

Governance & Proxy Review

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Edited by Francis H. Byrd

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As We See It - Commentary from The Altman Group

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Walking the Tightrope – New Proxy Disclosures on Director Qualifications, Board Risk Oversight and Board Diversity – and new Climate Change Disclosures for the 10K

I had the opportunity, last Friday, to moderate a [webinar](#) for the Society of Corporate Secretaries & Governance Professionals (SCS&GP) discussing the strategies and tactics companies can undertake in response to the Securities and Exchange Commission's new proxy disclosure rules on director qualifications and selection, and board diversity.

The webinar, sponsored by The Altman Group, had two panelists familiar with the new SEC disclosure rules - [Maryann A. Waryjas of Katten Muchin Rosenman LLP](#), and Lori Zyskowski, Corporate and Securities Counsel at General Electric. The panel also included attorney [Jane E. Montgomery of Schiff Hardin](#), an expert in environmental law, who discussed the SEC's new rules on climate change disclosure for the 10K. Co-hosting from the SCS&GP was Darla C. Stuckey, SVP - Corporate Policy & Advocacy.

What ensued was a lively discussion about the new disclosures for the 2010 proxy season. Here were some of the key takeaways listed by disclosure challenge:

On Director Qualifications

- The use of a short introductory paragraph describing the recruitment goals and director selection criteria of the nominating/governance committee
- Development of short descriptions of individual director qualities and attributes
- The use of a 'lite' version of the board/director skills matrix as a jumping off point in describing the skills sets the board believes it needs to fulfill its responsibility to oversee management's

Governance News & Views from across the spectrum

>>Executive Compensation

AGENDA

February 16th, SEC Warns of Hard Line on 2010 Disclosures

Kristin Gribben discusses the SEC's push for greater compensation and risk collation data.

[> read more](#)



February 16th, Investors Back Shell's Executive Pay Freeze

Kate Burgess and John O'Doherty report on the role of investors in Shell's decision to freeze compensation for top executives.

[> read more](#)



February 16th, Barclays Executives Shun Bonuses, But Staff Share £2BN

Jill Treanor discusses the compensation payout at Barclays.

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February 16th, Shell Moves to Cut Executive Pay

achievement of strategic goals

- The potential use of a more detailed director biography, similar to those utilized by companies when battling a short slate, might also be considered – see our discussion of the Point Blank Solutions proxy statement in our June issue of the Governance & Proxy Review

On Board Diversity

- Companies should bear in mind that any mention of diversity in corporate governance guidelines or nominating/governance committee charters obligates firms to discuss the role of diversity in the director selection and nominating process
- The notion of diversity on the board should include professional experience (policy, governmental, business or academic) and diversity of viewpoint as well as race, gender and ethnicity

Our speakers noted a certain level of overlap between the type and quality of information required for both the director qualifications and board diversity disclosure.

On Board Risk Oversight

- Provide an overview of how risk issues are elevated to the board level, the committee or committees involved, and who in management has the responsibility for reporting risk to the relevant committee or full board
- Be prepared to discuss Board leadership structure, if it has relevance to the review and discussion of risk at the board level
- Remember, the focus is on the board risk oversight process – not an analysis of the company's material risks or how those risks are mitigated. A potential jumping off point might be the corporate governance assessments conducted by Moody's and Standard & Poor's as they describe detailed discussions of the board risk oversight process

During the joint webinar, speakers mentioned two companies, Fortune Brands ([preliminary proxy](#)) and Analog Devices ([DEF 14 filing](#)), whose proxies could serve as a template for incorporating the new disclosure requirements in 2010 proxies.

Also discussed was a point raised by the Governance & Proxy Review in previous issues ([see issue #10, July 22nd](#)), namely the viability of utilizing Canadian management proxy disclosure as a suggested template for disclosure of the director selection, director nominee recruitment process and director qualifications. MaryAnn

James Herron discusses proposed changes in executive compensation at the global oil company.

[> read more](#)



February 15th, Deutsche Bank Said to Defer Banker Bonuses Amid Pay Controversy

Ambereen Choudhury and Aaron Kirchfeld discuss changes to the bank's executive pay plan.

[> read more](#)



February 11th, AIG Pay Plan: Rank and Rile

Serena Ng and Joann S. Lublin report on the concerns of AIG employees with changes in pay policy.

[> read more](#)



February 7th, Wijers Says Shell Has Learnt Pay Lesson

Richard Milne and Michael Steen report on comments by the chairman of Royal Dutch Shell's remuneration committee.

[> read more](#)



February 3rd, Banks Told to Comply on Bonuses or Lose UK Banking Licences in Shock FSA Ultimatum

Louise Armitstead and Helia Ebrahimi report on the line drawn in the sand by British banking authorities on bonus compensation.

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A. Waryjas, while not familiar with whether Canadian securities rules match the SEC's new requirements, did say that helpful information could be gleaned from the management circulars of Canadian filers, but that such a step should be fully explored for compatibility with new SEC disclosure rules.

Climate Change and Environmental Reporting

Jane E. Montgomery, Lori Zyskowski, and MaryAnn A. Waryjas engaged in a full discussion of the [new SEC 10K disclosure requirements concerning environmental and climate change issues](#). The big takeaways for companies were: (1) that disclosure will force many firms to determine and analyze the potential impact of climate changes; and (2) discussion of the potential effect of proposed federal legislation, existing state law and international agreements, and treaties on business operations, risk mitigation and strategy.

While not having an immediate effect on the 2010 proxy season, speakers acknowledged that climate and environmental information will be closely monitored by environmental groups such as the CERES Coalition, whose members may develop future shareholder proposals around these concerns (see [G&PR issues #15, August 28th](#) and [#16, September 4th](#) for a full discussion of CERES).

The Elephant in the Room: Disclosure and Discussion of the Compensation Risk & Analysis in the Proxy

Before adjourning, the panelists commented briefly on questions involving the new SEC requirement for a discussion of risk in executive compensation arrangements. All our speakers noted the difficult tightrope that companies face in deciding how and whether to disclose the potential of material risk within companies executive compensation plans. We will look to provide a future webinar on this important topic.

Thank You

We would like to take this opportunity to thank the Society for asking us to sponsor and host this webinar, and also our panelists and the audience for their participation and patience with us as we work to master the art of the webinar. We look forward, as we noted above, to providing future webinars on various topics related to corporate governance, proxy disclosure, executive compensation and shareholder engagement.

Webinar Presentation Materials

For your convenience we have posted the relevant information discussed during the webinar, including the Fortune Brands and Analog Devices preliminary proxy statements, and the legal alerts from Maryann A. Waryjas of Katten Muchin Rosenman LLP and attorney Jane E. Montgomery of Schiff Hardin. To listen to a rebroadcast of the joint SCS&GP and The Altman Group webinar please visit this [link](#) on our website, or visit the Society of Corporate Secretaries and Governance Professionals website.

February 2nd, \$100 Million Bonus Plan at A.I.G. Draws Fire

Mary Williams Walsh and Sewell Chan discuss a move by AIG to blunt criticism of bonuses being paid to employees of the financial products unit.

[> read more](#)

>>Global Dispatches

BusinessWeek

February 16th, Efes Beer Chief Says Brewer Spurned Larger Rivals' Approaches

Andrew Cleary reports on the efforts of Anadolu Efes Biracilik & Malt Sanayii AS to remain independent.

[> read more](#)

SPIEGEL ONLINE

February 16th, 'Lies, Damned Lies and Greek Statistics'

A discussion of the Greek debt crisis and its impact on the European Union.

[> read more](#)



February 12th, Germany's Club House Doors are Bolted

Richard Milne discusses the aftermath of the shareholders defeat at Infineon.

[> read more](#)



February 11th, Kirin and Suntory Call Off Merger Talks

Michiyo Nakamoto reports on the end of talks between the two companies that would have

Breaking News on Proxy Mechanics Reform

The Council of Institutional Investors has released a [whitepaper](#) discussing proposed reforms on proxy plumbing.

The white paper, “The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting” was prepared by Alan Beller and Janet Fisher, both partners at Cleary Gottlieb Steen & Hamilton, with the assistance of Rebecca Tabb, also at Cleary Gottlieb. Alan Beller is a former director of the SEC’s Division of Corporation Finance. The paper discusses the origins and evolution of the OBO/NOBO system, analyzes various proposals for changing it that have been floated recently and offers recommendations for reform that the authors believe to be in the best interest of investors. It offers a thoughtful, thorough review and recommends pragmatic, incremental change. The Council has no policies on the OBO/NOBO regime. The white paper is a starting point for Council discussion about key “proxy plumbing” issues that will be highlighted in the SEC’s upcoming concept release on the mechanics of proxy voting and communications.

created the fifth-largest beverage and food group, in the world, by sales.

[> read more](#)



February 11th, Reckitt Eyes Deals with Burgeoning Cash Pile

Jenny Wiggins and Adam Jones report on the possibility of deals by the Finnish consumer products company.

[> read more](#)



February 11th, Creditors to Nominate Successor For Hynix Semiconductor Chief

Kyong-Ae Choi reports on the role of creditors in the selection of a new CEO for the Korean semiconductor firm.

[> read more](#)



February 5th, Is Deutsche Bank Becoming a Paragon of Modesty?

Commentary on Deutsche Bank CEO Josef Ackermann.

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[>>Proxy Contests/Battles for Control](#)



February 16th, Simon Bids \$10 Billion for General Growth Properties

A discussion of Simon’s unsolicited \$10 billion bid for General Growth Properties.

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February 15th, Babcock Launches £1.14bn Bid for Rival VT

Sylvia Pfeifer, John O'Doherty and Alistair Gray report on a takeover contest in the engineering services sector.

> [read more](#)

>> **Investor Action**



February 18th, SEC Said to Use BofA Enforcement Talks to Press Proxy Rule

Jesse Westbrook and David Scheer report on the SEC's failed attempt to enforce a 'proxy access standard' at Bank of America during recent settlement talks.

> [read more](#)

>> **The Boardroom**



February 16th, Fluor Changes Bylaws to Permit CEO-Chairman Split

Marc Hogan reports on changes to the board leadership structure at Fluor.

> [read more](#)



February 13th, 'It Was a Shock that Something Like This Could Happen'

An interview with Hasso Plattner, one of the five founders of German software giant SAP, about the company's earnings collapse and recent executive changes.

> [read more](#)



February 13th, Constellation's Shattuck Sweats the Details

Mark Peters discusses lessons CEO Mayo Shattuck learned from the company's brush with bankruptcy.

[> read more](#)



February 11th, The SEC at a Crossroads

Discussion and review of the course being charted by SEC Chairman Mary Schapiro. The article makes note of a January 13th SEC approval of a concept release on proxy mechanics. We double-checked with the SEC and the concept release has not yet taken place.

[> read more](#)



February 11th, Infineon Investors Reject Hermes Chairman Nominee Berchtold

Ragnhild Kjetland and Claudia Rach report on the victory of Infineon's Chief Executive Officer Peter Bauer in his battle with governance advocates.

[> read more](#)



February 10th, Corporate Governance in Sad Shape

An opinion piece by Eric Jackson, Senior Contributor on the recently released book Money for Nothing, written by investment banker John Gillespie, formerly with Lehman Brothers, and David Zweig, a founder of Salon.com.

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February 4th, What Directors Think

2009

A brief discussion of the Corporate Board Member and PricewaterhouseCoopers LLP eighth annual survey of corporate directors.

> read more

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