



# 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**

The Governance & Proxy Review will not be published next Friday, November 27th. We will be taking a week's hiatus and resuming publication on Friday, December 4, 2009. Have a Happy Thanksgiving!

### **Preparing For The Year Ahead**

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

Earlier this week, I had the privilege of attending the Directorship Boardroom Leaders Forum, in New York, and moderating the "Meet the Experts – The 2010 Forecast" panel. The panelists, all subject matter experts (in areas ranging from succession planning to crisis communications to product and D&O liability), provided clarity on numerous issues important to the work of corporate directors.

There was among the director attendees a hunger for information on governance best practices, as well as for tools, strategies and tactics they could employ in performing their responsibility of management oversight in a more effective manner. The directors I spoke with realize that Corporate America and its directors face tremendous scrutiny from shareholders, the media, the government and the public. In the wake of Sarbanes-Oxley, the director class has undergone a rapid transformation, with board members becoming more independent and empowered vis-a-vis the CEO and the senior management team.

This transformation has, however, some attendant risks. The two most prominent: 1) blurring, then crossing the line between board and management; and 2) failing to meet the ever-rising expectations being placed on directors as stewards of corporate oversight. The fear is that regulatory overkill, and the expectations that come with it, could force directors out of their oversight role and into the role of supervisory managers of senior executives. The current populist mood in Congress (and the public anger behind it) could fuel just such a result.

Not Standing Still

## **Governance News & Views from across the**

**spectrum.**  
>> **Executive Compensation**



### **November 18th, Fat Cat Pay - Then and Now**

Carol Loomis, Fortune senior editor at large discusses the history of public outrage over executive compensation.

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### **November 17th, Citi Boosts Base Salaries of Some Senior Employees**

Dan Wilchins reports on increases in base compensation for some Citigroup executives.

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### **November 16th, Option Exchange Plans Stall Amid Criticism Of RiskMetrics' Rules**

Kristin Gribben reports on the factors limiting the issuance of option exchange plans.

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Directors aware of this conundrum are taking steps to meet the challenges presented by this more difficult environment. They are seeking to immerse themselves in the business and operation of their companies, and to leverage their knowledge and understanding of the markets they operate in to gain a better sense of the managers who run those businesses. Board members are also seeking to better understand the complex nature of risk, seeking insight on how a once sound strategic plan can have the potential to turn into a threat to the company. On this key subject, the National Association of Corporate Directors, last month issued a blue ribbon commission report on risk management best practices entitled “[\*Report of the NACD Blue Ribbon Commission on Risk Governance: Balancing Risk and Reward\*](#)”.

Another topic of concern to directors is the growing power of shareholders. While the question of proxy access remains unresolved, directors are becoming more aware of the challenges stemming from the SEC’s approval of the amendment to NYSE Rule 452 ending the discretionary broker vote in the election of directors. The prospect of a sharply reduced vote for directors, in the era of majority vote rules and the increasingly adversarial atmosphere with institutional investors, is not at all appetizing for many board members – especially those whose companies have a large percentage of retail shareholders. In 2010, the mechanics of proxy voting will occupy much more discussion time, in the nominating and governance committees and at the full board, than in years past.

Concerns about the shape of reforms, the role of directors, and the power of shareholders, will play out more fully in 2010 as Congress and the SEC work out the details – big and small – of what Corporate America will have to deal with going forward.

## BusinessWeek

### **November 16th, Payback Time? The SEC Launches a Second 'Clawback' Case**

Esmé E. Deprez discusses SEC action against Beazer Homes CEO Ian McCarthy.

[> read more](#)

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## The New York Times

### **November 16th, Lobbying Effort Backfires for Hedge Funds**

Paul Taylor reports on possible pay curbs being proposed for fund executives by the European Union as a result of aggressive lobbying efforts by the hedge fund industry.

[> read more](#)

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## >>Global Dispatches

## THE WALL STREET JOURNAL

### **November 18th, Ferrero Risks Shedding Veil of Secrecy**

Stacy Meichtry discusses the impact of Ferrero’s joint bid with Hershey for Cadbury on the company’s business profile.

[> read more](#)

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## THE ECONOMIC TIMES

### **November 16th, “We're positive on telecom and infrastructure sectors”: ICICI Prudential**

Santosh Nair has an interview with Nilesh Shah, deputy managing director and chief investment officer of ICICI Prudential Asset Management.

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## SPIEGEL ONLINE

### **6th, Spanish Banks Expand: Seeking New Worlds to Conquer**

A report on the global expansion by Banco

Santander and other Spanish financial institutions.

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>>**Proxy Contests/Battles for Control**

THE WALL STREET JOURNAL

**November 18th, Hopes Rise for Cadbury Bidding War**

Michael Carolan reports on the prospects of a bidding war for Cadbury.

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Bloomberg.com

**November 18th, Hershey, Ferrero, Mull Options on Kraft Target Cadbury**

Andrew Cleary discusses the deal evaluation process for Hershey and Ferrero.

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THE WALL STREET JOURNAL

**November 18th, Hershey, Ferrero, Face Limits**

Matthew Curtin discusses the obstacles to a potential counter-bid by Hershey and Ferrero against Kraft.

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breakingviews.com

**November 17th, Rule Meet Exception**

Robert Cyran discusses the merits of poison pill use in relation to the Mead Johnson Nutrition auction, and whether the pill actually benefits shareholders in this instance.

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## AGENDA

### **November 16th, Strategic Plans Vital to Assessing Hostile Takeovers**

Tony Chappelle discusses the roll of strategic plan review during a hostile bid.

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## BusinessWeek

### **October 27th, Brazil: M&A Deals Heat Up**

Frank Aquila, a partner in the Mergers & Acquisitions Group of Sullivan & Cromwell LLP, writes about the reawakening M&A market in Brazil.

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[>>Investor Action](#)

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## Bloomberg.com

### **November 18th, Private Equity Funding Plunges 62% at CalPERS Amid Fee Review**

Cristina Alesci, Jonathan Keehner and Jason Kelly discuss the changing relationship between the largest U.S. public pension fund and its private equity managers.

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### **November 18th, Former Head of Deutsche Bank Faces Charges**

James Wilson reports on charges facing Rolf Breuer, the Deutsche Bank CEO, in his ongoing battle against Leo Kirch.

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**Bloomberg.com**

**November 17th, PAI Investors Said to Push Firm for Bigger Cut in Buyout Fund**

Anne-Sylvaine Chassany reports on an effort by investors to reduce their financial commitment to the PAI.

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**DealBook**

**November 17th, Millennium's Englander Examines Hedge Funds**

Zachery Kouwe discusses comments by Israel A. Englander on the state of the hedge fund industry.

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**AGENDA**

**November 16th, SEC Warns: Bad CD&As May Mandate Refiling**

Josh Martin discusses a push by the SEC to insure compliance with CD&A disclosure.

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**>>The Boardroom**

**Bloomberg.com**

**November 18th, DirecTV Chooses PepsiCo's Michael White as Next CEO**

Kelly Riddell reports on the selection of a top PepsiCo executive as the new CEO at DirecTV.

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**FT.com**  
FINANCIAL TIMES

**November 18th, Businesses Told of Rising Risk**

Rachel Sanderson discusses the increasing levels of risk facing global companies.

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**guardian.co.uk**

**November 18th, Marc Bolland Appointed as Chief Executive of Marks & Spencer**

Graeme Wearden reports on the selection of William Morrison CEO Marc Bolland to lead Marks & Spencer.

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**Bloomberg.com**

**November 18th, Lazard's Jacobs Was Constant Amid 21 Years of Changes**

Michael J. Moore and Josh Fineman discuss the rise of Kenneth Jacobs.

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**DealBook**

**November 17th, At Hearing, Questions About BofA CEO, Candidate**

Cyrus Sanati reports on Congressional interest in the progress of the BofA CEO succession process.

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**DealBook**

**November 16th, GMAC Chief Resigns as Firm Prepares for More Aid**

DealBook discusses the board's removal of Alvaro de Molina.

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**November 16th, Perspective:  
Yahoo's Turnaround Efforts Are  
Straight from Steve Jobs'  
Playbook**

Brent Schlender provides commentary on leadership at Yahoo.

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**November 10th, Leading During a  
Downturn**

Geoff Colvin, senior editor at large, in his "Value Driven" column, discusses leadership skill for tough times.

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**November 10th, How Do You Pull  
Off a U-Turn?**

The Judgment Call column asks the questions when and how can a company announce and execute a strategic change.

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**November 6th, The 2010 Proxy  
Season: What Lies Ahead?**

Richard P. Swanson of Arnold & Porter provides an analysis of challenges confronting directors and boards in the upcoming 2010 proxy season.

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**November 3rd, View from the Top  
(Video) My Leadership Style:  
Christina Gold**

Richard Milne interviews the CEO of Western Union.

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