

Market News

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A monthly review of IR developments for our clients and friends. . .

SEC's Schapiro to chart different course

New SEC chair Mary Schapiro showed during her confirmation hearings that she's going to be a different type of regulator than her predecessor. Schapiro said she would support a rule to allow shareholder nominations of some board members, and also one to give shareholders an advisory vote on executive compensation. She also said that she wants small companies to comply with the Section 404 requirements on internal controls, signaling an end to repeated delays in applying the standard to small companies. Schapiro said that "It's time that we bring uniformity to the system so that investors know what to expect from companies, while being sensitive to the needs of small businesses." Meanwhile, Schapiro indicated that she's not quite ready to sign off on International Financial Reporting Standards (IFRS) via the International Accounting Standards Board (ISAB). She said standard-setters should be free from political interference and "a strong watchdog," adding that "at this time, it is not apparent that the IASB meets those criteria."

So, what's your hedge fund worth today?

Tuckerbrook Alternative Investments, a hedge-fund manager based in Marblehead, Mass., is among the first to offer its investors daily asset transparency statements through Citi Hedge Fund Services, the largest hedge-fund administrator. Most funds report net asset values monthly. John Hassett, managing principal of Tuckerbrook, admits the change is driven by the Madoff scandal. Tuckerbrook's investors will receive daily information on returns and the source of any losses or gains. The disclosure will show investors that "their money is where it's supposed to be," says Hassett. Jordan Allen, partner with HFR Asset Management, a fund of funds adviser, said the record losses at most hedge funds last year will likely also prompt concessions on fees and withdrawal restrictions.

PCAOB guides auditors on smaller-company reviews

The Public Company Accounting Oversight Board (PCAOB) has issued staff guidance for audits of companies subject to the Auditing Standard No. 5, the rule for combined financial statement/internal control audits of smaller, less complex public companies. The guidance doesn't establish new requirements, or address all audit contingencies the new standard raises, but does offer some direction to auditors on scaling audits based on a company's size and complexity. This publication is available via the PCAOB's website, www.pcaobus.org. The guidance reflects questions submitted to the Board and comments gathered in a series of forums the Board conducted during 2008 on small-business auditing issues. The auditing rule was approved in July 2007.

More companies offering to reprice soggy options

Tech firms and others with heavy doses of equity in executive compensation are looking for ways to bring relief. Compensation advisory firm Equilar Inc. said offers to exchange or reprice stock options are heavier so far this year than they were in 2007, and well ahead of 2008's pace. Google and Starbucks are among the biggest to reprice to restore the motivating power that options are supposed to provide. Similar moves are expected in other proxy statements this year. Outside shareholders, stuck with the depressed value of their own shares, are obviously unhappy. Anthony Valencia, of investment firm TCW Group Inc. in Los Angeles, says that while he doesn't oppose the move in Google's case, to him such moves overall show that "optimism about the business isn't what you as a shareholder would hope it would be."

"Golden Coffin" proposal gets 42% of vote

Shareholders seeking a first-ever vote on executive death benefits received 42 percent support at Johnson Controls, according to preliminary results. The labor-affiliated Amalgamated Bank and other labor investors have filed similar proposals targeting "golden coffin" arrangements at 13 other firms. The proposals would require shareholder approval for elements of executive compensation agreements that provide benefits solely as a result of the executive's death. At Johnson Controls, 42 percent was a good showing for a first-time proposal, Amalgamated said, and is comparable to results last year on its proposal to limit tax gross-up payments.

New M&A rules bring economic realities to bear

Acquisition accounting just got tougher. With 2009 came a set of new accounting rules forcing acquirers to include more fair value assessments, report negative goodwill on the date of sale, and capitalize an acquisition's incomplete R&D projects. While investors like the FAS 141 regulation, companies say it is hurting acquisition deals. Officials at Key Bank already claim the new rules killed one deal after they applied fair value to the target bank's loans.

NYSE follows NASDAQ's lead temporarily relaxing listing requirements

The New York Stock Exchange has temporarily relaxed its continued listing requirements in light of the market-cap declines of many of its listed firms. Announcing that it would not seek to delist Dollar Thrifty Automotive Group, the Big Board acknowledged that the rental car company is one of a dozen or so companies that would benefit from its decision to reduce by 40 percent, from \$25 million to \$15 million, its minimum market-cap requirement to remain listed. The lower market capitalization rule will be in place through April 22, 2009, but could be extended. The exchange said it will continue to send delisting warnings to companies whose market capitalization remains below the \$15 million level for 30 consecutive days.

Insider Trading: Short on memory, long on history

The Big Board oversight body referred 146 cases of suspected insider trading to the SEC in 2008. That is five more than in 2007, the previous record year, and more than twice as many as in 2004. Mergers were down in these years, a commonly believed hotbed for insider trades. But history shows insider trading runs in cycles, rather than just when opportunity knocks. The 1980s saw a sharp crackdown, with prosecutions of Mike Milken, Ivan Boesky and Dennis Levine. The 1990s had very few cases while there have been a record number in the last five years.



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