



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

Anticipation: The Financial Reform Bill's Status and its Possible Implications for the 2011 Proxy Season

**Francis H. Byrd, Managing Director & Co-Leader,
Corporate Governance Advisory Practice, and Mark
Garofalo, Regional Sales Director**

We're not yet through 2010 and we're already writing about 2011? Well, given the Senate's passage of the Financial Reform Act we are now much closer to a new reality of major governance changes being imposed on companies of all sizes by regulation. This proxy season, we have all been operating in the shadow of these potential wide-ranging corporate governance reforms. Even as companies and governance advocates have gone about business-as-usual, our anticipation of change – and the desire to see a settled landscape – has been enormous. It has been difficult to go more than a few days with no headlines from The Wall Street Journal or Financial Times, or our alerts or those from other industry players, keeping you aware of the latest twists and turns on the status of governance-related legislation.

In this article, we provide you with our perspective on the pending changes and their prospective impact for the remainder of 2010 and the 2011 proxy season. Our analysis will attempt to take into account the fast changing legislative environment in Washington, D.C. Of the eight corporate governance-related items that need to be integrated by a House/Senate conference committee, only two at present appear to be close enough that observers (and political insiders) view them as relatively done deals: Say on Pay and Proxy Access. Of the other changes being considered, majority voting for directors in uncontested elections would, if in the final bill, clearly have the most impact.

Say on Pay (SOP)

Presently, any discussion of SOP needs to qualify whether the proposal is management's, seeking approval of executive compensation from stock owners, or a shareholder resolution seeking the board's adoption of the advisory vote on executive pay. Once the final bill passes, the advisory vote on compensation will be an

Governance News & Views from across the spectrum

>> Executive Compensation



May 25th, Say on Pay: 4 Ways to Defend Executive Pay Under the New Law

Eleanor Bloxham, CEO of The Value Alliance and Corporate Governance Alliance provides commentary on the impact of the impending "Say on Pay" rules.

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AGENDA

May 24th, BofA, 3M Add Double Trigger for Equity

Katie Wagner discusses the use of double-triggers for equity vesting in executive compensation plans.

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The New York Times

May 18th, The Fat Cat Hypothesis

Nancy Folbre, an economics professor at the University of Massachusetts Amherst, expresses an opinion on the salary and bonuses of CEOs.

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>> Global Dispatches

annual fixture in the proxy statement.

Voluntary adopters and mandatory proposals

To date, there have been 637 Say on Pay proposals brought forth by management, which is almost a 20% increase from 2009 when there were 518 as of this time last year. These figures include firms that participated in the TARP program and were required to place SOP management proposals in the proxy and a number of companies who chose, in response to resolutions from activist institutional investors, to adopt SOP for submission to stock owners.

The majority of firms submitting SOP proposals to their shareholders this year have, thus far, experienced high ratification votes with overwhelming support in the high 90 percentiles. A serious caveat that boards and senior managers need to keep in mind is that the SOP proposal is presently a routine item under NYSE rules, allowing brokers to vote uninstructed client's shares in favor of the SOP resolutions. A provision in the bill approved by the Senate would make SOP proposals *a non-routine item* and as is now the case with director elections – *brokers would not be able to vote clients' shares for management SOP proposals.*

As we see it, under a mandatory SOP regime – without the safety net provided by the broker vote – companies will have a much more difficult time getting a high percentage approval vote from shareholders for executive compensation advisory votes. According to impact analyses we conducted on the effects of NYSE Rule 452 on companies with a significant retail shareholder base (20% to 60%), they could expect a drop off in the range of 10% to 44% in voting for directors. Putting this into the Say on Pay context, issuers should expect to see a similar and sizable decrease in the percentage of support for these management proposals in 2011. Issuers would be strongly advised to also consider the results of the KeyCorp, Motorola and Occidental SOP votes (which failed to achieve majority support) when thinking about the exclusion of broker votes effect upon SOP proposals going forward.

Proxy Access

Both the House and Senate versions support or require the SEC to adopt some form of proxy access, and it will be up to the SEC to decide on the shape, scope and reach of proxy access. The Senate and House bills (see Senate language below) provide an open and broad framework for proxy access, leaving the details to the SEC to fill in as the agency deems appropriate. The SEC has provided little indication of the criteria to be established for investors to utilize proxy access.

Restoring American Financial Stability of 2010

SEC. 972. PROXY ACCESS.

(a) Proxy Access- Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended-- (1) by inserting '(1)' after '(a)'; and



May 25th, Transurban in Hot Seat Over Bids

Adele Ferguson discusses management/board reaction to takeover offers.

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May 24th, Indonesia Shows Greece There's Life After Austerity in BRIC Bid

William Mellor discusses Indonesia's economic rise and prospect for future growth

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May 24th, The Monster Is Still Alive

An article discussing the Euro crisis and Germany's role in resolving it.

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May 24th, Debt Management Office for Dubai

Zaher Bitar reports on plans by the UAE to establish a debt management office to address gaps in the country's legal and regulatory infrastructure.

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May 24th, Fund Seeks to Block Matsuya's Poison Pill

Michiyo Nakamoto reports on efforts by SFP Value Realization Fund to amend Matsuya's, Japan's oldest department store, charter to prevent

(2) by adding at the end the following:

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include--

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A)'.
(b) Regulations- The Commission may issue rules permitting the use by shareholders of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

What is clear at this point is that proxy access (in some form) and Say on Pay will become increasingly important considerations, if not preoccupations, for boards of directors and executive management teams going forward.

Unresolved Issues Between the House and Senate Bills

There are a number of unresolved issues between the House and Senate bills that require reconciliation before a final vote can be taken by both houses of Congress, and the bill (once passed) can be presented to President Obama. As the status of these issues becomes clearer, we will endeavor to give you a sense of the impact on issuers and the reaction of the wider corporate governance community.

Comparison of S. 3217- Restoring American Financial Stability Act of 2010 & HR 4173 - Wall Street Reform and Consumer Protection Act of 2009			
Bill Provisions	S. 3217	H.R. 4173	Both
Proxy Access	X	X	X
Majority Vote	X		
Say on Pay	X	X	X
Compensation Committee Independence	X		

management from implementing a poison pill defense.

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May 24th, Temasek Names Hsieh as Executive Director, President

Lars Klemming and Joyce Koh report on a change in leadership at Singapore's state-owned investment company.

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May 23rd, Shares in Ambani groups rally after deal

Joe Leahy discusses impact of an agreement between Mukesh (Reliance Industries) and Anil Ambani (Reliance ADA Group) on the Indian equity market and future deal making activities.

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May 19th, Korea boosts global competitiveness: IMD

Cynthia J. Kim on Korea's rise in the global competitiveness listings.

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May 19th, Brazil Acts to Allay Fears of Overheating

Jonathan Wheatley (video) reports on concern by economists that the Brazilian economy could be overheating.

> [view video](#)

Mandatory Clawbacks in the Event of Accounting Restatements	X		
Disclosure of Hedging of Executive & Director Equity Ownership	X		
Codification of NYSE Rule 452 for Director Elections & Executive Compensation Issues	X		

Majority Vote for Director Elections – A Maybe?

Comments made on Tuesday of this week by Congressman Barney Frank, Chairman of the House Financial Services Committee (D-MA), and reported on the [RiskMetrics blog by Ted Allen](#) seemed to indicate that language in the Senate bill calling for a mandatory majority vote/resignation regime may not survive the conference committee process. As of our publication date, no other public comments have been made about the fate of the remaining issues.

We reached out to a number of sources close to the process, on the House and Senate side and within both parties, seeking a consensus on the possibility of reconciliation of the Senate and House provisions. The essential take: bigger issues in the bill such as the fate of Senator Lincoln's amendment to restrict derivatives trading by banks will drive the process and overshadow many of the outstanding corporate governance issues. Late Tuesday afternoon, WSJ.com reported that Senate conference committee members had been named. Given the impending Memorial Day weekend, it is not clear if the House will have all of its committee members selected until sometime next week, at the earliest.

We will endeavor to keep you informed on the status of the reconciliation process as we become aware of changes.



May 17th, What Brazil Teaches About Investor Protection

HBS professor Aldo Musacchio discusses findings from his new book on the Brazilian market and the role of corporate governance.

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May 2010, Corporate Governance in the Middle East: A Changing Landscape

Robert N. Walton and Michael L. Whitener, co-founders and principals at VistaLaw International LLC, provide a primer on corporate governance for companies from, and operating in, the Middle Eastern region.

(Registration required)

[> read more](#)

>> Proxy Contests/Battles for Control



May 26th, Adviser Warns Pru Investors Off A.I.A. Deal

DealBook discusses RiskMetrics recommendation to investors to vote against the Pru/AIA takeover.

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May 25th, Portugal Telecom Chief Accuses Telefónica of 'blackmail'

Peter Wise and Andrew Parker discuss the tactics in the battle between Portugal Telecom and Spain's Telefónica over the Spanish telecom company's €5.7bn (\$7bn) bid to buy out the Portuguese company's stake in the venture that

controls Brazilian mobile phone company Vivo.

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DealBook

May 24th, Behind the Trends in an M&A

Steven M. Davidoff analyzes the recent increase in M&A deals.

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May 24th, AIA chief in threat to quit over Pru deal

Sundeep Tucker and Paul J. Davies report on doubts about the viability of the proposed merged company in the Prudential/AIA deal.

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Bloomberg.com

May 24th, Recovering Auto Sales May Spur Parts Deals, Drawing Ross, Icahn

Jeff Green explores the possibility of an M&A boomlet in the auto parts manufacturing market.

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May 23rd, Chloride investors focused on bid revision

Michael Kavanagh and Philip Stafford report on the status of Emerson Electric's offer for the UK power protection specialist.

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The New York Times

May 21st Financier Invests in Borders,

Becomes Chairman

The Associated Press reports a deal and cash infusion from Bennett LeBow in the book retailer.

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May 21st, Lionsgate vs. Icahn Battle Drags Out Further

Julia Boorstin discusses the current state of play in the battle between shareholder activist Carl Icahn and Lionsgate.

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May 18th, Macarthur Rejects Peabody's A\$3.8bn Takeover

Peter Smith reports on the breakdown in talks between Peabody and Macarthur.

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>> [Investor Action](#)



May 25th, Investors Turn up Heat on SocGen Head

Scheherazade Daneshkhu reports on an effort by Hermes, Phitrust Active Investors, and other French shareholders to separate the Chairman and CEO roles at Société Générale.

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May 25th, Senate Names Lawmakers to Financial Conference Committee

Victoria McGrane reports on the makeup of the Senate members of the Conference committee who will be resolving the final version of the

financial reform bill.

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FINANCIAL POST

May 24th, Canada's Gold Miners Try to Polish Tarnished Image

Peter Koven explores CSR at gold mining firms Barrick Gold Corp. and Goldcorp. Inc.

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THE WALL STREET JOURNAL

May 24th, 'Ratings Shopping' Lives as Congress Debates a Fix

Aaron Lucchetti and Serena Ng discusses concerns about the quality and integrity of credit ratings on structured finance deals and the prospects for reform of the credit rating systems.

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May 23rd, Auditors Expect Renewed Bout of Scrutiny

Rachel Sanderson discusses the European Union's intention to place greater scrutiny on the role of auditors in the wake of Anton Valukas' report looking into the collapse of Lehman Brothers.

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THE WALL STREET JOURNAL

May 21st, Massey CEO, Regulators, Duel Over Mine Safety

Kris Maher reports on the back and forth between Massey Energy and federal regulators and Congress on mine safety.

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New York Law Journal

May 18th, The Revised Merger Guidelines: Science Fiction?

Neal R. Stoll and Shepard Goldfein, partners, and associate Philip D. Algieri of Skadden, Arps, Slate, Meagher & Flom discuss changes to the Department of Justice's merger review guidelines.

[\(Registration required\)](#)

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May 14th, Waddell & Reed Responds to 'Flash Crash' Reports

CNN/Money, May 14th, [Waddell & Reed Responds to 'Flash Crash' Reports](#) Ben Rooney reports on the firm's response to rumors that its trading was the cause of the historic 1000 point stock market crash.

[> read more](#)

[>>The Boardroom](#)



May 25th, HSBC to Refocus on Succession Issue

Kate Burgess and Patrick Jenkins report on the disposition of the succession plan for Stephen Green, the bank's Executive Chairman. A sidebar story discusses investors' continued focus on the issue of executive remuneration at HSBC.

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May 24th, How Governance Raters Performed Pre-Crisis

Kristin Gribben discusses the track record of two governance rating firms, The Corporate Library (TCL) and Governance Metrics International (GMI), in their pre-financial crisis assessment of banks and financial corporations.

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May 24th, Financial Fraud Leads to

Bankruptcy, Failure

WebCPA.com with a story on a COSO study on the impact of financial fraud on public companies.

[Link to COSO study](#)

[> read more](#)

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May 24th, Lowe's, Fifth Third Bancorp, Give Lead Directors More Duties

Kristin Gribben explores the rationale for increasing the scope of responsibilities for the lead director.

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May 19th, A Greener Blueprint for Industry

Peter Marsh discusses new methods of determining a company's "environmental footprint".

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INDYSTAR.COM

May 19th, Director's collapse shortens WellPoint annual meeting

Daniel Lee reports on a dramatic abbreviated annual meeting for WellPoint.

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May 18th, Massey Directors Retain Seats by 'Razor-Thin Margin'

Amanda Gerut reports on the narrow victory of Massey directors against the targeted Vote No campaign waged by public and labor funds.

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May 18th, How to Manage Risk in Complex Projects

Stefan Stern collects comments on risk management.

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