

Governance & Proxy Review

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As We See It - Commentary from The Altman Group

On Shareholder Engagement: Directors Should Not Fear Reg. FD

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Over the course of several forums on governance, director leadership and engaging with shareholders, a number of board advisors have intoned mightily against the notion of having corporate directors involved in a company's shareholder engagement efforts. The foremost rationale offered for holding directors apart from discussions with investors is that Regulation FD creates insurmountable problems for companies whose directors could potentially be involved in engagement and outreach to shareholders. While there are legitimate concerns about the shareholder engagement process for company officers *and* directors, fear of Regulation FD need not be among them – if due diligence and care are properly undertaken.

To be clear, Regulation FD requirement can create difficulties for companies in communicating with investors, but engagement with shareholders can be much different than the relationships companies maintain with equity and credit analysts. Whether you need to have your board members involved depends on the answer to four questions: 1) who is the shareholder making the request, 2) what are the circumstances surrounding the engagement request (or need), 3) a determination as to whether director involvement will add value; and 4) which director or directors need to be involved.

Answering the Questions

Your answers will dictate what level, if any, of director involvement is required in the engagement process. Yes, engagement process. A company's decision to sit down with shareholders and enter into dialogue (hopefully constructive dialogue) should be part of a process taking in account the company's management culture, by-laws, and corporate governance guidelines. A review of board governance and general corporate governance for issues that might be flagged by shareholders can provide a much needed road map for potential engagement. Your firm's

Governance News & Views from across the spectrum

>>Executive Compensation

THE WALL STREET JOURNAL

December 3rd, Goldman Takes Offensive on Pay

Susanne Craig reports on Goldman's efforts to engage activist institutional investors and socially-responsible shareholders to ward off backlash on its compensation and bonus practices.

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Bloomberg.com

December 3rd, Barclays Said to Plan Salary Increases, Lower Bonuses

Gavin Finch reports on changes to investment banker compensation at Barclays.

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TIMESONLINE

December 3rd, Caught Between A Rock and A Hard Place

David Wighton, Business Editor, provides commentary on the battle of wills between RBS and the Treasury.

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guardian.co.uk

December 2nd, RBS Warns Cap on Bonuses Will Lead to Exodus of Top

corporate secretary, general counsel and outside counsel and advisors should be involved in every step of the decision-making process because engagement should not be equated with abandonment of counsel.

Who is making the request and why?

Has the request for a meeting with the company come from an individual shareholder “gadfly,” an activist institution (NYC Comptroller’s Office, Connecticut State Treasurer or AFSCME), or Nelson Peltz’s Trian Partners? Your response to the request and concerns about FD will be different for each. A ‘gadfly’ shareholder, with a few hundred shares, should not get the same level of management attention as a public pension/union fund or an activist investor. For the meeting with a public pension or union fund, the participation of a director may be merited by the subject matter to be discussed. These shareholders, while concerned with financial performance, usually are focused on governance or social responsibility issues they believe impact the corporate bottom line. Discussions with activist investors, such as hedge funds, are usually focused on current strategy, financial performance and operations; as a result, engagement with these activists needs to be more closely monitored for potential FD breaches.

What are the circumstances surrounding the engagement request (or need)?

What issues are creating the need for engagement? For example, one of the stories we have linked to this week discusses [Goldman Sachs’ engagement with Connecticut State Treasurer Denise Nappier and social issue proponents regarding shareholder executive compensation and bonuses](#). In reviewing the story and accompanying links to the correspondence between Goldman and the funds, you will note communication between the Compensation committee chairman and the activist institutions. As a rule, activist institutions with compensation concerns like to have an opportunity to discuss compensation concerns with a representative director serving on the compensation committee – often viewing management’s defense of the company’s compensation processes as self-serving.

In the case of hedge funds, they are very often looking for dialogue with the board. Where the fund’s goal is to obtain board representation they may seek to be seriously considered by the nominating and governance committee. As stated above, much greater care around Regulation FD needs to be taken under these circumstances as the questions from hedge fund managers can more easily stray into FD areas that cross the line.

Will director involvement add value to the shareholder engagement process?

In the instance where a company is seeking shareholder support for its compensation practices or providing

Staff

Phillip Inman reports on the war of nerves between the RBS and the UK Treasury.

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THE WALL STREET JOURNAL

November 30th, No More Executive Bonuses!

Dr. Henry Mintzberg, a professor at the Desautels Faculty of Management at McGill University in Montreal, offers commentary on incentive and bonus compensation.

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November 30th, Shhh! Wall Street is Spending Again

David Enrich and Susanne Craig report on expected payouts to traders at Wall Street firms.

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FinanceAsia.com

December 3rd, Dubai Impact Not Feeding through to Asia

Edward Russell discusses the Dubai fallout or lack of it to Asian markets.

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December 3rd, Asian Sovereign Funds are Biggest SWF Spenders in 2009

Joseph March reports on Asian SWF surpassing Middle Eastern government funds as active investors.

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BusinessWeek

December 2nd, Why Dubai Matters

clarity around board governance processes, director involvement may not only make sense, but has the potential to lead to the establishment of a better relationship with the shareholder. Keep in mind that engagement does not necessarily mean there will be agreement between the company and the investor, but an open dialogue with a board member could create a greater sense of trust even where the parties agree to disagree.

Who from the board should be involved?

The “who” will be largely determined by the issue in question. Discussions of strategic planning, executive compensation, and succession planning are usually more about process than the details of operations or the profitability of specific divisions. There may be questions from shareholders about past actions taken to provide color – exceptions might include questions on global sourcing and use/review of foreign contractors in discussions of human and labor rights with social issue proponents. The majority of these issues could be discussed by the lead director (or non-executive chairman) or broken out by subject matter for the appropriate committee chairman. Directors who chose to participate in the engagement process should be fully briefed on the range of questions they may face from the shareholders, as the corporate secretary/general counsel in pre-meeting discussions with the activist have agreed upon an agenda. A pre-meeting discussion allows both the company and activist to know the boundaries and Regulation FD type questions about earnings expectations or projected inventory levels can easily be understood by both sides as out of bounds.

Regulation FD need not be an obstacle to director participation. Careful planning and negotiation with shareholders can provide for director engagement with shareholders that can foster trust, if not agreement.

Stanley Reed discusses the importance of Dubai debt crisis.

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December 1st, Dubai Creditors Fight for Their Money

Elena Moya reports on efforts by creditors to collect funds.

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FINANCIAL POST

November 27th, Hedge Fund Manager Taking Cautious Route

Jonathan Ratner has an interview with Canadian hedge fund manager Tom Antony of Peregrine Investment Management Fund.

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>>Proxy Contests/Battles for Control

TIMESONLINE

December 3rd, Piedmont Pledges No Surrender to M&B

Dominic Walsh reports on the battle between billionaire Joe Lewis and the board of Mitchells & Butlers.

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FT.com
FINANCIAL TIMES

November 27th, Cadbury Warms to Hershey tie-up

Jenny Wiggins reports on Cadbury’s potential willingness to support an offer from Hershey.

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>>Investor Action



December 2nd, EU Sets Up Trio of Financial watchdogs

Nikki Tait reports on the agreement of EU ministers to the development of three pan-European financial watchdog agencies.

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December 1st, Voting System is Broken

Barry Critchley discusses the state of Canada's proxy plumbing and proposed reforms.

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November 23rd, Proxy-Voting Advocates Pool Resources on the Web

Cari Tuna discusses the efforts of activist and institutional shareholders to develop web tools for sharing information in the proxy voting decision-making process.

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>>The Boardroom



December 3rd, BofA Tarp Deal Could End Hunt for New Chief

Greg Farrell reports on the possibility the bank could be free to pay compensation in line with peer organizations for Lewis successor once TARP is repaid.

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December 3rd, Whitacre Running GM

for Up to Year May Mean He Hires Himself

Katie Merx, Jeff Green and David Welch discuss the leadership transition at General Motors.

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December 3rd, RBS Board May Quit If £1.5bn Bonus Plan is Vetoed

Nick Clark reports on the options for the board of RBS if the Treasury succeeds in blocking management's bonus payout.

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December 2nd, Exxon CEO's Bonus Cut By 40%

Sheila McNulty reports on the board's decision to reduce Rex Tillerson's bonus.

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December 2nd, Search Begins to Fill GM's Hotseat

John Reed and Tom Braithwaite discuss the GM Board's search for a new CEO.

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December 2nd, GM CEO's Resignation Inopportune, Says GM Vice Chairman

Xinhua reports on comments by Bob Luntz on the board's removal of Fritz Henderson.

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BusinessWeek

December 2nd, The Battle Raging Inside

GM David Welch reports on conditions in the executive suites at GM during the CEO change.

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SPIEGEL ONLINE

December 2nd, Marital Woes: Takeover Battle Leaves Open Wounds at Volkswagen and Porsche

Dietmar Hawranek provides analysis on management and organizational changes at the new combined company.

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