Article Reprint

Using Your Board to Impress Investors

By Lois Yurow

May 2009

IRupdate

IR Update is published monthly by the National Investor Relations Institute as a service to its members. Annual subscriptions are available to nonmembers: $175. ISSN 1098-5220 Web site: www.niri.org

FOR SUBSCRIPTIONS OR CHANGE OF ADDRESS, CONTACT:
NIRI–*IR Update*, 8020 Towers Crescent Drive, Suite 250, Vienna, VA 22182, Phone: (703) 506-3570, FAX: (703) 506-3571, e-mail: amumeka@niri.org
Annual e-subscriptions for nonmembers: $75

ADVERTISING:
Matt Brusch, VP, Communication, Phone: (703) 506-3574, e-mail: mbrusch@niri.org

PLEASE SEND QUERIES, SUBMISSIONS AND REPRINTS REQUESTS TO:
Melissa Jones, Manager, Marketing Communication, Phone: (703) 462-2207, e-mail: mjones@niri.org.

REPRINT FEES PER ARTICLE:
Electronic copy — Adobe Acrobat PDF file
Authors only: $75, Members: $200, Nonmembers: $300
Web posting or e-mail distribution: $500
Hard copies: Quantity under 10: $10/copy
Quantities 10–100: $5/copy
An estimate will be provided for quantities over 100. All prices are subject to a signed agreement.

Using Your Board To Impress Investors

BY LOIS YUROW

If your company is looking for new ways to impress investors, consider activating a resource that is rarely used for that purpose: the board of directors.

Historically, responsibility for communicating with shareholders has rested primarily with management. However, several recent studies recommend that boards defy that custom, at least in governance matters, and engage more in direct communication with existing and potential shareholders.

Lois Yurow

Over the past few years, many companies have initiated successful exchanges among directors and shareholders. Pfizer's board convened a private meeting with select institutional investors to discuss governance, including compensation issues. Other companies have held town hall or roadshow-type meetings and formed shareholder advisory committees. Stephen Deane, author of a recent RiskMetrics Group report looking at six of these companies, confirmed, "Everyone interviewed—board directors, corporate executives, and investors—all spoke positively about their experiences."

There are various ways your company can facilitate board-shareholder dialogue, and many potential advantages to trying. Of course, as is typical for public companies, there are also some risks.

Forms of board-shareholder interaction

Recent studies by Yale University's Millstein Center for Corporate Governance and Performance and the National Association of Corporate Directors (NACD) offer several ways to encourage board-shareholder dialogue:

- ♦ Hold open meetings to invite shareholder input at times and locations other than the annual meeting.
- ♦ Convene invitation-only meetings with selected investors.
- ♦ Form a shareholder advisory committee to address a specific issue or to serve as a general sounding board.
- ♦ Respond to shareholders' written inquiries and reprint exchanges on the company Web site for investors. (See my December 2007 *Update* article, "Shareholders Will Speak: Is Anyone Listening?")
- ♦ Establish an electronic shareholder forum. (See my April 2008 *Update* article, "What About e-Forums for Your Company.")
- ♦ Make the annual meeting available electronically, offering remote shareholders ways to submit questions. The board should attend the meeting and participate in discussions.
- ♦ Distribute a board-focused annual report to discuss significant issues the board addressed during the year.
- ♦ Add a board blog to your IR Web page.

The right approach will depend in part on who your company wants to reach. So far, boards have directed their efforts primarily at the largest (generally institutional) shareholders. That strategy is understandable: institutional investors are easier to identify, and more likely to care about long-term plans and have the resources to offer valuable insight. And, put bluntly, institutional investors represent more votes.

Targeting institutions is practical, but don't slight individuals. Retail investors could become a more powerful voting force if the SEC approves the NYSE's proposal to eliminate the broker non-vote rule, which currently permits brokers to vote shares they hold in street name as management recommends unless the beneficial owners of those shares deliver contrary instructions. Many large brokerage houses already use proportional voting, meaning a portion of the shares for which the broker hasn't received instructions

are voted in tandem with shares that clients direct, giving each client instruction proportionately more weight. It may not be realistic to invite retail investors to personal meetings, but the board can share information with them, and invite their opinions with an electronic forum or town hall meeting.

Many benefits, but costs as well

A productive board-shareholder dialogue can generate a host of benefits. If you give shareholders an opportunity to air concerns, they may tender fewer proposals for the proxy statement or withdraw existing proposals. Each participant will learn something about the other side's concerns, objectives, and strategy. If your board handles these exchanges well, it can create shareholder trust and goodwill to help the company in stressful times. Finally, the Millstein Center study suggests that shareholders who understand the board's positions will exercise more independent judgment when they vote, rather than deferring to the recommendations of a proxy adviser.

The primary disadvantage of initiating board-shareholder dialogue is cost. If you host an in-person meeting, the board (and its legal counsel and staff) will need time and resources to prepare. Costs will vary, depending on meeting frequency, how many shareholders are invited, and how many topics are covered. Investors also have resource issues (their researchers and trading and governance professionals will need to prepare), which will vary depending on how many portfolio companies they engage.

The law firm Wachtell Lipton Rosen & Katz notes a second potential cost: perceived loss of authority for the company and its management. In the firm's view, "activists . . . use the leverage of a potential proxy contest, negative publicity, shareholder resolutions and other pressure tactics to promote the ongoing, routinized brokering of private deals with companies on governance and other matters. Communication sessions with directors may increasingly be viewed as an entitlement. . . . In addition, this process can . . . undermine the CEO's role as primary spokesperson for the company." Your board must decide, case by case, if investors are taking advantage of the company's outreach.

Some notes of caution

Any IRO who has read this far probably is thinking, "What about Regulation Fair Disclosure? How can my board talk to some investors and exclude others?" The answer, explains the Millstein Center report, is that "Reg FD is a caution, not a barricade." Although the report suggests that the SEC should issue guidance to create a safe harbor for certain discussions, it concludes, "It does not appear to have been the intention of the Commission to restrict private meetings with investors to review governance matters." Indeed, "There has been no hint from regulators that [Pfizer's very public] initiative amounted to a breach in any securities regulation."

Even without the comfort of SEC guidance, boards wanting to meet with investors need not feel hamstrung. Reg FD speaks to sharing of non-public material information—financial or earnings data, or details of an impending transaction. Discussion about corporate governance can avoid those topics. And, many commentators point out, boards can *listen to shareholders* without implicating Reg FD. To minimize risk, counsel should ensure board members understand what they can and cannot say, and explain to shareholders participating in any meeting or electronic forum that the board will discuss certain topics only.

The best way to proceed

The Millstein Center and NACD reports offer advice for boards that want to interact with investors, plus advice for IROs.

Investors look for two qualities in an IRO who tries to facilitate a board-shareholder dialogue. The IRO cannot be seen as representing management (focused primarily on promoting the stock) to the exclusion of the board's interest in governance. The IRO also must also be senior enough to have direct access to the board.

A board wishing to interact with investors should consider the following guidelines:

♦ Commit to having the right people participate. A meeting to discuss executive pay will not be effective unless some compensation committee members (preferably the chair) attend.

♦ Clarify topics and define objectives in advance of any meeting. The NACD report notes that appropriate topics are the sort of things that generate shareholder proposals, such as CEO evaluation and succession, executive compensation, director nominations and elections, strategic direction, and general policy matters (e.g., the environment and human rights). In contrast, boards should refer concerns about things like company products or 10-K disclosure to management.

♦ Invite regular communication. Often companies reach out to shareholders only in times of crisis. If you facilitate ongoing dialogue, shareholders won't wonder what the problem is this time and what you propose to convince them to do (or not do).

Conclusion

During this period of extraordinary uncertainty, IROs know they need to use all the tools at their disposal to ease investor concerns and explain the company's future course. Putting the weight of the board behind that effort by facilitating well-planned board-shareholder dialogue should strengthen your company's relationships with shareholders. IRU

Lois Yurow** practiced corporate and securities law for several years and now helps public companies use plain English principles in their disclosure documents and investor communications. Contact her at **lois@securitieseditor.com