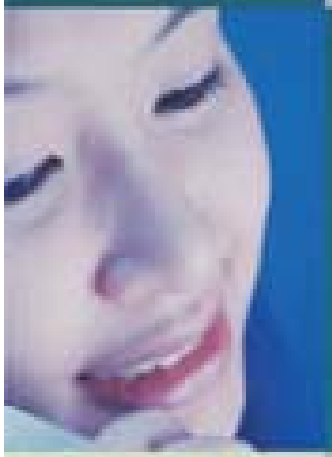


# November 2010 Washington IR Perspective





Jeff Morgan
President & CEO
National Investor Relations Institute
E-mail: jmorgan@niri.org
www.twitter.com/jeffreydmorgan

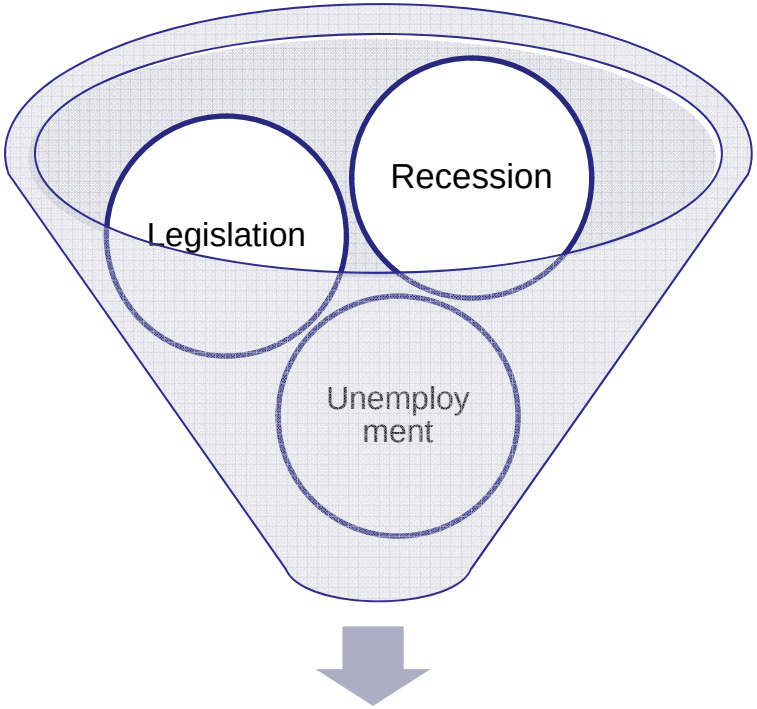
# Recession Playback:

- ✓ Regulation failed…
- ✓ Wall Street is greedy…
- ✓ CEOs, Boards & Investors not in sync…

Therefore Dodd-Frank legislation

Midterm election's role in legislation

# At this moment




Midterm Elections

# Mid-term Election Message:

- ✓ Votes said:
  - ✓ Economy & Jobs
  - ✓ Democrat (majority) backlash
- ✓ Elections were not a Republican mandate

Therefore Dodd-Frank legislation may evolve some but …

# Dodd-Frank Changes:

1. SEC rule making

2. Exchange Listing Standards

3. Shareholder Proposals

# 2009 & 2010 SEC recap

- ✓ NYSE 452: broker discretionary vote
- ✓ Proxy Disclosure Enhancements
  - ✓ Enhanced Compensation disclosure
  - ✓ Enhanced Director & Nominee Info
  - ✓ Board Leadership structure disclosure
  - ✓ Board Role in risk oversight disclosure
  - ✓ Comp. consultant disclosure
  - ✓ 8-K reporting within 4 days
- ✓ Notice & Access fixes
- ✓ Climate Disclosure Interpretation

# Dodd Frank

- ✓ 2319 pages (SOX was 61)
- ✓ 520 New Rules
- ✓ 81 Studies
- ✓ 93 Congressional Reports

- ❖ 6 to 18 month implementation

# Dodd Frank-Compensation

## Say-on-Pay (EOY/Q1 2011)

- Stockholders must have non-binding vote beginning 1/21/2011
- At least every 6 years stockholders decide every 1, 2 or 3 year cycle
- No broker discretionary vote
- Institutional vote transparency

# Dodd Frank-Compensation

## Say-on-Golden Parachute (EOY/Q1 2011)

- For any M&A, stockholders must have non-binding vote beginning 1/21/2011
- Can also be done as a regular say-on-pay style vote
- No broker discretionary vote
- Institutional vote transparency

# Dodd Frank-Compensation

## Clawbacks via listings standards (Q2,EOY 11)

- Policy disclosure on incentive-based comp on financials
- Policy to recover incentive-based comp after restatement
  - Material noncompliance triggers clawback
  - Preceding 3 years
  - Clawback is the overpayment

# Dodd Frank-Compensation

**Compensation Committees (EOY, Q2-2011)**

- SEC issues then exchanges via listing standard within 1 year
- Comp. Committee members are independent
- SEC to issue independence standard
- Rules will allow time to correct

# Dodd Frank-Compensation

**Compensation Committee Advisors (EOY, Q2)**

- SEC issues then exchanges via listing standard within 1 year
- Consultants, legal, etc. independence
- SEC to issue factors for independence
- Committee has sole discretion to engage
- Committee has sole responsibility for oversight

# Dodd Frank-Compensation

**Compensation Disclosures (>Q1,2011)**

- Director and employee hedging policy
- Whether comp. consultant was used
- Relationship of exec comp to performance
  - Exec comp to share value
  - Exec comp to median salary (SEC rules)
  - Annual total CEO comp. (SEC rules)

# Dodd Frank-Governance

## Corporate Governance

- Proxy Access
  - Effective:  3/15/2011 (120 after 60 days)
  - All companies (< $75M – 3 year reprieve)
  - No opt out, but companies can adopt more expansive procedures (14a-8)

# Dodd Frank-Governance

## Corporate Governance

- Proxy Access
  - 25% of directors (large shareholders 1st)
  - 3% ownership (individually or group)
    - Can be on loan but recallable
    - Borrowed or shorted don't count
  - 3 years (continuous)

# Dodd Frank-Governance

## Corporate Governance

- Proxy Access
  - Proposed directors must be eligible
    - Independence
    - Other relationships
  - Attest in 14N of intent not to gain or change company control

# Dodd Frank-Governance

## Chamber and BRT Legal Challenge

- Erred in appraising the costs
- Ignored potential adverse consequences
- Mishandled existing state laws
- Prevents shareholders from adopting alternatives
- Violated the 1st Amendment by forcing to carry and fund special interest when majority oppose

- SEC decided to stay implementation until DC court rules
  - earliest Q1 ruling

# Dodd Frank-Governance

## Corporate Governance

- Chair & CEO structure disclosure & why (SEC rules)

# Dodd Frank

## Other

- SEC to amend Sec13(f) disclosure (study 11)
  - public disclosure of the name of the issuer and the title, class, CUSIP number and aggregate amount of the number of short sales of each security, and any additional information determined by the SEC at a minimum monthly
- SOX 404 exemption < $75 million market cap
- SOX 404 burden reduction $75-$250 mil cap (SEC)

# Dodd Frank

## Things to consider:

1. Engage large shareholders
2. Review corporate bylaws (notice provisions, etc)
3. Review current director qualifications
4. Review ability to obtain needed comp info and begin to work on story around info
5. Review IR-Board interactions and communications
6. Consider internal governance teaming (IR, CS, etc)

# 2010 SEC

**Proxy Mechanics Concept Paper**

- OBO/NOBO discussion
- Improve retail voting (client directed)
- Proxy voting integrity
  - end to end
  - Pre- Post- Reconciliation
- Proxy costs/Fee setting/Service provider competition
- Proxy Advisory Services Oversight

# NIRI's Advocacy Focus Areas

**Proxy Mechanics** NIRI Agenda

(Shareholder Communications Coalition)

- SEC Investor Education
- Eliminate NOBO/OBO
- Proxy Service Provider Competition
- BO Compilation as a utility
- Proxy voting/tabulation verifiability/integrity

# NIRI's Advocacy Focus Areas

## **Proxy Advisory Firms** – NIRI & Society

- Register as investment advisers ++
- Disclose guidelines, methodologies, etc.
- Institutional investors due diligence
- Public record of all their voting advice
- Institutional investors public vote disclosure
- Opportunity for public companies to review
- Public disclosure of company's response
- Proxy advisory voting errors disclosure

# NIRI's Advocacy Focus Areas

1. Proxy Mechanics
2. Proxy Advisory Firms
3. Shareholder Ownership Transparency
   - Timeliness
   - Breadth
4. Short selling (DONE, except discl.)
5. And those discussions impacting IR

# What's going on at NIRI National?

1. Information
2. Education
3. Advocacy
4. Community/Networking









# Open Discussion

# Questions & Answers









