The imperatives of investor relations

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The Philippine Stock Exchange’s announcement that it will revive and enforce a code of ethical conduct for traders and sellers (Philippine Daily Inquirer, Jan. 7, 2000) reflects an awareness of malaise in the Philippine stock market.

The PSE believes a code of conduct is necessary in the light of “market disturbances” caused by “questionable transactions” involving the shares of BW Resources Corporation, whose price skyrocketed from January to October 1999, then plunged just as rapidly afterwards. Stockbroker Irving Ackerman described the market disturbance more bluntly: “It came very close to ruining the exchange.” (Business World, Jan. 3, 2000).

A code of conduct may help reassure investors that they aren’t being duped by practices that create a false impression of heavy trading and robust prices. But to convince investors that the market is worth investing in to begin with, publicly-listed companies need to mount their own initiatives in investor relations. In particular, they need to woo the world’s institutional investors through programs that stress disclosure and sound governance.

The management of listed corporations is increasingly monitored, challenged and taken to task by institutional investors — mainly pension funds and mutual funds — that have become major players in the US and global markets. These investors, who now own almost 50 per cent of corporate America’s equities, have learned to flex their muscles as shareholders, and in some cases, have driven change within troubled companies (Rosenberg, x).

The most dramatic instance of investor clout in recent months is the forced resignation last December of Douglas Ivester as CEO of The Coca-Cola Company. Ivester had earlier served as chief architect of strategic moves that saw Coke’s share price rise 3,500 per cent during the 16-year tenure of his predecessor Roberto Goizueta. Yet in Ivester’s two short years as CEO, share prices, bedevilled by a product recall in Europe and weak markets in Asia, had lagged well behind the Standard & Poor 500. Fortune magazine reports that Ivester was pushed out by two powerful directors of Coke — Warren Buffett of Berkshire Hathaway (which controls 200 million shares, or 8.1 per cent) and Herbert Allen of Allen & Co. (9 million shares). Through the 1990s, CEOs of other firms — American Express, IBM, General Motors, Westinghouse — have likewise been unseated because of shareholder discontent (Seitel, 409).

It wasn’t always that directors representing large shareholdings, in turn owned by thousands of smaller investors, exhibited this kind of activism or clout.

In the 1950’s, when almost 95 per cent of stocks owned in the US were held by individuals, the dispersion of small shareholdings in large corporations had separated the ownership of a company from its control.

But shareholdings didn’t stay small and dispersed. The key legislation that facilitated a sea change was the Employee Retirement Income Security Act (ERISA) of 1974, which led to the establishment and growth of more corporate pension funds. Much of their assets would be placed in the stocks of major US and global corporations. As these pension funds became active in the stock market, they came to account for more than half of the shares traded on the major exchanges (Hober, in Caywood, 108).

One key ERISA provision is that pension plans have to be operated exclusively for the benefit of the employees who are the beneficiaries of the pensions. In other word, pension funds did not simply grow big enough to exert an influence on the companies in which they were invested; the fund managers were legally bound to do so. That is to say, fund managers served as chief architect of strategic moves that saw Coke’s share price rise 3,500 per cent during the 16-year tenure of his predecessor Roberto Goizueta. Yet in Ivester’s two short years as CEO, share prices, bedevilled by a product recall in Europe and weak markets in Asia, had lagged well behind the Standard & Poor 500. Fortune magazine reports that Ivester was pushed out by two powerful directors of Coke — Warren Buffett of Berkshire Hathaway (which controls 200 million shares, or 8.1 per cent) and Herbert Allen of Allen & Co. (9 million shares). Through the 1990s, CEOs of other firms — American Express, IBM, General Motors, Westinghouse — have likewise been unseated because of shareholder discontent (Seitel, 409).

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were and are mandated to know what goes on in the companies in which they invest, and to make voting decisions as owners of these firms.

Much of the credit for the rise of shareholder strength is due to Robert A G Monks, who, by origins and training—Boston family, Harvard law school, corporate attorney and venture capitalist—might seem an unlikely person to turn shareholder activist (His biography is title A Traitor to His Class).

Monks' fundamental thesis is charming in its simplicity and seismic in its consequences. Companies need to be accountable to someone. That "someone" is its shareholders or owners. Increasingly, these shareholders are big institutional investors such as pension funds that represent millions of citizens with long-term goals apart from short-term profits. Hence, accountability to owners becomes the same as accountability to society (Rosenberg, xi).

Monks elaborated these seminal ideas into statements of principle and actual praxis. In 1985 he established Institutional Shareholder Services, a firm that handles shareholder voting for hundreds of corporate and government pension funds and represents a deciding factor in many controversial proxy votes in large corporations.

Here is the ISS Credo, according to the 1985 statement of philosophy and business plan:

Large American corporations have in this century existed without reference to the expression of ownership opinion and have been dominated by a self-perpetuating dominant management bureaucracy.

We would hope that our expression of a role for ownership can be positively involving increasing values not only for shareholders but also for society...Informed and active shareholders hold a proxy for the public interest lessening the need for the far more troublesome and expensive involvement by government....

We should attempt to establish directorial responsibility for corporate actions that do not reflect adequate concern for owners' interest....Our efforts should be to identify those particular actions that indicate the most blatant concern for management and the least for owners. (Rosenberg, 122-123)

Embedded in these texts is the idea that shareholders are not just employees looking at a pension; they are citizens who seek to live in a decent world, free of crime, pollution, health hazards. In such a world, certain corporate behaviors would clearly be unacceptable, such as...
violations of environmental laws. Under pressure from corporate activists, disclosure would actually benefit the firm, because the firms would then take steps to rectify the situation and thereby protect the firm from ruinous lawsuits or penalties (Rosenberg, 63).

If a corporation’s numerous owners, represented by activist fund managers, place its board and management under close scrutiny, then management’s best hope of maintaining stockholder confidence is a planned program of investor relations anchored in the disclosure of information.

The basic task is to keep investors cognizant of the company’s performance and prospects, where the firm is headed, how it plans to get there. The continuing communication of pertinent facts should drive share price—not rumor, not innuendo, and certainly not wash sales and other dubious trading practices.

As investors act on information gleaned from many sources—from analysts, brokerage houses, newspapers, electronic databases—an investor relations program should include these sources among its audience.

But the audience also extends beyond these groups, to employees (particularly if a company has an employee stock ownership plan, or if executive compensation includes stock options); customers, distributors and suppliers (who may be led by reports about the company’s standing to negotiate harder or hold out for more generous concessions).

Fundamentally, what the investor wants is an understanding of the company’s strategic direction and the resources and advantages that will enable it to achieve its goals. Are its objectives and operations designed to enhance shareholder value? Are there sufficient investments in quality, technology and employee development to retain and expand the customer base? When the best-laid plans fall short, is the enterprise flexible and skilled enough to make midstream corrections? Are the prospects of success and returns superior to those offered by alternative investments?

To address these concerns, the investor relations professional must take into account a broad array of factors and considerations (Hobor, in Caywood, 111-115):

-the mix of individual and institutional investors;
-the geographic distribution of shareholders, and the languages they speak, particularly if there are foreign investors;
-the motivations of shareholders (who, as earlier stated, may not be sim-
Sex and the campus 
(Or why there ought to be a law?)

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Now that curiosity has been aroused, this article, unfortunately, is not about sex. The topic concerned a law that, because of its title, suggests sex. The law, however, does not prescribe a sexual offense that can be categorized as a crime against chastity under our criminal code. Although the acts leading towards the commission of this offense involve sexual misconduct, the acts are punished because they constitute, singly or collectively, abuse of authority or power in a particular environment. This article deals with sex and the campus from the perspective of the Anti-Sexual Harassment Law.

Safe learning environment

Even before the passage of the Anti-Sexual Harassment Act in 1995, a school already has the duty to provide a safe learning environment to its students. The duty arises from a contractural obligation of the school upon the admission of the students. However, the duty had been, prior to 1995, more concerned with the physical safety of students from hazards or violence on campus. There was then no recognition or awareness that conduct of a sexual nature or unwelcome sexual advance also threatens the well being of students.

The passage of the Anti-Sexual Harassment Law changed this narrow perspective. The law declared a state policy on sexual harassment; defined sexual harassment; and imposed legal duties on employer or the heard of the work-related, educational or training environment or institution. Because of this law, a school became more conscious of the problem of sexual harassment that may have existed, although unrecognized or not given even its due importance. Indeed, a review of our student handbooks prior to 1995 evidences our own lack of kno

Quid pro quo sexual harassment happens when the “sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges or considerations.”

The legal definition states in general what kind of environment sexual harassment can occur and what the relationship of the alleged harasser and the victim is. In particular, there is a breakdown of the definition depending on whether the environment is employment or work-related on one hand; and whether it is an education or training environment.

Our discussion is on sexual harassment on campus, although is does not mean say that there cannot be work-related or employment-related sexual harassment in school. More specifically, sexual harassment is committed against "one who is under the care, custody or supervision of the offender" or "one whose education, training, apprenticeship or tutorship is entrusted to the offender".

The legal definition acknowledges two forms of sexual harassment irrespective of the environment. The first, and this form is the easiest to identify and prove, is the so-called quid pro quo sexual harassment. As further defined by
law, this happens when the “sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges or considerations.” In the quid pro quo sexual harassment, the law speaks of a sexual favor that is made as a condition to the academic decision to be taken.

The second, and this form needs further elaboration, is the so-called hostile environment sexual harassment. In the case of a hostile environment, the law states sexual advances resulting in such an environment for the students. The law is silent on what these sexual advances are.

Legal literature of the United States on sexual harassment explains in detail what are examples of sexual conduct and when sexual conduct creates a sexually hostile environment. The difficult task is pinpointing sexual harassment of the second form.

As a guide, there are some pointers that can be lifted from literature. Hostile environment can be created by a series of incidents of sexual conduct that is not severe. Unlike quid pro quo sexual harassment where one incident may be sufficient for its commission, hostile environment should be viewed in terms of the effect of the sexual conduct on the student. The verbal or physical conduct of sexual nature should have the effect of unreasonably interfering with the work or academic performance of the student in that the unwelcome sexual conduct created a hostile environment. There are two questions that are asked. First, did the student view the environment as hostile? Second, was it unreasonable for students to view the environment as hostile?

What should the school do?

Firstly, the school should develop and publicize a strong policy against sexual harassment. The policy is the first and perhaps the most important step in deterring or preventing sexual harassment from occurring on campus. The resolution, settlement or prosecution of acts of sexual harassment.

A school complies with this duty if it promulgates, upon consultation with students, rules and regulations prescribing the procedures for investigation of sexual harassment cases and providing the administrative sanctions therefore. The school should, in addition, create a Committee on Decorum and Investigation. This committee will be tasked with the function of conducting the investigation of sexual harassment cases and increasing the awareness and understanding of sexual harassment.

A school is compelled to comply with this legal duty because of the liability imposed on the head of the educational or training institution. The school head shall be solidarily liable for damages from acts of sexual harassment if the school is informed of such acts by the offended party and no immediate action is taken thereon.

The school’s concern about sexual harassment should be, ideally, over and above the legal duty. The best way to deal with sexual harassment is to deter or prevent it from occurring. The school personnel should be sensitive about what constitutes unwelcome sexual conduct. Even if no complaint is filed, or that the sexual conduct is being ignored by the victim, the sexual conduct nonetheless may constitute sexual harassment. The idea is that if no direct action is taken against harassing behavior, it will not disappear. On the contrary, the harassing behavior is likely to continue and may become worse.

Hence, upon receipt of information, not necessarily a complaint, a school should move quickly and investigate. Because of the sensitive nature of sexual harassment, investigation should be done discreetly and that, as much as possible, no public disclosure of the names of the parties involved should be made. The rights of the alleged harasser should also be protected considering the fact that accusation can easily be made by non-victims.

The school should be able to provide a set of procedures where students will not feel threatened by reporting incidents of sexual harassment and that their reports will be taken seriously and sensitively. More importantly, the school should ensure that no harm comes to the reporting students and should prevent any retaliation by the alleged harasser.

Conclusion

Five years from the law’s passage, our jurisprudence on sexual harassment is still evolving. Only recently, the Supreme Court in the case of Phil-America Automotive United Corp. V. National Labor Relations Commission, G.R. No.

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124617, April 28, 2000, characterized the gravamen of the offense in sexual harassment as an abuse of power and not a violation of one’s sexuality whether male or female. Prior to this decision, the Supreme Court regarded cases of sexual harassment as “immorality” or “grave misconduct”. These reported cases involved complaints of unwelcome sexual advances by subordinates against judges.

Thus, a judge was dismissed upon a complaint of a clerk of the court for gross misconduct and immorality (Dabon v. Arceo, Adm., Matter No. RTJ 96-1336, July 25, 1996). Another judge was dismissed because three female subordinates complained of unwelcome sexual advances (Diwa v. De Asa, Adm., Matter No. MTJ 98-1144 and MTJ 98-1148, July 2, 1998). In the De Asa case, the Court said that the judge’s overly abusive and outrageous acts constituted sexual harassment because they necessarily result in an intimidating, hostile and offensive environment. In Vedana v. Valencia, ADM RTJ-96-1351, September 3, 1998, the judge was luckier because he was suspended by the Supreme Court only for one year and not dismissed. The judge hugged and tried to kiss a court interpreter on the lips. But the kiss landed on the cheeks and this might have explained the lighter penalty. There are two other cases, Madrvedjo v. Loyao, Adm. Matter No. RTJ 98-1424, October 13, 1999; and Simbajon v. Esteban, Adm. Matter No. MTJ 98-1162, August 11, 1999, where Lotharios in robes were dismissed.

There is as of yet no reported case of sexual harassment involving members of the academic community. While the cases so far decided by the Supreme Court involved judges, this should not mean that there is a monopoly by the members of the bench. Even prior to the passage of the Anti-Sexual Harassment Law of 1995, the Supreme Court had ruled in Villarama v. NLRC, G.R. No. 106341, September 2, 1994, that sexual harassment is a valid cause for termination. In fact, as early as 1975, a professor was dismissed by one university for making homosexual advances on his students.

The Anti-Sexual Harassment Law is not simply about “immorality” or “grave misconduct”. It concerns proscribing any form of sexual conduct by a person exercising authority, influence or moral ascendancy that is unwelcome and more importantly, creates a hostile environment to the victim. If the unwelcome sexual conduct is not treated seriously, there is that danger of trivializing the law.

Endnotes

1 With due apology to the HBO series “Sex and the City”
2 Revised Penal Code, Book Two, Title Eleven
4 Sexual Harassment: It’s Not Academic, id.
5 Anti-Sexual Harassment Act of 1995, sec. 4
6 Id, sec. 5
7 Footnote 4
8 Id
9 Id
10 Montemayor v. Araneta University Foundation, 77 SCRA 321