

# Market News

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

## **SEC tightens rules on pay disclosure**

TARP recipients will have to let their shareholders have a Say on Pay, and other public companies must disclose more about how they set it, SEC commissioners decided. The 5-0 vote on rules implementing Congress's pay-approval requirement for TARP companies was expected; the broader requirements for more info about risk factors in pay policies, director/officer qualifications, and agreements with comp consultants was less certain. Commissioners also approved the NYSE's rule preventing brokers from voting shares on behalf of their clients, although some said that rule will make it harder for companies to gain enough votes.

## **Wall Street slump takes a bite out of research coverage**

Financial data vendor FactSet says that analyst coverage dropped off a cliff. Between September 2008 and May 2009, small-cap coverage fell 25.7 percent, mid-caps coverage was off 17.2 percent and large-caps were down 15.5 percent. The loss of large investment banks such as Bear Stearns and Lehman Brothers contributed, along with the steep fall in stock prices and the tight credit market. Managements may respond by increasing their own face time with investors.

## **Jury sides with SEC on K mart's flawed MD&A**

A jury recently found former K mart execs made false and misleading statements in the retailer's MD&A and during an investor call. The SEC case dates prior to Kmart's 2002 bankruptcy filing, when Charles C. Conaway was CEO. The SEC claimed that the company's new COO had made a massive inventory overbuy, triggering severe liquidity problems, but the MD&A described the it all as normal seasonal activity. According to the complaint, "the vendor borrowing constituted a material deficiency at quarter end that should have been identified in the MD&A."

## **Top management shying away from social media**

The blog UberCEO.com reported recently that only two CEOs of Fortune 100 companies were known to have Twitter accounts, and only 13 had profiles on the professional networking site LinkedIn. Nineteen percent had personal Facebook accounts. Three quarters had some kind of Wikipedia entry, many with limited or outdated information. Not one had a blog. The authors of the study say large-company CEOs want to avoid the risk of violating disclosure rules.

## **SEC's call to create e-forums rebuffed by public companies**

The SEC has encouraged public companies to engage with their shareholders online via e-forums, but few have done so, according to Thomson Financial. Only 4 percent of the public companies they surveyed planned to create an e-forum for shareholders; 56 percent said were not interested, and the remaining 40 percent said they were only starting to consider the idea. The reasons? Many said they already get shareholder feedback from talking regularly to major shareholders, and some fear the havoc that anonymous posters could cause.

### **Shift Index points to long-term slide in profits**

Deloitte's Center for the Edge says its "Shift Index," a new economic indicator, shows U.S. corporations are on a long-term slump in profitability that doesn't seem to be abating. U.S. companies' average return-on-assets (ROA) has progressively dropped 75 percent from 1965 levels, it says, with even high performers struggling and losing market leadership. The index looks at the long-term rates of change in 25 metrics across three sets of indicators.

### **Study reveals 80 percent of investors believe the S&P 500 will return to 1200 by 2011**

A study conducted in June by TheMarkets.com, a group that measures investor sentiment, revealed a swing in investors' thinking since last quarter. Of the 127 institutional investors polled from 24 countries, nearly 40 percent believed the market has started its rebound from the bottom reached earlier this year. An overwhelming 80 percent believe the S&P 500 will return to 1200 by 2011 and to 1500 by the end of 2013. Write us at [ctc@irbyctc.com](mailto:ctc@irbyctc.com) if you would like an electronic copy of TheMarkets.com study.

### **European companies leading the way in IR online clarity**

When it comes to IR web site transparency, the top 100 European companies have it over the top 100 North American companies (81 U.S. and 19 Canadian), according to IRonthenet.com's side-by-side comparison. North American companies use their web sites as repositories for disclosure documents delivered by other media, while European companies use their sites as a communications medium. However, Europeans trail on disclosing governance practices.

### **Money managers cutting funds, not just people**

As the global recession continues, money management firms aren't just cutting pay and jobs. Now they're wiping out entire funds and strategies. This "second wave" of cutbacks could also lead to more firm-level mergers and acquisitions, said Aymeric Poizot, Paris-based senior director in Fitch Ratings' Ltd. fund and asset management group. Firms cutting or combining funds include Voyageur Asset Management, Legg Mason Global Asset Management, Capital International, Schroder Investment Management, and Morgan Stanley Investment Management.

### **When is a Tweet proof of a cheat?**

Bruce Catton, a former SEC enforcement lawyer and now columnist and blogger on securities-law matters, posted this intriguing scenario last week and invited opinions from his readers. Catton has promised his own take next week. We're curious about what you think. Send your views to [ctc@irbyctc.com](mailto:ctc@irbyctc.com). We'll post a selection in next month's newsletter:

An executive at publicly-traded ABC Corp. learns that his company is about to be acquired. He posts the following on Twitter: "*I'm about to become a rich man. My company, ABC Corp., will be acquired next week at a 50% premium to current stock price. Shhh!!*" Assume that many of the exec's followers act on the tip, buying shares of ABC Corp. and selling them for a big profit the following week when ABC Corp. is acquired as the exec predicted. Under each of the following three scenarios, (1) Is the exec liable for "tipping"? And (2), are followers who profited on the tip liable for insider trading?

- (a) Executive has 5 followers, all family members.
- (b) Executive has 5 followers, all strangers.
- (c) Executive has 2,000 followers.



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