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Responding to Institutional Investor Requests for Access to Independent Directors

Recent statements by BlackRock, State Street, Vanguard and other institutional investors clearly articulate their expectation that companies should provide access to independent directors and should adopt a structure for regular investor/director communications. In responding to these requests, there is a range of approaches that companies could adopt which, in each case, should be tailored to the specific circumstances of the company. Indeed, institutional investors have specifically stated that they do not seek any particular method to ensure access to, and relationships with, directors. However, they have made it clear that it will color their attitude toward the company if the company first begins to provide access to directors only after the company has been attacked by an activist.

This memo outlines some alternatives to consider in constructing a shareholder relations program that will facilitate the development of meaningful long-term relationships with investors while also striking an appropriate balance between the roles of management and directors. In the case of an activist attack or other contested situation, these alternatives would need to be supplemented by an intensive campaign with participation by directors.

- The board could establish a Shareholder Relations Committee. This board committee could be available to receive communications from investors and meet with investors. In addition, it could oversee board and director evaluations, which have increasingly become an area of focus for institutional investors.

- The Lead Director and two or three other independent directors could join the CEO and head of investor relations on annual visits to the top 10 to 15 investors. The scope and substance of the agenda for those visits could be tailored to take into account, among other things, the investor's areas of focus and level of familiarity with the company (for example, the agenda for a meeting with the proxy team at an index fund may vary substantially from the agenda for a meeting with an active fund manager).

- When setting up other routine meetings between the company's CEO/CFO and top investors, the investor relations team could periodically offer to make two or three directors available to join the meeting and/or to meet privately with investors.

- Directors could attend an Investor Day and arrangements could be made for them to meet with the company's top investors.

- Investors could be invited to the annual shareholders meeting and arrangements could be made for them to meet with directors.

- The role of the Lead Director in facilitating communications with investors could be highlighted. In particular, investors could be provided with the Lead Director's contact information and could be advised that the Lead Director will work to facilitate direct contact with board members in appropriate circumstances.

- The Lead Director, Shareholder Relations Committee or the full board could issue an annual letter to investors that describes the "tone at the top" and ongoing initiatives to understand the perspectives of shareholders, develop long-term relationships and further enhance board functioning.

- The shareholder relations program could be managed by the CFO and investor relations team, in consultation with the company's CEO and general counsel.

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