The Activist Investor, Redefined
December 2, 2008 4-5 p.m. ET

Moderator:
Linda Y. Kelleher
Executive Vice President
National Investor Relations Institute
Today’s Panelists

Barry H. Genkin
Partner and Chair, Business Department
Blank Rome LLP, Philadelphia, PA

Waheed Hassan, CFA
Team Lead
Risk Metrics Group, Rockville, MD

Damien J. Park
President and CEO
Hedge Fund Solutions, LLC, Erdenheim, PA

Paul Schulman
Executive Managing Director
The Altman Group, Inc., Lyndhurst, NJ
NIRI IR advisor

Shifts in Hedge Fund Activism and Implications for Investor Relations Officers

http://www.niri.org/mem_service_area/iradvisor/adv081103.cfm
The Activist Shareholder, Redefined

Paul Schulman
Executive Managing Director
The Altman Group, Inc.
The New Activism – An Overview

Where is all the activism coming from?

- Hedge funds
  - Incentive
  - Concentration of holdings
  - Aggressive culture
  - Success breeds imitation

- Mutual Funds / Vanilla Institutions
  - Rarely take lead in activism
  - Less “squeamishness” in supporting hedge funds

- Pension funds
  - Shareholder proposals

- Private equity funds
Hedge Fund Engagement Process

- Hedge fund activist typically holds 5% – 10%
  - Shareholding profile
  - Other hedge funds

- Aggressive approach
  - Need to be responsive
  - Public criticism 13D filings / press release
  - Monitor changes in shareholder base (shift to hedge funds)
  - Voting tendencies (Where is your support?)

- Proxy Contest
  - Short slate vs. control

- Settlement
  - Considerations for settlement
  - A victory for activist
Activism Takes on a Variety of Forms

- Governance Activism
  - Corporate Governance issues
  - Executive Compensation
  - Environmental

- Transactional Activism

- Balance Sheet Activism

- Operational Activism
Activism Case Study - CSX

- Hedge funds TCI / 3G
- Background of engagement
- Legal battle over holdings
  - Equity swaps / beneficial ownership
  - 13D group violation
  - Court’s ruling regarding votability of the shares
- Detailed case by dissidents
  - 79 page white paper
- Intensity of solicitation campaign
- Results
  - Proxy tabulation challenge
Activism Case Study – Yahoo!

• Activist – Carl Icahn

• Background of engagement
  – Microsoft offer
  – Icahn purchases

• Proxy Contest launched

• Settlement

• Current Situation
Activist Hedge Fund Database

- Joint project with NIRI and ASCSGP
- Database of activist hedge funds
- Interactive database of most active funds
  - Background of most active hedge funds
  - History of activism
  - Detail on each case
- Portal with links to research, articles
- Blog to share information between IROs
SHAREHOLDER ACTIVISM
The Outlook For Activist Investing in 2009

Damien J. Park
President and CEO
Hedge Fund Solutions, LLC, Erdenheim, PA
THE PLAYERS | Shareholder Activist Matrix

Demand

2004 - 2007

2008 - 2009

Style

Pure

Reluctant

Constructive

Governance  Operations  Transactional  Financial

BREEDEN PARTNERS

BARRINGTON

RAMIUS CAPITAL GROUP, LLC

CITADEL

SHAMROCK HOLDINGS

Clinton Group

Bulldog Investors

D.E. Shaw & CO

STEEL PARTNERS

GREENLIGHT CAPITAL INC.

OLIVER PRESS PARTNERS, LLC

The Children's Investment Fund

JANA
More Recent Activist Investment Trends

- Redemptions have become a catalyst for investment decisions
- Portfolio rebalancing
- Leaving boards
- Instigating buybacks
  - Privately negotiated
  - SEC Rule 10b-18
- Liquidations causing downward pressure on stocks
- Going-to-cash
  - Moving into cash and cash-rich companies
- Hostile offers
Factors Driving Activism Into 2009 & Beyond

- Extremely Low Valuations
  1 in 10 companies trading below cash
  Trading at very low PE multiples
- Major Discontinuities
  Macroeconomic
  Structural (i.e. Banking)
  Government intervention
  Change in political landscape
- Special Situations Funds
  Distressed
  Financial
- Emergence of Private Equity – Public Equity Hybrids
Hedge Fund Activism
The Duties of the Board in the New Age of Activist Shareholders

Barry H. Genkin
Partner and Chair, Business Department
Blank Rome LLP, Philadelphia, PA
Strategy – From the Viewpoint of the Insurgent

- Knows company
- Has been an investor for a while
- Recognizes company undervalued
- Has done a vulnerability analysis
- Has a game plan in mind
- Believes he can be successful (or is a great card player)
- Will not easily go away
Strategy – From the Viewpoint of the Insurgent (Cont’d.)

• Will operate in stealth mode as long as possible (13D loophole for swaps)
• Has likely left a trail of warning signs
• Has spoken to others (institutional investors) who may share his views
• Willing to commit time and financial resources to the cause
• Likely has a track record of having done this before
• Understands benefits of e proxy rules
Strategy – From Target’s Viewpoint

- Know thine enemy (do your homework)
- Be vigilant to warning signs
- Be realistic (don’t put on blinders or be in denial)
- Be prepared, be organized and have a strategy
- Know your vulnerabilities
- Fine tune strategic plan
Strategy – From Target’s Viewpoint

• Understand your shareholder base and monitor stock movements
• Be alert to communications from Hedge Funds
• Have a Plan A, B and C
• Maximize communication opportunities with RiskMetrics Inc. (ISS)
• The best defense is a good offense
• Be nimble - ready to turn on a dime
Strategy – From Target’s Viewpoint (Cont’d.)

- Recognize time is not your friend
- Commit necessary time and resources early on
- Get support of Board/management early on
- Keep Board (or Committee) up to speed – communicate regularly
- Don’t take eye off running the business
- Have your team ready to hit the ground running
- Consider pre-emptive communication plan
- Managing pressure to settle
The Investor View of Activism

Waheed Hassan, CFA
Team Lead
Risk Metrics Group, Rockville, MD
Question 1: Is change warranted?
- Share price performance
- Financial performance
- Valuation
- Governance

Question 2: Can dissidents effect change?
- Majority vs. minority board representation
- Dissident vs. management nominees background
- Dissidents vs. management plan
RiskMetrics is recommending in favor of a smaller percentage of activist slates, while ...

**RMG Vote Recs**

- **2007 Full Year**
  - RMG Rec All Dissident: 7
  - RMG Rec Partial Dissident: 15
  - RMG Rec Against Dissident: 8

- **2007 YTD**
  - RMG Rec All Dissident: 6
  - RMG Rec Partial Dissident: 10
  - RMG Rec Against Dissident: 7

- **2008 YTD**
  - RMG Rec All Dissident: 5
  - RMG Rec Partial Dissident: 10
  - RMG Rec Against Dissident: 18

Source: RMG data. YTD through Aug. 29, 2008.
... shareholders continue to support dissidents at the roughly same rate.

Vote Results

Source: RMG data. YTD through Aug. 29, 2008.
Given the high activist batting average, it’s not surprising that many targets have agreed to settle.

“Settlement Fever”

Source: RMG data. YTD through Aug. 29 2008.
If settlements are activist “wins,” then the activist batting average is extremely formidable.

Ask a Question
During the live event only
December 2, 2008 4:00 – 5:00 p.m ET

- On the Telephone – follow the operator’s instructions
- On your computer – click on the “Questions” link on your screen

Telephone access provided by In Comm
Replay Options

Replay via telephone until midnight on 12/16/08 (Eastern time). Call 877-660-6853 (USA) or 201-612-7415 (International). The account number is 286 and the conference I.D. is 305165

View this forum on the web until 5/31/09 by going to the e-learning on demand web page:

http://www.niri.org/pro_develop/elearning/elearn.cfm

Webcast provided by VCall, a service of Precision IR
Schedule of e-learning events

- The topic for NIRI’s next live e-learning event is “IR On the Offense” on December 16, 2008.
- If you miss the live event, all e-learning webcasts are archived for six months at: [http://www.niri.org/pro_develop/elearning/elearn.cfm](http://www.niri.org/pro_develop/elearning/elearn.cfm)