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OTC Derivatives Rules

Corporate Reputations

Socially Responsible Investment

Shareholder Activism

CORPORATE Finance REVIEW

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HANK BOERNER

TELL ME A STORY: WHAT YOUR COMPANY'S STORY REVEALS—AND WHAT SHAREHOLDER PROXY RESOLUTIONS ARE SAYING

Tell me a story.... Overall, the corporate story is told through strategies adopted, the unique culture formed and cultivated over time, the decisions and actions of board and C-suite, the attitudes and accomplishments of the workforce, the valuations set in capital markets, the perceptions and reputation elements that shaped all of these, and more. *All* of this tells the story of the company for the benefit of investors and a variety of stakeholders.

Storytelling—think of the many investor road shows, quarterly analyst calls, annual meeting presentations; all are about storytelling, primarily but not entirely in financial terms. *The story behind the story* is often of great interest to investors and analysts. The numbers don't always tell the complete story: What is in today's value of what is in the R&D pipeline? What risks does management see that are not being headlined for external stakeholders?

So, to the question: How effective is your company at storytelling? Is it practiced as an art form—or taken for granted that the combination of all things being done will simply tell the story?

As author Stephen Denning describes in his book, *The Leader's Guide to Storytelling—Mastering the Art and Discipline of Business Narrative*, storytelling and leadership are *both* performance arts, and both involve at least as much doing as thinking. (The *doing* is what the storytelling is about.) Denning was director of knowledge management at the World Bank when he wrote his book to help other managers connect the dots linking management of the enterprise with the art of storytelling.

Denning cited the conclusions of three studies that encouraged him to write the book to generate awareness of the power of storytelling—something leaders do every day, even if not consciously.

The statistics he cited:

- Only 10 percent of all publicly traded companies have proved able to sustain a growth trajectory that creates above-average shareholder return for more than a few years;
- Repeated studies indicate that less than 10 percent of major innovations are successful—these are the innovations on which the future is said to depend; and
- M&A activities have a success rate of about 15 percent—in terms of adding value to the acquiring company. Most mergers do not deliver on the "story" (the promised benefits) of why the merger was pursued.

"One has only to look at the business section of the newspapers to see that organizations are chockablock with stories that have massive financial impact," Denning explained. Simple stories can help managers (and stakeholders) envision a different kind of future for the organization.

The business executive operates with a mindset—focused on analysis—and that drives business thinking, Denning explained. Hard facts. The strength of analysis lives in its objectivity, its impersonality, its heartlessness. The weakness? Analysis doesn't offer a route to the heart—and that's where you motivate people to take action, especially during times of transformational change. That's where effective storytelling comes in.[1]

HANK BOERNER *is chairman of Governance & Accountability Institute. He was named to the prestigious 2011 "100 people to watch" roster by the National Association of Corporate Directors and Directorship magazine, the NACD's official publication. Boerner was recognized for his work in promoting the highest standards of corporate governance, said the NACD panel of judges. He is a longtime governance advisor to corporations. Email him at* hboerner@ga-institute.com.

The other story being told

But what about the counter-stories that are also being told—for example, through the actions of activist shareholders exercising their rights to present draft resolutions to the managers of companies in their portfolios, usually to protest a strategy, an action, unintended consequences, or the negative outcome of actions taken? The story told through the language of these resolutions is usually not a favorable narrative, especially in the view of board members and executives. The language can rile up other investors and affect analyst thinking. And generate headlines that are not the kind of story that the company itself wants to tell.

Take the storytelling of proxy activists in the 2012 proxy season just passing its peak (the usual late-spring corporate election season). This was not just about the demands of a few activists (usually but not always coming from the Sustainable and Responsible Investing, or SRI, ranks) but also a growing number of mainstream asset owners and managers expressing their concerns and presenting their demands to management.

This is not usually the type of storytelling that corporate executives favorably react to or manage well in responding. Some companies ban protestors from speaking at all at the Annual Meeting; most usually *pro forma* request a "no action" letter from the Securities & Exchange Commission to prohibit the resolution from being included in the proxy materials.

The year 2012 being a presidential election year, an increasing number of shareholders are requesting—demanding—more information about corporate contributions to political parties and candidates and to special purpose committees set up to influence public policy.

Citizens United changed the game

The U.S. Supreme Court's decision in the matter of *Citizens United v. Federal Election Commission*[2] paved the way for unlimited contributions by corporations under a range of circumstances. The high court ruled that corporations and unions had First Amendment protection—in effect, rules or laws that prohibited independent expenditures by corporations and unions violated their right of free speech. Media commentators and political experts predicted a flood of corporate monies into political campaigns. "Who" received such money and "why" (what public policy or regulation may be involved) is of interest to asset owners and managers. And to shareholder activists.

The managers are asked: What controls or oversight mechanisms are in place in public corporations, and what policies are being pursued (through corporate contributions)? The answers—or lack of—become part of the corporate storytelling as well.

S&P 500 companies and political spending

Looking at the largest U.S. companies and their political activities, the IRRC Institute and the Sustainable Investments Institute produced a study in November 2011 (authored by Heidi Welsh and Robin Young) entitled "Corporate Governance of Political Expenditures: 2011 Benchmark Report on S&P 500 Companies."[3]

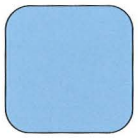
Below are highlights of their findings:

- Board oversight of corporate political spending had increased over the previous year; 31 percent of S&P 500 boards were explicitly charged with oversight.
- Management transparency had grown; in 2011, companies were more transparent than they were in 2010 about political spending.
- More companies were saying "no political spending" to parties, candidates, or political committees.
- More companies prohibited at least direct candidate and political party support.
- Big companies spent the most—the two top-revenue quintile companies accounted for more than US$1 billion in federal and state lobbying activities according to the Center for Responsible Politics and the National Institute on Money and State Politics. IRRC termed this

THE U.S. SUPREME COURT'S DECISION IN THE MATTER OF *CITIZENS UNITED V. FEDERAL ELECTION COMMISSION* PAVED THE WAY FOR UNLIMITED CONTRIBUTIONS BY CORPORATIONS

"after candidates are elected" expenditures.

- Correlation between board oversight and spending intensity was apparent; 151 of the 500 companies with board oversight disburse, on average, 30 percent more than their peers without oversight. "This may give some comfort to investors and others concerned about accountability and transparency," the authors state, "but not to those who think that corporate governance could be used as a lever to reduce [political] spending."



IN THIS SECOND YEAR AFTER THE *CITIZENS UNITED* DECISION, INVESTORS WERE FOCUSED AND TAKING ACTION AS DISCUSSIONS OF CORPORATE MONEY IN CAMPAIGNS INTENSIFIED.

The year 2012 election cycle

By mid-year 2012, at this writing, the peak of the 2011 proxy voting season has passed and presidential campaigning steadily moved to a higher pace, with "super PACs" (political action committees) raising to date more than US$220 million to influence the 2012 election according to Moxy Vote, a shareholder coordinating organization. The total by the time of the November elections could easily double that, pundits are saying.

In this second year after the *Citizens United* decision, investors were focused and taking action as discussions of corporate money in campaigns intensified: There were 109 shareholder-sponsored resolutions in peak proxy season 2012—about one-third of all such ballot initiatives—focused on the demand for more disclosure of corporate political spending.

Said *The Washington Post*: "One of the most polarizing fights over money in politics has been unfolding this spring at annual corporate meetings where shareholders are mounting an intensifying effort to push companies to disclose the money they spend on lobbying and political campaigns."

Countered Tom Donohue, the U.S. Chamber of Commerce president, an organization marshalling corporate monies for public policy initiatives: "This is all about intimidation."[4]

Commenting on the "spring ritual" of the annual corporate voting, *The New York Times* reported on June 8, 2012: "Every spring, corporate chieftains and their boards quash uprisings from a familiar batch of pugnacious investors, a ritual that shields many companies from major change. This proxy season was different. In recent weeks, CEOs and directors have gone up against a more formidable foe than the typical gadfly—the mainstream investor."

Reporters Ben Protess and Katherine Reynolds Lewis focused on the entrance of many more mainstream investors in the spring proxy season—the "awakening of sleeping giants," as they described it. For example: Wal-Mart Stores (NYSE:WMT) is challenged by shareholders about the revelations concerning alleged bribery of Mexico government officials to enable rapid expansion of the retailer in that country. This resulted in four "no" votes for four company directors—something only possible with mainstream asset managers joining their more activist peers in the voting.

Also, at Chesapeake Energy (NYSE:CHK), shareholder votes forced the board to make changes (separating the chair and CEO titles, both formerly held by co-founder Aubrey McClendon). An independent chairman will be recruited. Activist investors Carl Icahn and Southeastern Asset Management will appoint four new members to the nine-person board. Two directors received only 26 percent of the votes cast, and both tendered their resignation. (This was the lowest support of any S&P 500 company in the past five years, according to Institutional Shareholder Services.) Also, 80 percent of votes cast opposed the company's pay practices in a non-binding vote.[5]

The corporate story of political leanings

Think of the story that this shareholder activism tells about a specific company in the spotlight—and the focus on its political, lobbying, and "electoral" activities. Even where a company is being transparent in these matters, shareholders or stakeholders may still raise issues.

In spring 2012, Green Century Funds challenged IBM to disclose all direct and indirect lobbying and political spending

at the company's [April 24] annual meeting. Only 10 percent of the 700 million shares cast were in favor. But the issue is probably not going away: "Shareholders have the right and responsibility to understand how company resources are being spent in efforts to influence both elections and public policy," said John Keenan of the American Federation of State, County and Municipal Employees (AFSCME), who supported the action and has major IBM holdings in portfolio.

Speaking for Green Century, Larisa Ruoff said:

> We commend IBM for its strong policies preventing corporate funds from being used to make political contributions aimed at impacting elections, but without full transparency around its lobbying spending, shareholders are unable to fully determine how the company is engaging in the political process. We are concerned that the company is a member of [the U.S. Chamber of Commerce] that at times actively lobbies for policy positions that run counter to IBM's business.[6]

The health insurance company WellPoint (NYSE) was a target of an aggressive campaign to force disclosure of its political and lobbying expenditures (also including payments to the U.S. Chamber of Commerce). A coalition of investors demanded the resignation of board members including Susan Bayh (wife of former U.S. Senator Birch Bayh). In 2010, WellPoint transferred US$86 million from the health insurance trade association to the U.S. Chamber, which was actively fighting President Barack Obama's healthcare reform initiative, said the coalition. More transparency about such matters is the demand.

Said *The Washington Post*:

> The coalition's efforts to hold specific board members responsible represents a new militancy in the fight to require companies to reveal their political activities. It also foreshadows a concern about the potential for heavy spending by industry and labor groups on health care and other issues in the 2012 election.[7]

In its seasonal wrap-up of this year's corporate engagements, Trillium Asset Management, a Boston-based pioneer in ESG investing with US$1 billion AUM, described its engagements with almost two dozen companies. "A good portion of our dialogues and resolutions resulted in agreements with companies to improve policies and provide more transparency," said CEO Matthew Patsky. "Both are helpful in assessing the environmental, social and governance risks and their financial impact of shareholders."

Trillium's 2011 list of "concerns" included climate change and fossil fuel dependency, indigenous peoples' rights, conflict minerals, discrimination in the workplace, community-level impacts of industrial and energy production, and a free and open Internet. Half of the 2011 engagements focused on environment or environmental health issues.

"Engaged" companies included Costco (NASDAQ:COST); Sysco (NYSE:SYY); Anadarko (NYSE:APC); ATT (NYSE:T); Verizon (NYSE:VZ); and Comcast (CMSCA).

Political spending was of course a focus; Trillium managers noted that "shareholders expressed their deep discomfort with corporate political spending more strongly than ever before." In the spring of 2011, 46 percent of votes cast by Halliburton (NYSE:HAL) shareholders supported Trillium's proposal for greater transparency and oversight, as did 44 percent of the vote at State Street (NYSE:STT). "And for the first time a resolution of this type filed at Sprint Nextel by the NY Employees Retirement System received a majority vote."[8]

Perceptions shaped by shareholder activism

The story being told during the spring 2012 proxy voting season through the language of shareholder resolutions helped to create sharp perceptions that unlimited corporate monies belonging to the shareholders were being funneled directly and indirectly to influence specific candidates, political parties, and, in the end, public policy. On the positive side, the story being told by some companies was of being open and transparent in such matters, with full disclosure of contributions and lobbying expenditures.

The gray area of the story was being sketched by media in the coverage of super PACS and U.S. Chamber of Com-

THE HEALTH INSURANCE COMPANY WELLPOINT (NYSE) WAS A TARGET OF AN AGGRESSIVE CAMPAIGN TO FORCE DISCLOSURE OF ITS POLITICAL AND LOBBYING EXPENDITURES (ALSO INCLUDING PAYMENTS TO THE U.S. CHAMBER OF COMMERCE).

merce campaigns and lobbying efforts funded by large companies to influence public policy. A growing number of large-cap companies received demands from investors and stakeholders that their executives step down from the board of the Chamber (which a few corporate chieftains did do).

In the post-mortem of the 2012 presidential and congressional elections, the story of the role of corporate contributions in the outcomes will be grist for the media and for losing-side candidates and their supporters. That could mean greater demands for "political contribution storytelling" by public companies in the 2013 proxy season. Of course, there will be a new Congress (all House members and one-third of the Senate stand for election) and a re-elected or new president in the White House. The story of corporate political spending will be told and retold in the context of what happens as the new officeholders take their oaths and begin their decision-making early in 2013. ■

NOTES

[1] Denning, S., *The Leader's Guide to Storytelling—Mastering the Art and Discipline of Business Narrative*, New York, Jossey-Bass (2005).

[2] *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010) (January 21, 2010).

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[8] Trillium Asset Management LLC, Seasonal Wrap-up: Trillium's Engagement Highlights (Sept. 14, 2011). Available at www.trilliuminvest.com