

# Activist shareholders showing muscle

## Taking on management has gone from rogue to vogue

By **KEN SCHACHTER**

MELVILLE – During OSI Pharmaceuticals' Nov. 1 quarterly earnings call, Tom Roberts of Noonday Asset Management greeted OSI's CEO Colin Goddard and then delivered one of those questions that make investor relations professionals break out in a cold sweat.

Roberts acknowledged that it will take time to evaluate the wisdom of OSI's acquisition of Eyetech Pharmaceuticals. (Since that deal was announced, however, OSI stock has fallen 36.5 percent.)

Roberts added that "investors' confidence has been shaken in the board and management, and we feel that one way to address this would be making some proactive board changes in order to help reassure investors, and I just wanted your opinion of that."

Goddard took the question with aplomb, saying that "any discussion of changes to our board and/or to our management team is, at the very best, premature, just as we believe that the interpretation of the outcome of this deal is being prematurely judged."

Roberts, however, pressed on, saying he agreed that it will take time to play out, "but it's been pretty clear that the confidence factor has already played out." Then he again asked Goddard if he would jettison some board members.

Such exchanges once were rare, but securities governance experts say shareholder activism is becoming more commonplace, with institutional investors increasingly willing to pressure executives.

"It's certainly becoming more prevalent," said Alon Kapen, a securities lawyer at Farrell Fritz. "We're seeing many more public expressions of criticism of management and efforts to replace management, alter corporate strategy or sell the company."

"It's gone from being rogue to in vogue," said Robert Chapman, an El Segundo, Calif., hedge fund manager who has made an art form of scolding executives of underperforming companies.

"Hedge funds and other market players are finding passive investing as being insufficient in providing double-digit returns."

In 2003, one of Chapman's targets was Michael McManus Jr.,

chief executive of Farmingdale-based Misonix Inc., in which Chapman Capital had a 6.4 percent stake.

In one open letter to McManus, Chapman warned: "I want you to go to sleep tonight knowing that Chapman Capital LLC will be watching your every move as CEO of Misonix ... I can't be bargained with, nor do I feel pity, remorse or fear ... I absolutely will not stop, ever, until the owners of the company have seen the maximization of their investment."

In U.S. Securities and Exchange Commission filings, Chapman also mocked the chief executive as "Mike 'Mc-Minus' McManus" and said he had accumulated his shares by "mopping up the relentless vomiting of shares" of stockholders.

Misonix declined to respond to a request for comment.

In recent months, Long Island also has seen another form of shareholder activism at Cablevision Systems Corp., in which the controlling shareholders also are the company's top executives.

On Nov. 1, Cablevision's board said it would back a request by the controlling Dolan family to give shareholders a

\$3 billion special dividend. The Dolans, led by Chairman Charles Dolan and Chief Executive James Dolan, called for a dividend after they could not cut a deal with the board to take the core cable property private for \$7.9 billion and spin off the company's sports and entertainment assets.

In recent years, Computer Associates also went through two proxy-contest rounds with Texas billionaire Sam Wyly, who sought to install new board members.

Shareholder activism also can have a viral effect. Institutional shareholders have been pressing for the sale of underperforming newspaper chain Knight Ridder. That has put pressure on other newspaper companies, including Tribune Co., the parent of Newsday, to increase shareholder value.

Even when the smoke clears and activist shareholders have sold their stake, there's always the possibility of a comeback.

Chapman, noting that Misonix shares were down sharply after disappointing earnings, raised the possibility of accumulating a new position in the stock.

"Today the stock is being destroyed," he said. "Maybe Mr. McManus needs us to revisit their company."



**Goddard: Facing tough questions.**