

# Governance & Proxy Review

Volume 1: Issue #37

Friday, March 5, 2010

Edited by Francis H. Byrd

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## **As We See It - Commentary from The Altman Group**

**Frank J. Cifarelli, Director, Global Shareholder  
Communications**

### **Positive Trends in French Corporate Governance Practices**

One of the trends we are watching with increasing interest is the growing number of French companies adopting improved corporate governance principles. As the world's economy is becoming increasingly more integrated, French companies are grappling with the arrival of the "Anglo-Saxon" model to their country. Today in France, there is a greater corporate concentration on profitability, transparency, and shareholder accountability. However, the newer goals of activist shareholders and the interests of minority shareholders can be in conflict with the traditional French corporate model of state intervention, cross-holdings and economic nationalism. (1)

While France ranks as one of the world's most advanced economies, with a significant GDP and equity market, the development of shareholder rights is lower than one might expect. (2) Compared to its peer Western European countries (such as the United Kingdom and Germany), public and institutional shareholders investing in France have been at a competitive disadvantage, due to entrenched insider voting blocs exercising their voting power at Annual General Meetings on disputed agenda items.

There is a great deal of evidence that this behavior in France is changing however, and many French companies are taking the topic of corporate governance and shareholder accountability very seriously. They are now more likely to seek independent directors for their boards. Although most French companies still have a unified President-CEO / Chairman of the Board structure, (3) those that wish to send a message to the equity markets, that they are interested in improving their corporate governance practices, are now more likely to split this role into two different positions.

In addition, more French companies are taking seriously

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

>> **Executive Compensation**



### **March 2nd, AIG's Top-Earning Executives May Get Bigger Salaries**

Hugh Son and Ian Katz report on a potential agreement to allow pay increases for some AIG top performers.

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### **March 1st, Boards Eye Retention Pay as Demand for Talent Grows**

Josh Martin writes on the trend of compensation committees seeking to find mechanisms to help retain top performers.

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### **March 2nd, Executive Compensation and Public Outrage**

Patricia O'Connell talks with Kellogg School of Management Associate Professor Camelia Kuhnen about executive pay, public anger, government intervention and increased shareholder activism.

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the recommendations of several authoritative organizations, which have written articles on corporate governance “Best Practices”. The 2003 and 2008 AFEP-MEDEF reports outline recommendations for companies to follow. (4) The AFEP-MEDEF is a joint association consisting of two bodies – the AFEP, an association of large-cap companies (most of whom are CAC-40 constituents) which promotes the principles of private enterprise, and the MEDEF, which is the largest union of French employers, and which among its other duties conducts industry association surveys and takes action based on the survey results. (5) The AMF, a regulatory body that is responsible for: i) overseeing the French securities market and listed companies and ii) enforcing insider trading and corporate takeover laws, produced a report in 2005, regarding corporate governance and proper internal control channels.(6) The AFG (a French asset management association) has been producing guidelines on corporate governance “Best Practices” since 1998 and discusses such topics as legal and tax issues, proper corporate management behavior, and business conduct rules. (7)

Historically, the French government has had a great deal more influence on the management and capital creation of French companies than what has been commonly experienced in the United States. The power of the French government sometimes crowded out the full pursuit of shareholder activism previously. Interestingly, with the French government having a significant influence over French company management, this government involvement has been a factor in improving corporate governance in France now. (8) Major French political parties, across the ideological spectrum, are in favor of improving corporate governance and have given the power to the AMF to monitor French companies as to their compliance with the AFEP-MEDEF guidelines. Under a “comply or explain” system, the onus is on French companies to explain why they have not complied with the AFEP-MEDEF guidelines. (9)

One corporate issue that has received a great deal of attention in France is the topic of executive pay and its sister issue, severance packages issuance. Under French law, companies are required to submit compensation packages to a shareholder vote. (10) There have been numerous high-profile severance package proxy fights in France (11) (e.g. Alcatel-Lucent, Valeo SA, Total SA) during the past few years. These severance packages were considered excessive by activist shareholders.

In summary, we see an increasingly improving corporate governance environment in France, which will make investing in France a more attractive option for institutional investors, who wish to exercise their shareholder rights and demand better transparency, accountability and performance from French company management.

Bibliography



### **March 1st, HSBC to Take On Investors Over Pay Raises**

Sharlene Goff and Kate Burgess report on a coming battle between the bank and its investors over executive compensation.

[> read more](#)



### **February 27th, Retirement Benefits for BofA's Lewis: \$83 Million**

Dan Fitzpatrick reports on former BofA CEO Ken Lewis' retirement package.

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### **February 23rd, DSM to Link Managers' Pay with Green Credentials**

Richard Milne and Michael Steen discuss an effort to tie executive compensation with environmental sustainability.

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### **February 19th, EasyJet Adopts New Pay Policy Despite Anger from Investors**

Gill Plimmer discusses investor ire at a one year payout to CEO Andy Harrison.

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[>>Global Dispatches](#)



### **March 3rd, The Rise of Foreign**

- 1) CFA Institute - Shareholder Rights Across the Markets: A Manual for Investors 2009, France Section, Summary of Current Shareholder Rights, Schacht, Kurt, Allen, James, and Orsagh, Matthew, p. 21.
- 2) Ibid., p. 21.
- 3) RiskMetrics Group - France 2009, Corporate Governance Profile, p. 4.
- 4) Ibid., p. 2.
- 5) Ibid., p. 3.
- 6) Ibid., p. 3.
- 7) Ibid., pp. 2-3.
- 8) RiskMetrics Group - France 2009, Corporate Governance Profile, p. 2 and RiskMetrics Group - 2009 Postseason Report: France, d'Albo, Orsolya, pp.1 - 2.
- 9) RiskMetrics Group - France 2009, Corporate Governance Profile, p. 2.
- 10) CFA Institute - Ibid., p. 21.
- 11) RiskMetrics Group - 2008 Proxy Review: France, Tassin, Guillaume, p. 1.

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**James F. Burke, Managing Director, Special Studies**

**Modernizing the Proxy Voting System: Setting Priorities**

The Altman Group submitted a new position paper to the SEC on March 1, 2010, titled "Modernizing the Proxy Voting System: Setting Priorities." In the paper, Kenneth L. Altman (President, The Altman Group, Inc.) argues that: "reforms of the OBO/NOBO distinction and other aspects of the current proxy voting system are not simply about addressing a range of particular needs, but rather an imperative for sustaining a 'workable' system....Chairman Schapiro commented on Sept. 17, 2009, that she wants to ensure that 'the shareholders' vote is both meaningful and freely exercised.' 'Freely exercised' is a very high standard: one that can only be reached, in our view, through the reform of processes that currently result in historically low retail voting participation rates and the lowering of barriers to engaging more shareholders in the voting process (including reform of the OBO/NOBO [Objecting vs. Non-Objecting Beneficial Owner] system)."

The position paper expands on Altman's proposal for a limited event-based All Beneficial Owners (ABO) option for companies and soliciting shareholders to obtain comprehensive lists of the names of all beneficial owners (for annual and special meetings, and a limited number of other events that are detailed in a position paper submitted by Altman to the Commission in October 2009 [and available at the link provided below]). ABO, Ken writes: "is a process designed to fix a proxy plumbing problem. ABO will enhance the integrity of the overall system by increasing engagement with individual investors holding in Street name, and enable direct communications between smaller investors and both companies and shareholders using ABO lists to conduct mailing and solicitation campaigns. Without ABO, it will also be extremely difficult, if not impossible, to create a

**Investors**

Richard Milne discusses the role of foreign institutional investors stoking shareholder activism in European companies.

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**March 3rd, Barnier Refuses to Back Down in EC Battle with Hedge Funds**

Sean O'Grady, Economics Editor, reports on the looming battle between Michel Barnier, the new European commissioner for the internal market, and hedge funds and private equity firms.

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**March 2nd, Creditors Push Daewoo Investors to Sell Stakes**

Cho Chung-un reports on an effort by creditors to obtain investor approval for a restructuring of Daewoo.

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**March 1st, How to Avoid Getting Burned in China and India**

Anil K. Gupta and Haiyan Wang discuss the management of strategic partnerships in the key markets of China and India. Mr. Gupta is the INSEAD Chair and Professor of Strategy at INSEAD, and based at the Institute's campus in Singapore. Ms. Wang is Managing Partner of the China India Institute, a Washington D.C.-based research and consulting organization. She also serves as an Adjunct Professor of Strategy at INSEAD.

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modern system that marginalizes uncertainty about the accuracy of votes and provides a workable audit trail.” ABO will not eliminate the current OBO/NOBO system. However, this new position paper does advance a new proposal from The Altman Group to create “a process that will fully inform all investors about their OBO/NOBO status and clarify which account holders truly want to maintain their OBO status: “That process would involve conversion of all accounts to a NOBO ‘default’ status, while providing time before the effective conversion date (e.g., for 6 months or longer leading up to that date) for all existing OBOs to renew their OBO status. All account holders choosing to maintain their OBO status could be required to pay a small fee...Brokers must also be prohibited from making an OBO selection on behalf of an account holder unless explicitly directed to by the account holder (with the account holder’s signature) after the latter has been ‘fully informed’ of the consequences of an OBO designation, including any associated fees.”

The full text of the new position paper, written by Kenneth L. Altman, is posted on our website at the following address:

<http://www.altmangroup.com/pdf/ProxyMechanicsTheAltmanGroup.pdf>

A related position paper was submitted to the SEC in October 2009, and is posted at:

<http://www.altmangroup.com/pdf/PracticalSolutionTAG.pdf>



### **February 25th, Walmart to Set Emissions Goals for Suppliers**

Jennifer Birchall reports on a new environmental policy goal set by the large global retailer.

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### **February 24th, Power Struggle Looms in Spain**

Mark Mulligan discusses the impact of a plan to scrap shareholder voting limits at Spanish companies.

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

## **DealBook**

### **March 2nd, CF Makes New \$4.7 Billion Bid for Terra**

DealBook discusses the latest turn in the battle for Terra Industries.

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## **DealBook**

### **March 2nd, Will Rival Bidders Join the Fray for OSI?**

DealBook analyzes the current state of play for OSI.

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### **March 1st, Mandelson Urges Radical**

## **Takeover Reform**

Jean Eaglesham and Lina Saigol report on the comments by Lord Mandelson for a radical tightening of the UK's takeover rules.

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## **March 1st, Babcock Deadline on VT Takeover**

Alistair Gray and Sylvia Pfeifer discuss the imposition of a six week time limit on Babcock's attempted takeover of VT Group.

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# DealBook

## **February 22nd, How Flexible Is Delaware Law?**

Steven M. Davidoff discusses the flexibility of Delaware law in mergers and acquisitions.

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## **>>Investor Action**



## **March 2nd, Singapore, Abu Dhabi Face Losses on UBS, Citigroup**

Elena Logutenkova and Yalman Onaran discuss losses sustained by sovereign wealth funds.

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## **THE WALL STREET JOURNAL**

## **March 2nd, Justices Question Selection of Skilling Jury**

Jess Bravin and Brent Kendall discuss the grounds for Skilling's appeal of his conviction.

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## **March 1st, MSCI Buys RiskMetrics for \$1.55 Billion**

David Altaner reports on the purchase of RiskMetrics.

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## **February 22nd, SEC Advisors Eye Back-Up Plan to Empower Investors**

Ronald D. Orol discusses potential SEC action to require disclosure on majority voting in the election of directors.

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## **February 16th, A Hand in a House of Cards**

Andrew Ross Sorkin discusses the role of the credit rating agencies in the creation of the financial crisis.

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[>>The Boardroom](#)



## **March 2nd, Founder CEO, Fired CFO?**

Alix Stuart reports on a study discussing the effect of accounting restatements on the career prospects of CFOs when the company's CEO is a founder.

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# AGENDA

## **March 1st, Two Consumer Products Boards Create Risk Committees**

Tony Chapelle discusses the establishment of

board risk committees by two companies.

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### **March 1st, Should Boards Have Full Access to Employees?**

Kristin Gribbens with a discussion of the various mechanisms used by boards of directors to access employees.

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## THE WALL STREET JOURNAL

### **February 27th, Citi Cuts Size Of Its Board: Three Out, Zedillo In?**

Randall Smith discusses changes in board composition at Citigroup.

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## THE WALL STREET JOURNAL

### **February 22nd, Opening Up Succession Plans**

Joann S. Lublin reports on board involvement in succession planning at Frontier Communications Corp.

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### **February 22nd, 3M CEO George Buckley's Management Advice**

An interview with 3M's CEO (Video).

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### **February 9th, Audit Committees Ready to Disclose Risk Oversight**

WebCPA staff discusses a KPMG survey of board members and executives on preparation for the SEC's new risk oversight disclosure requirement. (Free registration required)

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## McKinsey Quarterly

### **February, 2010, How Inflation Can Destroy Shareholder Value**

Marc Goedhart, Timothy M. Koller, and David Wessels discuss the strategies companies will need to employ to outpace inflation and protect value for shareholders. Marc Goedhart is a consultant in McKinsey's Amsterdam office, Tim Koller is a partner in the New York office, and David Wessels, an alumnus of the New York office, is an adjunct professor of finance at the University of Pennsylvania's Wharton School.

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## McKinsey Quarterly

### **February, 2010, Planning for Your Next CEO A Conversation Starter,**

one in a series appearing in the McKinsey Quarterly, Ana Dutra and Joseph E. Griesedieck comment on the board's role in the CEO succession process. Ana Dutra is the chief executive officer of Korn/Ferry's leadership and talent consulting group and an executive vice president at Korn/Ferry International. Joseph Griesedieck is the vice chairman of Korn/Ferry International and the managing director of its board and CEO services practice.

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