

1

Foley's National Directors Institute Web Conference Series



NDI NATIONAL DIRECTORS INSTITUTE

Moving Your Business Forward: Are You Taking the Right Steps?

Follow Foley | [Twitter](#) @FoleyNDI



©2009 Foley & Lardner LLP

2

Foley's National Directors Institute Web Conference Series

Moving Your Business Forward: Are You Taking the Right Steps?



NDI NATIONAL DIRECTORS INSTITUTE

Investor Relations Issues

February 24, 2010

FOLEY
FOLEY & LARDNER LLP

©2009 Foley & Lardner LLP • Attorney Advertising • Prior results do not guarantee a similar outcome • Models used are not clients but may be representative of clients • 321 N. Clark Street, Suite 2800, Chicago, IL 60654 • 312.832.4500

Housekeeping

- Call **866.493.2825** for technology assistance
- Dial ***0** (star/zero) for audio assistance
- Questions can be entered via the Q&A tab located on your menu bar at the top of your screen. We will address questions at the end of the program.
- We encourage you to maximize the PowerPoint to full screen usage:
 - Hit F5 on your keyboard; or
 - Select “View” from the toolbar menu and click “Full Screen”
- To print a copy of this presentation:
 - Click on the printer icon in the lower right-hand corner
 - Convert the presentation to PDF and print as usual
- Foley will apply for CLE credit after the Web conference. If you did not supply your CLE information upon registration, please e-mail it to jbartz@foley.com

Today's Presenters

- John Wilson, *Foley & Lardner LLP*
- Jeffrey Brown, *Motorola, Inc.*
- Richard Grubaugh, *D.F. King & Co., Inc.*
- Gordon McCoun, *Financial Dynamics*
- John Palmer, *PL Capital LLC*
- Jason M. Wortendyke, *UBS Investment Bank*

Investor Relations Post Financial Crisis

- Improved visibility into future performance
 - Guidance enhances accuracy of investor forecasts and reduces volatility around reporting
 - Now is a good time to reevaluate the form and content of guidance
- Need for information from companies has never been greater
 - The more comprehensive and detailed the better
 - Providing access to management is also key
 - Companies need to regain trust of investors

Investor Relations Post Financial Crisis

- Stock prices have improved, but companies must find ways to differentiate themselves
 - Still volatility in the capital markets and uncertainty as to timing and extent of economic recovery
- Companies should be proactive with communications to avoid cycle of crisis management
- The company's message as part of the annual meeting should be focused on winning over institutional investors/hedge funds

Company Preparation for Activist Shareholders

- Establish response/defense team
- “No comment” and sole spokesperson policies
- Board preparation for activist situation
 - Annual review, including investor relations, takeover defenses, etc., with financial advisor and counsel
 - Understand strategic plan and potential strategic alternatives

Company Preparation for Activist Shareholders

- The battle is won in advance of the conflict
 - Steal the agenda from the activists: understand your operating and governance weaknesses and address them
 - Activists target companies with disaffected shareholders: maintain ongoing communications with key shareholders
- Despite recent market performance, certain companies’ stock continues to be undervalued
 - Follow developments in your shareholder base
 - Proactively communicate the company’s strategy and challenges with investors
 - Listen to their concerns
- Proactive investor relations is key

Current Activist Shareholder Considerations

- Significant market rebound and hedge fund investor redemptions have slowed
 - But, this has encouraged hedge funds to have outward focus
 - Retail investors still “mad as ever”
- NYSE rule barring broker discretionary votes on directors
- Hot button issues for this annual meeting season
 - Compensation issues
 - Majority voting requirements
 - Elimination of takeover defenses

Dealing with the Activist Shareholder

- Public company response
 - Key to assemble team of advisors to determine appropriate response
 - Keep board apprised of material interactions with shareholders
 - No duty to discuss or meet with activist, but determination whether to meet is case-by-case
 - Consider whether management and/or Board should have contact with activist

Dealing with the Activist Shareholder

- Investor relations strategy key to public company response
 - Be proactive ahead of time with traditional institutional shareholders
 - Evaluate benefits of dialog with activist investor
 - If it comes to a hostile contest, use every resource at your command

Questions & Answers

Save the date for upcoming NDI Web Conference Series programs:

- **March 10, 2010**
General Counsel Evolving Trends
- **March 24, 2010**
Nonprofit Corporate Governance
- **April 7, 2010**
Climate Change Update
- **April 21, 2010**
Trends in the Recruitment and
Selection of Directors
- **May 5, 2010**
SEC Enforcement Update
- **May 19, 2010**
M&A in the Boardroom

Visit Foley.com/ndi to register and for more details.

Follow Foley | [Twitter](#) @FoleyNDI

Thank You

- A copy of the PowerPoint presentation and a multimedia recording will be available on our Web site within 2-3 days:
http://www.foley.com/news/event_detail.aspx?eventid=3004
- We welcome your feedback. Please take a few moments before you leave the Web conference today to provide us with your feedback:
<http://www.zoomerang.com/Survey/?p=WEB22AA8WA34XV>