

## message from partner in charge

With summer upon us, we often find ourselves looking for diversions. We hope you'll take some time out of your day and divert your attention to our latest *New York Update*.

**Steven London** and **Matthew Gilman** have recently formed the firm's Shareholder Activism Team. In this issue, you'll find an article by Steve and Matt which describes how shareholder activism grew in 2007 and is expected to substantially increase in 2008 and the steps directors need to take to be more proactive in addressing this activism.

We also look outside the U.S. borders in this issue as we give an update on some Middle East financial developments and have an article about The European American Chamber of Commerce (EACC) – New York's successful launch with their conference "The Consequences of the Current Euro and U.S. Dollar Exchange Rate on the M&A Industry in Europe and the United States."

As always, thank you for reading and please let us know if you have any comments or suggestions.

James D. Rosener  
212.808.2717  
rosenerj@pepperlaw.com

## in this issue

- 1 **Best Practices for Working With Shareholder Activists**
- 2 **Peppercast: The Perils of the Employee Free Choice Act**
- 3 **Middle East Financial Developments**
- 4 **EACC - New York Celebrates Launch with Conference on Effect of Current Economy on M&A Industry in Europe and U.S.**
- 4 **Upcoming Events**

## Best Practices for Working With Shareholder Activists

*This article first appeared in The Deal on June 9, 2008. It is reprinted here with permission.*

Corporate boards of directors and management can — and should — be more proactive in preparing for and addressing increasing activism by shareholders.

Shareholder activism, which grew in 2007, is expected to continue to increase in 2008. Several factors led to this rise, including greater pressure to increase returns to shareholders and hedge funds seeking a variety of individual gains.

In addition, new Securities and Exchange Commission rules were established that permit less costly electronic proxy solicitations. This allows shareholders to avoid the burden of complying with numerous laws and communications rules, and they are not required to file and distribute significant amounts of paperwork. Also, the establishment of electronic forums allows shareholders to communicate and generate support for a cause without being in violation of proxy rules.

Shareholders now hold boards of directors and management more accountable for company performance and corporate governance, and dissident shareholders have achieved some notable successes.

Vocal and active shareholders often promote one particular issue that may not be in the best interests of the remaining shareholder base. Their objectives also can force board members to focus on short-term, rather than long-term, goals. At times, shareholder activists can distract boards of directors from focusing on their primary duties to provide strategic direction and oversee management.

While management and the boards of directors of public companies have always tried to balance Wall Street's demand for quarter-to-quarter performance with actions aimed at long-term growth, the now pervasive scope of activist shareholders makes that balance more difficult to achieve.

For example, hedge funds pressure management with the ultimate goal of obtaining board seats, special dividends and stock buybacks. Often, they also seek the board's commitment to explore the sale of the business or force a company to negotiate better terms for shareholders.

Shareholder activism is forcing boards of directors to respond more directly to the concerns and demands of large shareholders. These demands include greater accountability for executive compensation, board representation and short-term strategic options to enhance shareholder value. Shareholders' concerns are particularly prominent with respect to companies with languishing returns.

Companies can adopt several proactive approaches to address increased shareholder activism, thus enabling them to be ahead of, rather than behind, the trend, including:

- educating directors regarding the tactics of activist shareholders, as well as the obligations of management and boards of directors to individual shareholders
- continually reviewing, analyzing and improving corporate governance
- thoroughly analyzing executive compensation, linking pay to performance
- evaluating periodically the composition and performance of the board of directors
- holding meetings with prominent shareholders and listening to their concerns
- communicating to shareholders the key priorities of management, realistic benchmarks and milestones that shareholders can use to evaluate progress

- monitoring shareholders, including chat rooms, to understand who they are
- fully analyzing takeover defenses.

These are appropriate corporate governance measures regardless of the activist shareholder initiative. Furthermore, the measures can serve to address the concerns of all shareholders before potentially disruptive activities of shareholder activists.

The goal of any company should always be to alleviate shareholder concerns before they reach a crisis point. However, should a lawsuit, proxy contest or activist shareholder challenge arise, boards of directors and management need to be informed, deliberate and consistent in their response. They also need not be fatalistic, despite the significant power activist shareholders have gained in recent years. Each situation requires individual attention, the ability to develop and implement appropriate, measured responses, along with a realistic assessment of when to fight and when to forge a suitable settlement.

*Authors:*

*Steven R. London*

*617.204.5107*

*london@pepperlaw.com*

*Matthew S. Gilman*

*617.204.5106*

*gilmanm@pepperlaw.com*

*Mr. London and Mr. Gilman have formed Pepper's shareholder activism team.*



## **Peppercast: The Perils of the Employee Free Choice Act**

As the 2008 election cycle intensifies, the organized labor movement is devoting substantial resources to support candidates who will advance its ambitious legislative agenda in 2009, including passage of the Employee Free Choice Act (EFCA).

**Jonathan Kane**, a partner in the Philadelphia and Berwyn offices of Pepper Hamilton and chairman of the firm's Labor and Employment Group, discusses what passage of the EFCA would mean to employers and what they can do now to ensure that union organizers do not target their employees.

Listen today by visiting the Labor and Employment section of Pepper's podcenter at [www.pepperpodcasts.com](http://www.pepperpodcasts.com).

## Middle East Financial Developments: Brief Status Report on Recycling Petrodollars and Broader Economic Diversification by Middle East Financial Centers

With its creation of the Qatar Financial Center (QFC) in 2005, Qatar looked beyond oil in the hopes of becoming a world leader in economic and social transformation. The QFC is a financial and business center, designed to attract international financial services institutions and major multi-national corporations. Businesses participating in the center are entitled to 100 percent ownership and full repatriation of profits. Qatar has been able to commit to this transformation thanks to its large reserves of gas in the northern part of the country. These reserves provide enough gas to supply 30 percent of the world's gas exports.

Qatar is not alone. Two other Sheikdoms in the Middle East created what have now become booming financial centers, thanks to increased regional and international interest in Middle Eastern assets. The high level of capital liquidity in the region can be attributed to higher oil revenues, as well as the realignment of investments by regional investors. The question, however, remains: How many major financial centers can survive in one region? The financial markets in New York, London, Tokyo, Singapore, Shanghai and Frankfurt, taken as a whole, contribute to the development of the world financial market. Whether this theory also can apply to the Middle East remains to be seen.

The three main financial centers in the Middle East are the QFC, the Dubai International Financial Centre (DIFC) and the Bahrain Financial Harbour (BFH). Many may think that these three entities compete for the same opportunities. Interestingly enough, they have their respective business and functional differences. Qatar is a major oil exporter and has the world's third largest gas reserves. Its edge in securing investor confidence rests on its hydrocarbons resources. In contrast, Dubai's oil reserves are expected to be exhausted within this century and it has indeed become a diversified service based economy relying heavily on commerce and tourism. In playing an international role in finance, Dubai is promoting itself as the Arabian Singapore. Qatar, on the other hand, is attracting major global institutions to serve its local market. Bahrain has always been known as the first financial center in the Middle East. Since the late seventies, Bahrain has hosted offshore banks, and heavily relied on wealthy investors from Kuwait and Saudi Arabia. With its creation of the BFH, Bahrain

primarily seeks to consolidate its credentials to become an Islamic banking center.

Additionally, Qatar's approach is geared more towards boutique financial services, rather than a massive base for offshore financial professionals, like the DIFC. Qatar hopes to grow its economy and appears to be on the right track with its investing of oil and gas wealth into developing its financial infrastructure. The QFC has created a center that embraces modern laws for modern practices. Qatar has based its standard on the UK FSA model, a principles-based system with which international companies are already quite familiar. Unlike the DIFC and BFH, the QFC is offering a different option whereby companies are not compelled to operate only within the boundaries of the QFC, meaning they can operate in Qatar as well as in the QFC.

Financial firms from every corner of the globe are flocking to the Middle East to profit from the large amount of petrodollars. However, of even greater importance, has been the strong presence of state-controlled investment pools known as sovereign wealth funds. The International Monetary Fund estimates the total asset size of sovereign wealth funds at around US \$2 trillion to US \$3 trillion, with the potential to grow to between \$6 trillion and \$10 trillion by 2013. Abu Dhabi alone holds 1/3 of the world's current total, with an estimated US \$900 billion.

The amount of wealth in the region, paired with the sovereign wealth funds' activity, is a strong indicator that the financial centers in the Middle East are here to stay.

*Authors:*

*Timothy R. McTaggart*  
202.220.1210  
[mctaggartt@pepperlaw.com](mailto:mctaggartt@pepperlaw.com)

*Talal C. Salaam*  
212.808.2719  
[salaamtc@pepperlaw.com](mailto:salaamtc@pepperlaw.com)

*Mr. Salaam is a Middle East Consultant in Pepper's New York office.*

## EACC - New York Celebrates Launch with Conference on Effect of Current Economy on M&A Industry in Europe and U.S.

The European American Chamber of Commerce (EACC) – New York hosted its first event on May 29, 2008, when it presented a conference on “The Consequences of the Current Euro and U.S. Dollar Exchange Rate on the M&A Industry in Europe and the United States.” Pepper Hamilton LLP, Deloitte & Touche LLP and EACC–France were sponsors of the conference and are founding sponsors of EACC–New York.

“The continuing globalization of the world’s economy presents growing challenges for U.S. and European businesses,” said James D. Rosener, president of EACC’s New York chapter and chairman of Pepper Hamilton’s International Practice Group. He continued, “Our inaugural EACC–New York program analyzed the current appetite for cross-border mergers and acquisitions. The general consensus among panelists was that deals will continue to go forward regardless of the soft economic environment, as long as there are well-defined strategic fits. Panelists also felt that private equity funds as well as strategic buyers would be active in cross-border buy-outs over the medium term.”

J. Onno de Beaufort Wijnholds, the permanent representative of the European Central Bank in the United States and its observer at the International Monetary Fund, was the keynote speaker for the program and spoke on “The Macroeconomic and Financial Impact of the Euro.”

The EACC focuses on developing and cultivating strong economic relationships between the European Union and the United States. The EACC was created in 2006, and its New York chapter was formed in 2008.

Topics for upcoming programs of EACC–New York include sovereign wealth funds, international background investigations, the Foreign Corrupt Practices Act, arbitration, and IFRS – US GAAP convergence.

For more information regarding EACC–New York partnerships, memberships and sponsorships, contact Jim Rosener at 212.808.2717 or [rosenerj@pepperlaw.com](mailto:rosenerj@pepperlaw.com).

## Upcoming Events

*Pepper Hamilton Judges The Hedge Fund Regatta*  
Manhattan Sailing Club  
North Cove Marina

Preliminary Regatta A – July 10, 2008  
Preliminary Regatta B – July 14, 2008  
Final Championship – August 20, 2008

Visit [www.myc.org](http://www.myc.org) for more information and to purchase tickets.

*The Capital Roundtable: P.E. & V.C. Fundraising Workshop*: September 24, 2008  
Featuring Pepper partner **Michael B. Staebler**

*Masterclass*: September 25, 2008  
Featuring Pepper partners **Julia D. Corelli** and **Todd W. Betke**

Visit [www.capitalroundtable.com](http://www.capitalroundtable.com) for more information about these events and to register.

*The Deal’s 2009 M&A Outlook*  
November 2008  
New York, N.Y.

Pepper Hamilton is a gold sponsor of The Deal’s 2009 M&A Outlook. For more information, visit <http://www.thedeal.com/marketing/events>.

**Pepper Hamilton LLP**  
Attorneys at Law

The material in this publication is based on laws, court decisions, administrative rulings and congressional materials, and should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship. Please send address corrections to [phinfo@pepperlaw.com](mailto:phinfo@pepperlaw.com).

[www.pepperlaw.com](http://www.pepperlaw.com)  
Berwyn | Boston | Detroit | Harrisburg | New York | Orange County  
Philadelphia | Pittsburgh | Princeton | Washington, D.C. | Wilmington

© 2008 Pepper Hamilton LLP. All Rights Reserved.  
This publication may contain attorney advertising.