



# Governance & Proxy Review

Volume 1: Issue #38

Friday, March 19, 2010

Edited by Francis H. Byrd

If you are having trouble viewing this email [click here](#).

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

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

### Coming Events Cast Their Shadow

*Proverbial Meaning: There are usually warnings or signals when an important event approaches.*

*Literal Origins: Sometimes a string of minor events can lead up to a larger event, often in a predictable fashion – casting a metaphorical shadow as the event looms.*

In this week's newsletter, there are four stories that appear as shadows of future shareholder activism. The most obvious is the story on the progress of Senator Christopher Dodd's financial reform bill, and whether proxy access – the holy grail of institutional investor governance advocates – will remain in the bill. The other story, in our Investor Action section, speaking to direct action by shareholders, is the Agenda story on work being done by CalPERS and CalSTRS to develop a database of prospective dissident director nominees for short slates for use under a proxy access regime (if proxy access is actually enacted). However, these issues are essentially known to the market, are not surprises, and to a certain extent have already been expected.

The Altman Group, like other advisors to managements and boards, has advocated that companies prepare for the advent of the proxy access era. We have advised companies to maintain more frequent and substantial contact with their shareholders, and to have a better sense of what their key concerns are, be it performance or governance-related. A better question to ask is whether we will experience a dramatic change in the environment for public companies. Two of the stories we highlight this week speak to that issue. The first, in last week's New York Times, discusses the pressures facing public pension funds. These funds, many of whom are not earning anywhere near their actuarial assumption, are faced with the need to invest in higher yield investments and are seeking out alternatives – such as hedge funds. The second story, from Bloomberg, reports on efforts by the FDIC to encourage public funds to invest in the weak banks and repackaged financial institutions in the

## Governance News & Views from across the spectrum

### >> Executive Compensation

#### AGENDA

### **March 15th, GE Strengthens Clawback With Two-Part Policy**

Katie Wagner discusses the adoption of a new and stronger compensation clawback policy at General Electric.

[> read more](#)

#### THE WALL STREET JOURNAL

### **March 15th, Semiannual Bonuses Gain Traction**

Joann S. Lublin reports on the increased use of twice yearly incentive plans for executives.

[> read more](#)

#### THE WALL STREET JOURNAL

### **March 13th, Apple's Cook Gets \$22 Million Bonus**

John Kell and Andrew Morse discuss the Timothy Cook incentive for managing in Steve Jobs absence.

[> read more](#)

#### THE WALL STREET JOURNAL

### **March 10th, Black & Decker CEO Stands to Get Big Payday**

Joann S. Lublin discusses the director connectedness and its effect on the compensation

agency's ever increasing portfolio. These stories speak to changes in the thinking and activities of the stewards of good governance and long-termism. These public funds face serious long-term funding problems that could create the need for short-term investment horizons to meet the needs of their retirees. Yes, one could say this trend has been taking place for quite awhile. We would agree; however, the credit and financial crises of the last three years have taken their toll on municipal and state budgets, and many public funds are limiting governmental funding options. Additionally, many public funds were not fully funded during the good years, and will now struggle harder during this lean financial period to find investments to meet their future retirement payout obligations.

What does that mean for public companies? Companies will face a much tougher environment where executive managements and boards of directors will be pressured by shareholders who will be much more critical (and watchful) of risk and performance issues. As the public funds (and their Taft-Hartley allies) diversify from equities to find greater Alpha, will they act more like hedge funds they may hire and press companies for faster growth and actions that have an immediate, positive impact on the stock price, or will they maintain their stance on the longer term view of their portfolio companies growth? Will they press their hedge fund managers on voting policies as they have their index and equity managers in the past?

The fate of proxy access, in the U.S. Senate and at the SEC, is important and the outcome will have an immediate and lasting impact on the nature of the relationship between companies, boards of directors and shareholders. But the pressure faced by institutional investors points to a more contentious future environment for public companies. Companies will be need to develop a more coordinated approach internally (with teams from investor relations, the corporate secretarial function and the legal department working more closely together) in managing relationships with investors, and from their advisors (proxy solicitors, outside counsel and financial) to cover more territory and better understand the actions and motivations of their investor base.

### **Educating the Retail Investor Base on the Importance of Voting Proxies**

With the amendment of NYSE Rule 452 and the current state of Notice & Access it is expected that proxy voting among retail investors will decrease sharply. In an effort to educate retail shareholders, the Securities and Exchange Commission, through its Office of Investor Education and Advocacy, has developed a website to assist retail investors with understanding the importance and necessity of voting their proxies.

The web site, <http://investor.gov/proxy-matters/> provides

of the Black & Decker CEO in the wake of the Stanley Works merger.

> [read more](#)

---

## DealBook

### **March 8th, M&T Bank's Flight Plan for Chief Executive**

Michelle Leder of the web site footnoted.org, discusses the use of private jets and related party transactions.

> [read more](#)

---

## THE WALL STREET JOURNAL

### **March 6th, For CEO Pay, a Single Number Never Tells the Whole Story**

Scott Thurm discusses the calculation of CEO pay.

> [read more](#)

---

## THE WALL STREET JOURNAL

### **March 4th, Stock Options Still Popular with Tech Firms**

Pui-Wing Tam discusses the continued use of equity options by Silicon Valley firms.

> [read more](#)

---

## The New York Times

### **February 25th, Verizon's \$18.5 Million Goodbye to Ex-President**

Michelle Leder of the Web site footnoted.org, discusses the separation payment to Verizon's former president.

> [read more](#)

---

## >>Global Dispatches

## SPiegel ONLINE

### **March 9th, The Fundamental Flaw of Europe's Common Currency**

Der Spiegel explores the current state of the Euro.

retail investors with information about the voting process and has a series of frequently asked questions (FAQs) on subjects such as Corporate Elections, Receiving Proxy Materials and Voting Procedures.

The Altman Group applauds the SEC's outreach efforts; however, we continue to believe that systematic solutions such as those outlined in our proposals on reforming proxy mechanics would be a significant step in a long-term effort to increase retail shareholder voting levels.

To read our reform proposals, please click the following links:

<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>

> read more

---



### **March 6th, Ruia Brothers Aim For London Listing**

Richard Orange discusses the prospect that Essar, the Indian oil and gas conglomerate is preparing to list on the London Stock Exchange.

> read more

---



### **March 5th, Fujitsu Executive Claims He Was Forced Out**

Juro Osawa and Daisuke Wakabayashi report on claims by former Fujitsu President, Kuniaki Nozoe, that he was forced out of the company.

> read more

---



### **March 3rd, Moody's Blues: Euro-Zone Governments Want to Curb Power of Rating Agencies**

Der Spiegel discusses the options for the European Union and Euro-Zone governments in dealing with Greece's debt crisis and Moody's role.

> read more

---



### **February 15th, EU's Almunia Says Antitrust Rules Important in Crisis**

A discussion of the views of Joaquin Almunia, the EU's competition chief.

> read more

---

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



### **March 16th, Simon Prepares New**

## **Offer for General Growth**

Michael J. de la Merced reports on an expected raised bid by the Simon Property Group for General Growth.

[> read more](#)

---

# DealBook

## **March 16th, Cedar Fair's Last-Minute Change of Heart**

Steven Davidoff, The Deal Professor, comments on the postponed meeting of Cedar Fair, and the implications for the vote needing unit holders approval of Apollo Management's acquisition of the amusement park operator.

[> read more](#)

---

## THE WALL STREET JOURNAL

## **March 15th, You Must Be This Tall to Vote Your Proxy**

Josh Beckerman comments on the postponement of Cedar Fair's unit holder meeting.

[> read more](#)

---

## **>>Investor Action**

## THE WALL STREET JOURNAL

## **March 16th, Proxy Plan Roils Talks on Finance Rules**

Kara Scannell reports on the battle over proxy access in the U.S. Senate.

[> read more](#)

---

## AGENDA

## **March 15th, Investors to Create Databases For Director Nominations**

Kristin Gribben discusses the work of public pension funds (CalPERS and CalSTRS) and activist investors (Shamrock Partners) to create databases of director nominees for dissident campaigns.

[> read more](#)

---

# DealBook

## **March 9th, Public Pension Funds Are Adding Risk to Raise Returns**

Mary Williams Walsh discusses the changing investment horizons and risk appetite of public pension funds.

[> read more](#)

---

## Bloomberg.com

## **March 8th, Failed Banks May Get Pension-Fund Backing as FDIC Seeks Cash**

Dakin Campbell reports on an effort by FDIC to promote the purchase of failed/failing banks by public pension systems.

[> read more](#)

---

## TIMESONLINE

## **March 8th, Santander leads race for £4bn RBS branches**

Martin Waller reports on further expansion of Santander into the UK.

[> read more](#)

---

## THE WALL STREET JOURNAL

## **March 5th, Perils of Investing Bite Ex-Regulator**

Ann Zimmerman, Joann S. Lublin and Leslie Eaton explore the experiences and investment track record of Richard Breeden, former Chairman of the U.S. Securities and Exchange Commission.

[> read more](#)

---

## TheStreet.com

## **March 3rd, Lessons From Pershing Square's Ackman**

Senior Contributor Eric Jackson comments on Bill Ackman's activism and thoughts on corporate governance.

> [read more](#)

---

>> [The Boardroom](#)

## AGENDA

### **March 15th, Boards Pressured to Keep Outside CEOs Off Comp Committees**

Katie Wagner reports on on-going efforts by the AFL-CIO to limit the service of current and former CEOs on the compensation committees of publicly-traded companies.

> [read more](#)

---

## DealBook

### **March 15th, Auditor Could Face Liability Over Lehman**

Michael J. de la Merced discusses the potential liability for Ernst & Young in the lead up to Lehman Brothers' bankruptcy.

> [read more](#)

---

## DealBook

### **March 15th, Why Did Ex-Lehman Executives Talk to Examiner?**

Peter J. Henning, who follows issues related to white-collar crime for DealBook's White Collar Watch, discusses the possible rationale for Lehman executives to have spoken with the court appointed bankruptcy examiner Anton R. Valukas.

> [read more](#)

---



### **March 14th, Lehman Report Casts Auditors in Poor Light**

Rachel Sanderson discusses the impact of Anton Valukas' report on the Lehman bankruptcy on the role of auditors in the financial crisis.

> [read more](#)

---



### **March 11th, NYSE Rebukes Black & Decker Over Merger**

Lorraine Mirabella discusses NYSE concerns regarding the Black & Decker misinterpretation of the stock exchanges director independence rules.

[> read more](#)

---



### **March 8th, Proposal to Oust Directors Without Cause Passes at Whole Foods**

Kristin Gribben reports on the passage of a shareholder proposal, allowing for shareholders to remove directors at Whole Foods Market without cause, by the Amalgamated Bank's LongView Funds. The story also discusses the success (30% of the shares voted FOR and AGAINST) of a first year resolution on CEO succession by the Laborers' International Union of North America.

[> read more](#)

---



### **March 8th, Awareness Rises, but Women Still Lag in Pay**

Nicola Clark discusses a report by the World Economic Forum on the status of women in the global corporate workplace.

[> read more](#)

---



### **March 5th, Job 1: Ensure Financial Integrity**

Stuart R. Levine discusses the importance for directors of focusing on financial risks. Stuart R. Levine is a director of Broadridge Financial Solutions, and chairman of the governance and nominating committee and lead director for D'Addario & Company.

[> read more](#)

---



**March 1st, Congressional Crackdown:  
Investor Protection Act Enhances SEC  
Power**

Lauren Williamson with an analysis of the implications of the Investor Protection Act on litigation risk.

> [read more](#)

---



**February 22nd, How Risky Is Your  
Board?**

Sarah Johnson discusses the potential impact of the SEC's new risk disclosure requirement for the proxy statement.

> [read more](#)

---

To unsubscribe [click here.](#)