

INCREASING SHAREHOLDER ACTIVISM UNDERScores NEED FOR FORMAL INVESTOR RELATIONS GUIDELINES

By Ron MacInnes,
President

With shareholder activism and regulatory scrutiny on the rise, companies need to establish formal investor relations guidelines to govern their efforts and avoid potential problems in the marketplace.

Yet many companies are so busy running their day-to-day business that they feel they don't have time to draft a formal program.

At the MacInnes Communications Group, we counsel clients to make the time. It is important. It could save your company from a wide range of legal and regulatory problems in future.

Start by thoroughly reviewing the relevance and effectiveness of all the investor relations practices currently in force at your company. Often, public companies develop and implement their investor relations programs on a piecemeal basis without any overall plan or analysis of their longer term investor relations objectives. We find that many of these practices are then perpetuated even as circumstances change and their effectiveness wanes.

For these reasons, it is helpful for senior management to meet at least once a year around the time of the issuance of the annual report to decide specifically what the company's investor relations practices will be going forward. At this point all practices currently in force should again be reviewed against the objectives set for them when they were originally introduced. Those that are no longer relevant should be discarded. Those which are relevant but not effective should be revised so they can accomplish the company's objectives.

It is often worthwhile to reassess investor relations policies more frequently if the company finds it is entering a riskier environment because of product or market issues.

Whenever the reassessment takes place, there is great value in having the investor relations guidelines written down so every manager who will be in contact with the investment community or the media understands the policies which should guide them when they are speaking about the company and its performance. The value of written investor relations policy is that it

increases the odds that you will do what management has decided the company should do and it provides a benchmark against which actual practices can be measured.

The critical question then is who should be authorized to speak to the Street?

Basically, the more narrowly restricted the group that can communicate with analysts and investors, the less likely it is that your investor relations practices will get you into trouble.

Start by defining the group that has investor relations authority -- including restricted authority to address specific topics -- and include those restrictions in your written policy.

In my experience, many companies limit contact with analysts to the Investor Relations Vice President, the CEO, and the CFO. If someone else must meet with analysts because of the specific nature of the questions the analyst is seeking answers to, the Investor Relations Vice President should be present during the meeting to prevent deviations from the policy; to limit discussion of topics the company is not prepared to speak about, and to stay current on senior management thinking on specific issues.

To make sure only the information your company is willing to discuss gets discussed, the Investor Relations Vice President should prepare scripts and questions and answers for investor presentations and then discourage off-the-cuff comments.

At some point, your company will be asked to comment on draft analyst reports and revenue and earnings models. Newly public companies with little coverage may feel they must comment, while larger, more established corporations often feel they can reduce their securities exposure by declining to review reports.

Those who decide to comment should restrict their remarks to topics which are consistent with their investor relations guidelines. If, for example, it is your policy not to comment on analysts estimates in a meeting or during a phone call, then you should not deviate from that policy by commenting on EPS estimates in a draft report.

In my experience, many companies like to restrict their input to correcting factual errors in a draft report while declining to comment on forward-looking projections.

Once the analyst's report is published, the question becomes: Should we distribute copies to investors?

The easiest way to avoid any perception that you have adopted an analyst's projections by distributing copies of his or her reports is simply not to distribute reports at all. However, if your company is committed to sending out copies of analyst reports, consider including a disclaimer noting that you are providing the report as a service and that you don't necessarily agree with the contents.

And above all, if you are going to distribute analyst reports, be fair and consistent, don't just send out the positive ones.

Another essential element of the investor relations function -- and one increasingly favored by companies -- is the post-earnings-release conference call.

Most companies issue earnings releases after the market has closed and then follow up, that afternoon, with an analysts' conference call to discuss the results, putting more context around the numbers than is feasible in a press release.

Conference calls are more efficient use of management's time and minimize the risks of selective disclosure that accompany individual analyst calls.

The conference call should be scripted and include answers to any potential questions that might be asked by analysts. A word of warning: Dream up the worst possible things an analyst could ask you and then prepare answers to those questions. Nothing undermines management credibility faster than to be seen fumbling for answers to dirty questions – questions management should have anticipated and prepared for in advance.

And above all, don't say anything during an analysts' conference call that you would not like to see in tomorrow's newspaper.

Finally, consider how much guidance to give the Street.

Generally, you should only provide guidance which has a reasonable, good-faith basis. Many companies like to temper this kind of information with a review of important factors that could cause actual results to differ materially from their original projections.

And, of course, if your internal projections change substantially once you have provided guidance to the Street, you should consider if you should contact analysts with an update.

28 SPRINGWOOD CRESCENT, MARKHAM, ONTARIO L3R 3Z9
TEL: 905.479.6333 FAX: 905.479.8506
WWW.MACCOMGROUP.COM

MAC COM

MacInnes Communications Group Inc.