

ARTICLE REPRINT

Stay Tuned
...to the New
Year!
by Hank Boerner

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Stay Tuned . . . to THE NEW YEAR!!



Ahh, what a decade this will be to reflect on when the history of this era is written. Just two years into the 21st century and we have experienced a recession, the collapse of a roaring bull market, the re-emergence of Old Economy investing rules, seemingly endless corporate scandals, the humiliating resignation of the SEC chairman, unprecedented accounting practices reform, state attorney general-enforced dis-assembling of traditional financial research units at leading investment banking houses, passage of the most sweeping securities protection laws in 60 years, and on and on and on.

In 2003, IROs will be inundated with more news, information and gossip about new laws, changes in operating rules of the road, stricter securities/consumer protection regulations, and rigorous enhancements of the codes of conducts for licensed professionals. The long-term effects of Sarbanes-Oxley legislation will hang in the air over most developments in the practice of investor relations. So what is it that you should tune in to in the new year? Here's our checklist:

Stay Tuned to . . . the owners of the enterprise.

Yes, the "owners" really do count. Many of the provisions of S-O, SEC rules now evolving out of the new law, the New York Stock Exchange's pending listed company rules and other formal/official guidelines for corporate behavior center on restoring confidence and trust in the markets. Whose trust? *The shareowners!* There are 100 million Americans who invest on a direct and indirect basis in the equities markets, NIRI President Lou Thompson has made it clear in speeches across the nation — they are upset and angry about the \$7 trillion they have lost in the market over the past three years.

The good news is that IROs can be the Jimminy Crickets of their companies in 2003 by constantly whispering in management's ear: "It's about the shareowners!" Companies can avoid trouble in 2003 by asking, "Are we doing the right thing for the owners?" Regulators will be reminding everyone of the importance of this by issuing proclamations, rulemaking actions, enforcements and directives; here is your chance to get ahead of the events.

Stay Tuned to . . . new sheriffs on the beat. You won't be alone in advancing your internal warnings. S-O has the potential to change the way corporate lawyers do their job. In effect, the new law "federalizes" and deputizes corporate counsel and requires (just *how* depends on the final rules adopted) lawyers to bring certain wrongdoing to the attention of senior corporate officers and if that fails, to the board of directors. S-O fundamentally envisions the lawyer's client as the *shareholder* — not management, not the board.

New cops on the beat could also include whistleblowers. Not only are they afforded greater protection under S-O, but anyone who interferes with them could find themselves facing criminal prosecution as well as civil lawsuits. Board audit committees will be developing rules for hearing the concerns of employees regarding accounting or auditing issues. Some companies are already hiring outside independent private sector inspector generals to handle whispers, a new form of cop-on-the-beat for public corporations.

Stay Tuned to . . . new rules governing boards of director behavior. First, the key word to remember is "independence." Think of this as board mantra: We will

see independence further defined, promoted and enforced, as we move inexorably toward fully independent directorships, with no insiders (save perhaps one executive board member) on many boards. The key board committees — compensation, nominating and audit — will all be comprised of independent directors, with auditing committee members having the greatest responsibilities. We could see companies appointing “lead directors” to counterbalance the CEO. The posts of chairman-president-CEO will likely begin to be distributed among more individuals, with full-time board chairs actually running things in the boardroom and the CEO designated to run the day-to-day affairs.

Audit committee members must be “financially literate,” having prepared financial statements (could be as CEO or CFO of another firm), and conversant with accounting arcana. To that we would add other qualifications: *candor*, to be able to speak freely to the other board members, to management and, if necessary, to regulators and the public about problems; and *courageous*, to be able to stand up to management, the inside auditors, the outside auditors and other board members, when required.

In 2003 companies will likely experience real challenges in recruiting new board members and retaining current directors. Qualified directors will withdraw from some of their board seats to limit liability. On the plus side, we could see more companies recruiting females and minorities to become directors. IROs can be a real help to their companies here by identifying, tracking and helping to recruit outstanding board candidates.

There are many other issues that will be demanding your time and attention in 2003 and beyond: CEO compensation; expensing options; options plans in general; pension fund accounting; non-audit services provided by auditors; GAAP compliance; selective disclosure in the era of real-time disclosure; loans to corporate officers; reporting insider trades; and “fair presentation” of financial results, among the hottest topics.

So welcome to 2003 and the era of enhanced corporate governance. [IRU](#)

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