

Market News

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

SEC initiates program to educate investors on proxy rules

As we enter into proxy season, the Securities and Exchange Commission has introduced a flurry of initiatives to educate investors on proxy rules and guide companies on how to comply. SEC Chair Mary Schapiro describes the steps to promote investor participation in elections of companies they own as “critical to effective corporate governance.” The commission launched a new spotlight page (<http://sec.gov/spotlight/proxymatters.shtml>) that provides investors with information on the mechanics of proxy voting, the e-proxy rules, corporate elections and proxy matters in general. The page includes an adopting release explaining the rules for investors and a new alert entitled “New Shareholder Rules for the 2010 Proxy Season.”

Did antitrust get ignored in crisis?

University of Michigan Law School Professor Daniel Crane wonders in an *Antitrust Law Journal* article whether the emergency takeovers of weak financial services firms by their stronger brethren during the financial crisis, without concern for antitrust, will turn out to have adverse consequences. While conceding that “it’s too soon to tell,” he notes that government antitrust action now constitutes only about 10% of all competitive challenges, with private suits growing rapidly in number and significance. He said total civil antitrust cases are running only about 10% below pre-crisis levels, although he did note a substantial reduction on government cases despite expectations of a more activist posture under the Obama administration. But noting a pattern of diminished antitrust activity during prior crisis periods, including recessions and wars, “it may turn out that the 2008-09 crisis did not last long enough to have a discernable effect on antitrust enforcement.”

Companies required to explain who is overseeing risk

The SEC now requires companies to describe in their proxy statements how risk management is being distributed among their board-level committees. The rule is part of a package intended to improve disclosures regarding executive compensation that may foster risky behavior thought to be a major contributor to today’s financial crisis. By forcing management to review their risk procedures and make them transparent, the SEC hopes to reveal inefficiencies and spread the responsibilities over a broader range of board members. Corporate governance experts say too many audit committees have become dumping grounds for risk-oversight responsibilities. According to a recent survey by KPMG of board members and senior executives, 18% of audit committees are primarily responsible overseeing strategic risk and 58% oversee IT security and privacy risks.

Spending on governance, risk and compliance projected to rise in 2010

According to a recent report by AMR Research, U.S. companies' spending on governance, risk and compliance will likely grow 3.9% in 2010, with an expected outlay of \$29.8 billion, reversing a two-year trend of lower spending impacted by the recession. The research group says that almost half of the outlay will go toward day-to-day internal management and execution of business functions such as IT, legal, and audits, with a good portion this responsibility being farmed out to consultants.

SEC pushes back IFRS transition

Last Wednesday the Securities and Exchange Commission elected to push back from 2014 to 2015 the earliest possible date for U.S. public companies to transition from U.S. GAAP to International Financial Reporting Standards of accounting (IFRS), in order to give companies more time to prepare for the switch, and the Commission additional time to provide more specifics on how the U.S. financial reporting system could incorporate IFRS. The SEC is also directing its staff to provide regular updates on the issues raised in the nearly 240 comment letters the commission has received on the proposal.

Financial printers seek perfect binding

Looks like some corporate execs have been camping out at Bowne, drawing up some deal papers. Only this time, the campers were executives of RR Donnelley, Bowne's direct competitor in the financial printing business, which said it would pay \$11.50 per share, or \$481 million in cash, for Bowne. Donnelley also announced a loss of \$79.5 million in 4Q09, a sign of continued tough times in the financial printing industry that likely precipitated the deal. Bowne posted revenues of approximately \$675 million in 2009, versus Donnelley's \$10 billion. Donnelley said it expects the deal to be accretive in year one. We'll be watching for the speed and quality of the documents flow on this one.

New short-selling "alternative uptick rule" narrowly approved

A sharply divided SEC has voted to propose restricting short-selling when the price of an issue has fallen at least 10 percent during a trading session. Short-selling is the practice of borrowing shares and selling them, intending to buy them back later after the price declines. Once the restriction is in effect for a stock, it will apply for the rest of that day's session and the entire following trading session, whether or not the stock price has recovered. The votes were cast along party lines, with Republicans voting against it, saying that there was no evidence that any action was needed, and Democrats voicing hope the action would improve investor confidence. Two-thirds of the 4,300 comment letters the SEC had received from the public called for some action to protect investors from short-sellers.

Who's the (Next) Boss?

Restrictions on what topics shareholders can address in their resolutions have been falling steadily, with SEC pressure coming in the form of legal opinions. One significant topic that is now fair game: Disclosures about CEO succession planning. Whole Foods Market will face just such a resolution at its March 8 meeting, when shareholders will vote on whether Whole Foods should report annually on the Board's progress on CEO succession plans. Lawyers expect more such proposals, seeing them as consistent with the broader trend toward concern for sustainability and risk management.



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