

# 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

### A New Year with New Challenges

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

On December 16, 2009, the SEC adopted amendments to its executive compensation and corporate governance disclosure regime for public companies requiring them to enhance disclosures in their proxy statements and other SEC filings.

The enhanced disclosure focuses on six specific issues:

- Director (and director nominee) qualifications, background and diversity
- Board leadership structure
- Board risk oversight
- Use of, and potential conflicts of interest with, compensation consultants
- Material risk in compensation policies and practices
- Tabular disclosure of the value of equity and option awards to NEOs and directors

In this week's issue, we are going to discuss the enhanced disclosure of director nominee qualifications and background, what the SEC hopes to achieve under this new regime, and the type of information activist institutions will continue to seek about directors.

In her December 16th open meeting [comments](#), SEC Chair Mary Schapiro outlined the Commission's goals for enhanced proxy statement disclosure – that “investors will better understand the background and qualifications of directors and board nominees”. Institutional investors, members of the Council of Institutional Investors, and the International Corporate Governance Network, individually and collectively, have lobbied for greater disclosure on the background and experience of director nominees, seeking to understand the rationale for director selection beyond the boilerplate biographical information contained in the proxy statement.

Companies will now have to provide information on directors' experience, qualifications, and professional skills relating to board service. Companies should bear in

## Governance News & Views from across the spectrum

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[guardian.co.uk](#)

### **January 12th, “Even My Parents Think I'm Overpaid”, Admits RBS Chief Executive**

Jill Treanor reports on comments by Royal Bank of Scotland CEO Stephen Hester to a Treasury select committee of Parliament.

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## THE WALL STREET JOURNAL

### **January 12th, Banks Brace for Bonus Fury**

Susanne Craig, David Enrich and Robin Sidel report on steps the big banks are taking to prepare for public and Congressional anger over bonus compensation payouts.

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### **January 11th, Impact of New Comp-Risk Disclosures to Vary by Industry**

Marc Hogan discusses how the burden of the new disclosures rule may hit various industry sectors.

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mind that the original proposal sought to relate a director nominee's background to both committee assignments and the full board. Shareholders want to have a greater understanding of directors' skills, outlook, and opinions on questions of corporate governance. For example, the Universities Superannuation Scheme (USS) and the UK pension scheme, in consultation with other activist institutions, has developed a [questionnaire](#) for the nominating committees and director nominees of companies with whom they engage. A quick review of the questionnaire indicated that USS seeks insight into director candidates and the process that selected them.

### **Now What? – What Should Companies Do?**

As companies begin to prepare their proxies (or revise their proxy in light of the SEC's proxy enhancements) they should address the following:

- Review their corporate governance and executive compensation structures
- Identify and understand any hot button issue – compensation, director independence, anti-takeover provisions, over-boarding – that could be flagged by RiskMetrics, other proxy advisory firms, or activist institutional investors
- Determine which directors, if any, could be vulnerable to withhold recommendations from proxy advisory services or who could be the subject of a Vote-No campaign by activist shareholders
- Review and update, as needed, director and officer questionnaires to ensure they capture the type and quality of information now required for inclusion in the proxy statement

The other challenge for companies will be in determining how best to communicate this information to investors. The goal should be to provide their shareholders with a window on the processes utilized by the nominating committee and the board in assessing its leadership needs and on selecting prospective directors to meet those requirements.

In issues 9 & 10 of the G&PR (July 17th and 24th) last year, we briefly discussed examples of enhanced disclosure addressing director nominee selection criteria and the process undertaken by the nominating committee. We highlighted three solid examples: 1) [The Point Blank Solutions, Inc., 2008 proxy statement](#) - used by the company in their 2008 contest for control with Steel Partners; 2) the [2008 management circular for Cameco](#), a Canadian mining firm; and 3) a [2008 management circular for Nexen](#), a Canadian international oil company. Canadian issuers operate under disclosure rules very similar to those adopted by the SEC this past December.

All three disclose nominee selection processes and director biographical information in a straightforward manner. We have posted all three on our website: the

### **January 11th, Cuomo Demands Bonus Data From 8 Big Banks**

Michael J. de la Merced discuss efforts by NYS Attorney General Cuomo to determine the formula used by former TARP banks to pay bonuses.

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### **January 10th, U.S. Banks Braced for Bonus Backlash**

Justin Baer and Francesco Guerrera discuss bank plans for dealing with the backlash on executive compensation.

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### **January 10th, U.S. Bankers Are Fed Up With British Regulations**

Landon Thomas, Jr., discusses the U.S. bankers dismay at UK regulation on bonus compensation.

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### **January 9th, Banks Prepare for Big Bonuses, and Public Wrath**

Louise Story and Eric Dash report on the environment surrounding banker pay and incentives as we enter the bonus season.

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[>> Global Dispatches](#)



### **January 13th, Banking Sector Expects Increased Profits, M&A**

The paper reports on prospects for the Korean banking sector for 2010.

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management proxy circulars for the two Canadian companies and the PointBlank Solutions proxy statement. We believe you will find these examples useful as you consider your options and draft your proxy materials for the 2010 season.



**January 12th, Investors from E  
China's Wenzhou Head to Dubai for  
Property Bargains**

Xinhua discusses the search for investment property bargains in Dubai.

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**January 12th, German Government  
Plans to Crack Down on Rating  
Agencies**

The paper reports on legislative efforts to curb the power of the credit rating firms.

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**January 10th, Russians Woo Investors  
for London IPOs**

Miles Johnson and Courtney Weaver discuss the change in approach of London-based investors to IPOs of Russian companies.

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**January 5th, Gulf Indians Want Say In  
Divestment**

Discusses suggestions made by Indian citizens living in the Gulf region, including taking their views into consideration in the government's divestment process.

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



**January 13th, Ferrero Debates  
Cadbury Retreat**

Vincent Boland and Jenny Wiggins and Rachel Sanderson report on twists and turns in the battle for Cadbury.

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**January 12th, Cadbury Takeover  
Likely To Be A 'Disaster', MPs Warned**

Graeme Wearden discusses opinions from British MPs, unions and academics on a Kraft takeover of Cadbury.

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**January 10th, Cadbury Prepares for  
Final Defense**

Jenny Wiggins reports on Calbury's efforts to defend against Kraft.

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**January 8th, Cimpor Rejects €3.86BN  
CSN 'Hostile' Bid**

Peter Wise reports on the reaction from Portugal's biggest cement group, Cimpor, to a €3.86bn (\$5.57bn) takeover offer by Brazilian steelmaker Companhia Siderúrgica Nacional.

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**January 7th, Kraft's CEO Put On the  
Defensive With Cadbury**

Joann S. Lublin and Anjali Cordeiro report on the relationship and communications between Kraft and its largest shareholders regarding the Cadbury fight.

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[>>Investor Action](#)



**January 10th, Union Boss Loses  
Patience with U.S. Reform Delays**

Tom Braithwaite discusses one key labor leader's push for the Employee Free Choice Act.

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**January 7th, Damages Backlash  
Looms for Siemens**

James Wilson reports on potential investor resistance to damage settlements between the German industrial giant Siemens and former managers, resulting from bribery allegations. The firm may also face a shareholder resolution seeking to limit the pay of supervisory board members.

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[>>The Boardroom](#)



**January 13th, Arbitron CEO Resigns  
After Hill Testimony**

Joann S. Lublin discusses the circumstances of Arbitron's President and CEO Michael Skarzynski.

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**January 11th, Whole Foods Shines  
Light on Board Leadership Drama**

Kristin Gribben reports on whether the change in board leadership structure at Whole Foods is the start of a trend.

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### **January 11th, 2010 Director Pay to Grow Despite Economy: Experts**

Josh Martin discusses the prospect for increases in the compensation of corporate directors.

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### **Crisis to Force Some Boards to Change**

A discussion of the impact of the financial and credit crisis on the relationship between boards and the senior leadership team. (Video)

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### **January 11th, More Boards Opting for Independent Pay Advisers**

Joann S. Lublin discusses the trend in use of compensation consultants.

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### **January 6th, FSA Charges Four Former Isoft Directors**

Philip Stafford and Brooke Masters discuss the Financial Services Authority move to initiate criminal proceedings against four former directors of Isoft, a healthcare software company, for alleged misleading statements to the marketplace.

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## **January 1st, Fashion Patriarch Fronts a Model of Success**

Vanessa Friedman discuss the success of the family business and its role as a public company model at Polo Ralph Lauren Corp.

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## **December 2nd, Legal Action by German Boards to Rise**

Daniel Schäfer discusses whether the action of the Siemens supervisory board, in taking legal action against former members of management, is the start of a trend.

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