

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

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

Dog Days of Pre-Proxy Access Summer

CalSTRS, the nation's second largest pension fund, and Relational Investors, reminded us why observers talk of a year-round corporate governance/proxy season, with their announced intention to seek four board seats at the 2011 annual meeting of Occidental Petroleum. The potential short slate contest provides us with some clues about what life in a post-proxy access world might look like.

The issues driving, according to their letter to the company, the two funds are executive compensation and succession planning – not financial or stock performance – as the company has provided excellent returns for investors. Picking up on the results of the Occidental's Say on Pay vote, CalSTRS and Relational (often seen as an operational activist fund with a focus on improving business operations) believe there is an opportunity to create (or force) change upon Occidental.

Given how much time there is before the company's 2011 annual meeting (or even the earlier deadline for submitting prospective director nominee candidates) there will be ample opportunity for negotiation between the funds and Occidental. Should those discussions fail to yield an agreement between the parties we may have an opportunity to examine the CalSTRS/Relational director nominee slate for sector experience, financial acumen, enterprise risk management expertise and diversity.

While a majority of Occidental's shareholders have proven they are concerned with CEO pay, and may be concerned with succession planning as well, it is not clear that they will make a decision to support dissident directors based on those two critical issues alone.

The other interesting point is the teaming up of a public pension fund and an activist (hedge) fund, not something companies are used to seeing, but may see more of in the future. Bear in mind that Relational has had among its clients the funds of the New York City Retirement Systems and CalPERS. The firm has also placed

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>> **Executive Compensation**

Telegraph.co.uk

August 2nd, Bailed-Out Bank Chiefs on Course for Multi-Million Pound Bonuses

John Bingham reports on the bonus compensation for the UK's top bankers.

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FT.com
FINANCIAL TIMES

July 29th, Financial Services Authority (FSA) Unveils Tough Pay and Bonus Code

Megan Murphy and Brooke Masters explore the FSA's enhanced compensation code.

FSA media release

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July 26th, Law Sharpens 'Clawback' Rules for Improper Pay

Joann S. Lublin discusses the expanded use of and strengthening of compensation clawbacks in the Dodd-Frank Act.

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corporate governance issues prominently alongside performance concerns at their portfolio companies. Relational has demonstrated to the activist institutional community that they can ‘walk the walk’ on governance and that has likely provided comfort for CalSTRS in entering this partnership with them.

This is perhaps the rationale for this pairing of funds. CalSTRS’ focus on compensation and CEO and executive management succession at their portfolio companies is widely known and understood. However Relational, as mentioned above, is much more of an operational activist. As many will no doubt remember, Relational sought operational (store closures and the sale of a division) and capital structure changes (share repurchases) at Home Depot. Does Relational see company performance issues at Occidental that are ripe for change and that can result in increased value for shareholders – or is this a pure governance play?

Is this a prelude to the ever-advancing proxy access era, being promised by SEC Chairman Mary Schapiro, or is this a precursor of an evolution in shareholder activism, or is it both? According to media reports, CalSTRS and Relational hold between them 1% of Occidental, far short of the 5% threshold floated in the conference committee and shot down by House Democrats, or the 3% figure being discussed as a compromise. Among those items unclear at this moment is whether CalSTRS and Relational would take advantage of proxy access if the threshold were between 1-3%, or continue their battle with Occidental regardless of their ability to use proxy access.

Lastly, will we start to see more instances of public (and perhaps union) pension funds teaming up with hedge fund activists in order to meet threshold requirements and/or to access analytical (or operational) expertise from hedge funds? This potential contest, at Occidental, and the SEC’s fast-approaching decisions and rule-making on proxy access will help answer these questions.

Early Lessons

There are a couple of early lessons to take away from the presumed Occidental v. CalSTRS/Relational short slate contest.

First, don’t let corporate governance issues – especially on compensation – fester. While Occidental has had a decent relationship with shareholders (their stock performance has been quite strong) investor concerns on pay have also been problematic. While Occidental is a special and singular case, companies, particularly those with weak financial performance relative to peers, need to maintain open lines of communication with shareholders and identify governance concerns or vulnerabilities. The goal should be to limit surprise issues, and be proactive with both your largest holders and the governance influencers like CalSTRS or the NYS Common Fund.

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July 27th, Oracle's Ellison: Pay King

Scott Thurm on the WSJ examination of the highest paid CEOs.

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Erin Wright interviews Henry Mintzberg of McGill University regarding his advocacy of ending CEO bonuses.

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Josh Martin explores the decline in the compensation of Chief Operating Officers.

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July 22nd, Feinberg Faults Banks for \$1.6 Billion in Bonuses

Eric Dash discusses Feinberg’s view on bonus compensation.

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July 20th, More Clarity Needed on Pay Regulation, Says Philip Warland

A discussion of European Union regulation of pay of bankers and financial managers.

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Second, companies where shareholder resolutions have received a majority vote (or between 35%-49%) from investors, but the non-binding proposal has not been acted upon by the board, should take some immediate action to reach out and engage with the proponents. Companies that have ignored such votes in the past – especially if their stock performance has struggled – will be prime targets for short slate campaigns. This also holds true for companies whose directors have been targeted in Vote No campaigns. Substantial withhold votes from directors could also serve as a beacon for activists seeking to run a potential short slate.

Lastly, your Say on Pay vote matters on more than compensation. Many investors, especially the activist institutions, view compensation as a window for judging the quality of board oversight and determining whether a CEO is “imperial”. For example, Moody’s Investors Service, in its examination of governance quality at North American companies, would develop an unfavorable view of board oversight, succession planning and director independence at those companies where the CEO’s total direct compensation was more than two to three times higher than that of the next highest ranking Named Executive Officer (NEO). This was the origin of the now infamous pay equity concept. In short, executive pay reflects on, in the minds of governance advocates, the culture of the firm and the strength of independent director oversight. In that context, a failed Say on Pay vote could be viewed as a signal to an activist that there is at least some lack of confidence in the board and management.

“...let them speak now or...”

We at The Altman Group want to exhort the issuer community to take advantage of the opportunities for comments being provided by the U.S. Securities and Exchange Commission. The Commission has an enormous amount of rule-making to undertake, and on some key issues – Proxy Access and Say on Pay implementation – is planning to have them promulgated in time for the 2011 proxy season.

While we will continue to be active and vocal in representing our opinion on the needs of issuers, whether on aspects of proxy access or the reform of the proxy voting and shareholder communications system, we strongly encourage public companies (especially mid- and small-cap firms) and their advisors to formulate and communicate their concerns to the Commission.

The Dodd-Frank Act provides regulators with considerable latitude in determining the shape of the rules governing both access and SOP. Public company involvement will be critical in assisting Commission staff with gaining a wider perspective of the impact of various regulatory approaches upon the needs of issuers. U.S. capital markets are in the throes of historic, if not revolutionary, changes. Irrespective of what may or may

August 2nd, Crompton Makes \$400-mn Bid for Emerson's Transformer Business

Abhineet Kumar discusses the Indian power equipment maker Crompton Greaves \$400 million (Rs 1860 crore) offer for the transformer division of the US-based Emerson Electric Company.

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Babu Das Augustine explores the results of stress testing on Gulf banks.

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Carl Mortished reports on efforts by Laurence Parisot, head of the French employers union Metdef, to create a trans-European employers lobby.

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Anthony DiPaola and Hugo Miller explore Research In Motion Ltd’s challenges in expanding into overseas markets.

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Christopher Bjork explores the use of local stock exchange listings by the Spanish bank.

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not occur politically, in the mid-term elections or even 2012, much of Dodd-Frank and the preceding changes in the disclosure regimen will remain. The thrust and application of regulatory discretion is what is at stake, and more voices need to be heard from to ensure a better system for both issuers and investors.



July 30th, Rusal, Partners Ready to Buy Out Potanin From Norilsk

Ilya Khrennikov discusses the battle between Russian billionaires Oleg V. Deripaska and Vladimir Potanin. Together the two men control 50% of Norilsk's shares. Deripaska is the CEO of Rusal, the world's largest producer of aluminum. Potanin is the CEO of the multibillion-dollar Russian holding company Interros. The spectators are the company's global shareholders who hold the other 50% of the company.

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July 29th, Former Kookmin Bank Chief Faces Heavy Penalty

Lee Sun-young reports on the possible penalties facing Kang Chung-won, former CEO of Kookmin Bank, from the Financial Supervisory Commission.

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July 28th, TSE Reviews Trading Hours / Hopes to Revitalize Market, Improve Investor Convenience

Kazuki Nishihara discusses plans by the Tokyo Stock Exchange to consider extending trading hours.

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July 27th, Rights Protests Aim to Swamp Vedanta AGM

William MacNamara reports on plans by activists to voice protests against the Indian mining company.

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July 23rd, One German Bank and Six Others Across Europe Fail

An exploration of the failure of one German, one Greek, and five Spanish banks to pass the stress test given to Europe's 91 largest banks.

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Nathan Becker reports on Icahn's continued purchase of shares in the telecom company.

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Jeffrey A. Trachtenberg reports on the decision of the Barnes & Noble Board of Directors to pursue a sale of the business, under pressure from investor Ronald Burkle.

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Cyrus Sanati reports on the latest in the Novartis/Alcon battle.

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Dave McNary discusses the rejection of Carl

Icahn's most recent offer to the board of directors of Lionsgate.

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Michael J. de la Merced explores the dance of merger negotiations between the two drug companies.

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Bloomberg.com

August 1st, Sanofi's Genzyme Bid May Need to Reach \$80 to Win

Elizabeth Lopatto discusses the role of activist investor Ralph Whitworth of Relational Investors LLC, in pushing for a higher bid from Sanofi.

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Miles Johnson and John O'Doherty report on the latest in the twists and turns in the negotiations between Dana Petroleum and the South Korean National Oil Company.

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Steven Davidoff explores the lessons of the failed deal for WuXi PharmaTech.

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A discussion of the change in firm leadership at the powerful financial public relations firm.

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Bernard Simon discusses the battle over rental car dealer Dollar Thrifty.

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Saeed Azhar and Sanjeev Choudhary discuss the battle between Malaysian state investor Khazanah and India's Fortis Healthcare (FOHE.BO) for Singapore's Parkway, Asia's biggest listed hospital operator.

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Nathan Becker reports on Carl Icahn's lawsuit against Lions Gate over its use of what Icahn described as a "reprehensible" debt-to-equity deal the film maker undertook in an attempt to shield itself from Mr. Icahn's hostile takeover attempt.

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August 3rd, CalSTRS Letter to

Occidental: Stop Irani's "Lavish Payout"

A copy of the letter sent by CalSTRS and Relational Investors to Occidental's board.

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August 2nd, Two Funds Target Oxy Board Over Executive Pay

Braden Reddall discusses the brewing short slate battle between Occidental and the public pension and hedge funds, CalSTRS and Relational Investors.

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August 2nd, SEC to Allow Proxy Access by 2011 Season

Marc Hogan reports on comments by Mary Schapiro, Chairman, U.S. Securities and Exchange Commission on her intent to have proxy access rules in place for the 2011 proxy season. Chairman Schapiro's speech to the Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, Washington, D.C., July 27, 2010

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August 2nd, Mayor Creates Post to Aid in Pension Oversight

Sumathi Reddy reports on Mayor Michael Bloomberg's appointment of the first chief investment officer for the Mayor's Office of Pensions, and the possible implications for the activist \$100 billion New York City Retirement System.

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July 29th, China Pension Fund to Start Overseas Private Equity Investment

A report on the plans of Dai Xianglong, chairman of the National Council for Social Security Fund, to invest in overseas private equity funds focused on small and medium sized companies.

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July 29th, OTC Clearing - The Buyside's Concerns

Jeremy Grant interviews Guy Sears, a director at the Investment Management Association about the impact of new financial regulation on the investment management industry.

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The New York Times

July 28th, Ex-Regulators Get Set to Lobby on New Financial Rules

Eric Lichtblau explores the scramble to influence the U.S. Securities and Exchange Commission and other federal agencies on the new uses of discretion within the Dodd-Frank Act.

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The New York Times

July 27th, S.E.C. Expands Process for Public Comments on New Financial Rules

Edward Wyatt reports on U.S. Securities and Exchange Commission Chairman Mary Schapiro's efforts to insure an open process for public comments on the large number of proposed rules emanating from the Dodd-Frank Act.

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>>The Boardroom

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August 2nd, Two Funds Launch Fight for Board Seats at Occidental

Joann S. Lublin reports on the joint effort of Relational Investors LLC and the California State

Teachers' Retirement System (CalSTRS) to try to unseat at least four of Occidental's 13 board members during the company's 2011 annual meeting. The two funds cite concerns about executive compensation and CEO succession practices at the company as the reason for the challenge to Occidental's board.

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Kristin Gribben discusses decisions by some large companies to enhance the duties of the lead director position.

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August 2nd, Facilitating Communication is No. 1 Duty of Board Leader

Katie Wagner explores data from Agenda's survey issues important to independent directors.

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Rachel Sanderson reports on a revived effort by a number of groups and professions to revise global reporting standards in the wake of the financial crisis.

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August 1st, Leadership Training Gains Urgency

Joe Light discusses new urgency about management development at American corporations.

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August 1st, When Upbeat Analysts' Consensus Spells Danger

Spencer Jakab examines the role of earnings expectations and analysts' consensus.

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July 31st, The Academic-Industrial Complex

Graham Bowley explores the role and rationale for academics to serve on the boards of public companies.

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Jonathan Birchall discusses accounting and disclosure concerns at the apparel maker.

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Rob Cox provides an opinion on succession planning and risk oversight under Dodd-Frank at Wall Street firms.

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July 27th, The Big Interview:

Alan Murray interviews Ronald Williams, Chairman and CEO of Aetna about health care cost, the new health care law and President Obama.

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Pressure to Perform**

Wharton professors conduct an examination of the value of quarterly earnings guidance.

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Spencer E. Ante discusses succession planning at the computing and consulting giant.

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