



Governance & Proxy Review

Volume 1:Issue #1

Edited by Francis H.Byrd

Letter from the Editor

Since no-one can ever get to all the stories and commentaries on governance and proxy management in the course of our hectic and busy times, we've started The Altman Governance & Proxy Review (TAG-GPR). TAG-GPR is our weekly compilation of the best governance and proxy related stories and opinions, (with links), on hot topics (and **hot button** issues) affecting companies, boards and investors. We will also have some of our own commentary on topical issues outlining our view of how companies and their boards can best navigate the increasingly complex world of corporate governance and proxy.

Among the hot topics we'll be touching on in this and future issues:

- Executive Compensation
- Say on Pay (SOP)
- Impact of Rule 452 Amendment to voting for directors
- TARP Requirements on Banks and Financial Firms
- Overcoming Proxy Solicitation Challenges
- The Legal Opinion – highlighting the views and ideas coming from top legal thinkers on governance and proxy-related subjects
- The Altman Interview – an interview with a governance or proxy opinion leader discussing a key issue

We hope you find our weekly e-zine helpful in providing an easy way to stay current on important issues. We'd like to hear from you. Please share your thoughts, opinions and ideas with us at editor@altmangroup.com.

Francis H. Byrd, Managing Director, Corporate Governance Practice Co-Leader
The Altman Group

The Way We See It – Commentary

Governance News and Views from across the spectrum

ft.com/gapperblog

John Gapper, in an April 30th post on his blog addresses the vulnerability of dual Chairmen and CEO after a shareholder vote to split the roles at Bank of America.

([Article](#)) - "[How chairmen and chief executives are vulnerable](#)" April 30, 2009 6:46am April 30, 2009 6:46am

Bloomberg.com

U.S. Regulators Clash Over Holding Banks Accountable

Craig Torres of Bloomberg had a story (5/15/09) ([Article](#)) on the debate between regulators over whether to and how best to hold our troubled banks accountable for the credit crunch and financial meltdown. It will be interesting to hear the various federal regulators' testimony to the special committee Congress plans to impanel (see Gibson Dunn link in Legal Opinion).

THE WALL STREET JOURNAL

The WSJ's Dan Fitzpatrick and Damian Paletta had a story ("[BoFA Urged by Regulators to Revamp Board of Directors](#)") ([Article](#)) on the continued press for changes at Bank of America in the wake of the last month's shareholder vote stripping the role of Chairman from BoFA CEO Ken Lewis. New non-Executive Chairman and the board face a

from The Altman Group

Regaining Investor Trust at Bank of America (BAC)

Francis H. Byrd, Managing Director, Corporate Governance Practice Co-Leader

As you can see from two of the stories above, much has been said about Ken Lewis' loss of the Chairman title, the experience or lack of regarding the new non-executive chairman, Walter E. Massey, the former president of Morehouse College, and the pressure from federal regulators to change out the board. But few have commented on what steps Massey, the board and Lewis can take to regain the initiative and re-establish trust with shareholders and strengthen confidence with regulators.

In spite of some investor comments on Mr. Massey's ability and experience to be the non-executive chairman of America's largest bank, BAC's new board leader has a strong leadership background. Walter Massey is an experienced corporate director having served on the boards of McDonald's, Amoco (prior to its assimilation into BP) and Bank of America. He has led a large organization, the U.S. government-owned Argonne National Laboratory, one of the U.S. Department of Energy's oldest and largest national laboratories for science and engineering research, with roughly 2,900 employees and an annual operating budget of approximately \$250 million. Massey's field of professional expertise is theoretical physics, in which he has a PhD. Professor Massey nor does appear to be a "stereotypical" tweed jacketed academic lacking any practical background in organizational management. Given the scrutiny that BAC is under, Massey's elevation to non-executive chairman will be closely studied by observers and governance experts on both sides of the separate chairman/CEO debate. Massey is leading a new special committee charged with reviewing director, CEO succession and TARP pay back.

Were I advising the Bank of America board (and had I conducted a full diagnostic of the firm's corporate governance) here are the steps I would likely recommend to the new non-executive chairman:

- Take a deep dive on BAC's status (litigation risks, stress test results and profitability outlook) and prospects with CEO Lewis and his team. This will entail spending considerably more time at BAC attending senior management briefings and conferring with fellow board members than he has

number of challenges – stress tests results, management development, repaying the TARP and the need to recruit new directors. (WSJ subscription required) (See our commentary below)

The Legal Opinion

This week, we're highlighting alerts from Weill Gotshal and Gibson Dunn & Crutcher.



([Article](#)) The briefing discusses the potential implications of amendments to Delaware General Corporation Law by the state's General Assembly. The amendments were, as stated by Weill Gotshal, a response to recent court decisions and SEC rule-making initiatives addressing shareholder concern regarding proxy access and expense reimbursement for director-election contests.

GIBSON, DUNN & CRUTCHER LLP

([Article](#)) The Gibson Dunn update focuses on the efforts of the U.S. House of Representatives and the Senate to create an independent commission whose purpose will be to examine the domestic and global causes of the current U.S. financial and economic crisis.

typically done as a director and audit committee member.

- A formal leadership hand-off from the Lead Director. Temple Sloan, the BAC lead director, appears to have lost credibility in the minds of many investors (nearly 25% of whom withheld their votes from him) who believed that BAC needed an official non-executive chairman to assist the board in conducting its oversight responsibilities. Chairman Massey needs to take the reigns of communicating with the committee chairs and getting up-to-date on their key concerns and expectations from senior management.
- Massey will need a waiver from the mandatory director retirement age of 72. He, for the sake of board leadership and stability, should remain as non-executive chairman for at least two years before relinquishing the role.
- Disband the executive committee. Many investors and proxy advisory services view executive committees as a potential board within a board limiting director involvement and oversight.
- Seriously consider the possibility of holding a “Pfizer-like” investor meeting (s) with key investors before the end of the calendar year. The meeting would need to have guideposts for discussion and strict ground rules created at the outset and agreed to by prospective investor attendees. The attendees from Bank of America would include Mr. Massey, CEO Lewis (the General Counsel and Corporate Secretary should also be in attendance) and the board committee chairs whose subjects are likely to be the focus of the meeting - long-term strategy, succession planning compensation and risk management oversight. Determining which investors should be invited might be the most difficult aspect of preparing for these meetings. Obviously, some of the largest holders (besides the U.S. Treasury) and the most critical including the Change to Win union and Finger Investments would need to be among those invited.

Public companies rely on the credibility provided by their boards of directors’ independence, presumed judgment and quality of oversight. As Bank of America strives to restore profitability and integrate the Countrywide and Merrill acquisitions investor

patience will depend as much on the ability of Massey as Non-Executive Chairman and Ken Lewis as CEO to restore trust and credibility as on the performance of Bank of America stock.

