The Altman Group

Governance & Proxy Review

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As We See It - Commentary from The Altman Group

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This week, The Altman Group and Exequity, LLP have released a study of equity plans submitted to shareholders (2007-2009), how they fared and what issues companies should consider when preparing to submit a plan to shareholders. Below is an executive summary, the full report is available on our website.

Equity Plan Proposal Failures: 2007–2009

Equity Plan Proposal Failures: 2007-2009 – Lessons to Consider When Requesting Shares

Executive Summary

Ever since the exchange listing rules were modified to require shareholder approval of almost all equity compensation plans, there has been an ever-increasing focus on securing shareholder approval for equity plan proposals, both new equity plans and amendments to existing plans. The stakes are higher now that shareholder approval is required. So how did voting on equity plan proposals go during the past three years (2007–2009)? Overall, there were approximately 2,200 equity plan proposals submitted to shareholders of Russell 3000 index companies for the period 2007 through 2009. Of these proposals, only 38 failed to be approved by shareholders. Our report looks at the voting on these equity plan proposals and then focuses on the 38 proposals that failed to see what, if any, lessons can be learned. Hopefully these lessons will prove valuable for companies seeking shareholder approval of their own equity plan proposals.

We conclude that if your dilution meets or exceeds 15 percent with your equity plan proposal, and you are not a small cap company or in an industry that permits a higher level of dilution, you should be a little nervous and your level of nervousness should grow right along with the dilution as it exceeds that level. If your dilution would be

Governance News & Views from across the spectrum

>>Executive Compensation

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June 7th, Finance Bill Rewrites Rules of Clawbacks

Marc Hogan reports on the tougher clawback requirements of the Dodd bill.

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>>Global Dispatches

CIO

June 8th, India's Bharti Airtel Completes Acquisition of Zain Africa

John Ribeiro writes on the expansion of India's Bharti Airtel.

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DealBook

June 8th, Imagining the Worst in BP's Future

Andrew Ross Sorkin thinks through the worst case for BP.

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Bloomberg.com

above 20 percent, you should likely be quite concerned and perhaps seek out your top shareholders to ask their opinion about dilution levels before even submitting an equity plan proposal to shareholders. To the extent your company's dilution would be out of step with its peers and/or industry group, you should be even more concerned. Much of the success or failure of an equity plan proposal depends on the composition of a company's shareholders, so a detailed analysis of the shareholder base must be undertaken. Some of the questions that need to be asked include:

- What is the level of influence of RMG among my shareholders?
- What are the voting guidelines of my non-RMG influenced shareholders?
- What is the "message" for my equity plan proposal?
- Can I leverage my retail shareholders to help the equity plan proposal pass?

As with most things, it is often easier to ask and receive when times are good, i.e., when the company stock has performed well and shareholders have experienced some gains. In recent proxy seasons that hasn't always been the case. But, it isn't an absolute necessity. Most institutional shareholders understand that company equity programs are necessary in today's compensation arrangements. For many investors, so long as they have faith in management, and management can demonstrate that it has been a responsible steward of the company, they will support reasonable share requests. What is reasonable? It depends on the investor, but generally it will take into account the company's dilution level, how equity has been used in the past, and how long the shares requested might last (ideally, somewhere between 3 to 5 years for most investors).

For further information on Edward A. Hauder and Exequity LLP please use the links below:
Ed's Equity Compensation Blog: http://www.edwardhauder.com Follow Ed on Twitter: http://www.twitter.com/ExeCompAdvisor
www.exqty.com

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

From the 2010 Proxy Season to Conference Season: Some Early Questions for 2011

As we enter the tail end of the 2010 proxy season, members of our firm are off to conferences and summits following-up on this season and seeking to identify the key issues and challenges for 2011 and beyond. The Governance & Proxy Review will provide you with

June 7th, Investors Pick U.S. Over BRICs in Bloomberg User Poll

Mike Dorning discusses the results of a poll of attractiveness for global investors.

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FT.com FINANCIAL TIMES

June 7th, Foxconn Wants Clients to Share Wages Burden

Kathrin Hille discusses wage increases for Chinese workers in the wake of suicides among workers at Foxconn's Shenzhen plant and a strike at a Honda plant in China. Foxconn is the world's largest electronics contract manufacturer. Among Foxconn's customers are Apple, Dell and Sony.

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June 3rd, India's Reliance in Informal Talks with AT&T

Amol Sharma and Anupreeta Das discuss a proposed investment by the American telecom giant in India's second largest wireless carrier.

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FT.com FINANCIAL TIMES

June 2nd, Potholes On the Road to Emerging Markets

Richard Milne discusses the race to capture emerging BRIC consumers and markets.

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SPIEGEL ONLINE

June 1st, Iron Ore Speculators 'Serious Threat' to Global Economy

Spiegel interviews ThyssenKrupp CEO Ekkehard Schulz about the rising threat of speculators manipulating the market for iron ore.

information, context (and where possible guidance) on the key questions raised by the companies, institutional investors, regulators, governance observers and commentators.

Among the some of the questions concerning issuers are:

- With proxy access and "Say on Pay" as new and permanent features of the American corporate governance landscape, what should companies do to prepare for 2011?
- What will the activist institutional investors (pension and union funds) do with these new powers?
- For companies who have engaged in dialogue with shareholders, how will proxy access and "Say on Pay" change, if at all, the nature of engagement.
- How should companies approach executive compensation, and planning, discussions and disclosure in the wake of votes to reject pay plans at Occidental, Motorola, KeyCorp and Abercrombie & Fitch?
- How will the institutions and the proxy advisory firms manage the prospective mandatory "Say on Pay" voting in 2011?

Among some of the questions concerning activist institutional investors are:

- How will the public and union funds define and refine the circumstances that would call for the use of proxy access?
- Will there be an expansion of institutional activism to mid-size and small companies and can the institutions be as effective with these firms as they have been with large- and mega-cap companies?
- If the Senate provision for mandatory majority voting fails to make it into the final bill, can the institutions effectively campaign to establish broad adoption of majority voting for companies outside of the S&P 500/Fortune 100?

Among the questions facing the Securities and Exchange Commission (SEC):

- What shape will the rules for proxy access take, and can they be promulgated in time for the 2011 proxy season?
- In what direction will the SEC take the reform of "proxy mechanics" and shareholder communications?

We have couple of our own as well:

- Did the enhanced disclosure, as mandated by the SEC, provide the value sought by investors?
- What further steps should be taken to increase retail holder voting?

These are among a small sample of the questions that we

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>>Proxy Contests/Battles for Control

DealBook

June 8th, Casey's Rejects Hostile Bid from Couche-Tard

DealBook provides an update on the Casey's, Couche-Tard battle.

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FT.com FINANCIAL TIMES

June 4th, NAB Moves to Rekindle A$13.3bn AXA AP Deal

Peter Smith reports on efforts by National Australia Bank to purchase Axa Asia Pacific from France's AXA (the majority owner at 54%) for A$13.3bn (US$11.3bn).

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>>Investor Action

SPIEGEL ONLINE

June 8th, German High Court Considers Euro Bailout

The German paper discusses the constitutionality of the Euro bailout package as Germany's high court, the Federal Constitutional Court, considers issuing a temporary injunction against the aid agreement.

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DealBook

June 8th, A Rundown of the Big Financial Services Lobbyists

DealBook explores the role of lobbyists in the progress of the financial reform package.

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have heard during the past few weeks. Many of these queries have been posed at NIRI, Kaplan Fox's Institutional Investor Summit and the International Corporate Governance Network (ICGN), and will be the subject of further discussion and debate at the annual conferences of the Millstein Center for Corporate Governance and Performance, and the Society of Corporate Secretaries and Governance Professionals. We will report back to you later this month and also in July on what we have heard and on how it affects boards/senior management and investors.

FT.com FINANCIAL TIMES

June 7th, Hayward Moves into Obama Line of Fire

Jeremy Lemer discusses the pressure on BP CEO Tony Hayward by the White House.

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June 7th, Proxy Voting Websites Help Spread Shareholder Activism

Kristin Gribben discusses efforts to expand the role of retail investors in proxy voting and shareholder activism.

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FT.com FINANCIAL TIMES

June 7th, Pru Chiefs Ride Storm of Angry Shareholders

Paul J Davies reports on investor reaction to the Prudential annual shareholders meeting.

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FT.com FINANCIAL TIMES

June 6th, Tucker Touted by Investors for Return to Pru

Kate Burgess and Paul J Davies discuss a move by Schroders and some other investors to bring former CEO Mark Tucker back into the leadership of Prudential PLC in the aftermath of the insurer's failed bid for AIA.

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>>The Boardroom

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June 8th, BP Takes Heat from Two Sides on Dividend

James Herron discusses dividend challenges for the embattled energy company as the CEO and board must decide who it should make more angry – the White House, Congress, and American public opinion, or its shareholders (especially UK stockholders).

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June 8th, Leahy to Step Down as Tesco Chief

Adam Jones discusses the succession plan at the British supermarket chain.

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June 7th, The Graying of Corporate Boards

Amanda Gerut reports on a Spencer Stuart study on director retirement ages and the expectation of the need for greater board recruitment.

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June 7th, Thiam's Failure Over AIA Puts His Future in Doubt

Anthony Hill offers an opinion on the future of the Prudential PLC CEO post the failed merger.

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June 7th, What's Keeping Directors Up at Night?

Marc Hogan discusses director concerns about board risk oversight and management risk mitigation.

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FT.com
FINANCIAL TIMES

June 6th, The Meticulous Diplomat

Francesco Guerrera and Justin Baer have a discussion with James Gorman, the President and new CEO of Morgan Stanley.

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FT.com
FINANCIAL TIMES

June 4th, Pru Investors Push for Change at the Top

Kate Burgess and Paul J Davies report on investor reaction to a statement by Prudential PLC's Chairman Harvey McGrath that senior management has the confidence of shareholders after the aborted bid for AIG's AIA unit.

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June 2nd, CEO Lévy Will Stay at Publicis Past 2011

Ruth Bender and Max Colchester report on the apparent lack of a succession plan forcing the retention of CEO Maurice Lévy by the Publicis board.

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June 2nd, AIG Deal Tests Prudential's CEO

Dana Cimilluca and Neil Shah discuss the ramifications of the collapse of the Prudential/AIG deal on the future of Prudential PLC's CEO Tidjane Thiam.

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Directorship
Boardroom Intelligence

May 27th, Enron, Healthy Skepticism and Today

James Thompkins, director of the Corporate Governance Center at Kennesaw State University, expresses an opinion on the need for skepticism in the boardroom.

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CHIEF EXECUTIVE .net

March/April 2010, The Three Basic Elements of Effective Competitive Intelligence

T.J. Waters, a senior consultant at U.S. Special Operations Command Headquarters and former CIA employee, discusses the benefits of competitive intelligence for corporate decision-makers.

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