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Takeover Response Checklist
And
Dealing With Activist Hedge Funds

2014

Takeover Response Checklist

Notwithstanding the constant criticism from academics, activists and other so called governance experts, takeover preparedness has never been more important. Failure to prepare for a takeover or demands from an activist exposes potential targets to pressure tactics and reduces the target's ability to control its own destiny. This outline provides a checklist of matters to be considered in putting a company in the best possible position to respond to a takeover bid, pressure from an activist, a proxy fight or a consent solicitation or to negotiate a merger. This is a general comprehensive checklist; not all the matters in this outline are appropriate for any one company. Takeover defense is an art, not a science. It is essential to be able to adopt new defenses quickly and to be flexible in responding to changing takeover tactics. Whatever the state of the law may be and however it may change, in order to achieve the best result in a takeover situation a company must have effective defenses and keep them up to date. In addition to regular portfolio reviews by management, an annual board of directors "fire drill," with participation of the company's investment banker and legal counsel, is important for dealing with an attack, if one comes. Of equal importance, a company must maintain excellent investor relations, with the CEO and CFO having regular contact with the key portfolio managers and analysts.

Advance Preparation

1. Create Team to Deal with Takeovers

    - Small group (2-5) of key officers plus legal counsel, investment banker, proxy soliciting firm, and public relations firm
    - Ensure ability to convene special meeting of board within 24 to 48 hours
    - Continuing contact and periodic meetings are important
    - A periodic fire drill is the best way to maintain a state of preparedness
    - Periodic updates of board
    - Warlist of contacts updated regularly

2. Prepare Instructions for Dealing with:

    - Press
    - Message boards, blogs and other real time sources
    - Stock Exchange
    - Directors
    - Employees and unions
    - Customers/suppliers/banks
    - Institutional investors and analysts
    - Public officials and government contacts

3. Review Structural Defenses, Consider Implementing Additional Defenses If Necessary

    a. Bear in mind:

- In many cases a structural defense is possible only if there has been careful advance preparation by the Company and its investment banker and legal counsel (see 7 and 8 below)
- While staggered election of the board of directors and supermajority merger votes or other shark repellents have had limited success in defeating most any-and-all cash tender offers, they may be effective in deterring other types of takeovers (including proxy fights) and are worth retaining, if the Company has them currently
- Structural defenses and supermajority voting requirements need to be reviewed in light of negative reactions from institutional investors and impact on corporate governance ratings and institutional voting services' recommendations

b. Charter and bylaw provisions

- Staggered board
- Ability of stockholders to act by written consent
- Advance notice provisions for nominations and business at stockholder meetings
- Ability of stockholders to call a special meeting
- Ability of stockholders to remove directors without cause
- Ability of stockholders to expand size of board and fill vacancies
- Supermajority voting provisions (fair price, etc.)
- Authorization of sufficient common and blank-check preferred stock
- Director qualification requirements
- Cumulative voting
- Preemptive rights
- Constituencies
- Majority voting (resignation with acceptance in business judgment of the board)

c. "Poison Pill"

- Permits board to "just say no," Airgas case
- Purported antidotes ineffective
- Consider treatment of derivatives
- Institutional pressure to submit pills to a shareholder vote
- Dealing with shareholder proposals and director withhold vote recommendations for pill renewals
- Avoid poison pill policies, governance principles and by-laws as they limit flexibility
- "Dead Hand" provision (not valid in Delaware)

d. Structure of loan agreements and indentures

e. Change of control triggers in joint venture agreements and other material contracts

f. ESOP arrangements; plans to increase employee ownership

- Dept. of Labor and SEC fiduciary considerations

g. Customer protection plans

h. Options under state takeover laws

- Control share
- Business combination
- Fair price
- Pill validation
- Constituencies
- Long-term prospects vs. short-term price
- Disclosure

4. Additional Advance Preparation

- Review of the business portfolio and strategy: dividend policy, leverage, share repurchase, divestitures and spinoffs
- Advance preparation of earnings projections and liquidation values for evaluation of takeover bid and alternative transactions
- Amendments to stock options, employment agreements, executive incentive plans and severance arrangements ("golden parachutes")
- Amendments to employee stock plans with respect to voting and accepting a tender offer
- Protection of overfunded pension plans
- White knight/white squire arrangements
- Review availability of regulatory defenses, including CFIUS

5. Shareholder Relations

- Maintain excellent investor relations
- Review dividend policy, analyst presentations and other financial public relations
- Prepare fiduciary holders with respect to takeover tactics designed to panic them
- Review trustees for various company plans and determine if changes required
- Monitor changes in institutional holdings on a regular basis
- Plan for contacts with institutional investors (including maintenance of an up-to-date list of holdings and contacts) and analysts and with media, regulatory agencies and political bodies
- Remain informed about activist hedge funds and activist institutional investors and about corporate governance and proxy issues
- Role of arbitrageurs and hedge funds

6. Prepare Board of Directors to Deal with Takeovers

- Maintaining a unified board consensus on key strategic issues is essential to success
- Schedule periodic presentations by legal counsel and investment bankers to familiarize directors with the takeover scene and the law and with their advisors
- Company may have policy of continuing as an independent entity
- Company may have policy of not engaging in takeover discussions
- Directors must guard against subversion by raider and should refer all approaches to the CEO

- Avoid being put in play; psychological and perception factors may be more important than legal and financial factors in avoiding being singled out as a takeover target
- Review corporate governance guidelines and reconstitution of key committees
- Discuss the importance of independent directors meeting with ISS and major shareholders during a proxy solicitation or a takeover

7. Preparation by Investment Banker

- Maintain up to date due diligence file and analysis of off-balance sheet values
- Consider defensive acquisitions, recapitalization, spin-off and tracking stock alternatives
- Perform semiannual review
- Know your raiders — advance preparation for dealing with a specific potential raider may be the key to a successful defense
- Communication of material developments and regular contact is important

8. Preparation by Legal Counsel

- Review structural defenses such as poison pill
- Review charter and bylaws; make sure they reflect "state of the art"
- Review business to determine products and markets for antitrust analysis of a raider
- Understand regulatory agency approvals for change of control
- Consider impact of change of control on business
- Consider disclosures that might cause a potential raider to look elsewhere
- Consider defensive acquisitions, recapitalization, spin-off and tracking stock alternatives
- Consider amendments to stock options, executive compensation and incentive arrangements and severance arrangements, and protection of pension plans
- Consider ESOPs and other programs to increase employee ownership
- Regular communication and periodic board presentations are important

9. Prepare CEO to Deal with Takeover Approaches

- The CEO should be the sole spokesperson for the company on independence, merger and takeover
- Handling casual passes (bearhugs)
- Handling offers
- Communications with officers and board of directors
- Company may have policy of not commenting upon takeover discussions and rumors

Responding to Bidder Activity

1. Types of Activity

- Accumulation in the market
- Casual pass/nonpublic bear hug
- Public offer/public bear hug
- Tender offer

- Proxy contest/consent solicitation
- Demand by activist for board representation

2. Responses to Accumulation in the Market

- Monitor trading, hedge fund accumulation and 13(f) filings
- Maintain contact with specialist
- Monitor analyst reports and react appropriately
- Look for bidder Schedule 13D and Hart-Scott-Rodino filings
- Board has duty to prevent transfer of control without premium
- Monitor/combat disruption of executives, personnel, customers, suppliers, etc.
- Monitor uncertainty in the market; change in shareholder profile
- Consider responses to accumulation:
  - Poison pill can be structured so that flip-in takes effect at 10% to 15% threshold (N.Y. corporations 20%)
  - Engage with activist
  - Consider board seat/strategy change versus a creditable proxy fight
  - Litigation
  - Standstill agreement

3. Effect of Hart-Scott-Rodino Antitrust Act and Antitrust Enforcement Policies

a. Hart-Scott should prevent dawn raids on big companies but under Hart-Scott a raider can buy up to $75.9M, and there is a 10% passive investment exception that has been misused by raiders

b. A raider cannot complete its purchases until the requisite waiting period has expired:

- Cash tender offer/bankruptcy: 15 calendar days
- All other situations: 30 calendar days
- If second request issued: 30 calendar days (10 calendar days in cash tender offer/bankruptcy) after substantial compliance

c. Antitrust enforcement policies should be reviewed regularly, particularly when there is a change in administration or personnel

d. Foreign filings are increasingly important

4. Responses to Casual Passes/Non-Public Bear Hugs

- No duty to discuss or negotiate
- No duty to disclose unless leak comes from within
- Response to any particular approach must be specially structured; team should confer to decide proper response; meeting with potential bidder or activist may be best strategy
- Keep the board advised; participation by independent directors may be critical

5. Response to Public Offers/Public Bear Hugs

- No response other than "will call you back"
- Call war list and assemble team; inform directors
- Call special board meeting to consider bidder proposal
- No press release or statement other than "stop-look-and-listen"
- Consider trading halt (NYSE limits halt to short period)
- Determine whether to meet with raider (refusal to meet may be a negative factor in litigation)
- In a tender offer, Schedule 14D-9 must be filed within 10 business days and must disclose:
  - Board's position (favor; oppose; neutral) and reasoning
  - Negotiations
  - Banker's opinion (optional)

6. Special Meeting of Board to Consider Offer

a. Board should be informed of the following:

- Board has no duty to accept or negotiate a takeover offer
- A premium over market is not necessarily a fair price; a fair price is not necessarily an adequate price
- The "just say no" response was approved in the Time Warner case and reaffirmed in the Paramount, Unitrin and Airgas cases and continues to be good strategy and good law
- Where outside directors are a majority, there is no need for a special committee to deal with takeovers nor do the independent directors need separate legal counsel
- Board must act in good faith and on a reasonable basis; business judgment rule applies to takeovers (modified rule applies in Delaware, where defensive action must be proportional to threat)
- Partial offers present fairness issues which in and of themselves may warrant rejection and strong defensive action

b. Presentation:

- Management -- budgets, financial position, real values (off-balance sheet values), new products, general outlook, timing
- Investment banker -- opinion as to fairness or adequacy, assessment of bidder, quality of bidder's financing, state of the market and the economy, comparable acquisition premiums, timing
- Legal counsel -- terms and conditions of proposal, legality of takeover (antitrust, compliance with SEC disclosure requirements, regulatory approval of change of control, etc.), bidder's history, reasonable basis for board action

c. Board may consider:

- inadequacy of the bid
- nature and timing of the offer
- questions of illegality

- impact on constituencies other than shareholders
- risk of nonconsummation
- qualities of the securities being offered (if bid is not all cash)
- basic shareholder interests at stake, including the past actions of the bidder
- strategic alternatives

Strategic Alternatives

1. Remaining Independent

   a. "Just say no" defense is available as a legal matter, but may not be available in practice

      - Refuse to redeem poison pill
      - Wage proxy fight to keep control of board (if board is staggered, bidder cannot get control and redeem pill without two annual meetings)

   b. Consider white squire arrangements

   c. Consider actions which decrease the Company's attractiveness as a takeover target

      - New acquisitions (e.g., to create antitrust problems for bidder or increase size of transaction for bidder)
      - Asset sales or spin-off
      - Share repurchases/self-tender
      - Issue targeted stock
      - Recapitalization

2. Merger of Equals

   - Early, proactive efforts to pursue mergers of equals are necessary, as they are generally impossible to implement as a takeover defense.
   - MOEs offer an alternative to an outright sale in which two organizations of similar size can combine their organizations in an effort to provide shareholders with greater long-term values.
   - Management and other "social" issues are the key to an MOE's success or failure; these issues can be particularly challenging to address when combining companies with different corporate cultures.
   - A variety of contractual and legal structures are available to implement agreements on social issues, although basic trust and common objectives are key.
   - Careful planning is critical to avoid placing one or both parties "in play" prior to the announcement of the transaction and to anticipate possible shareholder concerns.
   - Lock-up protections are appropriate to protect the transaction once it is announced. The record must show the MOE is not intended to be a sale of either company.
   - MOEs can be "fair" even though higher short-term value could be obtained in an outright sale of the Company.

3. Joint Ventures and Strategic Alliances

- Strategic alliances and joint ventures have significant control ramifications.
- These transactions raise complex tax, accounting and sale of control considerations, which must be carefully analyzed against the backdrop of alternate strategic options.
- These transactions often present all the complexities of a full acquisition with the added complexity of shared governance and the need to construct an inherently imperfect exit mechanism.
- Short-term objectives need to be carefully balanced against potential longer-term ramifications.

4. Sale of the Company

a. Options:

- Locate white knight
- LBO/MBO
- Auction
- Sell significant subsidiary or division ("crown jewel" or other)
- Negotiate with bidder

b. Bear in mind: if Revlon duties are triggered, board will not be able to reverse course

c. Exploration by CEO of possible sale or merger (including strategic merger of equals) should only be undertaken after consultation with expert advisers

d. Form of confidentiality/standstill agreement used may have important ramifications

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Dealing With Activist Hedge Funds

This year has seen a continuance of the high and increasing level of activist campaigns experienced during the last 14 years, from 27 in 2000 to nearly 250 to date in 2014, in addition to numerous undisclosed behind-the-scenes situations. Today, regardless of industry, no company can consider itself immune from potential activism. Indeed, no company is too large, too popular or too successful, and even companies that are respected industry leaders and have outperformed peers can come under fire. Among the major companies that have been targeted are, Amgen, Apple, Microsoft, Sony, Hess, P&G, eBay, Transocean, ITW, DuPont, and PepsiCo. There are more than 100 hedge funds that have engaged in activism. Activist hedge funds have approximately $200 billion of assets under management. They have become an "asset class" that continues to attract investment from major traditional institutional investors. The additional capital and new partnerships between activists and institutional investors have encouraged increasingly aggressive activist attacks.

The major activist hedge funds are very experienced and sophisticated with professional analysts, traders, bankers and senior partners that rival the leading investment banks. They produce detailed analyses ("white papers") of a target's management, operations, capital structure and strategy designed to show that the changes they propose would quickly boost shareholder value. These white papers may also contain aggressive critiques of past decisions made by the target. Some activist attacks are designed to facilitate a takeover or to force a sale of the target, such as the failed Icahn attack on Clorox. Prominent institutional investors and strategic acquirors have been working with activists both behind the scenes and by partnering in sponsoring an activist attack such as CalSTRS with Relational in attacking Timken, Ontario Teachers' Pension Fund with Pershing Square in attacking Canadian Pacific, and Valeant partnering with Pershing Square to force a takeover of Allergan.

Many major activist attacks involve a network of activist investors ("wolf pack") who support the lead activist hedge fund, but attempt to avoid the disclosure and other laws and regulations that would hinder or prevent the attack if they were, or were deemed to be, a group that is acting in concert. Not infrequently, at the fringe of the wolf pack are some of the leading institutional investors, not actively joining in the attack, but letting the leader of the pack know that it can count on them in a proxy fight. Major investment banks, law firms, proxy solicitors, and public relations advisors are now representing activist hedge funds and are eagerly soliciting their business.

Among the attack devices used by activists are:

(a) aggressively criticizing a company's announced initiatives and strategic actions and presenting the activist's own recommendations and business plan;

(b) proposing a precatory proxy resolution for specific actions prescribed by the activist or the creation of a special committee of independent directors to undertake a strategic review for the purpose of "maximizing shareholder value";

(c) conducting a proxy fight to get board representation at an annual or special meeting or through action by written consent (note that solicitation for a short slate is very often supported by ISS and, if supported, is often successful, in whole or in part, and ISS is increasingly showing support for "control" slates);

(d) orchestrating a "withhold the vote" campaign;

(e) seeking to force a sale by leaking or initiating rumors of an unsolicited approach, publicly calling for a sale, acting as an (unauthorized) intermediary with strategic acquirers and private equity funds, making their own "stalking horse" bid or partnering with a hostile acquirer to build secret, substantial stock positions in the target to facilitate a takeover;

(f) rallying institutional investors and sell-side research analysts to support the activist;

(g) using stock loans, options, derivatives and other devices to increase voting power beyond the activist's economic equity investment;

(h) using sophisticated public relations, social media and traditional media campaigns to advance the activist's arguments;

(i) hiring private investigators to establish dossiers on directors, management and key employees and otherwise conducting aggressive "diligence"; and

(j) litigating to obtain board records and materials and to block transactions.

Current SEC rules do not prevent an activist from secretly accumulating a more than 5% position before being required to make public disclosure and do not prevent activists and institutional investors from privately communicating and cooperating.

Prevention of, or response to, an activist attack is an art, not a science. There is no substitute for preparation. In addition to a program of advance engagement with investors, it is essential to be able to mount a defense quickly and to be flexible in responding to changing tactics. To forestall an attack, a company should continuously review its business portfolio and strategy and its governance and executive compensation issues sensibly and in light of its particular needs and circumstances. Companies must regularly adjust strategies and defenses to meet changing market conditions, business dynamics and legal developments.

This outline provides a checklist of matters **to be considered** in putting a company in the best possible position to prevent or respond to hedge fund activism.

Advance Preparation

Create Team to Deal with Hedge Fund Activism:

- A small group (2-5) of key officers plus lawyer, investment banker, proxy soliciting firm, and public relations firm
- Continuing contact and periodic meetings of the team are important

- A periodic fire drill with the team is the best way to maintain a state of preparedness; the team should be familiar with the hedge funds that have made activist approaches generally and be particularly focused on those that have approached other companies in the same industry and the tactics each fund has used
- Periodic updates of the company's board of directors

Shareholder Relations:

- The investor relations officer is critical in assessing exposure to an activist attack and in a proxy solicitation. The regard in which the investor relations officer is held by the institutional shareholders has been determinative in a number of proxy solicitations. Candid investor relations assessment of shareholder sentiment should be appropriately communicated to senior management, with periodic briefings provided to the board
- Review capital return policy (dividends and buybacks), broader capital allocation framework, analyst and investor presentations and other financial public relations matters (including disclosed metrics and guidance)
- Monitor peer group, sell-side analysts, proxy advisors like ISS, activist institutions like CalSTRs and TIAA-CREF, Internet commentary and media reports for opinions or facts that will attract the attention of attackers
- Be consistent with the company's basic strategic message
- Objectively assess input from shareholders—is the company receiving candid and direct feedback
- Proactively address reasons for any shortfall versus peer company benchmarks; anticipate key questions and challenges from analysts and activists, and be prepared with answers; build credibility with shareholders and analysts before activists surface and attempt to "educate" the sell-side
- Monitor changes in hedge fund and institutional shareholder holdings on a regular basis; understand the shareholder base, including, to the extent practical, relationships among holders, paying close attention to activist funds that commonly act together or with an institutional investor
- Maintain regular, close contact with major institutional investors; CEO, CFO and independent director participation is very important; regularly engage with portfolio managers as well as proxy-voting departments
- Monitor ISS, GL, CII, TIAA-CREF corporate governance policies; activists try to "piggyback" on process issues to bolster the argument for management or business changes
- Monitor third-party governance ratings and reports for inaccuracies and/or flawed characterization
- Major institutional investors, including BlackRock, Fidelity, State Street and Vanguard have established significant proxy departments that make decisions independent of ISS and GL and warrant careful attention. It is important for a company to know the voting policies and guidelines of its major investors, who the key decision-makers and point-persons are and

how best to reach them. It is possible to mount a strong defense against an activist attack that is supported by ISS and GL and gain the support of the major institutional shareholders

- Maintain up-to-date plans for contacts with media, regulatory agencies and political bodies and refresh relationships
- Monitor conference call participants, one-on-one requests and transcript downloads
- Continue regular temperature taking calls pre- and post- earnings and conferences and exercise caution and oversight with respect to large format or "group" investor meetings

Prepare the Board of Directors to Deal with the Activist Situation:

- Maintaining a unified board consensus on key strategic issues is essential to success; in large measure an attack by an activist hedge fund is an attempt to drive a wedge between the board and management by raising doubts about strategy and management performance and to create divisions on the board by advocating that a special committee be formed
- Keep the board informed of options and alternatives analyzed by management, and review with the board basic strategy, capital allocation and the portfolio of businesses in light of possible arguments for spinoffs, share buybacks, increased leverage, special dividends, sale of the company or other structural changes
- Schedule periodic presentations by the lawyer and the investment banker to familiarize directors with the current activist environment
- Directors must guard against subversion of the responsibilities of the full board by the activists or related parties and should refer all approaches to the CEO
- Boardroom debates over business strategy, direction and other matters should be open and vigorous but kept within the boardroom
- Avoid being put in play; recognize that psychological and perception factors may be more important than legal and financial factors in avoiding being singled out as a target
- A company should not wait until it is involved in a contested proxy solicitation to have its institutional shareholders meet its independent directors. A disciplined, thoughtful program for periodic meetings is advisable
- Scrutiny of board composition is increasing, and boards should self-assess regularly. In a contested proxy solicitation, institutional investors may particularly question the "independence" of directors who are older than 75 or who have served for more than 10 to 15 years

Monitor Trading, Volume and Other Indicia of Activity:

- Employ stock watch service and monitor Schedule 13F filings
- Monitor Schedule 13D and Schedule 13G and Hart-Scott-Rodino Act filings
- Monitor parallel trading and group activity (the activist "wolf pack")
- Monitor activity in options and derivatives, as well as corporate debt and other non-equity securities

The Activist White Paper

The activist may approach a company with an extensive high-quality analysis of the company's business that supports the activist's recommendations (demands) for:

- Return of capital to shareholders through share repurchase or a special dividend
- Sale or the spin-off of a division
- Change in business strategy
- Improvement of management performance (replace CEO)
- Change in executive compensation
- Change in cost structures
- Merger or sale of the company
- Change in governance: add new directors designated by the activist, separate the positions of CEO and Chair, declassify the board, remove poison pill and other shark repellants, and permit shareholders to call a special meeting (or lower thresholds for same) and act by written consent in lieu of a meeting

The white paper is used by the activist in private meetings with shareholders, sell-side analysts and the media and is ultimately designed for public consumption

Responding to an Activist Approach

Response to Non-Public Communication:

- Assemble team and determine initial strategy. Response is an art, not a science
- No duty to discuss or negotiate (no outright rejection, try to learn as much as possible by listening and keep in mind that it may be desirable to at some point negotiate with the activist and that developing a framework for private communication and non-public engagement may avoid escalation)
- No duty to disclose unless leak comes from within
- Response to any particular approach must be specially structured; team should confer to decide proper response
- Keep board advised (in some cases it may be advisable to arrange for the activist to present its white paper to the board or a committee or subset of the directors)
- No duty to respond, but failure to respond may have negative consequences
- Be prepared for public disclosure by activist
- Be prepared for the activist to try to engage directly with shareholders, sell-side analysts, business partners, employees and key corporate constituencies

Response to Public Communication:

- Initially, no response other than "the board will consider and welcomes input from its shareholders"
- Assemble team; inform directors
- Call special board meeting to meet with team and consider the communication
- Determine board's response and whether to meet with activist. Failure to meet may be viewed negatively by institutional investors. Meeting may result in activist using the meeting to mischaracterize the company's position.
- Avoid mixed messages and preserve the credibility of the board and management
- Gauge whether the best outcome is to agree upon board representation and/or strategic business or other change in order to avoid a proxy fight
- Be prepared and willing to defend vigorously
- Appreciate that the public dialogue is often asymmetrical; while activists can, often without consequence, make personal attacks and use aggressive language, the company cannot respond in this manner
- Remain focused on the business; activist approaches can be all-consuming, but continued strong performance of the business, though not an absolute defense, is one of the best defenses. When business challenges inevitably arise, acting in a manner that preserves and builds credibility with shareholders and rest of investment community is of paramount importance. Maintain the confidence and morale of employees, business partners and key constituencies
- The 2012 defeat by AOL of an activist short-slate proxy solicitation supported by ISS shows that investors can be persuaded to not blindly follow the recommendation of ISS. When presented with a well-articulated and compelling plan for the long-term success of a company, they are able to cut through the cacophony of short-sighted gains promised by activists touting short-term strategies. The AOL fight showed that when a company's management and directors work together to clearly present a compelling long-term strategy for value creation, investors will listen
- The recent amendments, and then full withdrawal, by Carl Icahn of his attempt to force Apple into leveraging its balance sheet and paying out $150 billion to its shareholders, showed that investors can be convinced not to support an activist attack that is not in the long-term best interests of the company's shareholders (Icahn later restated his support for continued buybacks). In this connection, it is noteworthy that on March 21, 2014, Larry Fink, Chairman and CEO of BlackRock, wrote to the CEOs of the S&P 500:

  > Many commentators lament the short-term demands of the capital markets. We share those concerns, and believe it is part of our collective role as actors in the global capital markets to challenge that trend. Corporate leaders can play their part by persuasively communicating their company's long-term strategy for growth. They must set the stage to attract the patient capital they seek: explaining to investors what drives real value, how and when far-sighted investments will deliver returns, and, perhaps most important-

ly, what metrics shareholders should use to assess their management team's success over time.

It concerns us that, in the wake of the financial crisis, many companies have shied away from investing in the future growth of their companies. Too many companies have cut capital expenditure and even increased debt to boost dividends and increase share buybacks. We certainly believe that returning cash to shareholders should be part of a balanced capital strategy; however, when done for the wrong reasons and at the expense of capital investment, it can jeopardize a company's ability to generate sustainable long-term returns.

We do recognize the balance that must be achieved to drive near-term performance while simultaneously making those investments—in innovation and product enhancements, capital and plant equipment, employee development, and internal controls and technology—that will sustain growth.

BlackRock's mission is to earn the trust of our clients by helping them meet their long-term investment goals. We see this mission as indistinguishable from also aiming to be a trusted, responsible shareholders with a longer term horizon. Much progress has been made on company-shareholder engagement and we will continue to play our part as a provider of patient capital in ensuring robust dialogue. We ask that you help us, and other shareholders, to understand the investments you are making to deliver the sustainable, long-term returns on which our clients depend and in which we seek to support you.

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