



INVESTOR AND SHAREHOLDER RELATIONS IN THE CURRENT ECONOMIC CLIMATE BACKGROUND MATERIALS

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I. Issues and Developments Impacting Shareholder Relations

- Weak to poor corporate performance in a global recession and credit crisis
- Institutional shareholders and hedge funds still active even though weakened
- The federal government as shareholder, lender, guarantor and regulator
- Majority voting requirements
- Electronic solicitation of proxies
- Electronic shareholder forums
- Share lending/empty voting/vote buying
- Proxy access

II. Trend of Increased Shareholder Activism

A. Institutional Shareholders

- Institutional shareholders continue to make their views known through:
 - Shareholder proposals
 - Withholding votes for directors
 - Corporate governance ratings

B. Hedge Funds¹

- Estimated hedge fund industry assets at end of 2008 of approximately \$1.8 trillion (down from peak of \$2.9 trillion) on which significant returns are expected
- Although hedge funds saw cash outflow of \$512 billion and performance losses of \$535 billion in 2008, they continue to be active
- Hedge funds have taken on role as investors, not just traders – activism as investment style
- Investment strategies create incentive for hedge funds to be drivers of events at portfolio companies

¹ Statistics in this section from HedgeFund.net.



- Hedge fund activism can take different forms:
 - Challenging management and boards of directors to review business strategy
 - Pursuing increased dividends or stock repurchases or a restructuring, breakup or sale of a company
 - Launching hostile takeovers and proxy contests
 - Blocking a sale transaction to force the acquiror to pay a higher price
- Hedge funds often act in parallel using “wolf pack” tactics
 - Not uncommon for a number of hedge funds to acquire over 50% of a company’s shares
 - Takeover defenses and statutes may not be effective as individual hedge funds often stay below 10%
- Hedge funds and other activists no longer viewed as “raiders” but as “corporate activists” promoting shareholder interests

C. *Federal Government*

- The federal government has taken preferred equity positions in over 300 banks, guaranteed the debt of various financial institutions and lent money to the automotive and other industries
- The federal government is regulating compensation at such companies and has forced company action through public relations
- Reach could expand if use of TARP funds expands beyond the initially targeted industries or if conditions are attached to stimulus package funds

III. Public Company Preparation for Hedge Fund and Other Activist Shareholders

- Maintain a response team and appropriate corporate policies
 - Establish takeover defense team and maintain current contact list
 - Key officers: CEO, CFO, CLO, others
 - Legal counsel
 - Financial advisor
 - Investor relations
 - Proxy solicitor
 - “No comment” and sole spokesperson policies
 - Avoids duty to disclose third party overtures
 - Ensures company speaks with one voice – typically through CEO
 - Scripted responses to different approaches



- Board should be prepared to deal with an activist situation
 - Annual review, including investor relations, takeover defenses, M&A market review, etc., with participation of financial advisor and counsel
 - Board needs to understand strategic plan and potential strategic alternatives
 - Be prepared to call special board meeting on short notice (e.g., 24 hours)
- Although hedge fund attack may be intended to facilitate a takeover or force a sale, takeover defenses of limited use with respect to initial attack
 - Rights plan triggers avoided with hedge fund “wolf pack” tactics
- Investor relations is key
 - Proactively communicate company strategy and explain reasons for any performance shortfall
 - Monitor significant stock holdings and trading
 - Identify potential problematic shareholders
 - Review analysts’ reports for opinions that may appeal to hedge funds
 - Understand alternatives that activists may propose so the company can respond accordingly: share buybacks, special dividends, sale of company/division, spin-off or other restructuring
 - Maintain open communication with institutional shareholders and respond to all shareholder inquiries
 - Watch Regulation FD issues

IV. Public Company Responses to Activist Hedge Fund Approach

- Approaches typically private, but can be public through Schedule 13D
- Assemble response team to determine appropriate response and develop investor relations strategy
- Advise board so it is prepared and call special meeting if appropriate
 - If majority independent directors, no requirement for a special committee
 - Presentations by management, legal counsel and financial advisor
 - Board should be informed of its fiduciary duties
 - Review of all appropriate alternatives
- No duty to disclose unless leak of information by company personnel
- Generally no duties to discuss, negotiate or meet with activist
- Decision of whether to meet with activist made based on case-by-case basis; consider confidentiality and standstill agreement if meeting with activist
- Monitor stock activity and maintain contact with large institutional investors and proxy advisory firms



- Goal to avoid public announcement or “wolf pack” attack that puts company “in play”

V. Shareholder Proposals²

A. Board Matters

- Majority voting
 - Approximately 90 proposals in 2008; vote averaged 50%
 - More than half of the approximately 90 majority-vote proposals were withdrawn
- Separate Board chair and CEO
 - Support climbed 5% in 2008 to 30%
- For 2009, at least 3 proposals that ask firms to reincorporate in North Dakota, where companies are required to provide proxy access, an advisory vote on pay, majority voting in director elections and other shareholder friendly measures

B. Elimination of Takeover Defenses

- Repeal staggered boards
 - 99 proposals in 2008; vote averaged 67% at 76 meetings
 - More than 40 companies targeted in 2007 have agreed to elect all directors annually
- Redeem or vote on shareholder rights plan
 - Only 4 proposals in 2008; vote averaged 50%
 - Approximately 38% of S&P 1,500 companies have active rights plans
- Eliminate supermajority vote
 - Only 12 proposals in 2008; vote averaged 59%
- Right to call special meetings
 - 56 proposals in 2008; vote averaged 45% at 25 companies where results are known

C. Compensation Practices

- “Say on pay” – annual shareholder advisory vote on compensation
 - 69 proposals in 2008; vote averaged 42%

² Statistics in this section from Risk Metrics Group, *2008 Postseason Report Summary, Weathering the Storm: Investors Respond to the Global Credit Crisis* (Updated as of October 16, 2008).



- Pay-for-performance – no bonus unless financial and stock performance exceeds peers
 - Vote averaged 25% in 2008
- Severance / golden parachute
- Clawbacks – if incentive goals not met as a result of later restatement
- Tax payments – “gross ups”

D. *Social Responsibility Issues*

- Average support for all social and environmental proposals was 15% over 179 meetings in 2008
 - Only approximately 31% of vote results have exceeded 20%
 - A record 129 resolutions were withdrawn
- Reducing carbon emissions
 - 6 resolutions requesting concrete goals for reducing carbon emissions with average support of 22%
 - 8 resolutions seeking green house gas emissions reports had average support of 31% with 5 proposals withdrawn and 4 omitted
- Sustainability reporting
 - Average vote approximately 29%; 22 proposals were withdrawn
- Product safety review
- Political contributions
- Human rights and equal employment opportunity