

December 21, 2005

Be Prepared For Attacks By Hedge Funds

In this environment of attacks by hedge funds, including against some of our largest and most well-known companies, it is more critical than ever for companies to be prepared. Companies need to:

- Be acutely aware of where they stand in relation to their peers. Relatively poor performance, regardless of the reason, can make one an easy target.
- Consistently articulate the company's business and financial strategy in a way that is meaningful and understandable.
- Carefully monitor analyst reports, particularly for suggestions of strategic changes the company could make. Company officials must be careful when discussing potential strategies with analysts, and "half-baked" ideas for the company's strategic direction must be refuted or otherwise addressed immediately. Frequently, hedge funds are "turned on" to a company by an analyst who one way or another got an idea for a way to get a quick increase in the price of the stock.
- Have in place sophisticated stock watch programs which alert management to new large stockholders and non-ordinary course patterns of stock purchases. Hedge funds have become very sophisticated in their ability to execute purchases so as to avoid detection. Detection tools must be upgraded to meet the challenges posed by these purchases.
- Ensure that the company's investment bankers, lawyers and public relations consultants are at the ready with state-of-the-art programs for responding to a potential attack.
- Review at least annually with the board of directors the response program so that the board is comfortable with how to proceed in the event of an attack.
- Be aggressive and prepared to litigate or inform regulators immediately if there is evidence that funds have violated securities laws -- including by failing to disclose the formation of a group, the identities of the group members and/or the group's intention -- the HSR Act or the Investment Company Act. Make it clear that anyone (including opposition slate candidates) joining or supporting the attack will be subject to the same litigation and public relations campaign as the lead attacker.
- Not allow the attackers to achieve the moral high ground by wrapping themselves in the cloak of good governance. Expose the attackers for what they are, self-seeking, short-term speculators looking for a quick profit at the expense of the company and its long-term value.
- Above all, do not be caught off-guard and do not remain passive.

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