

INVESTOR RELATIONS ISSUES

TOP TAKEAWAYS

1. Issues and Developments Impacting Shareholder Relations

- Strong 2009 stock market performance despite global recession
- Access to credit improved, but limited, especially for smaller and weaker companies
- The federal government as shareholder, lender, guarantor and regulator
- Active foreign governments with potential for international cooperation which could create more unified regulatory regime
- Broker votes barred in uncontested elections
- Majority voting requirements
- Electronic solicitation of proxies
- Proxy access

2. Trend of Increased Shareholder Activism

Institutional Shareholders

- Institutional shareholders continue to make their views known through:
 - Shareholder proposals
 - Withholding votes for directors
 - Corporate governance ratings
 - Direct communication with company directors and executives

Hedge Funds¹

- Estimated hedge fund industry assets at end of 2009 of approximately \$2.0 trillion (up from \$1.8 trillion at end of 2008) on which significant returns are expected
- Hedge funds were up 21% in 2009, which was the best performance since 2003 and second best in ten years.
- 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

Federal Government

- The federal government had taken preferred equity positions in over 300 banks, guaranteed the debt of various financial institutions and lent money to the automotive and other industries, although many of the strongest banks have already purchased the preferred equity back from the government
- Given the what appears to be a deadlocked Congress, the federal government frequently uses public relations to force action
- The federal government continues to regulate compensation at such companies, while other countries have dramatically increased taxes on certain bonuses
- Reach could expand if reform efforts (health care, financial) prove successful or use of TARP funds expands beyond the initially targeted industries as has been proposed

3. 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 (through SEC disclosures, press releases, website disclosures, industry conferences, etc.)
 - 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

4. 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”

5. Shareholder Proposals²

General Considerations

- Of the proposals to go to a vote, 37% received majority support (compared to 31% in 2008) with board declassification, right of investors to call a special meeting and majority voting in director elections receiving the most majority votes
- Proxy fights continue with dissidents having won at least one seat in 22 of 39 proxy contests and negotiated 36 settlements prior to a vote
- While directors were generally elected with broad support, 91 directors at 49 companies failed to receive majority support (compares to 32 directors in 2008), with many of the withhold votes stemming from compensation practices

Compensation Practices

- “Say on pay” – annual shareholder advisory vote on compensation
 - 71 proposals in 2009; vote averaged 46%
- Severance / golden parachute
- Tax payments – “gross ups”
- Executive death benefits
- Retention period for stock awards

Board Matters

- Majority voting
 - Approximately 45 proposals in 2009, which compares to 27 in 2008; vote averaged 56%, up 6% from 2008
- Separate Board chair and CEO
 - Support climbed 6% in 2009 to 36%

Elimination of Takeover Defenses

- Repeal staggered boards
 - 67 proposals in 2009; vote averaged 63%, which is down from 67% in 2008
- Right to call special meetings
 - 56 proposals in 2009; vote averaged 51%
- Eliminate supermajority vote
 - 16 proposals in 2009 vote averaged 70%, which is up from 59% in 2008

² Statistics in this section from Risk Metrics Group, 2009 Postseason Report, *A New Voice in Governance: Global Policymakers Shape the Road to Reform* (Updated as of October 1, 2009).

Social Responsibility Issues

- For first time ever, a proposal concerning greenhouse gas emissions received majority support
- Investors withdrew a record number of social and environmental proposals, frequently after successful negotiations