DON’T

Wilson: “Hide; you have to be out front to maintain your credibility with shareholders and gain it with a new management team.”

Herr: “...panic and go silent. You may not have all answers, but it’s important to say here’s what we know about our transition.”

Steele: “...let him or her lean too far forward in initial interactions with Wall Street. Encourage him or her do a full assessment of the company before making bold promises to the Street.”

Pondel: “Assume the new executive will be receptive to investor meetings.”

Womble: “Wait too long to get new executives to your major investor market.”

leader during these meetings and get a better sense of his or her presentation style.”

“One of the important things is listening to his or her early interactions with your team,” Womble agreed. “If it’s a CEO, there will be a company-wide communication (such as a town hall). Also the

executives that I've worked with have been pretty open about their level of experience: 'I need help with Q&A, for example, but I am good at public speaking.' And I consider it a best practice to bring in trainers for Q&A prep before the first earnings call with a new leader."

Herr cautioned against trying to force him or her into the mold of someone else. "It's uncomfortable for the leader, and investors can see right through it," she said. She also offered these suggestions for making sure initial meetings with investors go more smoothly: "You have to build in additional time for prep and walk him or her through the typical lines of questions from specific investors at certain organizations. Establish internal rules of the road and make sure he or she is comfortable with them."

To be sure, welcoming a new leader to their companies will require adjustment by the IR teams. "Everyone has different styles," Steele observed. "You have to leverage the strengths of that executive. For example, if this person is better in person than on the phone, IR needs to leverage that. And some may be better with the financial media than others."

"I would search online and look at what they have done in the past. If they had a similar role at a prior company, review its website or YouTube [videos] to watch them present to get a better feel for how effective they were and how they active they were."

Pondel noted that the new leader may have a different view of the IR function. "Perhaps, he or she was less active with the Street or had less engagement with investors," he said. "This can pose a challenge if your universe of investors was accustomed to having a close and open relationship with the CFO and/or CEO."

"It's in your best interest to provide the incoming executive with a holistic assessment of previous expectations and what continues to be the expectation for his or her participation in IR. It's really important that the IRO serves as a proxy to the investment community and gives the new executive a good assessment of how the role functions in terms of investors. The IRO

should serve as his or her guide with respect to investor engagement."

"You're really trying to help this person get up to speed. Provide a download on what is going on with respect to IR – where you've been and where you're headed. Schedule a time to sit down and review the IR program. You'll be able to glean pretty quickly how receptive that new executive is to certain aspects of the program. Some may not be amenable to being on the road while others may be. Having a sit-down is an easy way to get to know the new executive and provide guidance."

But what's an IR professional to do if the new-comer is not well-versed in IR or has no desire to be as engaged with investors as his or her predecessor was. "If you don't have that asset in the person who's now managing the company, plan B would be to find other credible people internally that you can use," Wilson said. "Hopefully, in the case of a CEO transition, there's still a CFO with a lot of credibility with the Street. You have to look at the assets that you have and leverage those people."

Leveraging New Leadership

With the arrival of a new person to the C-suite, the IR team should also be on the lookout for the potential opportunities that the transition may present, which requires remaining flexible and optimistic about the new relationship.

"It's a matter of being open and engaged and communicating in a way that shows you're there to assist and be helpful," Pondel said. "It's easy to make assumptions about new leaders. It's really important to manage your own expectations prior to the arrival of a new executive."

"Go into it with a positive outlook," Herr urged. "When you stay positive, that comes across in the rest of your interactions externally and internally. It is always better to be perceived as being open minded and willing to change and adapt."

In fact, Wilson looked back fondly on her experience working with an acting CEO.

"He was able to give me quite a bit of time going on the road to meet with current investors and targeting new ones," she said. "We viewed the

"We viewed
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and sell-side
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well as
increase
share price."

- Wendy Wilson

transition as an opportunity to recruit new investors, and we were able to recruit new shareholders and sell-side analysts as well as increase share price.”


“It’s so important to be flexible enough to establish that new relationship because you never know what will happen next. You have the opportunity to create a great relationship with someone who may be able to help you throughout your career.”

According to Steele, building a relationship with the new executive requires IROs remaining flexible and open-minded in their approach. “Every executive has different strengths and weaknesses,” he said. “You also need to be open-minded to any new ideas he or she brings to the table. The people with the best attitudes are the ones who thrive during times of change. Always believe there’s room for improvement in your investor relations efforts.”

In Pondel’s view, a transition in leadership might be a great opportunity to re-energize an IR program that’s been in place for a while. “Being able to breathe new life into an IR program with a new CFO or CEO is always welcome by the Street,”

he said. “The arrival of a new exec is an inflection point that gives the IRO a chance to reset the IR program and refocus priorities.”

“The IRO now has a clean slate for introducing new ideas that may not have resonated with the previous exec. Generally, you hope the new leader will do as good of a job or better than the outgoing executive that improves the company’s relationship with investors and gives the IRO a chance to augment his or her role.”

This has been true for Womble. “Working with a new leader provides an opportunity for an IRO to demonstrate his or her value to the incumbent,” she said. “For me, it’s been beneficial in demonstrating the value that IR brings to the C-suite. The way I’ve been viewed throughout the organization has grown with each transition because of the historical knowledge that I have and the relationships that I’ve built.” 

APRYL MOTLEY is a freelance writer based in Columbia, Maryland.

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NASDAQ'S BLUEPRINT FOR MARKET REFORM

A Q&A with
Nasdaq's CEO
on revitalizing
the U.S. capital
markets.

BY TED ALLEN



In spring 2017, Nasdaq released a report, “The Promise of Market Reform: Reigniting America’s Economic Engine,” that includes a series of recommendations on market structure, proxy voting and corporate governance, litigation, taxes, and long-termism. The following is an *IR Update* Q&A with Nasdaq President and CEO Adena Friedman. More information on Nasdaq’s blueprint for market reform can be found at www.business.nasdaq.com/revitalize.

What was your inspiration for developing this blueprint?

We are concerned about why companies are avoiding the public markets by either choosing to remain private or abandoning a public listing. The U.S. equities markets have long been dynamic engines for job and wealth creation. However, as good as the U.S. markets perform, they have become more costly for issuers. This is particularly the case for publicly listed small and mid-cap companies and for private companies that might consider public offerings.

Our plan is focused on reestablishing a balance between private and public markets and to ensure that all investors have an opportunity to participate in the growth and success of the great companies in the United States. Moreover, we see that 74 percent of all corporate job creation over the last 16 years

occurred after a company went public. If companies continue to avoid the public markets, it could limit the number of jobs and adversely affect our economy.

The imbalance that exists today is the result of regulation and structural issues that need to be addressed. We want to reassert a balance and make sure that the U.S. equities markets remain robust, accessible and the envy of the world.

Some have argued that U.S. IPOs started to decline before regulations like Sarbanes-Oxley and Dodd-Frank went into effect. What other drivers are preventing companies from tapping the public markets?

It’s the cumulative weight of a host of drivers that are hurting the public company experience. We believe that the path forward

centers in three core areas: modernizing market structure, reshaping the regulatory framework that exists today, and promoting long-term thinking in the markets.

Today's markets have become more fragmented, which has made it harder for smaller companies to access liquidity. We need to create a healthier balance between supply and demand in these smaller growth companies.

Second, it is widely held that the regulatory framework governing our financial markets today is outdated and in some cases, arbitrary. We need to move beyond a one-size-fits-all approach to corporate disclosure requirements and believe that companies of all sizes would benefit from comprehensive proxy voting, litigation, and tax reforms. The complex patchwork of regulation that we have today is adversely affecting market participation.

Third, and finally, we need to promote long-term thinking in our financial markets. There is increased pressure to satisfy short-term investors on a quarterly basis to the detriment of long-term benefits.

For investor relations officers, we believe one solution is to balance short interest transparency. Legitimate short selling contributes to efficient price formation and enhances liquidity. However, the lack of information between investors with long and short positions deprives companies of insights into trading activity and limits their ability to engage with investors. Creating a more level playing field is the critical balance we are advocating.

You highlight in the blueprint Nasdaq's support of dual-class share structures. Can you explain your position on this?

We believe that public companies should have flexibility to determine a class structure that is most appropriate for them, so long as this structure is transparent and disclosed up-front so that investors have complete visibility into the company. Dual-class structures allow investors to invest side-by-side with innovators and high-growth companies, enjoying the financial benefits of these companies' success.

The Nasdaq blueprint highlights how certain unintended consequences of existing market structure is negatively impacting small- and mid-sized public companies. How have listed companies responded?

In general, our clients agree with our view. But more importantly, they welcome the opportunity to be an active participant in the

process and are supportive of the notion of choosing the liquidity profile most suitable for them. Small and medium-size issuers have for years struggled with understanding how their stock is trading. Disproportionate price volatility, in the long run, can impact their ability to attract new investors, raise additional capital, and execute on their long-term plan.

That said, we view a big part of this effort as an educational process. We have appreciated the opportunity to partner with our issuers and bring these important ideas into the mainstream conversation. We will continue to work closely towards a solution that benefits all participants. NIRI can be of great assistance in this education process.


What's in it for IR professionals – and how can they help with this effort?

Having a dialogue is a big part of it. And to that end, we want to hear from investor relations professionals. IROs should understand how the proposals we are offering in the areas like market structure, proxy advisory rules, and the shareholder process are impacting a company's ability to adequately tap the public markets. Not only is our Nasdaq Revitalize website (www.business.nasdaq.com/revitalize) a resource, but we encourage IROs to engage directly with us on these key issues.

What results can market participants – especially investors – expect from the campaign?

Nasdaq has always focused on the creation of a robust ecosystem that supports the efficient access to capital by entrepreneurs and growth companies. When the markets perform as intended with transparency and price discovery and are assessable by all participants, they help create jobs and drive our economy.

America's equity markets attract the deepest and most diverse community of investors and market participants as you'll find anywhere in the world. However, more must be done to ensure they continue to evolve and flourish to benefit all participants involved – and that is the primary focus of our efforts at Nasdaq today.

For more information on Nasdaq's recommendations and other proposals for regulatory reform, please visit the Advocacy Call to Action page on the NIRI website at www.niri.org/advocacy/call-to-action. 

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PREPARING FOR PAY RATIO DISCLOSURE

The CEO pay ratio mandate will present messaging challenges for many companies in 2018.

BY TED ALLEN



More than seven years after the passage of the Dodd-Frank Act, U.S. companies are preparing for one of the law's most controversial and costly provisions – the CEO pay ratio disclosure rule.

The pay ratio mandate will bring significant external and internal messaging challenges for many companies when they disclose their first pay ratios during the 2018 proxy season. The new rule may prove especially daunting for firms in retail, hospitality, and other sectors that have comparably more low-wage employees.

While human resources teams and compensation consultants at many issuers have started the process of collecting salary data and undertaking company-specific determinations to identify the median employee based on compensation, there has been less attention on how to communicate the ratio to investors, employees, and other stakeholders. (For more details on the rule, please see “Pay Ratio 101” on page 20).

“Companies need to approach pay ratio disclosure in a holistic and comprehensive manner,” said David Calusdian, president at Sharon Merrill Associates, who is a NIRI National

Board member. “They need to communicate proactively with key stakeholders, especially employees. Disclosing a ratio and waiting for the fallout can have negative consequences.”

Hala Elsherbini, senior vice president at Halliburton Investor Relations & Communications, said: “Our advice to clients would be to prepare management and the board with potential questions, strategize on responses, and develop a keen focus on employee relations, since the pay ratio rule will likely have implications on employees who may fall under the median threshold.”

“It’s a delicate situation, and there are varying inputs from company to company that could skew the ratio and how that compares to peers,” said Elsherbini, who also is a NIRI Board member.

Don’t Count on Repeal

While the U.S. House of Representatives approved the Financial CHOICE Act, which includes a repeal of the pay ratio mandate, it appears unlikely that this bill will advance in the Senate, where the Republicans hold a narrow 52-to-48 seat majority. Senate Banking Committee Chair Michael Crapo (R-Idaho) has

said he will try to move a narrower reform bill that can attract bipartisan support, but that may not happen until early 2018. Pay ratio disclosure has been a major priority for labor unions and their Democratic allies, so it's uncertain whether a pay ratio repeal bill could win the 60 votes needed in the Senate to overcome an expected filibuster.

Corporate groups have asked the Securities and Exchange Commission to delay or scale back the rule to reduce compliance costs, but it remains to be seen whether the SEC, which still has two commissioner vacancies, will tackle this contentious issue before the 2018 proxy season. [As of press time in mid-September, the SEC had not acted on this issue.]

Chris Wightman, a partner at CamberView Partners, a corporate governance advisory firm, said it's increasingly unlikely that the SEC will block the pay ratio rule this year. "We are advising clients to be prepared," he said.

Investor Concerns

Calusdian said the IR aspect of the pay ratio rule is "relatively straightforward," because many investors have been analyzing compensation data since the arrival of Say-on-Pay votes at U.S. companies in 2011. "From an investor perspective, the support of a CEO's pay is often directly proportional to the company's performance and the returns to investors," Calusdian observes.

The large index fund managers, including Vanguard and BlackRock, have not disclosed publicly how they will evaluate pay ratio disclosures when making proxy voting decisions. "A big question is how will these investors think about pay ratio when it comes to voting on Say-on-Pay or compensation committee members?" Wightman said.

At the same time, he expects that public pension funds and labor investors, which have urged the SEC not to delay this rule, will scrutinize pay ratio disclosures closely. The two major U.S. proxy advisory firms, ISS and Glass Lewis, have not yet released new voting guidelines indicating how they will analyze pay ratio disclosures, but their proxy reports likely will include pay ratios as a data point.

In addition, companies with early spring annual meetings will have a greater challenge in 2018, as they won't know how their ratios compare with most of their industry peers, or whether the ratios are impacting proxy voting by investors.

"There are a lot of unknowns, so companies should be mindful of the potential pitfalls as the compliance date approaches," Wightman said.

Under the SEC rule, companies may include additional pay ratios (e.g., based only on full-time, U.S. employees) or other

information to provide context about its pay practices. In a recent memo to clients, CamberView suggested that companies could provide a ratio based on the CEO's realized compensation (i.e., "take home" pay) or disclose more information about its workforce (such as their geographic locations or the percentage of seasonal or part-time employees).

Elsherbini stressed the importance of tying a company's pay ratio disclosures to its other compensation messaging. "Key message points to investors should include the company's approach to compensation, reiterating its general philosophy on compensation and how this incentivizes and supports its growth and strategic initiatives across its employee base," she noted.

Employees and Other Stakeholders

One of the biggest challenges for companies will be the impact of the pay ratio disclosure on employee morale and retention. Many workers will be surprised to learn that they are getting paid less than the median employee at their company. Calusdian said companies should be prepared to communicate about the ratio and should be already engaging with their workforce.

"Everything is company specific and you need to provide that context to employees before disclosure of the ratio. If you have built up support among employees, then the ratio should become less of an issue," he observed.

CamberView advises companies to consider providing "validating messages" that highlight their approaches to compensation and workforce development. For instance, a company could provide data on job creation efforts or programs to promote the advancement of low-wage employees. "Now is the time for companies to start thinking about how to measure the totality of compensation and benefits beyond cash and equity that aren't captured by the ratio," said David Martin, a principal with CamberView.

Companies also need to be ready for negative news coverage from business press, trade publications, and local news outlets. Journalists likely will focus on the headline number of the pay ratio, rather than assess a company's overall pay practices, and may make inappropriate comparisons with local firms in other sectors with different pay scales.

"Companies should be proactive and prepared to provide context around the sum total of efforts to build, invest, and compensate the entire workforce" said Martin.

In a 2016 commentary in *Forbes*, crisis communications expert Richard Levick warned that "the pay ratio rule will effectively provide critics with a potent new weapon to shame

Pay Ratio 101

The CEO pay ratio disclosure rule was mandated by Section 953(b) of the Dodd-Frank Act, and the Securities and Exchange Commission voted 3-2 to adopt a final rule in 2015. This mandate does not apply to smaller reporting issuers, emerging growth companies, or foreign private issuers.

While many companies have focused on the calculation of the pay ratio, which will prove costly for large or multi-national issuers, the rule will result in significant communication challenges for companies that expect to report higher ratios.

Here are key provisions of the rule:

- Companies must provide pay ratio disclosures for their first fiscal year that starts on or after January 1, 2017, which means that companies with calendar fiscal years will make their first disclosures in their proxy statement during the spring of 2018.
- Under the rule, companies must disclose: 1) the annual total compensation of their CEO; 2) the median of the annual total compensation received by all other employees; and 3) the ratio between those two numbers.
- Notwithstanding comment letters from NIRI and other business groups, the SEC did not exclude part-time, seasonal, or temporary employees from the pay ratio calculation. Independent contractors and leased workers may be excluded, provided that their compensation is set by an independent third party.
- Companies are required to include non-U.S. employees in their calculation, but they may exclude employees who reside in foreign jurisdictions where it would not be feasible to obtain salary information without violating local data privacy laws. In addition, there is a *de minimis* provision that allows companies to omit 5 percent of their foreign employees based on data privacy or any other reason.
- In determining the median employee, companies may select any date within the last three months of their fiscal year.
- Companies may wait three years before calculating a new pay ratio, unless there is a change in its employee population that would result in a significant change in its ratio.
- Companies may use statistical sampling in calculating the pay ratio, but they must disclose their methodology used in calculating that number.
- Companies may provide additional pay ratios or other disclosures beyond the pay ratio required by Section 953(b).

individual companies they see as bad actors. It's like digging your own grave in the hot summer sun."

Another concern for companies will be additional taxes they could face based on their SEC pay ratio disclosures. The city of Portland, Oregon, adopted a 2016 ordinance that would impose a 10 percent surcharge on its business income tax rate for companies that disclose CEO pay ratios that exceed 100 to 1.

Lawmakers in Illinois, Rhode Island, Minnesota, Connecticut, and Massachusetts also have proposed bills to levy new taxes or fees based on pay ratios, according to the law firm of Andrews Kurth.

Opportunity for IR Teams

One silver lining of the pay ratio mandate is that will provide IR professionals an opportunity to provide input and collaborate more closely with legal, the corporate secretary, HR, corporate communications, and senior management as they prepare their company's messaging around this disclosure.

"[Pay ratio] is an IR issue at the very heart of it, but it affects so many other stakeholders and it will enable IR to expand its sphere of influence," Calusdian said. [IR](#)

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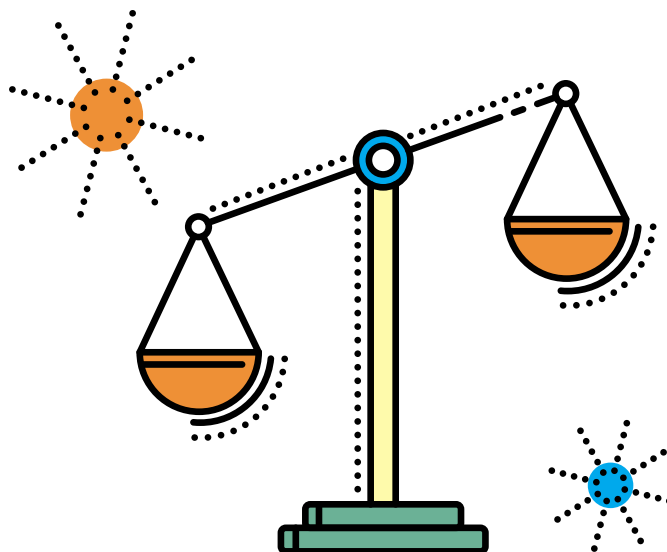
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2018



The NIRI Ethics Council: An Important Member Benefit

BY MARK AARON



The integrity of the capital markets is based on transparency of credible financial and non-financial corporate information, according to the NIRI Code of Ethics published in 2002.

Investor Relations professionals play the key role in ensuring that integrity. As the organization representing the investor relations profession, NIRI strives to advance the highest ethical standards regarding the practice of investor relations, and regarding those who provide related products and services. Members should become familiar with and strive to abide by the NIRI Code of Ethics.

Ethical decisions are often clear and easy to make. At other times such decisions are not as clear-cut or may pose dilemmas or other potential consequences. NIRI offers an important member benefit to help members with ethical questions: The NIRI Ethics Council.


The NIRI Board of Directors established the Ethics Council in 2002 to serve as a resource for the both the NIRI Board and for all NIRI members. The Council serves as a sounding board and mentor to members regarding ethical matters that may arise during their practice – both for investor relations professionals and those providing products and services to the investor relations community.

Comprised of former senior IR practitioners and one service provider, the Council:

- Provides confidential, non-legal advice to NIRI members, assisting members with ethical questions.
- Reaches out to members whose companies may be involved in publicly announced ethical situations.
- Provides advice and counsel to the NIRI Board of Directors

regarding ethical issues, as requested, and recommends appropriate actions the organization may want to evaluate.

- Reviews the NIRI Code of Ethics for Regular Members periodically to ensure that it addresses the evolving needs of the membership and profession.
- Reviews the NIRI Code of Ethics for Associate Members periodically to ensure that it addresses the evolving needs of the membership and profession.
- Assists the IRC program as requested by the NIRI Certification Council and as outlined in the *IRC Policies and Procedures Manual*.
- Provides content on ethics for NIRI publications and education.
- Provides recommendations to the NIRI Board concerning the enforcement of NIRI's Code of Ethics. The NIRI Board will make all final determinations regarding ethical matters.

Of these responsibilities, the first one – to assist members with their ethical questions – is perhaps the most important. NIRI members are welcome to contact me on a confidential basis with any questions. During my tenure as chair of the Council, many members have found that members of the Council have been helpful as they grapple with ethical concerns. We are here to help. Learn more at www.niri.org/membership/code-of-ethics. 

MARK AARON is vice president, investor relations, at Tiffany & Co. and serves as chair of the NIRI Ethics Council; mark.aaron@tiffany.com.

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A black and white photograph of rowers in a boat, with their oars dipping into the water. The image is used as a background for the top half of the advertisement.

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