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By Hank Boerner

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# STAY TUNED to … 2004 Proxy Season: 'Tis the Season to Be …?

By Hank Boerner

'Tis the season — the proxy season, that is — to be … *cautious and prepared*. As companies and shareholders move inexorably toward the 2004 proxy voting season and the parade of mandatory annual meetings, Stay Tuned for some possible contentious elections and meetings.

For those expecting a return of shareholder pressure in coming contests, *caution* may be the prevalent watchword. Being *prepared* for the coming proxy season could mean expanding career opportunities for the investor relations professional as companies enter the crucible of the testing ground for new proxy rules, mutual fund disclosure rules, renewed shareholder activism and rapidly expanding investor-company communication.

The operating environment for many companies will be distinctly different from that of years past. Elections 2004 will be a clear dividing line between past proxy seasons and processes and the significant changes that begin in this calendar year. Shareholder advocates are high-fiving some of the changes in the proxy environment, feeling the scales tip in their favor — and lessening the ability of companies to reject shareholder proposals, etc.

A number of forces will be shaping proxy season 2004 and those to follow, creating increased pressure for change inside boardrooms and executive suites of some companies, as shareholders exercise "corporate democracy" through their ballots.

Keep your eye on the public employee and union pension funds — and faith-based investor coalitions — as canaries in the coal mine for proxy contests to come. And watch the flow of new and pending rules from the SEC as the agency reacts to public criticism of its "too slow to move" track record.

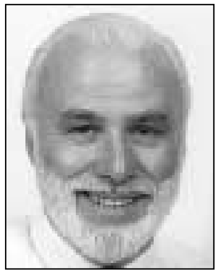
Investor relations professionals could find their careers at a crossroads, with one road heading to greater involvement in corporate affairs and the other a possible dead end. So Stay Tuned to opportunities in 2004 that will help you earn a seat at the management table.

### Stay Tuned to … More Vigilant Institutional Investors

Mutual funds have all kinds of troubles these days. They don't need more headaches! Investor confidence has been shaken by the New York State Attorney General's and SEC's investigations of large fund families and revelations of insider self-dealing at formerly trusted adviser companies. This year, under new rules, those advisers must begin reporting to their shareholders on two key issues: First, their corporate governance voting policies must be clearly communicated — *here is how we will vote the shares we hold in trust for you, and why.*

Then, each year the adviser must tell shareholders *how* the votes were cast for each company held in portfolio. For some large advisers — i.e., Fidelity, Vanguard, American Century — these investments represent hundreds of millions of shares to be voted as a fiduciary duty. Will a fund vote with management on unpopular issues? What if serious challenges are mounted by *other* institutions — California, New York State or other public pension funds — with populist appeals to peer institutions to join the campaign?

Would a fund management organization buck the trend to support management or targeted directors standing for re-election? And what if that mutual fund was targeted by AG Eliot Spitzer and the SEC? No wonder the fund advisers strenuously opposed the new rule!


Hank Boerner

### Stay Tuned to ... the Effect of Holistic Company-Investor Communication

John Wilcox, an investor communication professional with three decades of experience, is vice chairman of Georgeson Shareholder Communications, Inc. Georgeson has been involved in literally thousands of proxy contests as well as ordinary voting campaigns over many years.

Looking at the proxy contests about to begin in spring 2004, Wilcox noted: "Investor relations officers will experience being in an entirely new 'place' that shareholder meetings will occupy in their lives and in the lives of their companies. IROs will need to play a major role in determining how disclosures are handled under new SEC rules, for example.

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*— John Wilcox, Georgeson Shareholder Communications, Inc.*

"Boards will now have specific disclosure responsibilities, and direct communication with shareholders will begin," Wilcox continued. "What does this mean? How will board-investor communications work? We will soon be seeing more investor relations functions at the board level. That is, the more traditional IR role, and not necessarily the legalistic views that previously prevailed in the boardroom, with corporate secretaries at the center of activities. As investor-company communication expands, a more holistic type of communication is needed. I see this as a major opportunity for the IRO beginning this year."

### Stay Tuned to ... Direct Nominations of Directors by Investors

Pending SEC rule changes *could* open the door for direct nomination of candidates for board seats. This will be a complicated process, perhaps beginning this spring *(if* the commission moves rapidly to approve), with convolutions and contortions necessary at the start to achieve just one nomination on the company proxy in 2005 or beyond. But the door will be cracked open by the new rules, just as they were in 1992 when the commission made investor-to-investor communication less cumbersome and more effective. As for disclosure to come, think Reg FD on steroids for some companies.

The SEC's pending rule would allow holders of 5 percent (or more) of a company for up to a certain period of time to offer one nominee as a board candidate on the company proxy, after a "triggering event" demonstrated widespread shareholder dissatisfaction.

### Stay Tuned to ... Perennial Corporate Governance Issues

In some conversations at NIRI and other association meetings, we've heard the comment that corporate governance "may be fading" as a front-of-mind issue for corporations and institutional and individual investors. Don't bet on it!

As an example of what may be in store for companies, watch the actions of the coalition of four big public pension funds as they set out to sponsor a shareholder resolution to change the board of Marsh & McLennan Companies (parent of Putnam Investments, the large mutual fund adviser). The funds — California Public Employees Retirement System, New York State Common Fund, AFSCME Employee Pension Plan and California State Teachers' Retirement System — said they intend to seek access to Marsh & McLennan's proxy process to nominate and elect independent directors (providing, of course, that SEC issues its new rules governing shareholder access to proxies in time for the 2004 contest).

In the traditional "Wall Street walk" method of voting (with their walking shoes), 11 state pension funds — including those in Vermont and Massachusetts — pulled their investments out of Putnam, part of a $30+ billion outflow of the Marsh & McLennan fund complex after Spitzer began his investigation of Putnam staff trading practices.

"Marsh & McLennan deserves to be the first company in U.S. history to face a binding proxy access proposal because of its gross failure to have proper controls that could have prevented the Putnam [mutual funds] disaster," said Gerald McEntee, chairman of the AFSCME union pension fund.

At a January news conference, Spitzer, California State Treasurer Phil Angelides, North Carolina Treasurer Richard Moore and New York Comptroller Alan Hevesi announced the formation of the "Mutual Fund Protection Principles," a coordinated effort to force reforms on the $7 trillion mutual fund industry, including more disclosure of management fees and costs. These officials control $400 billion in assets and influence other state officers managing hundreds of billions more.

Watch for these and other public officials to focus on their investments in corporations in 2004 and beyond, and to become more prominent players in expanding proxy contests for underperforming companies, and those with "errant managers" in the laser-beam focus of prosecutors, both state and federal.

### Stay Tuned to ... Shareholder Issues

CEO compensation is shaping up to be a biggie for 2004. Charles Elson, a corporate governance expert who heads the Woolard Chair in Corporate Governance at the University of Delaware, is a battle-tested veteran of proxy wars. The big proxy contest issues for 2004?

"The No. 1 issue for many companies will be executive compensation," Elson told us. "We will see options fading and a shift to restricted stock for senior officers. There will be truly independent committees of the board, and some could pose challenges to CEOs as they act more independently. The issues of severance pay, parachutes and other practices of the past will be addressed by resolutions from within the companies and especially from outside.

"As for issue No. 2, we will see more focus on board candidates and board independence, beginning in the 2004 elections. Investors are posing serious questions now about board elections. Who are the nominees? What are their qualifications? What will their mandates be if elected? What will their disclosure policies be? With the New York Stock Exchange rules now in place," Elson stressed, "there is going to be heightened investor focus on various issues, especially compensation plans, board qualification and matters of independence. The place where all this plays out is in the annual meeting, elections and proxy voting."

One bellwether investor for you to watch is CalPERS, the large California employee pension fund. Since the 1987 proxy season, the fund has maintained a "Focus List" selecting the lowest-performing companies for attention. If changes are not forthcoming, the list is made public, and proxy resolutions can be filed. (The 2003 public list included Gemstar, JDS Uniphase, Xerox and others. The boards of dozens more companies were visited by CalPERS to discuss shortcomings.)

CalPERS looks at three areas of performance: (1) shareholder returns; (2) EVA™ (Economic Value-Added); and (3) corporate governance practices. Check out www.calpers-governance.org/alert/selection/default.asp to educate yourself on this important approach that influences many other institutional investors before the 2004 proxy season gets much longer in the tooth. IRU

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*Hank Boerner is managing director-NY of Rowan & Blewitt, where he provides corporate governance and accountability counsel to public companies. The views expressed are his own. He can be reached at hank@pb.net.*