



The Altman Group

Governance & Proxy Review

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As We See It - Commentary from The Altman Group

Current Corporate Governance Trends in Germany

Asha Doogah, Head of Research and Frank J. Cifarelli, Director, Global Shareholder Communications

About a decade or so ago, publicly traded German operating companies were characterized by stable management boards with mostly German nationals serving as board members, and stable shareholder bases characterized by a preponderance of cross-holdings by German banks, insurance companies and other operating companies. In general, there was little shareholder activism and German companies were run using a consensus style basis, with different parties giving input and decisions being made that strived for unified outcomes among the different stakeholders. This source of stability aided the German economy and allowed Germany to develop into one of the wealthiest, most prosperous Western Democracies in the world. In fact, Germany became the world's leading exporter until only overtaken by China this past year.

However, Germany's foray into the global economy now makes German companies recognize the important topic of corporate governance, which is a world-wide phenomenon that publicly traded companies must address. Currently, foreign investors are investing in German companies to a larger degree than in the past and activist shareholders are making their views known to management and taking action as a result. In their 22nd of August, 2008 edition, the highly respected German newspaper, Handelsblatt, published their leading story with the headline "Foreigners increase pressure on companies – international investors use general meetings for criticism."

An important recent incident that occurred in February of 2010, was when Hermes, an activist investor domiciled in the UK, tried to block the re-election of incumbent Klaus Wucherer as Chairman of the Board for Infineon Technologies AG. 72.5% of the vote went to Mr. Wucherer and he was re-elected, but the fact that 27.5% of the vote went against Mr. Wucherer demonstrates a significant level of opposition. Even though Mr. Wucherer was re-elected, he has promised to remain as

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April 15th, CEOs Are Not That Highly Paid

Matt Andrejczak of MarketWatch interviews pay consultant and author Robin Ferracone about her new book "Fair Pay For Fair Play."

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DealBook

April 13th, Union Brandishes Banker Pay in Fight with Wall St.

Cyrus Sanati discusses efforts by the AFL-CIO to link banker compensation to proposed financial regulatory reform.

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AGENDA

April 12th, Macy's Restructures Annual Bonus Program With Eye Toward Flexibility

Wagner discusses the changes to the bonus compensation program at the retail giant.

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Chairman for only one year. Instead of Mr. Wucherer, Hermes proposed Willi Berchtold, who is currently the Chief Financial Officer of the German auto supplier ZF Friedrichshafen. Hermes' position stated that "a new start at Infineon requires further renewal, particularly at the top of the supervisory board". Hermes also added that by the board ignoring shareholder concerns, this will be "particularly problematic". At the same meeting, shareholder activism did prevail on Agenda Item 6, where the authorization to repurchase and use Infineon's own shares was rejected at the AGM. The Altman Group believes that this meeting may have been a watershed event for corporate governance and shareholder activism in Germany.

There have been a number of high-profile proxy fights in Germany recently. After new laws on "Say on Pay" were enacted in 2009, the first AGM that occurred after the new laws went into effect was the Siemens AGM in January of 2010, where although shareholders approved a non-binding vote on the company's executive pay policies with 89.6% of the votes cast in favor, 10.4% voted against this resolution, a rather high percentage to vote "No" for such an item. At that same meeting, two agenda items were actually defeated – one on new rules governing the supervisory board compensation, and another one amending part of Section 2 of the Articles of Association.

Recently, Porsche Automobile Holding SE tried to acquire Volkswagen AG. On the 25th of January, 2010, the hedge funds Elliott Management, Glenhill Capital, Glenview Capital and Perry Capital filed a lawsuit against Porsche and its former CEO and CFO for over \$1 Billion, accusing the defendants of lying about Porsche's intent to take over Volkswagen. The four hedge funds were shorting Volkswagen stock, and allegedly lost over \$1 Billion when Volkswagen's stock price surged upward after Porsche announced having a 75% stake in Volkswagen. Additional investors who lost money from Porsche's stealth move are anticipated to join the lawsuit, which could increase the amount being sued for to over \$10 Billion. The charges against Porsche contend that it was covertly increasing its stake in Volkswagen beginning in 2005, while overtly denying its intention to the markets and general public that they were interested in taking over the company. Taken in by Porsche's public denials, the hedge funds were obligated to buy back the Volkswagen stock at higher prices after selling short.

One topic sure to have significant impact on the composition of boards of directors in Germany involve a recent Government Commission on the German Corporate Governance Code, which recommended greater diversity for the supervisory section of the board and developing methods to have more women and international representatives on the boards. In addition, the Commission recommends expanding additional training and continuing education, which will improve the professionalism of supervisory boards and existing



April 28th, Chinese Realty Firms Share Issues Put On Hold

Helen Mo, editor, discusses a government moratorium on share issuances by real estate companies, as part of a government effort to cool down housing prices.

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April 28th, Shareholders Support Lagardère Management

Max Colchester reports on a victory by Lagardère SCA's CEO against U.S. activist investor Guy Wyser-Pratte.

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April 26th, RBC May Be Next To Make Small-Scale Purchases

Boyd Erman with commentary on the growth by small acquisition strategy of Canadian banks in the U.S. market.

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April 26th, A Change of Topics for Pandit: World Growth

Cyrus Sanati reports on comments by Citigroup's CEO on the U.S. model as the best path for economic growth.

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April 26th, Spate of Multinationals Consider Singapore Listing

members. It is hoped that these educational enhancements will lead to better legal practices, and more accurate financial statements and risk control. Later this year, the Commission will review companies listed on the German Stock Exchange to see which companies have best implemented these recommendations. The Altman Group has studied a sample of German company websites and we have found that most listed German companies have already either implemented or are in the process of implementing these changes.

Since the changes to the German Corporate Governance Code were issued on June 18, 2009, The Altman Group has observed an aggressive approach to implement these recommendations throughout Germany as well as in the rest of the European community, which have similar country-specific mandates. From our research, it is one of the main topics pertaining to corporate governance occurring around the world. In response, the challenge of developing and implementing a new style of shareholder activism will set a precedent for shareholders' voices, and will certainly establish an opportunity for activist shareholders to ask for change. Hermes has opened the door to a new chapter in the investor world. Prior to Infineon, there had never been a proxy fight at a DAX30 constituent's AGM over appointing members to the Supervisory Board. These new developments represent a seismic shift in Germany regarding shareholder activism.

Kevin Brown discusses the prospects of European and U.S. companies listing on the Singapore stock exchange.

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[April 26th, Einhorn's Greenlight Destroys The Wall Street Journal For Paranoid "Yellow Journalism" Piece On Hedge Fund Collusion](#)

Courtney Comstock reports on David Einhorn's comments on a WSJ story alleging hedge fund plans to short the Euro.

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[March 25th, Welcome to Dodge City](#)

Kevin Carmichael discusses the impact of comments from former Bank of Canada Governor David Dodge on government policy makers.

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[April 22nd, Douglas J. Skinner of the University of Chicago Booth School of Business, and Suraj Srinivasan of Harvard Business School study the Japanese audit market](#)

Douglas J. Skinner of the University of Chicago Booth School of Business, and Suraj Srinivasan of Harvard Business School study the Japanese audit market, where recent events provide a powerful setting for investigating the effect of auditor reputation on audit quality absent litigation effects.

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April 27th, Lions Gate Poison Pill Has 61% Support So Far, Burns Says

Joe Schneider discusses the latest turns in Carl Icahn's battle with Lions Gate.

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April 16th, Rebuffed Icahn Lifts Bid for Lions Gate

Matthew Garrahan reports on Carl Icahn's latest move in the battle for Lions Gate.

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April 26th, Next SEC Governance Reform Target: Proxy Advisors?

Kristin Gribben discusses the push on the SEC for action to regulate proxy advisory firms.

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April 26th, Walmart To Seek Lawsuit Review

Jonathan Birchall reports on efforts by the world's largest retailer to have the U.S. Supreme Court overturn a large class-action sex discrimination lawsuit.

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April 21st, Funds Turn Up Heat on Mine Firm's CEO

Joann S. Lublin and Kris Maher discuss an effort by activist institutional investors to oust CEO Don Blankenship from the Chairmanship of Massey Energy.

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April 19th, SEC Engages in High Risk Game

Brooke Masters discusses the risk for the SEC in going after Goldman Sachs.

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April 12th, SEC Considers Revealing More Facts About Corporate Investigations

Tony Chapelle discusses the SEC's new approach to the release of information regarding investigations and settlements with companies.

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April 27th, Alison Cooper, Imperial Tobacco Chief, Rails Against Positive Discrimination

Simon Bowers reports on comments by incoming Imperial Tobacco CEO Alison Cooper on gender discrimination and the lack of women in the boardroom.

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April 27th, Neiman Marcus CEO Tansky to Retire

Peter Lattman reports on the CEO transition at retailer Neiman Marcus.

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Broker Vote Ban

Marc Hogan reports on the loss of the broker discretionary vote and its effect on the director elections at The Pantry.

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April 26th, Norway's Novel Approach to Bringing Equality to the Board Room

Niels Reise reports on the results of Norway's efforts to promote gender equity in the boardroom.

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FT .com
FINANCIAL TIMES

April 25th, The Unassuming Oil Giant

Sheila McNulty interviews John Watson, CEO of Chevron.

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April 24th, Director Resigns at Wellcare Health

Avery Johnson and Joann S. Lublin discuss the potential impact of the resignation of the audit committee chairman at Wellcare.

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April 20th, A CEO's Challenge: How to Get the Right Data

Javier Espinoza discusses the struggles of a European CEO to collect and identify the right data for making decisions.

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Arthur Levitt: The Real Governance Problem

April 9th, Excerpts from Arthur Levitt's speech at the Annual Audit Committee Issues Conference.

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The New York Times

April 2nd, Does Merck Agreement Pave a Road Toward Change?

Natasha Singer discusses the potential impact of shareholder lawsuit settlement on corporate governance practices at other companies.

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