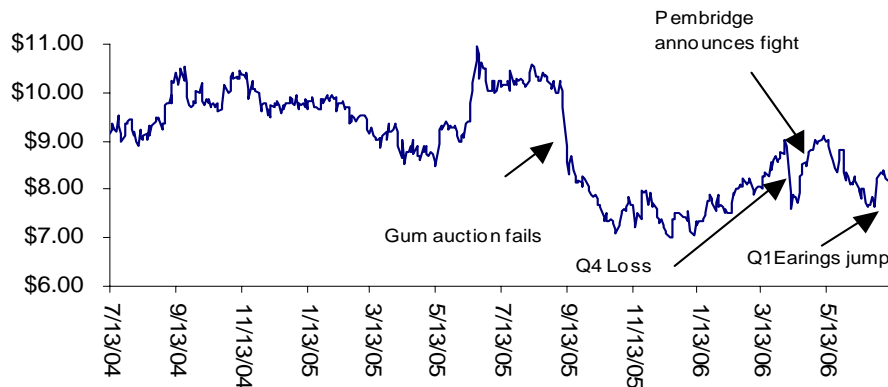


**Issuer:** The Topps Co. Inc. (TOPP) Proxy Fight with Pembridge/Crescendo  
**Date:** July 17, 2006

<b>Dissident 14A Date</b>	June 23, 2006	<b>Board Slate</b>	3 of 9
<b>Meeting Date</b>	July 28, 2006	<b>Record Date</b>	June 1, 2006
<b>Company</b>	Topps (TOPP)	<b>Dissidents</b>	Pembridge and Crescendo
<b>GICS Sector</b>	3010 Food & Staples Retailing		

## TOPP Annotated Share Price Performance



## Executive Summary – Vote FOR the Dissident Slate

TOPP is in the middle of a restructuring plan. The company argues that it should be given time to play out its cards, and the dissidents would only disrupt this process. However, shareholders need to ask what will happen if the strategic restructuring does not work as planned? One positive quarter is not enough of a track record to erase a lengthy period of underperformance.

In light of the current board's inability to execute the sale of the confectionary business, we believe it may be helpful to inject new blood into the board that would provide an alternate viewpoint to board deliberations, especially in light of the Crescendo's generally positive track record in creating shareholder value. Moreover, the presence of the dissidents would help to ensure that the board is proactive (rather than reactive) with respect to corporate governance best practices.

As a minority of the board, the dissidents would not be able to force an ill advised sale, but would provide a different perspective if the current plan does not result in sustained improved performance. Although it normally is prudent to allow a company reasonable time to execute on a new strategic plan, sometimes the authors of the plan become too emotionally invested in its success. Electing board members who are not so invested in the current plan may help the company quickly transition to a new plan if warranted.

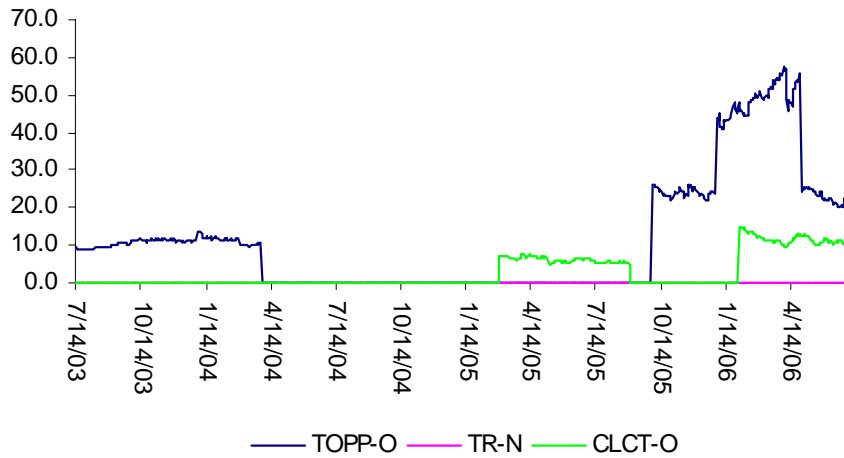
Based on the factors discussed below, on balance we conclude that the presence of the dissidents on the TOPP board would likely prove beneficial to long-term shareholder value. The long-term financial and operational performance of the company and the dissidents' skill sets and track record establish both the need for change and the dissidents' ability to effect changes.

# Trading Comparables

Company	Ticker	Market Cap	Enterprise Value	EV /			Price /				LT Growth	2007 PEG
				LTM EBITDA	2006 EBITDA	2007 EBITDA	LTM EPS	2006 EPS	2007 EPS	LTM Sales		
Tootsie Roll	TR-N	\$1,551.2	\$1,467.9	13.9x			20.6x	22.5x	21.6x	3.1x	NA	NA
Collectors Universe	CLCT-O	\$121.9	\$68.8	14.3	11.5	10.1	32.9	28.3	22.8	3.5	20.0	1.1
<b>Median</b>				<b>14.1</b>	<b>11.5</b>	<b>10.1</b>	<b>26.7</b>	<b>25.4</b>	<b>22.2</b>	<b>3.3</b>		<b>1.1</b>
<b>Mean</b>				<b>14.1</b>	<b>11.5</b>	<b>10.1</b>	<b>26.7</b>	<b>25.4</b>	<b>22.2</b>	<b>3.3</b>		<b>1.1</b>
<b>Harmonic Mean</b>				<b>14.1</b>	<b>11.5</b>	<b>10.1</b>	<b>25.3</b>	<b>25.1</b>	<b>22.2</b>	<b>3.3</b>		<b>1.1</b>
<b>Topps Company Inc</b>	<b>TOPP-O</b>	<b>329.3</b>	<b>247.8</b>	<b>41.4</b>	<b>14.2</b>	<b>10.7</b>	<b>43.4</b>	<b>32.3</b>	<b>24.2</b>	<b>1.1</b>		<b>NA</b>

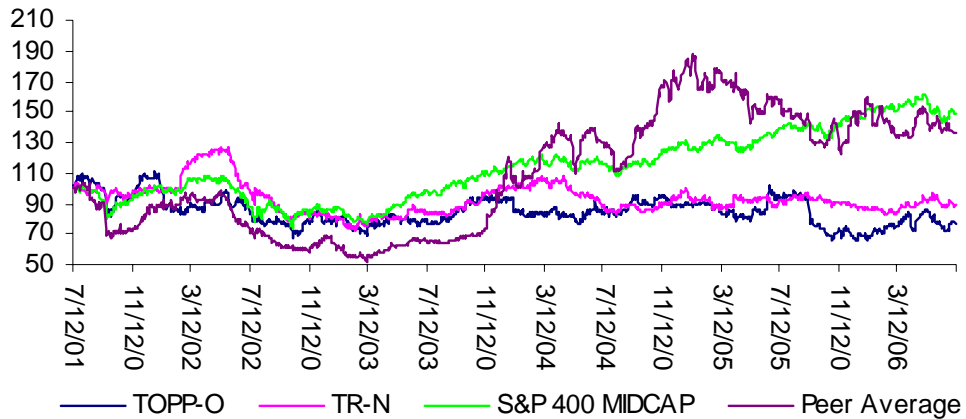
Source: Thomson One. \$ in millions; Data as of July 11, 2006; 2006, 2007 refer to calendar years.

## EV/Forward EBITDA



Source: Thomson One. Includes period when estimated forward EBITDA were not available.

## Total Return vs. Index & Peers



Source: Thomson One. Peer average includes: TR, CLCT.

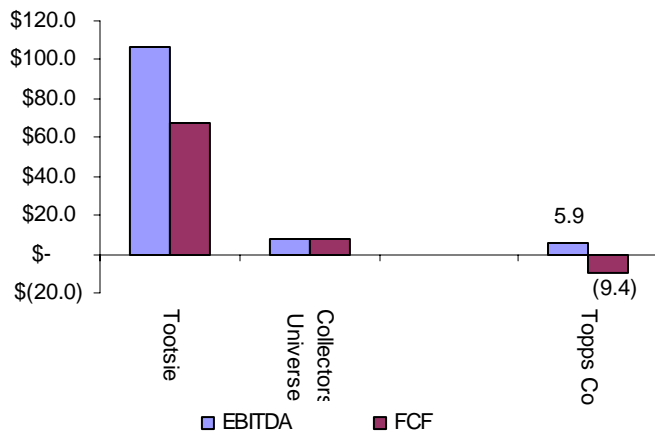
# TOPP Financial Performance

## TOPP-O Historical Financials

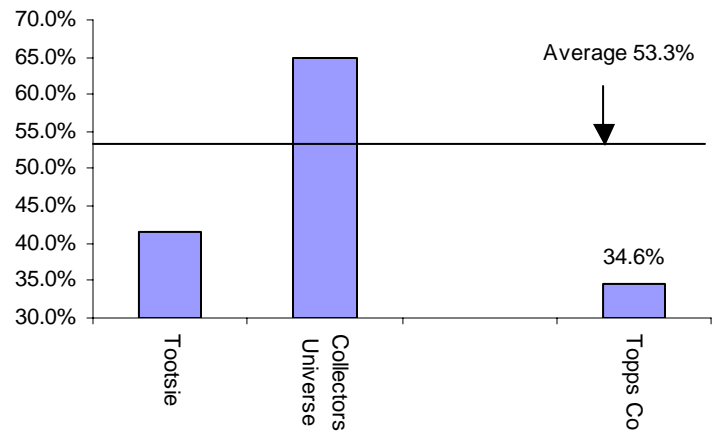
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>01 - '06</u> <u>CAGR</u>
Revenue	\$ 439.3	\$ 302.9	\$ 290.1	\$ 297.3	\$ 295.9	\$ 293.8	-7.7%
Net Income from Continuing Ops	88.5	28.5	16.9	12.7	11.0	3.9	-46.3%
EBITDA	123.3	42.2	27.1	20.6	18.5	5.9	-45.5%
FCF	101.0	(3.5)	2.4	9.1	20.3	(9.4)	-162.2%
EPS	1.91	0.64	0.40	0.31	0.27	0.10	-44.6%
Gross Margin	50.0%	40.3%	36.8%	37.2%	37.7%	34.6%	-7.1%

Source: Thomson One. Data as of fiscal years ended Feb. 25

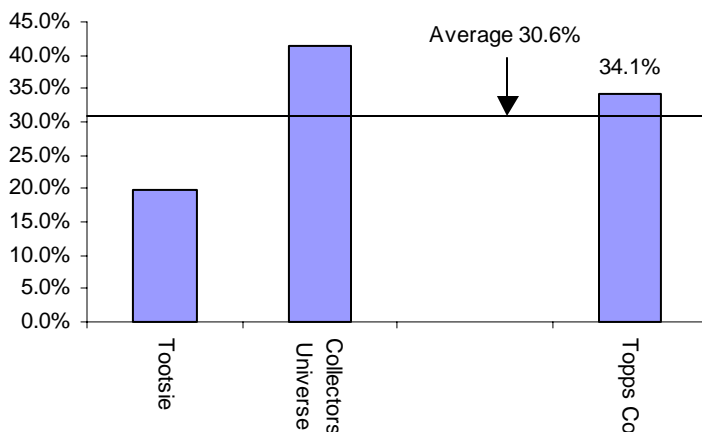
### EBITDA & FCF



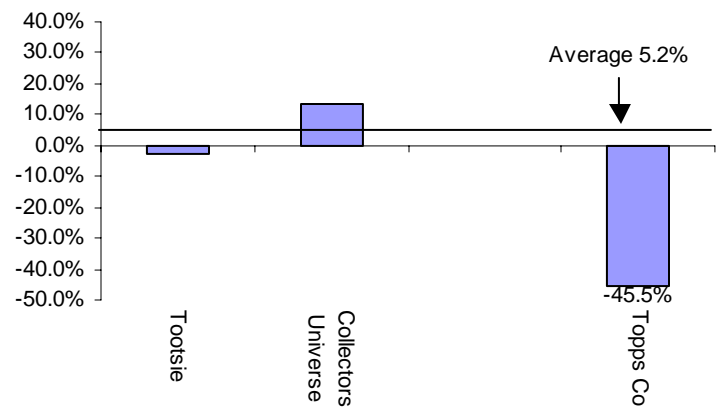
### Gross Margin



### Operating Inefficiency



### EBITDA 5-Year CAGR



Source: Thomson One. Financial data as of FY2005 for TR, CLCT; FY 2006 for TOPP; EBITDA defined as Operating Income plus D&A; FCF defined as Cash Flow from Operating Activities minus CAPEX; EBITDA margin defined as EIBTDA over Sales; Operating Inefficiency defined as SG&A over Sales

# **Introduction**

## **Background**

Founded in 1938 by the father and uncles of current CEO Arthur Shorin, Topps (TOPP) creates and markets confectionery and entertainment products. The confectionery brands include Ring Pop, Push Pop, Baby Bottle Pop, and Juicy Drop Pop lollipops, as well as Bazooka bubble gum. Topps entertainment products include trading cards, sticker album collections, and collectible games. TOPP has a staggered board, and three directors including the CEO are up for election at this year's annual meeting.

The following is a chronological list of key developments:

- June 1, 2005 – Pembridge files preliminary proxy statement, nominating three candidates to the board
- June 9, 2005 – Pembridge agrees to terminate its proxy solicitation after TOPP discloses it had retained Lehman Brothers in February 2005 to explore strategic alternatives
- September 12, 2005 – TOPP terminates the sales process of the confectionery business due to lack of attractive offers
- April 25, 2006 – Pembridge notifies TOPP that it is re-starting its proxy fight, nominating three candidates to the board
- May 11 – Pembridge files preliminary proxy statement
- May 19 – Pembridge and Crescendo (the “dissidents”) jointly file a 13D using the name “Topps Full Value Committee” and disclose a 5.9% ownership position
- June 1 – the record date
- June 12 – TOPP agrees to put to a vote proposals to declass the board and allow shareholders to call special meetings
- June 14 – the dissidents increase their stake to 7%
- June 29 – TOPP reports an earnings jump in the fiscal first quarter ended May 27
- July 28 – the annual meeting date

In the preparation of this analysis, ISS met with representatives of both the company and the dissidents.

## **The Dissident Platform**

The dissidents are seeking (i) the election of three dissident nominees to the nine-member board (ii) the amendment of the TOPP charter to declassify board, and (iii) the amendment of the TOPP charter and bylaws to allow shareholders to call a special meeting.

Pembridge initially invested in TOPP in mid-2004, and estimates its weighted average cost basis at approximately \$8 per share. Crescendo arrived on the scene later in the process, initially purchasing TOPP shares in April of this year, and consequently it has a slightly lower cost basis. Pembridge currently owns 1% and Crescendo owns 6.4%, for a total dissident economic and voting stake of 7.4%.

If elected, the dissident nominees will propose to effect a platform including:

- the hiring of a financial advisor to explore the sale of all or part of company on tax efficient basis
- the more efficient allocation of capital
- a significant repurchase of stock in the open market or by self-tender
- the distribution of a large special dividend
- a reduction in the company's cost structure
- a reduction in executive compensation and the tying of bonuses to significant improvements in operations

Because TOPP has a staggered board, only three seats are up for election. If the dissidents win, they will control one-third of the board. The dissidents are seeking three seats as both a powerful signal to the rest of the board that shareholders want change, and to achieve a critical mass of influence on the board. If the dissidents are elected, they expect to be able to convince "like-minded" directors of the need for change.

### **The Company's Defense**

TOPP in its defense argues that it has already undergone an in-depth strategic study and has started implementing a multi-pronged strategic and operational plan that has delivered significant results as evidenced by the earning jump in fiscal first quarter ended May 27. TOPP believes that the current board is experienced and committed to enhance shareholder value, is responsive to shareholders and is supportive of sound corporate governance.

The company believes the dissidents' interests are not aligned with long-term shareholders, that the dissidents have no specific plan and that they seek only to sell the company. In the company's opinion, electing the dissident slate could prove to be disruptive to the company's strategic initiatives.

### **Framework of ISS Proxy Contest Analysis**

When analyzing proxy contests, ISS focuses on two central questions: (1) Have the dissidents met the burden of proving that change is warranted at the company? and (2) If so, will the dissidents be better able to effect such change versus the incumbent board?

When the dissidents are seeking board control, ISS will require from the dissidents a well-reasoned and detailed business plan (including the dissidents' strategic initiatives), a transition plan that describes how the change in control of the company will be effected, and the identification of a qualified and credible new management team. ISS will compare the detailed dissident plan against the incumbents' plan and the dissidents' proposed board and management team against the incumbent team in order to arrive at our vote recommendation.

When the dissidents are seeking a minority position on the board, the burden of proof we impose on the dissidents is lower. In such cases, ISS will not require from the dissidents a detailed plan of action, nor will we require that the dissidents prove that their plan is preferable to the incumbent plan. Instead, ISS will require that dissidents prove that change is preferable to the status quo and that the dissident slate will add value to board deliberations by considering the issues from a different viewpoint than the current board members.

## **Question #1: Is Change Needed?**

### **TOPP Performance**

#### *The Pembridge/Crescendo Challenge*

The dissidents cite the decline in the company's sales, gross profit, gross margins and income from operations over the past five years, as well as an increase in SG&A expense as a percentage of sales.

The dissidents also point to the poor share performance since June 2001 against the company's peer group and the market.

#### *The TOPP Response*

TOPP highlights the recently reported positive fiscal first quarter, in which the company achieved significant increase in net income.

The company also cites the \$76 million in cash returned to shareholders over the past five years in the form of dividends and share repurchases

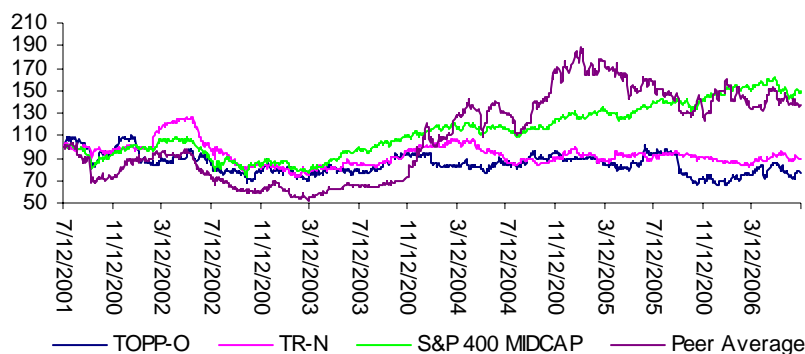
TOPP acknowledges the high SG&A percentage of sales, but blames this mostly on the denominator, reminding shareholders of the significant drop off in sales after the end of the Pokemon craze. Over the period in question, SG&A is up only \$16 million due to increased advertising, the Wiz Kids acquisition, one-time restructurings, foreign exchange effects, salary COLA adjustments and SOX costs. The company promises to continue to attack overhead expense.

#### *ISS Analysis – TOPP Performance*

As a "novelty" candy and card and sticker company, TOPP is subject to the fickle whims of the marketplace. In some respect, success is like catching lightning in a bottle, which the company did in the late 1990s with the Pokemon product line. From FY1999 to

FY2003, the company went on a “Pokemon run,” generating big cash flows, retiring debt and capturing attractive retail shelf space. When Pokemon died, however, the fortunes of the company took a significant hit. To complicate matters, the sports card market over the same period continued to suffer an industry-wide decline. As a result, the TOPP share price underperformed the market and its peers.

### TOPP Total Return vs. Index & Peers



Source: Thomson One. Peer average includes: TR, CLCT.

We note that there are few if any pure play comps for TOPP. Representatives of the company told us that Tootsie Roll (TR) was an appropriate comp for the candy business. According to the dissidents, Collective Universe (CLCT) is one of the closest public comps for the company’s entertainment business, although the company notes that CLCT is only remotely comparable as it is more in the authentication business (the primary competitor in the sports card market is Upper Deck, a private company).

Not surprisingly, underlying this underperformance are negative long-term trends in key operating metrics.

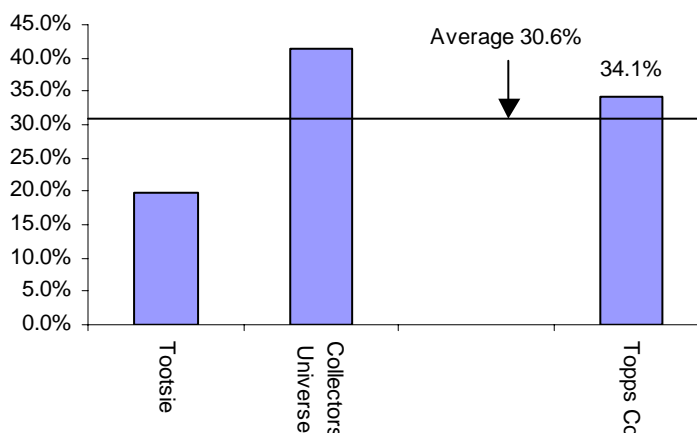
### TOPP Historical Financials

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>5 Year CAGR</u>
<b>Revenue</b>	\$ 439.3	\$ 302.9	\$ 290.1	\$ 297.3	\$ 295.9	\$ 293.8	-7.7%
<b>Net Income from Continuing Ops</b>	88.5	28.5	16.9	12.7	11.0	3.9	-46.3%
<b>EBITDA</b>	123.3	42.2	27.1	20.6	18.5	5.9	-45.5%
<b>FCF</b>	101.0	(3.5)	2.4	9.1	20.3	(9.4)	-162.2%
<b>EPS</b>	1.91	0.64	0.40	0.31	0.27	0.10	-44.6%
<b>Gross Margin</b>	50.0%	40.3%	36.8%	37.2%	37.7%	34.6%	-7.1%

Source: Thomson One. Data as of fiscal years ended Feb. 25 of each year.

Over the past five years, income from operations fell from \$38.4 million in FY2002 to a loss of \$2.3 million in FY2006. As the dissidents point out, gross margins are at a 10-year low and SG&A as a percentage of sales is at a 10-year high. Although the company argues that this ratio suffers primarily from the denominator, SG&A itself has increased 26% over the 10-year period. Inflationary effects could play a role in the increase in costs – using SG&A as a percent of sales helps to negate inflation’s impact. TOPP does not compare favorably to Tootsie Roll using this metric.

## Operating Inefficiency



Source: Thomson One. Data as of FY2005 for TR, CLCT; FY2006 for TOPP; "Operating Inefficiency" defined as SG&A over Sales.

In its defense, the company points to the recent quarter as evidence that things are looking better. TOPP handily beat Street earnings expectations based upon, among other factors, a significant increase in its baseball card business as well as the cost cut initiatives.

### TOPP Quarterly Financials

	<u>Q1 FY06</u>	<u>Q4 FY06</u>	<u>Q1 FY07</u>	<u>Growth Over</u>	
				<u>Prior Quarter</u>	<u>Prior Year</u>
Sales	\$78.9	\$67.5	\$81.0	20%	3%
Net Income	0.9	-1.9	1.6	NM	78%
Gross Margin	39.4%	28.8%	34.5%	20%	-13%
Operating Inefficiency	35.8	35.2	32.5	-8%	-9%

Source: Thomson One; TOPP June 29, 2006 earnings call.

Although Q1 showed marked improvements in sales, earnings and SG&A, we note however, that gross margins remained near historical lows. While positive short-term results provide some comfort, ISS places more emphasis on the long-term trends and track records, especially in a business like TOPP's which can suffer big swings in volatility due to one-time events (e.g., the World Cup, Superman, Star Wars).

### TOPP Operational Strategy

#### *The Pembridge/Crescendo Challenge*

The dissidents believe that the company is guilty of poor capital allocation, resulting in an underleveraged balance sheet with too much cash earning too little of a return. According to the dissidents, this cash should be promptly returned to shareholders, either in the form of dividends or by an increased share repurchase.

The dissidents also cite an alleged mismanagement of the Bazooka brand over the past 20 years. The dissidents believe that the company has failed to market this well-known

brand effectively and struggled with managing its cost of goods sold, as evidenced by COGS exceeding the price at which wholesale clubs such as Costco would sell the Bazooka product.

The dissidents also are critical of the company's M&A strategy, both as an acquirer and as a potential seller. Pembrige and Crescendo cite the acquisition of Wiz Kids (purchased for \$29.5 million in July 2003), an acquisition that is now weighing on the company's entertainment segment margins. The dissidents are critical that TOPP did not negotiate an earn-out provision to protect itself from deteriorating Wiz Kids performance. From the sales side, the dissidents are critical of the company's inability to sell its candy division in last year's auction process.

#### *The TOPP Response*

The company in its defense points out that approximately \$30 million of its cash is overseas and cannot be repatriated without tax consequences. Adjusting for the cash needed to run the business, there is not as much cash available to return to shareholders as the dissidents claim. TOPP also argues that the bulk of its cash balances came from Pokemon, and since the end of that craze the company has given back to shareholders more than cash generated from operations. According to the company, the focus now should be on restructuring the company, not leveraging up.

TOPP claims to have considered using an earn-out structure for its Wiz Kids acquisition, but determined that such a structure was too complex to implement. Management remains hopeful that Wiz Kids will turn out to be a wise investment.

The company argues that the sales process began in November 2004 with the search for an investment bank advisor. Lehman Brothers was retained in February 2005, prior to Pembrige's proxy fight pressure. According to TOPP, the candy business was pitched to every significant logical potential acquirer, each of whom was provided with sufficient P&L information to make a decision. The company did not shop the entire company because in its judgment there were no buyers for the whole business. Moreover, at the time the candy market appeared "hot," with two comparable sales fetching high multiples of revenue. Unfortunately, bids for TOPP's candy business were not attractive, and consequently the company terminated the process.

TOPP also argues that now is not the time to restart the sales process. The company already engaged a strategic consultant and is in the process of implementing a detailed plan that calls for the reduction of costs (compensation costs have already been reduced 20%) and the promotion of competitive strengths. The company has addressed its COGS issue, and now sources its sugar products more cheaply from overseas plants. In addition, TOPP management has worked with licensors to reduce competition in the sports card business, which may be reflected in the improvement shown in the recently reported fiscal first quarter. The company is developing new candy products and is re-launching the Bazooka brand. Key new hires should help speed this process along, including Paul Cherrie, who tripled sales of Double Bubble prior to its sale to Tootsie Roll.

After the Pokemon craze had run its course, the company felt it needed some external guidance from a strategic consultant on how to improve its operations. From that engagement, the company formulated a strategic plan to cut costs, develop new products and improve the marketing of existing products. This plan was put on temporary hold after the board made the decision to try to sell the candy business. After a failure of the auction, the company began to re-implement the plan, which based upon a limited sample set seems to be bearing some fruit.

We commend the company on its ability to convince licensors to in effect eliminate some of the company's competition in the entertainment business. This development should help the company cope with a sports card market that is a fraction of its size at its peak.

However, we also must note that the company failed to find a buyer for the candy business despite two comparable sales at attractive prices (Wrigley's purchase of Kraft's Altoids and Life Savers at 2.4x sales in 2005 and Tootsie Roll's purchase of Double Bubble for 2.8x sales in 2004, according to media reports). Although the company admits that the entertainment business could not survive as a standalone public company due to its size, it did not pursue a parallel sales track for that business, nor did it attempt to sell the entire business. Although the company claims there were no buyers for the whole company, one could reasonably ask whether a seller should have checked that supposition in the market.

In addition, the company explains the decline in Bazooka revenue over the past 20 years as a result of competition from deeper pocketed players with cheaper access to raw materials. Bazooka and other gum products sales were down 60% from \$26.2 million in FY1985 to \$10 million in FY2006, according to the dissidents. This seems to have been a company-specific issue in light of the success of the Double Bubble brand after being purchased by Concord (according to the company, Double Bubble grew from a \$14 million brand to a \$90 million brand under Concord's stewardship). Why did Double Bubble thrive while Bazooka withered?

## **TOPP Corporate Governance**

### *The Pembridge/Crescendo Challenge*

The dissidents believe the company is guilty of excessive management compensation. They cite the base salary of Shorin, which appears to be in line with much larger food companies such as Kraft, Wrigley and Hershey's. They note the \$500 thousand "signing" bonus Shorin receives every two years and that Scott Silverstein, the company's COO and Shorin's son-in-law, received a raise between 2004 and 2006 despite a decline in operating income over that period.

The dissidents question the board's independence and cite related party transactions as evidence of a "cozy" board. For example, Silverstein is the CEO's son-in-law and some of the directors received current or historical financial benefits from TOPP other than for their service on the board.

Also cited by the dissidents are several questionable governance practices, including a classified board, the non-separation of chairman and CEO, supermajority charter and bylaw amendment provisions, and the inability of shareholders to call special meetings or act by written consent. The dissident proposals to declass the board and allow for the calls of special meetings were originally rejected by the company, and according to the dissidents are only now being put forth as company-sponsored proposals as a cynical ploy to curry shareholder favor. In 1997 and 1998, non-binding shareholder proposals to declass were strongly supported by shareholders, but the TOPP board ignored the message.

The dissidents have publicly urged TOPP to agree that the amendments to the charter and bylaws be treated as non-contested proposals allowing broker non-votes to be counted in favor of these proposals, and calls on the board to publicly state whether they will vote in favor. This may be critical to ensure the passage of the proposals, which require a two-thirds approval rate.

### *The TOPP Response*

The company explains the biannual \$500 thousand bonus paid to Shorin as simply a legacy of his employment agreement and the raise given to Silverstein as justifiable considering his promotion to president. TOPP also points out that no other bonuses were paid to senior management because the company missed its performance targets.

TOPP argues that the board has listened and responded to shareholders, as evidenced by the company putting the governance proposals on its ballot with its endorsement. The declass will not go into effect until 2007 because the company wants to be able to implement its strategic plan.

TOPP promises to keep the vote on the governance proposals open as long as necessary to achieve passage of the proposals, and recently publicly committed the board to vote for the proposals.

### *ISS Analysis – TOPP Corporate Governance*

We note that the president and COO of the company is also the son-in-law of the chairman and CEO of the company. Although Silverstein may be commended for negotiating the new agreements with the sports card licensors, the family relationship is not ideal from a governance perspective. How easily would the CEO be able reprimand or even terminate the employment of his daughter's husband if the facts warranted such a decision?

We also cast a somewhat skeptical eye on the company's sponsorship of the declass and special meeting proposals. This endorsement appears to be in direct response to the threat of a proxy fight by the dissidents, and as such implies a reactive rather than proactive board. Although clearly a net positive, TOPP shareholders could reasonably wonder whether additional governance improvements would be forthcoming without continued activist pressure going forward.

We also note that despite a negative one- and five-year TSR (and barely positive 3-year TSR), the company's CEO in effect received a raise by virtue of the biannual

contractually-mandated \$500k bonus. ISS supports pay for performance. The guaranteed bonus portion of the Shorin employment contract is not aligned with this goal and calls into question the board's compensation policies.

We urge the company to do everything legally permissible to ensure that the high vote threshold for approval of the two governance proposals is met. The dissidents' proxy solicitor argues that the rules permit the company to make such proposals "routine" which would allow broker votes to be cast in favor of the proposals. The company's solicitor argues that it is impermissible for TOPP to agree to the "routine" designation, but that the company will take all permissible steps to facilitate the passage of the proposals.

### **ISS Conclusion – Is Change Needed?**

After evaluating the dissident and incumbent arguments with respect to the company's financial and shareholder return performance, strategic track record and governance profile, we conclude the dissidents have met their burden of proving that some change on the board is warranted.

## **Question #2: Will the Dissidents Add Value?**

### **The Dissident Slate**

The dissidents are running three candidates:

- Timothy Brog: Pembridge president and portfolio manager; managing director of his own boutique investment bank; former Skadden associate
- Arnaud Ajdler: Crescendo managing director, director of Nasdaq-listed company; Computer Horizons board observer; management consulting and investment banking experience
- John Jones: gaming industry experience; former general counsel at telecom company; Skadden associate

The dissidents believe that their slate has complementary skills and business experience, including relevant M&A, business development and corporate governance experience.

TOPP believes that the presence of the dissidents on the board would only disrupt the functioning of the board and may incite uncertainty that negatively impacts employee retention and customer and vendor relationships. The company claims to be receptive to putting a shareholder representative on the board, but that the dissident nominees have no relevant experience and would not bring anything "new" to the board.

### **The Incumbent Slate**

The three incumbent nominees up for election include:

- Arthur Shorin: CEO of the company, son of its founder; owns 7.3% of the company;

- Edward Miller: director of The American Express Company and Korn/Ferry International; served as executive or senior officers in multiple financial services companies
- Leonard Stern: new nominee; founding partner of an advertising and marketing firm; head of CAA's corporate advisory group; visiting professor at Yale

The six incumbent directors not up for election include:

- Stephen Greenberg: MD of Allen & Co.
- Ann Kirschner: management consultant in education, media and technology
- Richard Tarlow: advertising experience
- Allan Feder: independent business consultant
- David Mauer: CEO of E&B Giftware; former CEO of Riddell Sports
- Jack Nusbaum: law firm chairman; director of W.R. Berkley Corporation and Strategic Distribution

The incumbents believe that their slate has decades of relevant sports and entertainment, media and advertising experience, and that as collective 12% owners, its interests are aligned with shareholders.

The dissidents, on the other hand, describe the board as “cozy” and note several current or historical related party transactions, including:

- Jack Nussbaum is chairman of Willkie Farr, outside counsel to TOPP
- Richard Tarlow is chairman of a advertising company that was paid \$349 thousand by TOPP during FY2003
- David Mauer was retained as a special consultant to TOPP from April to December 2002 and was paid \$208 thousand

### **ISS Analysis – Will the Dissidents Add Value?**

According to ISS classifications, seven of nine directors are technically independent. We note, however, when analyzing proxy contests ISS reserves the right to look deeper into the facts and circumstances, including an examination of more qualitative factors, to determine how independent the board is as a whole. Although two of the nominally independent directors have benefited from payments by the company in prior years, they do not trigger our “affiliated outsider” designation.

Only two of the nine incumbent directors sit on the boards of other public companies. The seven incumbents (other than two outliers: Mr. Shorin and Mr. Stern) have an average board tenure of over ten years. Long tenure is a double-edged sword. On the one hand, it may imply a deep understanding of the company's history and knowledge of the company's markets. On the other hand, it may indicate a stagnant environment that may benefit from fresh blood.

From public filings and conversations with the dissidents, it appears that there are no material relationships between the dissident nominees that will prevent each nominee

from being able to act independently of each other nominee. Like all board members, the dissidents if elected will be subject to the fiduciary duties owed to shareholders.

We note that in minority slate contests, relevant board and transactional experience is sometimes more important than specific industry experience. After all, the dissidents are not asking to run the company – they are simply asking to participate in the oversight of the company. Here, we find that the dissident nominees possess significant advisory expertise that might be beneficial for a company that recently suffered a busted auction and purchased a company that resulted in an unforeseen drag on earnings.

In addition, the track record of the dissidents in unlocking shareholder value argues for their support. ISS supported Pembridge in its only other proxy fight against Vestcom in 2002. Vestcom was eventually sold at approximately 85% premium from the time Pembridge went public with its dissent. We note also that Pembridge has owned most of its TOPP shares for more than a year and a half, which is a relatively long holding period in today's investment climate.

Crescendo has been a more prolific activist than Pembridge, and was presumably brought in to this contest not only for its greater financial resources, but for its experience in running proxy fights.

### Crescendo Track Record

	<u>Return Since Engaged</u>	<u>Engaged Period</u>	<u>Status</u>	<u>Comments</u>
Computer Horizon	21%	1 year +	Active	2 proxy fights. First to have shareholders vote down the Analysts International merger and second to replace the board (oct 18 2005)
Geac Computer	8%	3 Month	Sold Nov 05	Settled proxy fight in Sep 05; Appointed to the board Oct 05; "He was singing a tune that we were already working on," - Geac's SVP for M&A.
Hip Interactive	Negative	8 months	Receiver appointed	Not activist position. Purchased stake directly from the company in a friendly transaction; filed bankruptcy Jul '05
Pivotal	49%	8 months	Acquired by Chinadotcom Dec 03	Appointed to the board July 1 2003; Chairman of Special Committee; Three-way bidding war won by Chinadotcom
Spar Aerospace	63%	2.75 years	Acquired by L3 Oct 01	20% holding; Elected chairman of the board after successful proxy fight;
Call-Net Enterprises	Negative	Non-public	Acquired by RCI May 2005	Proxy fight to replace board & sell the company; CEO fired after fight began; Company put itself for sale Nov 01
Sierra Systems	7%	3.75 years	Active	Owns 10.7%; \$70MM Market Cap; Appointed to the board Oct 2003
AD OPT Technologies	95%	18 months	Acquired by Kronos Oct 04	Board member; owned more than 10%
Emergis	8%	2 years	Active	Board member; CEO & CFO replaced
Arpeggio Acquisition Corporation	26%	2 years	Active - Merged with Hill International June 06	2 seats on the board
CPI Aerostructures	41%	3.25 years	Active	Director; Chairman since Jan 2005

Source: Daily Deal; ThomsonOne; 13D filings; Yahoo; Crescendo.

As illustrated in the table above, Crescendo is not necessarily a short-term investor and appears to own shares for as long as necessary to unlock shareholder value. Although not every portfolio company has been a success story, on balance Crescendo has a positive

track record in increasing shareholder value, something the company has been unable to do over the past five years.

We note that most of the companies in which Crescendo invests were eventually sold. A sale, while normally producing a premium to market, is not always the best option for long-term shareholder value. However, a sale is often one of the best exits for “broken” companies that are unable to sustain a turnaround. In any event, the dissidents will be unable to force a sale from a minority position on the board.

We discount the company’s disruption argument. Highly experienced adults should be able to function together despite differences in opinion. A limited degree of contentiousness in the boardroom is likely to lead to a more lively discussion and critical assessment of the issues and will help to ensure that the board does not simply defer to management. We note that as a minority on the board, the dissidents will need to work constructively with the majority in order to govern the company and effect change. Moreover, as a 7% shareholder, there is little incentive for the dissidents to disrupt the functioning of the board and thereby interfere with the company’s operations, with a likely negative impact on the share price.

We note that the company’s CEO is one of the incumbent nominees. If the dissidents win, the CEO will no longer be on the board. Although in the vast majority of US companies, the CEO sits on the board, there is no reason a company cannot function effectively even if the CEO is not a board member. Under such a scenario, the CEO presumably would continue to be invited to all board meetings (other than executive sessions), but he or she would not have a vote. Our recommendation is not meant to indicate our opinion as to whether this CEO should be on the board, a decision that will if necessary be made by the full board following a dissident win.

When deciding how many dissident nominees to support, it is important to understand board dynamics. A single dissident on a large board is unlikely to have much of an effect on board deliberations and obviously would have little impact from a voting perspective. A more substantial minority position helps achieve the purpose of supporting the dissidents in the first place: providing a significant alternative voice on a board where shareholders have concluded change is warranted. As such, we believe that shareholders should in this case support all three dissident nominees.

Based on the factors discussed above, on balance we conclude that the presence of the dissidents on the TOPP board would likely prove beneficial to long-term shareholder value.

## **ISS Conclusion and Vote Rec**

TOPP is in the middle of a restructuring plan. The company argues that it should be given time to play out its cards, and the dissidents would only disrupt this process. However, shareholders need to ask what will happen if the strategic restructuring does not work as planned? One positive quarter is not enough of a track record to erase a lengthy period of underperformance.

In light of the current board's inability to execute the sale of the confectionary business, we believe it may be helpful to inject new blood into the board that would provide an alternate viewpoint to board deliberations, especially in light of the Crescendo's generally positive track record in creating shareholder value. Moreover, the presence of the dissidents would help to ensure that the board is proactive (rather than reactive) with respect to corporate governance best practices.

At least one Wall Street analyst seems to agree. In its June 30 report on TOPP's positive Q1 earnings, Jefferies notes the "uncertainty around the sustainability of initiatives to improve fundamental operating performance thru new revenue generating initiatives and cost cutting measures" and goes on to argue that the company should be broken up into two separate entities to unlock value. In addition, Jefferies argues that the company remains over capitalized, which is acting as a drag on valuation.

As a minority of the board, the dissidents would not be able to force an ill advised sale, but would provide a different perspective if the current plan does not result in sustained improved performance. Although it normally is prudent to allow a company reasonable time to execute on a new strategic plan, sometimes the authors of the plan become too emotionally invested in its success. Electing board members who are not so invested in the current plan may help the company quickly transition to a new plan if warranted.

Based on the factors discussed above, on balance we conclude that the presence of the dissidents on the TOPP board would likely prove beneficial to long-term shareholder value. The long-term financial and operational performance of the company and the dissidents' skill sets and track record establish both the need for change and the dissidents' ability to effect changes.

In addition, we recommend that shareholders support the governance proposals, including the declassification of the board beginning in 2007 and the amendment of the company's charter to allow 25% of the outstanding capital stock to call a special meeting of shareholders.

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**Contacts:**

**Chris Young, JD, CFA**  
**Director & Head M&A Research**  
**Tel.: 301.556.0625**  
**Christopher.Young@issproxy.com**

**Qin Tuminelli, CFA**  
**Manager, M&A Insight**  
**Tel.: 301.556.0415**  
**Qin.Tuminelli@issproxy.com**

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