

Governance & Proxy Review

Volume 1:Issue #40

Friday, April 16, 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

The Altman Interview – Michele J. Hooper, Corporate Director, and President & CEO of The Directors’ Council

Our interview this week is with Michele J. Hooper. Ms. Hooper is President and CEO of The Directors’ Council, which specializes in corporate board of director recruitment and board advisory services.

Ms. Hooper serves on the boards of PPG Industries, Inc., Warner Music Group, UnitedHeath Group, and AstraZeneca PLC. She previously served on the boards of Target Corporation, Seagram Company Ltd., and DaVita Corporation. Ms. Hooper is a board member of the National Association of Corporate Directors (NACD) and President of the NACD Chicago Chapter. She has served on the 2004 through 2009 NACD Blue Ribbon Commission Reports on governance including Board-Shareholder Communications, Director Liability, Risk Oversight and Board Evaluation. Ms. Hooper also is Vice-Chair of the Center for Audit Quality, a public policy organization whose mission is to foster confidence in the external audit process. Hooper is also a member of The Economic Club of Chicago, the World President’s Organization, The Executive Leadership Council, The Committee of 200, and The Chicago Network.

Previously, Ms. Hooper served as President and Chief Executive Officer of Voyager Expanded Learning, and of Stadlander Drug Company, Inc. Prior to joining Stadlander, Hooper was Corporate Vice President of Caremark International, and President of the International Business Group, responsible for the expansion of Caremark into Europe, Canada, and Japan. Hooper began her career at Baxter International

1. F.H. Byrd: What, in your opinion, is the greatest misconception that those outside the boardroom hold about the work of being a director for a public company?

Michele J. Hooper: I have thought about this a lot,

Governance News & Views from across the spectrum

>>Executive Compensation

DealBook

April 9th, Executive Says Competition Drove Fannie to Brink

Cyrus Sanati reports on the testimony of Robert J. Levin, Fannie’s former chief business officer before the Financial Crisis Inquiry Commission.

[PDF version of Mr. Levin’s testimony](#)

[> read more](#)



April 7th, Becht’s Pay Proves There is Money in White Powder

Louise Lucas discusses the £90m-odd compensation for Bart Becht, CEO of consumer goods group Reckitt Benckiser.

[> read more](#)

THE WALL STREET JOURNAL

April 6th, Traders Beat Wall Street CEOs in Pay

Stephen Grocer and Aaron Lucchetti report on the compensation of traders versus their Wall Street bosses.

[> read more](#)

especially as I read books with titles like “Money for Nothing,” or see television interviews on governance that refer to directors as “lapdogs of the CEO” or come across opinion pieces in the newspaper that talk about directors being “asleep at the switch.” I think the biggest misconception about the work of being a public director is that directors are a monolithic group that has learned nothing over the past 10 years about our responsibilities as directors. I think that, in the vast majority of instances, this perception of the work we do is absolutely wrong.

It makes for easy headlines and sound bites to continue to discuss the bad behavior of a handful of directors as though it was symptomatic of all boards and that the majority of directors are still living in the distant past. However, the corporate scandals of Enron, WorldCom and Hollinger, the legislative and regulatory requirements that resulted, as well as a steady drumbeat of investor and shareholder pressure have precipitated a growing demand for independent corporate boards, which are more effective, more engaged, more financially literate and more transparent in their actions. This convergence of events and influences has been a driving force for an increased focus in the boardroom on sound governance structures and board composition.

Are we perfect? No. Last year’s meltdown of the financial industry with its widespread collateral damage has done nothing to improve the public’s perception of America’s corporations and their boards of directors.

However, we need to step back and look at the broad landscape of thousands of corporations and their boards of directors. I believe that there has been and continues to be a transformation of the boardroom for which directors are not yet getting credit. I continue to believe, as I have for many years, that the overwhelming majority of boards and individual directors are committed to doing the right thing to the best of their ability in the best interests of the companies and the shareholders they serve. For me, serving on a board is an honor, but it is also serious business, with ever-increasing visibility, liability and accountability. When the job is done correctly, the board of directors strengthens and expands long-term corporate performance and increases shareholder confidence and value.

In 1989, I joined the board of my first public company, Target, formerly The Dayton Hudson Corporation. I have always said that I was fortunate to “grow up” working on a board that has long been recognized as having outstanding governance structures. For example, even in the early 1990s, we had executive sessions, all independent directors except for the CEO, evaluations of the CEO as well as Chairman evaluations, board and committee evaluations, a strong

AGENDA

April 5th, Pay Equity Among Amendments to Finance Bill

Marc Hogan reports on the inclusion of important amendments addressing pay disparities within a company, and another that would ban broker voting of uninstructed shares in executive compensation matters.

[> read more](#)

The New York Times

April 2nd, Executive Pay: A Special Report, Bargain Rates for a C.E.O.?

Devin Leonard examines CEO compensation and investor power.

[> read more](#)

THE WALL STREET JOURNAL

March 22nd, Firms Use Outside Adviser to Judge Executive Pay

Joann S. Lublin reports on the use of outside consultants to provide an independent second opinion on pay practices.

[> read more](#)

>>Global Dispatches

THE GLOBE AND MAIL

April 13th, A Bay Street Player Courts the Persian Gulf

Jeff Gray discusses the expansion of the law firm Blake Cassels & Graydon LLP, the first Bay Street firm to physically set up shop in the Persian Gulf.

[> read more](#)

THE WALL STREET JOURNAL

April 8th, Fujitsu's Ex-President Goes Public

Juro Osawa and Daisuke Wakabayashi report on the latest twist and turns in the battle between Fujitsu Ltd and its former president Kuniaki Nozoe.

lead director, interactions with the Council of Institutional Investors (CII), and of course robust boardroom discussions on strategy, risk and the competitive environment. Our Chairman and CEO listened to board feedback and we could see the follow-up and impact of our work. I have also had the privilege to serve on several other major global public companies. Over the last decade, I have been a member of the National Association of Corporate Directors board and chapter leadership teams, and participated in numerous Blue Ribbon Commissions on governance best practices, board surveys and now our “Leading the Way Campaign.”

A lot has changed in the boardroom since 1989. Boards are not only fulfilling the revised governance requirements of Sarbanes-Oxley, but also the listing standards of the NYSE and NASDAQ and the new disclosure requirements of the SEC. Many more boards now have executive sessions, are addressing the need for an independent leader of the non-executive directors either through an independent chair or a strong lead director, and have introduced board and committee charters and evaluations. Nominating committees are independent and most use skills and experience matrices as they evaluate director candidates and the needs of the company. Compensation committees with their time in the spotlight are making numerous thoughtful changes to pay practices. We are encouraged or required to get director education either in classes led independently or through in-boardroom sessions. There are more robust discussions in the boardroom, especially around strategy and risk, with directors requiring more information from management and delving deeper into the hard work of decision-making.

Most boards have turned over a fair number of their board seats due to retirement or resignations over the last decade. But even most board members who would be considered members of the “old guard” have embraced the new governance environment. For those new to board service in the last 10 years, they have known no other environment.

Some people point to the increased hours spent by directors on their responsibilities as one indicator of change. That is one important measure. But I think the increase in the quality of board discussions is a better measure. Unfortunately, there is no opportunity for those outside the boardroom to “see” inside and experience the progress that has actually been made in how we execute our responsibilities. Increased disclosure will help pull the curtain back somewhat.

But as I said before, are we perfect? No. I cringe at the thought of the next corporate scandal, because we know that it is likely to be out there waiting to be revealed. And again the majority of decent, conscientious directors may be tarred with the same brush of public outrage. Despite those public relations challenges, we

[> read more](#)

The New York Times

April 7th, Fed Reviews Find Errors in Oversight of Citigroup

Sewell Chan and Eric Dash report on questions and criticism for former Federal Reserve Chairman Alan Greenspan pre-crisis; and the New York Federal Reserve Bank’s review of the strength of Citibank.

[> read more](#)

THE WALL STREET JOURNAL

April 6th, Fujitsu's Boardroom Drama Features Touch of Film Noir

Daisuke Wakabayashi and Juro Osawa with an interview of retired Fujitsu Ltd president Kuniaki Nozoe.

[> read more](#)

SPIEGEL ONLINE

April 3rd, Daimler's Risky Renault Romance

Dietmar Hawranek reports on the new partnership between Daimler, Renault and Nissan.

[> read more](#)

FT.com FINANCIAL TIMES

March 22nd, Fund Seeks To Tempt European Investors

Abner Allam discusses the launch of a fund designed to attract European investors to the Middle East and North African regions.

[> read more](#)

>>Proxy Contests/Battles for Control

DealBook

April 14th, Deal Outlook is Rosy Ahead

continue to make improvements in corporate governance and transparency, year after year, and the vast majority of directors remain steadfastly dedicated to fulfilling their responsibilities

2. F.H. Byrd: How should shareholder engagement work from a director's point of view?

Michele J. Hooper: *If there is a theme to the various Congressional and SEC governance proposals, it is that the environment has shifted towards more transparency and disclosure to shareholders. Say on Pay, proxy access, increased director disclosure are all being hotly debated. It is more important than ever for management and boards to enhance communication with shareholders and strive to understand shareholders' views on a wide-range of topics. In my experience, shareholders can provide a unique perspective that can be helpful to the board in fulfilling its duties, but these views do not and cannot supplant the board's fiduciary responsibilities.*

Boards should consider whether direct shareholder/board communication, either face-to-face or by telephone, is appropriate and necessitated by a clear, commonsense reason -- for example, if direct communication is requested by a shareholder or your company has some material governance action on the proxy statement to discuss. These conversations between directors and shareholders will differ based on the company and the issue area being addressed. Determine who would be the best board spokesperson -- usually the Chair or one of the committee chairs, depending on the issue. Once the agenda is agreed to in advance, the director must be thoroughly briefed on all issues that may be raised. The general counsel should attend the session, monitor the conversation and help determine appropriate follow-up.

The proponents of "say on pay" here in the U.S, contend that it will promote a dialog that is currently lacking regarding executive compensation policies and practices, and they point to its use in the U.K. As Senior Independent Director of AstraZeneca, a global pharmaceutical company based in the U.K., let me share with you my experiences on the issue of "say on pay" and an example of how board/shareholder communications work over there.

In addition to the annual shareholder meeting, our board at AstraZeneca has at least two other different opportunities annually to interact with shareholders: One is through a mandated "say on pay" vote. Our Compensation Committee Chair uses this process to hold meetings with a select number of large, long-term shareholders in advance of the required vote to explain our compensation philosophy and the components of our incentive plans, particularly when changes are proposed. This gives us an opportunity to listen to our

of Tulane M&A Conference

DealBook discusses a survey by the Brunswick Group on the prospect for increased M&A in 2010.

[> read more](#)



April 11th, Arrow Backs Improved Takeover Offer

Peter Smith discusses an improved takeover bid for Arrow Energy from Royal Dutch Shell and PetroChina.

[> read more](#)



April 9th, New Hope Joins Macarthur Takeover Fray

Peter Smith discuss the entry of the Australian coal mining firm, New Hope, into the Peabody Energy-Macarthur Coal battle.

[> read more](#)



April 9th, Sticks and Stones

An FT Editorial comment on the language of contested bids in an age of globalization.

[> read more](#)

DealBook

April 8th, Financial Deal-Making May Rise in 2010, PwC Says

DealBook comments on a report on the environment for deal-making and consolidation in the banking and financial services industry.

[Go to PDF of PricewaterhouseCoopers report](#)

shareholders' concerns, explain our position and fine-tune our approach when necessary.

The second opportunity is for the Board Chairman and the Senior Independent Director to engage in a sit-down, listening tour with various long-term shareholders individually, usually pursued every 12- 18 months or so. Prior to our tour we have a thorough briefing by our head of Investor Relations and Corporate Secretary including possible issue areas and an overview of prior discussions held with each shareholder. During the tour, we listen to shareholders' comments on our strategy, governance issues, capital allocation decisions and so forth, to gain greater insight into their perspectives and investing philosophies.

In both instances, we find our shareholders are not shy about pressing their opinions on us, but they also have not proven to be inflexible. It is better to hear their concerns, be able to explain our positions when appropriate, and hopefully come to a successful understanding, than to have our compensation plan voted against at the annual meeting. It serves no one's interest to be tone deaf. While the shareholder vote on compensation is not binding, the embarrassment factor of a significant "no" vote is formidable.

So scheduling listening visits with a small but representative group of your long-term shareholders, critical listening and clear dialogue are very important in this communication process. In most instances, we have found that shareholders are like everyone else – they want to be heard and have their concerns acknowledged.

In both of these meetings with shareholders, we are accompanied by the General Counsel or Corporate Secretary and the head of Investor Relations. I should also note, however, that U.K. companies typically have a more concentrated shareholder base and most of those shareholders are located in close proximity to London. This makes the logistics of board/shareholder communications much less challenging than they are in the U.S.

Another good example of effective board/shareholder communication is the UnitedHealth Group Nominating Advisory Committee. This Committee provides a formal channel for direct communication between four of the Company's shareholders and me, as Chair of the Nominating and Corporate Governance Committee, along with the Chair of the Board, the CEO and our Board Secretary.

These meetings provide useful feedback from the shareholders on our board composition, skills and experience matrix. Our meetings are also useful for input from the shareholders about possible director candidates, and to review the skills and experiences of

[> read more](#)

DealBook

April 7th, Macarthur Coal Cool to Peabody Energy's Bid

Chris V. Nicholson reports on the latest moves in this takeover contest.

[> read more](#)

>>Investor Action



April 14th, China Unveils New Rules for Foreign Investment

Mu Xuequan reports on the new investment rules approved by the State Council, China's cabinet.

[> read more](#)

guardian.co.uk

April 13th, Northern Rock Directors Fined and Barred by FSA

David Teather reports on action taken by the Financial Services Authority (FSA) against two former Northern Rock executives.

[> read more](#)

THE GLOBE AND MAIL

April 13th, Why the TSX No Longer Tells the Whole Story About a Stock

Andrew Willis discusses the importance of trading data.

[> read more](#)

THE WALL STREET JOURNAL

April 12th, Two Power Producers Set Pact to Merge

Rebecca Smith and Mark Peters report on the just announced merger of Mirant Corp. and RRI

potential board candidates with the shareholders prior to our board making a decision to formally nominate a candidate.

The Nominating Advisory Committee finds this is valuable because they have a much better understanding of how thorough our processes are to identify and recruit new directors. I find the Nominating Advisory Group members to be very thoughtful in their comments. Their perspectives are a good addition to our board process, and they also provide us a window into any concerns that our shareholders at large may have in this important area.

For boards that do not communicate effectively, an environment of annual director elections, majority voting and increased director disclosure may create “a perfect storm” for shareholder discontent. One thing that most directors do not want to do is campaign for their seats. The earlier that boards can understand shareholder concerns and plan appropriate responses, the more successful the election process will be.

These conversations between directors and shareholders will differ based on the company and the issue area being addressed. We are seeing more and more boards, like UnitedHealth Group and AstraZeneca, effectively communicating with their shareholders.

3.F.H. Byrd: Academics and commentators have expressed the opinion that the CEO succession is a difficult task for boards. In your experience as a director, and from working with directors, have you found that to be true?

Michele J. Hooper: CEO succession is one of the top responsibilities of corporate boards, and is consistently reported in surveys by the National Association of Corporate Directors to be one of the top concerns of directors. No matter how well the process works, most directors can identify improvements that they would make to their approach.

CEO succession can be difficult if you view it as a “task”. I prefer to think about CEO succession as an ongoing board process and responsibility. Just like executive sessions, if you only have these discussions when you have an issue, then you miss a rich opportunity to discuss, plan and anticipate various scenarios, risks and opportunities. And you can create unnecessary anxiety in the organization. The same is true with CEO succession. If you only address it when there is an unexpected emergency due to death, illness or an unexpected dismissal, then yes, you can have a very difficult “task” on your hands.

Energy Inc.

> read more

>>[The Boardroom](#)

[THE WALL STREET JOURNAL](#)

April 14th, Bank of America Names an Outsider as CFO

Dan Fitzpatrick reports on executive changes at BofA.

> read more

[THE WALL STREET JOURNAL](#)

April 12th, Activist Holders Eye Top Managers for Boards

Joann S. Lublin discusses the trend in former CEOs serving as dissident directors.

> read more



April 8th, Spotlight Falls on Role of Consultancies

Megan Murphy, Justin Baer and Brooke Masters discuss the role of outside management consulting firms in the strategic planning and business development process at Citigroup, leading to the bank’s foray into the mortgage securities business.

> read more

[THE WALL STREET JOURNAL](#)

April 8th, Board Ties Begin to Trip Up Companies

Miguel Bustillo and Joann S. Lublin discuss companies’ problems with the Clayton Act.

> read more



April 6th, Sears Director Resigns in Settlement Involving Clayton Act

Alternatively, I suggest that directors think of succession in two parts, and begin to add discussions of succession plans to your regular board or private session agendas. The two parts are (1) emergency succession and (2) CEO succession/executive development. No one, including the CEO, likes the thought that she or he has barely accepted the job when the bosses are asking about possible successors, but that is the board's responsibility. My gold standard in this area is McDonalds. The McDonalds' board has such a robust process and line of sight on their executives that in 2004, during very unfortunate circumstances, they were able to appoint three different yet excellent CEOs in the space of less than 8 months. This kind of remarkable success does not happen by chance, nor does it happen by rationalizing that "we just appointed our CEO and have many years before we need to have succession discussions."

Discussions about emergency succession can allow for clarity on what steps will be taken if, unfortunately, your board is on the receiving end of a tragic phone call. Some boards have discussions with their CEO about emergency successors. Directors should discuss alternatives concerning board members or other outside executives who have the requisite experience to step in on an interim basis if there is no immediate successor identified, and whether those candidates would be agreeable if asked to serve. These options should be reviewed at least annually.

Boards should hold periodic executive sessions focused on CEO succession. Successful CEO succession planning involves a high degree of collaboration between the incumbent CEO and the Board. The views of the incumbent CEO regarding his or her direct line reports are a valuable piece of information in connection with CEO succession planning, but the Board should also continue these discussions in executive session without the CEO present. Successful CEO succession culminates with the appointment of the right leader with the right skills and cultural approach at the right time. As a company's strategy evolves, the board's thinking may evolve. The right CEO successor may require different skills and a different approach from the current CEO in order to drive long-term value.

Having visibility and interactions (both formal and informal) with senior executives over a long period of time allows a board to see those individuals in a variety of leadership roles, to understand their strengths, weaknesses and development actions and to gain insight into their character. Regular discussions also allow the board to look to the younger, high potential executives who need to be nurtured for future leadership roles. Sometimes the timing is such that the Board decides to reach into the organization to that next level for the logical successor to the CEO.

There are myriad stories of CEOs who delay or

Kristin Gribben reports on the resignation of William Crowley from the board of Sears Holdings as a result of an agreement with the Federal Trade Commission.

[> read more](#)

AGENDA

April 5th, Where Should Boards Direct Companies' Excess Cash?

Tony Chapelle discusses the merits of share repurchases.

[> read more](#)



March 29th, Ruthlessly Realistic: How CEOs Must Overcome Denial

Martha Lagace has an interview with Richard S. Tedlow, and an excerpt from his recently published book *Denial: Why Business Leaders Fail to Look Facts in the Face—And What to Do About It*

[> read more](#)



March 25th, Wanted: New Directors

Jeffrey M. Cunningham discusses six qualities to look for in today's board candidates.

[> read more](#)



March 19th, Eight Director-Relevant Highlights of the Dodd Financial Reform Proposal

Mark V. Nuccio and Alan G. Priest of Ropes & Gray LLP discuss the Dodd reform proposal.

[> read more](#)

To unsubscribe [click here](#).

obfuscate when asked to discuss succession with the board. We have all read about companies with great lieutenants who were world-class, but suddenly, for whatever reason, these individuals are pushed out of leadership contention. Hopefully, these situations become fewer over the years as directors become more independent, as strong lead directors become the norm, and as the understanding of the importance of CEO succession becomes more robust. A strong board must take responsibility for a robust CEO succession plan with a broad pool of candidates within the company for possible CEO succession, which will serve the ultimate good of the corporation overall.

F.H.Byrd: Michele, thank you for your time and your detailed and thoughtful responses. We greatly appreciate your participation.