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Operator

Ladies and gentlemen, and welcome to the Proactive Management of Shareholder Activism conference call.

[OPERATOR INSTRUCTIONS]

I would now like to turn the conference over to Mr. [Chris Tetman] of the programs of the NIRI Virtual Chapter. Please go ahead, sir.

Chris Tetman - *NIRI Virtual Chapter*

Thank you, Jamie, and welcome, everyone, to the NIRI Virtual Chapter's second program of our program year titled Proactive Management of Shareholder Activism, where you'll hear from experts on this topic who will discuss a variety of issues revolving around trends and shareholder activism, voting procedures related to this investor class and [waits] for actively managed shareholder activist issues.

Following the panel discussion, you will be able to ask questions of the panel. If you have any questions you would like to send to us during the panel discussion, you can e-mail them directly to Ann Storberg at astorberg@apcapital.com. Again, astorberg@apcapital.com. Ann is on the call with us today and can relay your questions directly to the panelists.

First, before we begin, I'd like to briefly thank our sponsors. Without their support, we would not be able to bring this caliber of programming to our members. We'd like to thank Business Wire, who provides the blast, e-mail and faxing services for our membership. We'd like to thank Thomson Financial, which directs and hosts the Virtual Chapter website and provides transcripts of our programs, ACT Teleconferencing, which provides the teleconference services for our webcast and Vcall, who provides the phone conferencing services for board and committee Virtual meetings. I would also like to thank our universal sponsor, Nasdaq, and our global financial sponsors, Bowne and InvestorCom, for their generous financial contributions to the Virtual Chapter. It's only through their support that we are able to bring the Virtual Chapter membership such a wide variety of programming and educational opportunities.

Now, onto the program. We have an outstanding panel for you today. Since I'd like to allow as much time as possible for today's discussion and Q&A, I will introduce today's moderator, Steve Calk and Steve will provide you with a brief introduction of our panel members. Their full bios are available on the main webcast page. We'd -- again, we are delighted to have our moderator for today's program, Steve Calk, who is vice president of Ashton Partners, an investor relations and financial communications consulting firm. Steve is also the former IRO at Intrado and is a member of NIRI. He's been in IR for seven years and was in banking for 10 years prior to that.

I'll now turn it over to Steve to introduce our speakers.

Steve Calk - *Ashton Partners - VP*

Thank you, Chris, and our panelists today joining us are John Grau. He's the founder and chief executive officer of InvestorCom. That's a proxy corporate governance and capital markets advisory firm. We also have TerriJo Saarela, the investor responsibility program manager for the State of Wisconsin Investment Board or SWIB, which is the ninth largest public pension fund in the United States with $79 billion in assets. She is responsible for the development and implementation of corporate governance activities and you're not allowed to hit her up for one-on-ones after the call.

And then, finally, with us, Chris Young is director of M&A Research at Institutional Shareholder Services. He provides analyses and vote recommendations for high profile and contentious mergers as well as proxy fights via M&A Insight, which is a premium ISS research solution.

So now, I'd like to turn the floor over to our first panelist, John Grau, of InvestorCom. John, it's up to you. Please go ahead.

John Grau - *InvestorCom - President*

Great. Thanks a lot, Steve. Well, I just wanted to start out today by really trying to define who a shareholder activist is. When we all think of shareholder activism, we think of large hedge funds and corporate pension funds. And that's certainly all true. But at the same time, all companies have different classes of potential shareholder activists in their stock. Again, we spoke about the large hedge funds who certainly have been around for awhile and have become a very dominant player in having an ownership stake in the stock of many, many companies. And corporate pension funds have a very long and wonderful history of being holders of vast amounts of stock.

But in addition to that, we have individual corporate raters. Both the raters from the 1980s that we all remember and also some new folks that are on the forefront of becoming activists in the shareholder community. And as well was that we have, along with that, we have shareholder groups or committees or labor unions who also, on a regular basis, are becoming activist shareholders. So, that really is a definition of many of the types of categories of shareholder activism, but I guess my most important point right now is really just trying to emphasize that no matter what type or size company you have, shareholder activism is something that many, many companies deal with.

So, let's first go into how do you actually identify whether or not there is a potential shareholder activist in your company's stock? Most companies monitor their 13-F filings and they look out for changes or irregularities in ownership positions quarter over quarter. That's one way of really trying to assess whether or not there are any unusual patterns or new holders in the stock that you haven't heard of and, perhaps, would like to get more information on.

Another very effective way of trying to assess whether or not you may have any shareholder activists in your stock is by just doing proactive outreach or having one-on-one meetings with investors or really taking seriously any call that comes in from somebody claiming to be an investor and wanting to meet with management and using the proper filters to really be able to understand whether or not that is a legitimate stockholder that you're talking to and whether or not they're, if they are asking to meet with management, whether or not those concerns are valid and therefore setting up meeting between that shareholder and management.

So, what you need to know is, certainly, knowing who your shareholders are is quite important, but really understanding the portion of your shareholder base that you may not have your arms around as much is equally significant. I always suggest that companies keep very strict records of anyone that they've had dialogue with, anybody who has contacted management, whether it's around proxy time or not. And look for any similarities in the types of shareholders who were contacting you and just be proactive. Pay special attention to any unusual or unknown shareholders around annual meeting time or the six months leading up to that annual meeting, whether it's a shareholder that may be submitting a shareholder proposal for the annual meeting or somebody who could just simply show up and put their own slate of directors up on the proxy or reach out against management in any type of way.

Remember, there are very different levels of shareholder activists. There are those who are really trying to address the valid issues that they have with the company and try to guide the company on behalf of shareholders as to best practices for managing the business, but also there are some less traditional activists who really can fall under the category of being a nuisance shareholder or perhaps have some valid concerns, but really has much more of personal dialogue and relationship with the company and has a specific issue that's less broad based.

Now that we've identified who these shareholder activists could be, how do they behave as shareholders over time? Leaving -- going into the next topic of what I was just talking about, we really want to know the history of that activist being supportive or not supportive of voting for management during the annual meeting time. So, keep strong records of who the shareholders are that have perhaps withheld on the board of directors or attended the annual meeting and expressed any specific concerns. Again, knowing the difference of who is the sophisticated, larger institutional investor who falls into the shareholder activist category versus that kind of smaller, more unknown shareholder is important in how you deal with them and really understanding what their agenda is, is critical.

The best and most effective way of managing -- proactively managing shareholder activism is by inviting these shareholders into the company, if they request, and really having that dialogue with them as early on as possible. You want to avoid having or being surprised by a shareholder activist at an annual meeting. It is critical to get the issues on the table from the very early stages. It's important to understand what influences their voting process. The larger firms and I know my colleagues on the panel will get into this in more detail, but the larger firms have much more sophisticated mechanisms for making proxy voting decisions, whether it be working with ISS or other agencies. The pension funds, as you will hear shortly, certainly have a very straightforward and proactive way of dealing with their investments and management at their investments.

And then again, we hit the category of the small shareholder and how to manage that individual or group of small individuals and if it's an issue that's broad based, whether it be an executive compensation issue on their agenda or anything else along those lines or, again, somebody who's simply trying to get a seat on the board of directors and make some noise. So, that really is a, I guess, a 3,000-foot view of how we deal with shareholders activism on a day-over-day basis and my colleagues, I'm sure, will have much more to add to that with respect to kind of the bigger picture view of the current landscape of managing activism.

So, with that, I'll turn it back to Steve.

Steve Calk - *Ashton Partners - VP*

Thank you, John. And now, we'll just hand the call over to TerriJo Saarela of the State of Wisconsin Investment Board. TerriJo?

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

Thank you. SWIB is a public pension fund, as Steve had mentioned, and we manage approximately $79 billion and we are the ninth largest public pension fund in the United States. We have a long developed program in corporate governance because we really believe it's our fiduciary duty as a shareholder to be involved and to understand what the current issues are that companies are faced with. And because we believe that, we also think it's very, very important to implement very thoughtful policies for when we do go ahead and vote on proxies. And I think you're seeing, in recent years, a lot more of the public pension funds taking a bigger role and having more process in their corporate governance area.

We have our own customized policies and we conduct an annual review of those every single year to determine what changes need to be made because the environment is always changing and there are times, of course, that we want to strengthen our guidelines. And there's also times when the guidelines really become irrelevant because they're now a listing standard or a regulation. We're currently in the process right now and we involved our portfolio managers because they're the ones that actually invest the money in the companies. So, they are a lot closer to the particular companies and see some of the issues that we may no see immediately.

Some of the resources that we use are we're involved with CII, the Council of Institutional Investors. And we're also -- we also work very close with ISS and the corporate library. Some of those areas are to get just some basic data. Some are to gather just different kinds of academic resources, academic studies and to kind of see what the current thought process is for other people besides us on any given issue that's occurring.

Once they go through the guidelines and go through our process and we determine that we have certain changes that we want made, we have to present it to our board of trustees for their approval and implementation. And like I said, we're in this review process right now and we are planning guideline changes and we typically do every year. And we also, at the same time, are developing our strategy of the things that we were going to focus on for the following year. This will go to our board of trustees in December.

One -- and a place where you can go to find information for what our thinking is or where our guidelines are is our website. Anybody can go there. They can view our process. Our guidelines are there. Our overall activities are there. We also post to our website letters that we've wrote to the SEC. We wrote some letters to companies when the backdating of options issue came out and those letters are also posted on our website. And so, it kinds of gives you an idea of things that we're working any basically what we're thinking on that particular issue.

I think another thing that we consider beneficial is that we actually post what votes we cast in annual meetings for the previous year. And we're not required to do that like mutual funds are, but we decided that it was beneficial to do that, so we have our votes for the entire previous year posted on the website. And any time that there's a vote that is contrary to management, there's a short notation as to why. So, for example, if there's an option plan that we voted against, it would say dilution was 25%, SWIB's limitation is 20%. And so, it doesn't give the lengthy explanation, but it gives just a real, inside quick view as to why the vote was cast against.

And we do have a link there where, if there is a question about a vote, you can send an e-mail and it will get answered. We usually do not disclose what our vote is prior to the annual meeting, however, and that's just for some obvious reasons. A lot of time we have large holdings in companies and if we were to disclose how we're voting on a particular issue, we could possibly sway that vote and we don't want to be responsible for that.

Two of the main issues that we're looking at right now, and I think that most people are, is executive compensation and board of directors. Our policy in both of these areas is fairly comprehensive and we monitor them very closely. Just to give you an idea of how our votes are cast in these areas, we withheld roughly 10% to 15% of all the director votes cast and some of the reasons for that go back to some basics. It's -- independence is still an issue. We found this year, when we were preparing our post-season report, that over boarding and attendance actually had increased from previous years, which simply translates into directors aren't attending the meetings and are sitting on way too many boards.

And then, one of the other main reasons that we withheld from directors is for committee action. And there we withhold from an entire committee when we don't approve an item that they put on the proxy. So ...

Unidentified Speaker

Thank you for calling ACT. This is Michael and thank you for holding. You're calling for Proactive Management.

Operator

Our apologies. Please continue.

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

So ...

Steve Calk - *Ashton Partners - VP*

Sorry.

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

Well, we believe that the committee is responsible and, therefore, should be held accountable for what the committee is proposing. So, for example, if there's an option plan on the ballot and we do not approve of the option plan, they we will be withholding from the entire executive -- the compensation committee. And that's just so, again, because the committee is responsible for developing and putting that on the ballot. In the area of executive compensation, we typically vote against about 35% to 40% of all plans. And some of the main reasons that we've voting against those plans go back to dilution, burn rate, maybe vesting wasn't assigned or there's still repricing issues.

It's been our policy and we've actually increased this in the last couple years, so that when we do withhold from directors now, it's our policy to call the company and try to communicate with them as to why we withheld. This has been fairly successful because what we'll try to do is, when we get a ballot and we know that there's going to be withholds for the directors, we try to call them and contact them before the meeting so that perhaps there can be some negotiating room and we can actually change the vote and vote for the directors and vote for the plan or whatever it is that we're withholding from. But sometimes that doesn't always work and we still have to withhold from the directors. But it still facilitates a dialogue between us as the investor and the company. And it helps us understand what the company is faced with because there are certain issues that -- each company will have just a variation of issues that they have to deal with and then it helps them to understand our viewpoint as the investor.

If -- the other thing with that is we do keep records of everybody that we've talked to. And so, in the event that we've talked to the same company year after year after year about the same issue and there still aren't changes, that will kind of [inaudible-technical difficulty], too, that there's something going on with the company that we need to seriously look at if it's a company that we really still believe has value and that we want to be invested in. A question actually does come up about that, too, is when we're withholding from directors or when we're voting against particular issues, people say, "Well, why don't you just go ahead and sell the stock if you're not happy?"

But as a large institutional investor, that's not always possible. And even in the event when it is possible, it's not always what we want to do because of the fact that, if we invested in the company, there's belief by our portfolio manager that there's value there. And that, while there may be some corporate governance issues that aren't quite up to par, that if they could be addressed and, perhaps, corrected, in our view, that that would just increase and enhance the value of the company. And there, over the long term, everybody would benefit.

So, we really view that as -- the communication -- as an improvement for both the company and us as the investor. And we make it pretty clear we don't have a political agenda. We don't have a hidden agenda. It just goes back to we're just trying to increase value for us as a fund.

I think because we have communicated with so many companies, there's quite a few that just go ahead and call me ahead of time when they know that there's certain things they're thinking about putting on their proxy and we actually welcome that. Sometimes there's quite a few conversations going on, but it helps because, again, we can kind of go through any guideline changes that have been updated since the previous time we may have talked with that company. Or we can just kind of go through certain criteria of an issue that maybe they hadn't had addressed before. And again, it's just really beneficial, I think, to everybody involved, to have that open discussion.

And so, I think with that I will turn it back to Steve.

Steve Calk - *Ashton Partners - VP*

Thank you, TerriJo. I'd now like to turn the call over to Chris Young. And Chris, you can take it from here.

Chris Young - *Institutional Shareholder Services - Director, M&A Research*

Great. Thanks, Steve. I do have some slides if people are following this on the web, if you would go to slide 10. I assume that most of the listeners know who ISS is, but we are the leading proxy advisory service providing analyses and vote rec to over 1,600 institutional clients. My particular area at ISS is focused on contentious situations, primarily M&A and proxy fights where, obviously, activists play a large role. One of the questions I receive most often from investors, companies and advisors, is how exactly does ISS evaluate contentious activist situations and it's definitely not a black box, so hopefully over the next couple of minutes I can give an outline of how we look at these situations.

On slide 11, basically this is just a very simple schematic of the process that ISS follows when looking at these activist situations. A deal or a contest is announced. M&A Insight, the solution -- subscription service that I run, may put out a note or a series of notes very similar to First Call notes, highlighting issues for our clients, issues that they should be focused on, material developments in the -- either the proxy fight or the M&A process. We engage in constructive dialogue with all constituents -- the issuer, their advisors, the bankers, the lawyers and, of course, the shareholders who are our clients who are interested or hold the stock.

About two weeks or so prior to a vote, we will put out an analysis and vote recommendation. The analysis supports the vote recommendation and can be rather lengthy. We also put out a pipeline every two weeks of contentious situations or situations that we are tracking and monitoring for potential coverage. And that basically is what M&A Insight is and what ISS does during these situations.

On the next slide, which is slide 12, first we'll take M&S. How does ISS look at M&A and I'm sure many of you are aware that activists are increasingly getting involved in M&A transactions. Issuers will claim that they are folding up the transaction for a better price. But in some cases, we believe that they are creating value for shareholders. And it's not always an extortion process. For us, M&A, of course, really is driven by valuation. So, that's kind of the first thing in the paramount factor that we will look at. We will look at trading and M&A comps and evaluate DCF analysis. We have -- I'm a former investment banker. We have former corporate development analysts who are able to do that type of work or at least check the work that has been done by the investment banker.

But more than just valuations, because you get a lot of that from Wall Street research, is that we truly believe that many factors can affect valuation. For example, a for sales process may imply that a full valuation was not obtained. Restrictive merger, contract terms may also affect valuation. So, we definitely take a look at all aspects of the transaction. We are not industry experts, but -- and we don't build our own projections model. But what we are experts in, I think, is M&A best practices because we see -- every single M&A transaction that involves a company comes through our door and is evaluated by our team. Because of that, we're able to identify what practices have tended to maximize shareholder value and what current deals diverge from those best practices. We still, if you look at the numbers, recommend for a vast majority of transactions because many of them pass the test. But if we do find an outlier, we reserve the right to recommend against the transaction.

On the next slide, which is slide 13, turning to proxy fights, which have been very numerous this year. I think there are something like over 80 proxy fights this year compared to about 40 a couple of years ago. We look at a long list of factors. It's definitely a black box. It's a qualitative assessment of many different factors, which is going to be a case-by-case determination because each proxy fight is different. Our focus is really on the long-term track record of both the incumbents and the dissidents with respect to both operations and governance. We review and evaluate past strategic decisions made by the incumbents. We look for board accountability and responsiveness to shareholder concerns and the board's independent oversight of management. And we examine the skill sets and experience of the respective nominee slates and some of the other factors. I won't read them to you, but they're all listed on this slide. So, the point of it is that we do look at lots of different things and it's pretty much of a sliding scale. There's not one -- there's not -- it's definitely not a check-the-box process and it takes a long time and we put a lot of resources into it.

On slide 14, another question I get a lot -- asked a lot is our different kind of standards or burdens of proof that we put on the dissidents when they wage a proxy fight. For minority non-control contests, we place a burden on the activists to prove that some change on the board is warranted and that the dissident nominees would be able to affect the change or add needed skills and experience to the board. It's not a low burden, but it is a lower burden then for a control contest, where the burden is higher. In a control contest, the dissidents have to, in addition to proving that change is needed, they need to provide a detailed operational plan. If they're asking for a change in management, clearly, they need to have some people in mind that will replace management so we can evaluate their experience and credentials. And we take a harder look at the track record of the dissidents.

And on slide 15, again, every activist situation is different, but a template is being to emerge over the past two years. This is basically some, I guess, free advice at seeing so many activist situations over the past three years for me personally. First, and I think this was alluded to before, I think communication is key no matter what side you are on, if you are advising the issuer or, frankly, if you're the activist. You should be disclosing as many details as you can to your shareholders and dealing with any potential criticisms that have been leveled at you rather than sticking your head in the sand. Shareholders really need as much information as possible to evaluate your platform. We have found that a lack of details is counted against a party that's involved in a contest. I mentioned Deephaven's failure at -- to derail the MCI and Ubiquitel mergers -- is one example.

Secondly, personal attacks -- ad hominem attacks -- do not go down well with our clients. I bring up -- it's not listed here, but Heinz, in particular, a very high profile proxy fight this year where the dissidents in, basically, in pretty much of a stunning upset, were able to get on the board. And one characteristic of that fight was that the company basically took the low road. Rather than addressing concerns with kind of a long period of mediocre performance, they spent most of their time ripping the activist shareholder personally. And at the end of the day, that strategy failed fairly miserably.

Third, continue to improve your corporate governance. Activist will use any type of governance structure weaknesses as a way to appeal to the more, kind of so-called vanilla investor. Although valuation and performance in a total shareholder return is still the ultimate driver, governance will resonate with the shareholder base. And start the dialogue with proxy advisory services like us and others and shareholders as soon as possible. You want to try to get the support of the shareholder base rather than playing catch-up. And if the activists are able to get the public support of a so-called traditional mainstream investor, that, a lot of times, will sway the balance. So from your perspective, you want to avoid that. I mentioned a Citibank, a non-activist shareholder supporting ValueAct, a kind of an activist value investor, in the opposition of Novartis' buying of Chiron was key in getting the attention of the other shareholders.

And that's pretty much it. I want to make sure there's enough time for questions. So ...

Steve Calk - *Ashton Partners - VP*

Great. Thank you, Chris. Great job and, as we wrap up here, I just wanted to add a couple of quick thoughts as an IRO who has lived through activism as well as now I'm an advisor who works with a handful of companies right now in activist situations. And Chris made a couple of interesting points there. He talked about fundamentally thinking about this in light of creating value for shareholders and that valuation and performance is the driver. And that's where I'd like to just camp for a minute. Think for a minute about what drives an activist to you. Fundamentally, they believe, and of course, there are some activists that have non-monetary drivers. I think TerriJo had mentioned, had just pointed out that they were not among those. Most funds want to make money. But fundamentally, they believe they can make money and they can make it somewhat quickly by becoming activists. Out of the trillion dollars in capital now and hedge funds now, more hedge funds and stocks in the country, they are constantly on the hunt for new ways to maximize returns.

So, how do they do that? Obviously, they -- historically, we can look to the newspaper itself to see they forced repurchases of shares or dividends. They forced sales of divisions or restructurings in the company so that valuation has improved. And in some cases, they forced the sales of the company overall. So, what I'd like to do is just take a second and say okay, well, if this is the problem you get into, the bear trap that you get into once an activist hits you, how do I just avoid this altogether or at least do my best to stay off the radar screen. So, a couple of learnings from just personal, my personal situation as well as some of those companies I'm advising now.

Number one, I think I would point to just look at your balance sheet. If you have a lot of net cash in your balance sheet that's - a lot of cash and not much debt -- it's a lot easier to make the argument to yourself, if you're an activist and just screening. "Look. I can just force the repurchase of shares here or force the dividend. In essence, I can just take your money away from you and return cash to shareholders." Now, obviously, you'd need other factors to be involved there, but I'm boiling it down. In fact, in one case, I heard the activist actually suggest to management in a conference call that they allocate 100% of the cash on their balance sheet for share repurchases and then just turn around and lever up if they need cash for new initiatives. So, that was about how much trust they had in that management team.

So, check the balance sheet. I think the second thing you have to look at is what's my business model like? Do I have this predictable recurring revenue stream or a recurring cash flow stream at my company? And here's why. If 80% of your revenues are under long-term contracts or more, I, as an activist, could essentially take control of your company and turn around and sell it before I even damage those cash flows. So, I mean, that's a risky proposition, but it's possible and I've actually seen it happen. So, watch your business model and assess, "I am an easy candidate? Do I have -- have I given guidance for the next year-and-a-half or two years and does that make me actually more of a target than less?"

And then, finally, and Chris hit this point as well. Are you underperforming from an operational perspective? Listen, if you're valued on a cash flow or EBITDA basis and your margins are 10 points below your peers, I can come in and force a restructure, get the margins up and then, as the valuation improves, exit my position. Again, somewhat of a risky proposition, but I've seen it happen and if your management team isn't paying attention to the blocking and tackling, the normal blocking and tackling of running a business, then they're in effect, inviting others to do so for them.

So, say, now, say you've got a combination of one of those issues that we just talked about, what it makes it worse is if you're lacking a clear strategic message to your shareholders. Now, that may not be clausal for an activist, but Chris made this point, too, if you haven't been clear with what you're doing or if you're taking a low road or if you're not messaging well to your shareholders, you probably have a handful of shareholders already who may be supportive of an activist who wants to come in and shake up leadership. And then, of course, if your stock is in a slump, that makes it even easier to build a position. So, you've kind of hit balance sheet, revenue stream, business model, operational efficiencies, your messaging to your shareholder base and then, finally, is your stock in a slump.

So, those are the kinds of things that you want to be thinking about. What do you do? The answers are simple, but they, unfortunately, they're hard. Obviously, your management team has to have a laser focus on operations. You can't consistently trail your peers. That's number one. Number two, your team has to be very careful about capital structure and capital allocations. Be careful not to build too much cash with no clear use for it.

Number three, your team has to be out there with a clear message. It's got to be crystal clear to your existing and new holders what you're strategy is and what you're doing and they have to believe in you. And then, on top of that, you've got to be out there consistency through multiple forms of outreach, not just your quarterly calls or road shows organized by the sale side, but actually an active, smart campaign to keep and add shareholders who are buying you because of your team and your strategy, not just because you happen to be in an index or in a particular industry.

And then, I think John hit this early on. I think it's important to monitor shareholders movements. Not necessarily looking for activists, although that's important, but -- because it's often too late when an activist actually makes the decision and they show up in the 13-Fs. But rather identifying in your current base, who's at risk of sale and then how to keep those guys, either through continued messaging and visits and selling your company to them or, in some cases, you can't do that, so you have to be looking at that next generation of shareholders. Who do I need to be adding to my shareholder base as these guys exit? So, that's going to be an important component of your plan.

And then, finally, and my last point is -- and this is no slam on sell-siders. I've got a lot of friends who are sell-siders. But they're often unwittingly the source of activist ideas. So, if your analyst is pounding the table that one of your divisions is draining cash or should be sold or cash needs to be returned to shareholders or that your strategy is weak or whatever, that's going to be easily screen for by the activists. They're going to pick up on that and could actually draw attention from the activist community. So, that's kind of views from someone who's been there, lost his job because of an activist situation and now I'm enjoying a wonderful career as an advisor, but one with a few stripes.

So now, I can hand it back over to Chris and, Chris, can you take us into Q&A?

QUESTIONS AND ANSWERS

Chris Tetman - *NIRI Virtual Chapter*

You bet and thanks, Steve, and thanks to all the panelists. I thought that was an excellent discussion. We do have some time for Q&A. For those of you who listen to the webcast, again, feel free to e-mail Ann Storberg at astorberg@apcapital.com and she is on the call with us today. Operator, could you just do the prompting real quick for anyone who wants to do it over the phone?

Operator

Absolutely.

[OPERATOR INSTRUCTIONS]

Steve Calk - *Ashton Partners - VP*

All right. While we're waiting for folks to queue up. One question that would be interesting to ask the panelists -- and I'm not sure who to direct this to, but once a company is already under attack, what's the single most important thing that a management team can do to help bring the process to resolution? And maybe, Chris, this goes to you.

Chris Young - *Institutional Shareholder Services - Director, M&A Research*

That's a good question. I think I alluded a little bit to it. Communication, number one, meaning reaching out to not only your shareholder base, but to the dissident. I've -- we've seen often an issuer react by, again, kind of sticking their head in the sand. Refusing to meet with the activist. It's almost, in a sense, it seems like almost beneath them. And that will be seized on by the activist as evidence that the board and management are not responsive to shareholder concerns. Because, after all, they are a shareholder.

Now, whether that gets traction with the other shareholders is a different matter, but in some cases, I think it does because, again, as Steve alluded to, the -- these guys aren't dumb. They pick companies that already have, in some sense, a disaffected shareholder base. They're not going to pick a company that the shareholders are happy in and maybe it would be one of the factors that Steve listed out, whether it's, obviously, poor share price performance is probably paramount, but maybe a track record of not communicating a vision to your shareholder base or the mismanagement of your balance sheet. And so, instead of just saying, kind of dismissing this as just an activist issue and, of course, our long-term mainstream investors will never listen to these activists.

I think that's a fatal mistake. You need to reach out and communicate, whether that's sending letters to the dissident, refuting their accusations and filing that with the SEC, so in a way you're communicating with your shareholder base that way. But the number one thing to me is being a proactive professional, again, not dragging it down into the mud, but critiquing or responding to these charges that have been made by the activists in public is the most important thing.

Steve Calk - *Ashton Partners - VP*

Excellent. Chris, do we have anybody queued up on the phone at this point?

Chris Tetman - *NIRI Virtual Chapter*

Operator, anybody on the phone?

Operator

There are no questions at this time.

Chris Tetman - *NIRI Virtual Chapter*

Sorry.

Steve Calk - *Ashton Partners - VP*

Yes, how about Ann? Ann, do you have anybody through e-mail? I know that seems to be the way that people communicate these days.

Ann Storberg - *APCapital*

Yes, they do. Steve, yes, I actually do have a question that came through here. It's from the perspective of, say, a CFO or an IRO, and they're trying to go about identifying who at an institution actually votes the proxy. And maybe this is directed to TerriJo. So, if you have a relationship normally with a portfolio manager or the analyst there and you want to talk to somebody at an institution, how do you go about finding the right person within the institution to talk to? Is there normally a compliance department or is it different within each institution?

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

I think that different pension funds have it set up differently. Most of the larger ones have a corporate governance area and that would be the person that I would suggest going to first. However, if you do have a relationship already with a portfolio manager and that's your in, then go ahead and talk to the portfolio manager. What happens with us is our portfolio managers are very closely tied to the companies that they're invested in and so they talk to them regularly anyway. And when there's an issue that's a governance issue, then they just call me and invite me into the meeting. And so, then we talk about it together. But I would suggest that whoever you have that's already in, start with them and if they tell you that there's somebody else to talk to, then talk to the other person.

Ann Storberg - *APCapital*

So, just a follow-up question then. It really depends then on the firm as to how much voice the fund manager or the analyst has with the person that actually votes the shares. Is that -- does that change by institution, do you know?

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

I would say that it does change by institution.

Ann Storberg - *APCapital*

Okay.

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

I would say for us it's - our portfolio managers and analysts are brought in all the time to help develop the guidelines so that we're all on the same page. But I do know that other institutions do it differently.

Ann Storberg - *APCapital*

Okay.

John Grau - *InvestorCom - President*

I can add to that, if I may. This is John. Also, I mean, I think that people need to know that in - at many institutions, the portfolio manager is not directly involved in the proxy voting decision and the proxy decision is done by committee. And say, for example, if there is an institution that may not necessarily follow any outside proxy voting guidelines, that proxy committee may set their own internal guidelines and therefore, in some cases, the portfolio is -- has some influence and does get involved. But in other cases, the portfolio manager may not want to get involved at all and just essentially put up a wall between the PM and the proxy committee.

Steve Calk - *Ashton Partners - VP*

Say, John, just a follow-up. This is Steve again. I wonder -- because you've advised a lot of companies. I wonder if you've seen the situation where, like the bankers, the investment bankers, have gotten involved with an activist and are -- now have kind of a dual agenda. And it seems like there was an article or something about that recently. And I wonder if that affects the way that the institutions you talk to and work with or the companies you work with, does that affect the way they handle the situation? Is there kind of stain on the activist at that point because clearly the investment banker is out for fees or have you even seen that?

John Grau - *InvestorCom - President*

Well, there certainly is the potential for that to happen or the fear or thought that that could happen. But I think many institutions do a very good job at separating the proxy voting group from any other outside folks within the same organization. And on some more standard issues or, say, executive compensation issues, the proxy committee has a very rigid set of guidelines that they follow. But in more M&A situations, I mean, there certainly can be some influence, but, in general, I have not seen that investment banking relationship have a noticeable impact.

Steve Calk - *Ashton Partners - VP*

All right. Operator, anybody on verbal or are we still doing e-mail?

Operator

We do have one question that just came in from Donald Dolaria.

Steve Calk - *Ashton Partners - VP*

Great.

Donald Dolaria

Hello. Thanks very much for your time today. The question I had -- John, you mentioned there are two -- are defined at least to have two categories of activist shareholders, one of which -- it falls into the group of the people that really have the best interest of the company at heart and the other one is those that may have an alternative agenda, may not be focused on the broader picture, whether that be a labor union or some smaller segment of the company. How would you recommend dealing with that second group? Is it more of the same kind of proactive communication or are there different nuance that one should consider in dealing with that other group of activist shareholders?

John Grau - *InvestorCom - President*

Well, sure. I think that dealing with that second group of activist shareholders kind of -- I don't want to necessarily classify them as the second tier, but say the smaller, perhaps less predictable group. You certainly want to know who they are -- and this was mentioned earlier -- even before you see their filings on the 13-F report. So, I think, just through a regular investor relations outreach, it's probable that you will be in contact with that type of investor in advance of any type of activist aggressive activity.

So, but in terms of actually dealing with them, you certainly want to at least identify what their agenda is at first and understand if it's something -- they have issue with, say, cash and company's balance sheet, well, that's one thing and deserves one type of response. Or does the shareholder simply want to get a board seat or have any specific issue with any one director or directors. So, I think you just really need to understand or try to make your best to attempt to understand what that shareholder is trying to accomplish because I think when you're dealing with this smaller group of stockers or that particular portion of the activist population, I think that their particular concerns can be very varied and so you want to identity that.

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

I think, too, just to add to that, is that in the event that you realize that you have a large institutional holder, such as like ourselves -- I guess I shouldn't speak for anybody else -- but the labor unions and some of the smaller groups that try to do those political agendas, they contact us as well if they know we hold the company. And they try to get us to team with them. And so, in the event that they try to come to your company, if you know that we're a holder, it's good to talk to us, too, because what we'll do then, in turn, is we tend to talk back with the labor union -- I'm just -- I guess I'm picking on the labor union now -- but talk back with them and say -- give them our reasons for not wanting to do or not wanting to be involved.

Donald Dolaria

So, effectively, we can list you as -- for the spokesperson for the company's point of view.

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

Well, it's ...

Donald Dolaria

On certain issues.

TerriJo Saarela - *State of Wisconsin Investment Board - Investor Responsibility Program Manager*

I -- sure. I'm mean, if we -- because if we believe that there's value in the company, we're --we don't necessarily want that company dragged through the mud either. We don't -- and that's where it goes back to some of the people have the political agendas or whatever and they'll take out a full page ad. That does not help the company at all and we don't like that when some of those activists who we would consider not good activists do that. So, we would try to help to stop them from doing that.

Donald Dolaria

Thank you very much.

Ann Storberg - *APCapital*

Steve, I do have a few more questions that came through on the web.

Steve Calk - *Ashton Partners - VP*

Okay, great.

Ann Storberg - *APCapital*

The -- one of them here was he wants to know a little bit further how the Heinz management mishandled the activist shareholders that they came up against.

Chris Young - *Institutional Shareholder Services - Director, M&A Research*

Sure. I guess I'll take that one. We met with both sides, I think, three times in person in preparing our analysis and report and I mentioned in the presentation part of the program, what struck us was that, normally, the activists are the ones that are painted as the impolite actors that drag the company through the mud, that make it personal from day one, that attack the management and the board on a personal level. And Heinz, in this case, everybody here that, again, has evaluated every proxy fight over the past few years, was struck that it seemed to be the reverse. I mean, right from the beginning and instead of truly -- I mean, they did critique Nelson Peltz's plan or arguments for the company, but it seemed to be dwarfed by the personal attacks, bringing up things from Nelson's past. I mean, and we're talking from the 80s and making it much more personal than the company normally does.

I think that changed the dynamic of the contest. I think, all of a sudden, it almost looked like the company was not focusing on the real issues. It didn't recognize that it had a disaffected shareholder base. The stock had gone sideways or slightly down for years. They've have -- they had restructuring after restructuring after restructuring and instead of maybe defending or coming -- or at least coming to their shareholders with ways they were going to fix the problems and they were very clear, apparent problems that were facing the company, they turned it into denigrating the activist. Blaming the messenger without addressing the message. And I think that turned off a lot of mainstream shareholders who wanted to hear -- wanted to hear about what the company was going to do to fix the mess it was in.

Steve Calk - *Ashton Partners - VP*

It sounds almost as if you're saying that the personal attacks and the -- kind of the non-business elements of it could be a ruse by the activist themselves to kind of get management into that kind of discussion.

Chris Young - *Institutional Shareholder Services - Director, M&A Research*

Well, yes. We don't like when either side it, frankly, because we are all for a constructive dialogue. Sometimes it is the activists that get the constructive dialogue going in a company that, frankly, needs it. And all of the side stuff, the poison pen letters that many activists send in, I agree with you, that potentially could draw out kind of a visceral reaction from the issuer. And I would advise the issuer not to take the bait. I contrast Heinz with Time Warner and how Dick Parsons handled Carl Icahn's pressure earlier this year.

And if you compare and contrast the two fights, you will see a noted difference in strategy. Dick Parsons took the high road from the very beginning, even though Carl Icahn is a very easy person to attack and get some traction in the media against. He did not do that. He focused on what the company was doing, what it was planning on doing. And I really think it had an effect. And Carl was Icahn was then marginalized and did not get traction. I mean, they're not exactly the same issue, but from people that have looked at all these proxy fights, we did notice that the very stark difference in strategy of Time Warner versus Heinz.

Ann Storberg - *APCapital*

Steve, I'd like ...

Steve Calk - *Ashton Partners - VP*

Chris, I wonder if we're running short on time. How are we doing?

Chris Tetman - *NIRI Virtual Chapter*

We've probably got enough time for maybe a couple more questions.

Ann Storberg - *APCapital*

One more. I'd really like to get this one out if I could because this one has come up a couple times. First of all, the person is asking how the panel feels about market surveillance firms and -- as a way to proactively identify and mitigate against activist shareholders. Any suggestions on how do use them in that way? And then, the follow-up question, which I have myself, along with a couple of other people, have heard -- are there any sources out there that identify well known activist hedge firms -- hedge funds?

Steve Calk - *Ashton Partners - VP*

I can speak from experience that the -- and I have to do this carefully, but I'm in an advisory role now. But we actually bought surveillance and the surveillance was right, roughly, about half of the time. So, the quality of the data, I think, can vary depending on the company and the volume and the shareholders. But from where I sit today, it seems to me just identifying whether or not activists were beginning to get involved earlier -- a month earlier -- because of the filing schedule -- wasn't our problem. Our problem was we were not paying attention to the issues that attracted them to begin with and then we, unfortunately, did not have Chris Young to help us take good advice, so we fell into many of the traps that we talked about. So, that's my two pennies on surveillance firms.

John Grau - *InvestorCom - President*

I'll -- this is John and I can add to that and my experience -- and we actually provide stock surveillance as one of our services. And back in the 1990s, I guess, it was much more of a -- kind of a typical tool that IROs used and kind of used it to try to drill down and identify all of their holders and were much concerned, down to the exact share amount, how many shares an institution held. Well, the surveillance landscape has changed over recent years and I think now, one of the key elements in having the surveillance services -- certainly trying to get some current updates on who the holdings are. But really trying to carve out that percentage of your shareholder base who you really haven't been able to fully identify and therefore haven't had an opportunity to do any outreach to.

That's the component that quite often turns out to be, perhaps, hedge fund related and perhaps been -- have more of a likelihood of becoming more aggressive or activist shareholders. So, I think -- I think it's much more -- it's used much more to determine trends and to really kind of identify what to look out for and tool to be used in conjunction with other tools, especially, again, leading up to the annual meeting time and trying to look out for anything that may seem unusual.

Steve Calk - *Ashton Partners - VP*

Great. We probably have time for one last question. Ann, if you have any that you needed to ...

Ann Storberg - *APCapital*

Let me see. I just see one popped in there.

Steve Calk - *Ashton Partners - VP*

Say, Ann, you asked a good one last time and we didn't answer it. But ...

Ann Storberg - *APCapital*

Yes, I'm sorry. The resources.

Steve Calk - *Ashton Partners - VP*

Yes, are there any resources out there that you can point people to that would be helpful, not only in just how to deal with issues, but also how to identify who are the top 50 guys out there that engage in activist activity. Anybody got any ideas? [Grip] it in silence.

John Grau - *InvestorCom - President*

Identifying the top 50 institutions that -- oh, I think that -- I mean, firms like ours keep records of which institutions -- I mean, obviously, we all have records on the [big] proxy fights and who the major players are and everyone sort of -- whether it be Steel Partners, Carl Icahn or the list goes on and on. But I think really looking at the history of how various kind of institutions and what we call quasi-institutional holders -- how they typically vote. I mean, is an institution an activist shareholder if they always withhold on the board of directors if there's one corporate governance topic that they're not in agreement with? Perhaps, but surveillance firms or proxy firms have databases containing that information. So, at least it's a tool that we can develop some good talking points for that will help put together such a list. But that list constantly changes because there is always new players and things are always changing.

Chris Young - *Institutional Shareholder Services - Director, M&A Research*

Yes, I would just add that hedge fund research out of Chicago tracks, I think it's a list of about 40 activist hedge funds. Actually puts them kind of in a -- like an index to track their performance. So, that's one place they get a list. We -- ISS tracks all of these in our pipelines so, in a sense, we have a list there as well.

Ann Storberg - *APCapital*

Do you make that available?

Chris Young - *Institutional Shareholder Services - Director, M&A Research*

We do make it available to clients.

Ann Storberg - *APCapital*

Chris, do we have any more time?

Chris Tetman - *NIRI Virtual Chapter*

I think we're pretty much at the end of the hour.

Ann Storberg - *APCapital*

Okay.

Chris Tetman - *NIRI Virtual Chapter*

So, I guess I will probably wrap that up again. I'd like to thank our moderator, Steve Calk, as well as the panelists, John Grau, TerriJo Saarela and Chris Young, for being so generous with your time and for sharing your insights.

And once again, I'd like to thank our program sponsors -- ACT Teleconferencing, Bowne, Business Wire, InvestorCom, Nasdaq, Thomson Financial and Vcall for their invaluable contributions to today's program and the NIRI Virtual Chapter.

And to those of you NIRI Virtual members out there, don't forget today's presentation and the Q&A session will be available in an archived webcast along with a complete transcript of the call at the NIRI Virtual Chapter website at www.nirivirtual.org.

Finally, I would like to remind our listeners that our next NIRI Virtual Chapter program will be on October 4 at 4:00 p.m. Eastern Time. The program is entitled, "Who Moved my IR Program? Managing Constant Change in the Regulatory Environment." This program will focus on the changing regulatory environment and how that impacts IROs. Specific areas include proxy requirement including non-brokered versus brokered, disclosure and Sarbanes-Oxley changes, SEC filing requirements, et cetera. Once again, that will be on Wednesday, December 6 at 4:00 p.m. Eastern.

And that wraps up today's program. So, thank you, again, to the panelists and -- as well as the moderator -- for your generous time and for joining us here today as well as our sponsors. Thank you again.

Operator

Thank you so much, sir. Ladies and gentlemen, this does conclude today's Proactive Management of Shareholder Activism call.

Thank you so much for your participation and have a pleasant day. You may now disconnect.