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INVESTOR RELATIONS®
YOUR INDEPENDENT ADVISOR ON STRATEGY AND TACTICS

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KENNEDY INFORMATION

Companies Go Beyond Sarbanes-Oxley Requirements

Executive officers and directors at Fidelity National Financial, Inc., a Fortune 500 company, decided to repay loans the company made to them. The company, based in Irvine, California, provides its customers with title insurance and real estate related products and services.

This is an example of how some companies are assessing the current climate and going beyond the requirements of the Sarbanes-Oxley Act.

"We didn't need to do it, but with all that has gone on, it takes one thing off the table that someone could view as problematic," Daniel Murphy, Senior VP of finance and investor relations at Fidelity National Financial tells this newsletter.

About $6.5 million of outstanding loans were repaid, and no future loans will be granted under either of the company's loan programs. The executives sat down and decided how to do it. Some sold their stock options, explains Murphy. Once the loans were paid off, the company put out a press release.

> *"We didn't need to do it, but with all that has gone on, it takes one thing off the table that someone could view as problematic."*
>
> *– Daniel Murphy, Senior VP of Finance and Investor Relations, Fidelity National Financial, Inc.*

The release quotes Chairman and Chief Executive Officer William P. Foley, II who says, "While the Sarbanes-Oxley Act does not explicitly require our executive officers and directors to repay these existing loans, we felt that it was the proper thing to do in comply-

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Accelerated Earnings Releases Give IR a Competitive Edge

Accelerating earnings releases will not only put companies in compliance with new requirements of the Sarbanes-Oxley Act, but swift reporting will improve relations with the Street.

"Our research suggests that there is a correlation between speed of earnings releases and the premium for the stock price paid for that company," says Dan Weinfurter, president and CEO of Parson Consulting, a firm that assists companies in streamlining their financial accounting systems.

Knowing Your Numbers

"The sooner you know your numbers, the more quickly you can act on them," Weinfurter tells *Investor Relations Newsletter*. "It makes intuitive sense that if you can get this done quickly with minimal problems, it says favorable things about your overall ability to run your company."

Parson Consulting's research consisted of looking at the earnings release date and the earnings filing date for every company in the S&P 500 and comparing it to their price/earnings ratios. For UK companies, the consulting firm did the same, and there was an even stronger premium for companies that were able to release earnings in a timely fashion, reports Parson Consulting.

SEC Filing of Earnings Releases

Industry	*Average Time*
Finance	43 days
Insurance	43 days
Chemical	43 days
Energy	43 days
Utility	43 days
Consumer	40 days
Industrial	40 days
Defense	40 days

Source: *Parson Consulting*

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CEO Pay Matches Performance

In a sagging economy, it may be heartening for investors to know that according to a survey by Watson Wyatt Worldwide, CEO compensation in the form of stock options is matching company performance. As a group, CEOs at low-performing companies saw the value of their stock options plunge by nearly $8 billion.

CEOs at companies with one-year total returns to shareholders above the median saw the value of their stock options more than double to $5.1 million, while CEOs at low-performing companies experienced a 66.5% drop in the median value of their stock options – from $12 million to $4 million.

A View of The Street

Surprisingly, a Harris Interactive poll of what the general public thinks of the people who work on the Street isn't as bad as expected. "The good news is that the bad news isn't that bad!" says Humphrey Taylor, chairman of the Harris Poll, Harris Interactive.

With the evidence of dishonesty, the expectation was that Wall Street's image would have taken a bigger hit.

When asked whether Wall Street benefits the country, the following were the responses in percentages over the years:

	1996	1997	1998	1999	2000	2002
Benefits	70	80	73	72	69	66
Harms	22	13	19	15	16	24
Neither	1	2	2	3	2	3
Don't know	7	5	6	10	13	7

The words, "Wall Street," are used to describe the nation's largest banks, investment banks, stockbrokers and other financial institutions.

The Name Game

A record number of U.S. companies – 87% introduced a new name for a product, service, company or division during the last two years. A survey of 600 U.S. firms with more than 200 employees was conducted by Rivkin & Associates Inc., Glen Rock, New Jersey. "This is the highest percentage of new name introductions we've seen in 12 years of doing the survey," says Steve Rivkin, who founded the marketing and communications consulting firms.

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Do More With Less: New Internet Technology Improves Conference Calls

The challenge for most IROs today is doing more with less – providing more disclosure and accessibility with a smaller budget.

As travel becomes less convenient and more expensive, investors clamor for more frequent and timely information, and companies look to reduce expenses, the trend is toward more use of the Internet to get a company's message out, says David Rosenberg, Executive Vice President, Sales and Marketing at Genesys Conferencing, the global conferencing specialist.

More Options

It is unlikely that conferences using the Internet would ever completely substitute for face- to-face meetings, Rosenberg tells *Investor Relations Newsletter*. But as new technology offers more options, IROs need to evaluate what will work most effectively for them in the future. One option is using a meeting center. The accompanying box shows hypothetical costs for meeting with 15 participants online.

Phone Plus Internet

Historically, audio conferences, and blast faxing have been used to get the messages out to as many people as possible. Now companies are making more use of the Internet for their calls.

For example, when a company has its earnings conference call, participants can access the meeting by dialing the audio phone number. At the same time, participants can use the Internet to view information during the call. They go to a Web site and enter a code.

During the presentation, the speaker may say to the audience, "now lets go to exhibit C," and the audience can call up exhibit C. That exhibit could be, for instance, a spread sheet, a slide, a text document, or a streaming video. Integration with the Web allows IROs to share more information with a broad audience.

Convenience

From the audience's perspective, they just need a phone and a PC. This enables them more conveniently to gain greater insight into the operations of the organization, points out Rosenberg.

Without Web integration, participants or their assistants could be standing by a fax machine waiting for a blast fax of perhaps 20 pages that might look like a Power Point summary. Or, participants could be at the mercy of the mail room to deliver the fax.

With a Web-integrated call, all the information is available online and managed by the vendor. The system works for an earnings announcement, a company announcement, a new product launch – anything that an IRO would want to communicate.

Point, Click and Meet

Currently, the traditional audio conference coupled with a Power Point slide presentation is the most commonly used tool, but IROs are moving toward full integration on the Internet where users can point, click and meet, says Rosenberg.

Evaluate Meeting Needs

IROs need to think seriously about the following:

- How many road shows are necessary?
- Is the frequency of road shows compromising other areas of productivity?
- What are investors and analysts looking for? They obviously want further disclosure, but do they want more face-to-face time? Are they looking for more quality time that can be achieved through the Internet?

The costs would have to be weighed against the specific requirements for the calls. For example, adding some Internet capabilities to a typical $750 audio conference for a reasonably sized audience would probably double the cost to $1,500, says Rosenberg. But that $1,500 needs to be assessed against what you would have to do to achieve a similar result in communicating the message. It's probably a fraction of that cost, he points out.

Hypothetical Costs

Five-Week Road Show		*Web-Based Conferencing*
Airfare for three executives	$22,000	$40 per month for use of a Genesys meeting center with unlimited number of meetings
Lodging, meals, car rental	18,000	
Total:	$40,000	$480 a year, plus audio charges

Source: *Genesys Conferencing*

There are hard and soft costs, he says. "Conferencing helps make CEOs and CFOs more accessible and more spontaneous. Integration takes you to another level of sharing content," says Rosenberg.

An integrated Internet conference call is less expensive for a company than a road show. But the question ultimately becomes: Is it really what your audience is looking for? Do they need face-to-face meetings as often? Instead of traveling, your institutional shareholders and your buy and sell analysts can come to an event literally using their desktops in their offices – that is something that will be beneficial, says Rosenberg.

Anatomy of a Proxy Fight: Dealing With an Activist Shareholder

C. Robert Coates doesn't like the management effort at Northfield Laboratories – and he owns 5% of the shares. On two occasions, Coates has tried to do something about it.

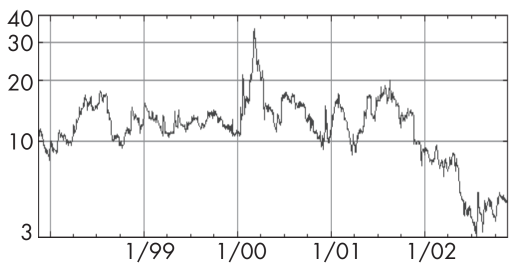
Winning Investors to His Side

Coates began by inspiring investor anger over the company's failure to win regulatory approval for the Evanston, IL-based firm's only product, a blood substitute called PolyHeme. The Coates' direct mail and media relations campaign eventually led to the resignation of former Northfield CEO Richard DeWoskin earlier this year. Soon after new CEO Dr. Steven Gould launched an effort to ease investor concern over lack of progress with the Food and Drug Administration (FDA), Coates promptly registered himself and a business associate as a rival slate of directors for two of the seats on Northfield's seven-member board.

Coates' Position

Coates and other Northfield investors lament the fact that PolyHeme has been in development for 17 years, and that the company's share price has tumbled from a high in excess of $40 to $4 per share. Last July 9, in a special mailing and widely disseminated press release, Coates told fellow investors that he personally owned 644,200 shares of Northfield purchased at an average price of $14.95. He began buying shares in May 1998 and has held his shares for an average 3.5 years.

5-year stock chart for Northfield Laboratories



Bold Strategy

Once Coates established his credibility with fellow investors, he pursued a bold strategy of convincing investors that he knew the way to quickly return the share price to a respectable level. Accusing existing Northfield management of turning down an offer of $30-35 per share from a large pharmaceutical company in 1996, Coates tempted investors sitting on a $4 stock with promises of more than quadrupling the price.

"Northfield needs more money, and it needs a CEO who can get the job done for the shareholders. We think the only way to remedy the present situation is to partner with a major pharmaceutical firm on terms satisfactory to shareholders. In addition to infusing much needed capital into the company before it runs out of money, this pharmaceutical company would provide Northfield with an experienced CEO and the marketing and manufacturing expertise that is missing," Coates wrote to shareholders.

Looking for a Corporate Investor

"Why would a major pharmaceutical company pay $20 a share to partner with Northfield when the stock is selling for less than $4?" Coates asked. "Because they can't buy it in the open market without announcing their intentions and driving the price much higher. Also, Northfield's poison pill protects the CEO and directors behind their wall of silence and makes it impossible for any company to acquire a large number of shares without Northfield's approval," according to Coates.

Management Accused of Too Much Silence

The short interest increased from slightly more than 182,000 shares in July 2001 to 1.2 million shares in June 2002. "That's a huge short interest for a stock that trades only a few thousand shares on many days. Northfield management let short sellers have a free hand by staying silent. No news at Northfield is not good news," Coates argues.

He also points to a *Wall Street Journal* story entitled "Northfield's Game Plan Remains a Mystery" that contributed to Northfield stock plummeting 49.7% from $8.01 to $4.03 in just a matter of days earlier this summer.

How Much Is PolyHeme Worth?

Coates asserts that the market set the value of the PolyHeme product to $20 per share just on the basis of the FDA filing and possibile approval. But there are other ways of looking at this, according to Coates. Several studies he cites indicate the costs of bringing a major new drug or biologic through Phase III and gaining FDA approval range from $500-800 million. "No one we've talked to doubts the safety and efficacy of PolyHeme. It only remains for Northfield to properly demonstrate this to the FDA. So these studies suggest that Northfield shares could be worth between $36.75 and $56.08 on a cost basis once PolyHeme is approved," Coates says.

Coates' Bid for Director

Making his case for election as a director, Coates adds "With the right management, Northfield's product has tremendous potential, both to save lives and to provide shareholders with above average returns on their investments. PolyHeme has no competition in the trauma market. Moreover, our armed forces and Homeland Security agencies will need to stockpile blood substitutes, just as they are now stockpiling key vaccines and medicines."

An 800-Number

In various mailings to existing shareholders and a major press statement, Coates urged investors to call his 800-number with comments, questions or suggestions or contact him via e-mail. According to Will Ruiz, managing director of the Robert Coates Group, "Establishing and manning an 800 number was expensive, but we felt it was essential to encourage dialog with other Northfield investors, especially since the company itself had become mute."

The Other Side of the Coin

Northfield management wasn't exactly silent. Mailings from the company addressed efforts to resolve remaining FDA concerns and achieve regulatory approval for PolyHeme. New president Dr. Steven Gould also characterized Robert Coates as a dissident and disruptive shareholder. In no fewer than three mailings to investors, Gould stresses that Coates has:

- No health-care industry experience
- No indicated capital-raising experience
- No public-company, executive-level experience
- No FDA regulatory experience

Gould claims Coates has little public company board experience. "In 1999 he served as director of Inprise Corp. but resigned after only eight months, turning his back on that company and its shareholders.

"In our opinion, Mr. Coates' lack of experience and judgment is clearly evident in his recent behavior. His frustration with the decline in Northfield's share price is shared by all of us. However, we do not believe his recent spate of press releases – which implicitly criticize the FDA while touting PolyHeme – are helpful or appropriate at this critical stage of our discussions with that agency. Were he to engage in such communications as a board member, we fear it could severely compromise our ability to secure FDA approval for PolyHeme."

Point Counterpoint

Ruiz said the Coates Group issued two press releases and made three mailings to shareholders. The mailings focused on the need for FDA approval of PolyHeme ("PolyHeme Saved My Daughter's Life" and "It's All About Saving Lives – And Saving Northfield"). The mailings also explained how to accurately complete the proxy voting card on behalf of the dissident slate.

Three Proxy Mailings

Coates was concerned about the fact that Northfield management made three proxy card mailings in an apparent attempt to be the last card returned, which would invalidate any earlier card returns from a given shareholder.

> **The Robert Coates Group**
>
> "We had a sense that Northfield's main strategy was to flood the mails with proxy cards and thereby confuse shareholders that may be interested in supporting Mr. Coates."
>
> – Will Ruiz, Managing Director of the Robert Coates Group

"We had a sense that Northfield's main strategy was to flood the mails with proxy cards and thereby confuse shareholders that may be interested in supporting Mr. Coates, " Ruiz says.

In addition, Northfield management made three rounds of telephone calls soliciting proxy votes from shareholders.

At the same time, Gould began speaking more directly to shareholders and the business media. He claimed Northfield has been in discussions with a number of potential partners, without naming any. Gould also suggested that Northfield might consider being sold to a larger pharmaceutical company if that would help in negotiations with the FDA and the ultimate marketing of PolyHeme. "We are in active discussions with several partners," Gould continues to tell shareholders. "We will not run out of money. We can continue to raise money."

The FDA

On the regulatory front, Gould says the FDA is concerned about potential off-label use for PolyHeme, which is designed primarily as a blood substitute for use in hospitals and emergency-room situations. The FDA has expressed reservations about using the product in ambulances or helicopters transporting patients after traumatic injuries. The Coates' slate has suggested so-called off-label uses are appropriate.

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Companies Go Beyond Sarbanes-Oxley Requirements *(continued from page 1)*

ing with the spirit of the legislation." The Sarbanes-Oxley Act forbids companies from providing loans to directors and executives, but does not require repayment of loans made before the legislation became law. "No one has called us up and patted us on the back," comments Murphy.

In terms of investor relations, however, this is a pre-emptive move in light of the increased scrutiny facing executive compensation. Harris Interactive surveyed a cross section of 2,023 adults about their attitudes toward top executives. Of those surveyed, 87% said top executives had gotten rich at the expense of ordinary workers. In addition, 87% said top executives receive more than they deserve.

GE's New Standards for Directors

General Electric is another company that is making changes that go beyond the requirements of Sarbanes-Oxley. Many believe other companies will follow GE's practices.

Under new standards for its board of directors, effective January 1, 2003, the company considers directors independent if sales or purchases involving GE total less than 1% of the revenue of the companies where the directors serve as executives.

The company is setting similar standards for directors of companies that make or take loans with GE, or nonprofit organizations for whom GE is making charitable contributions.

As part of the changes, two board members who serve at companies that do business with GE will step down:

- Fiat SpA Chairman Paola Fresco, who is a former GE executive, and
- Sun Microsystems Inc. Chairman and CEO Scott McNealy, who only joined the board in 1999.

Each member of GE's board of directors will visit two of GE's businesses a year without the presence of corporate management so that directors can have direct exchanges with operating leaders.

The GE board will conduct a self-evaluation process. Information will be gathered in November and then discussed at board and committee meetings in December.

Directors who serve as CEOs at other companies should not serve on more than two public company boards in addition to the GE board. Other directors should not serve on more than four public company boards in addition to the GE board.

Audit Committee

Audit committee members on GE's board of directors must meet new independence tests: The chair of the audit committee should not serve on more than one other audit committee of a public company, and other members of the audit committee should not serve on more than two other audit committees.

Audit committee directors' fees must be the only compensation they receive from the company. The responsibilities of the audit committee will increase so that it meets seven times a year.

New Responsibilities for GE's Audit Committee

GE board of director's audit committee will review the following:

- 10Qs, 8Ks, 10Ks
- Processes for making public disclosures
- Earnings releases
- Presentations to analysts and rating agencies
- Key auditing principles and decisions
- Approval of independent auditor
- Concurrence in the appointment of the head of the internal corporate audit staff
- The annual audit plan conducted by internal and independent auditors

The audit committee must also hold separate quarterly meetings with the head of the internal auditors and independent auditors.

Source: *GE*

AFL-CIO Scrutinizes Exec Comp

The AFL-CIO devotes a portion of its Web site to keeping a critical eye on executive pay. It cites a *New York Times* survey by the compensation consultant Pearl Meyer & Partners showing that CEO pay grew by 7% in 2001, while there was a 35% decline in corporate profits. The cite also points out what it views as pay disparities, which include the following:

- **AT&T.** The company announces $1 billion in restructuring costs and more than 10,000 job cuts, while CEO C. Michael Armstrong gets a $10 million minimum guarantee on his restricted stock – regardless of how far AT&T'S stock price falls.
- **Coca-Cola.** After cutting 5,200 jobs, Coca-Cola loses domestic market share and misses earnings goals, but CEO Douglas Daft takes home $105 million and gets earnings targets on his restricted stock reduced.
- **IBM.** The company converted its pension plan to a cash-balance plan, saving the company $200 million a year while retired CEO Louis V. Gerstner Jr. is entitled to a double pension benefit worth millions.

Source: *AFL-CIO*

Accelerated Earnings Releases Give IR a Competitive Edge *(continued from page 1)*

"I don't know that there is conclusive evidence that this alone causes higher premiums," admits Weinfurter, " but there is definitely a correlation."

"Long before Sarbanes-Oxley, there was a lot of interest in shortening close cycles," says Weinfurter, whose firm has been assisting companies with shortening their accounting cycles for the past seven years. "Not everybody is there. Not everybody has recognized that it's in their best interests to close quickly with a high degree of comfort that is accurate."

Around 90% of U.S. companies on the S&P don't meet the 35-day, 10Q filing deadline for closing required by 2005, reports Parson Consulting. "Virtually all are in compliance with existing requirements," says Weinfurter. "There are a few that actually release early."

Although many companies are in good shape, some companies will be facing a major challenge to get their processes and systems in place to meet new deadlines.

Complexities

When information is collected from business units around the world, the process becomes more complex. The companies need to be able to certify that all the control procedures in every country around the globe are up to snuff. Firms that can't do this now will have a lot of work to meet the new standards.

"There aren't many quick fixes," says Weinfurter. "There are some major companies that have 30 or 40 disparate systems. In some cases, they have automated interfaces, but in many cases, information has to be rekeyed into another system. Much of the world is still doing consolidated financial statements on Excel."

According to survey information, not all companies will be hard hit by accelerated filing."We think that when earnings are released publicly via press release, that gives us a pretty good indication of when they are ready to go as opposed to what the SEC filing date is," he says.

Although the average time companies file their SEC reports is 41 days, the average time for issuing earnings by press release is 24 days – which would be within the new requirements. But there are plenty of companies that are still releasing outside the new deadlines, reports Parson Consulting.

Steps for Assessing the Financial Closing Process

1. Review current processes
2. Benchmark
3. Assess bottlenecks
4. Evaluate potential solutions
5. Prioritize
6. Implement both short- and long-term solutions.

Source: *Joel Adler, Practice Director, Parson Consulting*

To upgrade systems, it's a fairly standard type of consulting:

- Identify what your current state is
- Identify what your future state should look like
- Go through it on a subsidiary-by-subsidiary basis and make sure that you have the right sort of plan and technology in place to get there.

"As our clients go through the process of trying to accelerate the close," explains Weinfurter, "they tend to discover other issues that could be remedied and that will improve the overall health of the company. Side benefits often come from the main objective."

Whether or not a company needs to buy new technological equipment to speed up its filing time needs to be determined on a case-by-case basis. But the solution is typically not simple, says Weinfurter. "If it were simply working harder or faster, they would already be doing it. It tends to be either processes, or systems or in most cases, both."

CASE STUDY

Dealing With an Activist Shareholder *(continued from page 5)*

After months of arguments, propositions and allegations, Northfield shareholders narrowly voted to retain management's slate of directors. In the final analysis, this evolved as a classic proxy battle, complete with a stream of ongoing counter-communications and down-to-the final-day phone solicitations. IR officers should take note of how both sides conducted their respective campaigns.

The vote was close enough to require a re-count. For the time being at least, Coates and his supporters are pleased to pressure Northfield management to install a new CEO and begin to consider partnering with a larger pharmaceutical organization. One also senses that Northfield executives have not heard the last from the Coates contingent.

The Shift to Pension Fund Accounting

First the debate was on whether to expense stock options. Now the focus appears to be expensing pension costs. "If 2002 was the year of options, you can expect 2003 will be that of pension-fund accounting," according to Kenneth Shea, head of global equity research at Standard & Poor's.

On a net-income basis, the big-company S&P 500-stock index earned $26.74 a share for the 12 months ended June 30. But after adjusting to factor in items including both the actual rate of return on pension funds as well as the expensing of options, the figure falls to $18.48 a share. This is what the S&P now calls "core earnings."

What IROs Need to Explain

Increasingly, IROs will need to be able to explain these distinctions to both analysts and investors. In its calculation of pension costs, S&P uses *actual* returns generated by pension funds, as opposed to *expected* returns under Generally Accepted Accounting Principles (GAAP). For many companies, S&P's methodology increases their pension costs for this year because numerous firms assume – as permitted under GAAP – that their pension plans may return as much as 10%. But of course the reality of this year's difficult market environment indicates the potential for negative returns.

S&P's Shea warns, "Investors should be aware that companies with large, defined pension obligations may not be as financially sound as investors might think if they looked at just the income statement."

Core Earnings

Shea says S&P's definition of "core earnings" is an effort to introduce consistency in corporate financial reporting. The Financial Accounting Standards Board (FASB) sets standards for U.S. companies to use in calculating net income for purposes of regulatory filings. But the fact remains that companies are not precluded from publicizing other earnings benchmarks. Such homemade benchmarks obviously are designed to tell the best possible news. The S&P "core earnings" is designed to clarify that type of financial reporting confusion.

Besides the inclusion of an actual rate of pension-fund investment return and the expensing of stock options, S&P's core earnings incorporate restructuring and other charges that relate to continuing business activities. Also included are merger-and-acquisition related expenses and unrealized gains and losses from hedging activities. Such charges are typically excluded from companies' self-designed operating-earnings benchmarks.

What's In and What's Out for S&P's Core Earnings

Included in Core Earnings

- Employee stock option grant expense
- Restructuring charges from ongoing operations
- Write-downs of depreciable or amortizable operating assets
- Pension costs – revised treatment of interest cost
- Purchased R&D expenses
- Merger and acquisition related expenses
- Unrealized gains & losses from hedging activities

Excluded From Core Earnings

- Goodwill impairment charges
- Gains and losses from asset sales
- Pension gains
- Litigation or insurance settlements and proceeds
- Reversal of prior-year charges and provisions

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