

Market News

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

Say-on-pay still hot in 2012, but say-on-politics proposals gaining

The Conference Board is warning member companies that “say-on-pay” will again be a big issue at shareholder meetings this year, but proxy adviser Institutional Shareholder Services (ISS) says proposals dealing with corporate political activity may be hotter. The Conference Board says that persistently high unemployment and a weak economy, plus election-year politics, means the news media will be attuned to executive compensation votes. They warn that even if shareholders resoundingly pass the say-on-pay item, execs should be prepared for crossfire on the topic at the shareholders meeting. Meanwhile, ISS reports that a record 100 proxy proposals pushing for more disclosure of corporate political activities have already been filed for this year’s meetings cycle. The Supreme Court’s Citizens United decision in 2010 overturning limits on candidate-focused corporate political spending has sparked proposals for full disclosure of political donations, lobbying activities, and contributions to industry lobbying associations. Some proposals seek a say-on-political-spending vote similar to the say-on-pay vote, while others ask that all political contributions be reported to shareholders. The 100 proposals submitted to date are up from a record 88 at this time last year. Only 55 of the political proxy proposals last year went to a vote. A third of those got majority support.

Lawyers hone in on excess spin

A University of Chicago study shows that companies that pad their profits with puffery are 75 percent more likely to get sued if their stock doesn’t match the hype. The paper was published in the American Accounting Association’s *Accounting Review*. The research covered 165 companies accused of securities fraud in federal court, compared with 165 companies with similar characteristics and stock-price declines that weren’t sued. The sued firms more frequently used the word “strong” to describe results, and often quoted the CEO as “very pleased” with results. The study didn’t compare legal success rates for the plaintiffs based on degrees of puffery. Researchers suggested softening the tone of releases either with less positive language or a more balanced mix of positive and negative terms, and avoiding insider selling following very optimistic reports.

NYSE bars broker votes from governance proposals

The New York Stock Exchange instructed its members last week that discretionary broker votes may no longer be counted toward shareholder approval for management proposals to declassify their boards or to repeal super-majority rules. Brokers must now get permission from their clients before voting shares on these key issues. This action continues a move by the NYSE to scale back discretionary broker votes. In 2009, the NYSE barred discretionary broker votes from uncontested board elections. The Dodd-Frank Act endorsed that action, and added say-on-pay to the list of votes that shareholders must approve themselves. The NYSE noted that companies may continue to accept discretionary broker votes for auditor ratifications.

Overall securities lawsuits hold steady, while IPO suits soar

There were 188 federal securities class-action suits filed in 2011, compared to 176 filed in 2010. On average, 197 federal securities class-action suits were filed annually between 1997 and 2010. According to a study conducted by Stanford University Law School and Cornerstone Research, 23 percent of the lawsuits filed in 2011 argued that a particular merger or acquisition was unfairly depriving shareholders of potentially higher gains or that insider trading took place around the deal. The rate of class action suits involving mergers and acquisitions was flat from 2010, but 33 lawsuits were filed involving IPOs in 2011, representing 18 percent of all class actions filed and up from nine IPO-related suits in 2010. Most of those 2011 suits involved Chinese reverse mergers, a target of the SEC as many of them were based on fraud.

Cash, debt reporting practices that investors wish CFOs would adopt

If you have debt on your books, there's a good chance that investors are unsatisfied with how much you tell them about how you're going to pay it off, and where the cash to do so is coming from. In a new white-paper roundup of wished-for disclosure improvements, investors told PricewaterhouseCoopers even small changes to disclosures about debt and cash generation would help. While conceding that "net debt" is not defined under GAAP, and reconciliations aren't required, investors say that companies that discuss it, and follow the same definitions and conventions from year to year, stand out. Similarly, investors appreciate comprehensive maturity tables for all material components of debt, showing both the yearly contractual maturity of each type, helping them reconcile the maturity schedules to the carrying values in the balance sheet. On cash flow, investors tell PwC that they would like more meaningful descriptions of the adjustments made to derive operating cash flow to better relate them to the balance sheet. They also prefer reconciliations of profit or loss to operating cash flow to start at the operating (or pre-tax) profit line, which would bypass many reconciling items they now need to first eliminate and then add back to get to operating cash flow.

Silver lining for CEOs: More trusted than government

Not exactly good news for CEOs in Edelman's latest "trust barometer" survey for which 25,000 people in 25 countries were polled between Oct. 10 and Nov. 30, 2011. Asked to rate the credibility of information about a company, just 38 percent would trust it if it came from a CEO. That's down from 50 percent last year, and the biggest drop since the survey began 12 years ago. Government officials and regulators fared worse: 29 percent would believe company information from them, down 14 percentage points from last year. About half want more regulation of business, compared with 22 percent who think business is over-regulated. Financial services companies and banks are the least trusted, and technology companies the most. About two-thirds would trust company information from academic and technical experts, the highest-rated groups of individuals, immediately followed by "a person like yourself" and a "regular employee." Only 14 percent would trust information from social networking sites, but 32 percent found mainstream media sources credible, versus 29 percent last year.

CFOs oppose auditor rotation

According to a recent survey, few CFOs support mandatory periodic audit rotation. They believe it is too expensive and will cause management to lose control over internal operations. More than 75 percent of the 84 CFOs responding to Deloitte's quarterly CFO Signals survey had a negative opinion about the mandatory audit rotation. Twenty percent supported the idea, saying it would enhance independence and objectivity if the rotation period were long enough.

More studies point to one-on-one advantages

Another academic study supports the view that market-moving information is being provided in private one-on-one meetings. The first, published last summer by noted IR researcher Brian Bushee of the Wharton School, detected significant changes in trading volume and prices of stocks in the hours before and after the reported timing of one-on-ones. The latest one, by Eugene Soltes at Harvard Business School and David Solomon at the University of Southern California's Marshall School, suggests that private meetings lead to better trading decisions, and convey an advantage over those not granted the same opportunity. The pair looked at six years of investor meeting records provided by one unnamed NYSE-listed company, covering 935 meetings. They found connections between the meetings and the direction of subsequent stock trades, the likelihood of changes in investor holdings after meetings, and most important, smarter trades. After meetings, favored investors were more likely to buy before periods of high returns and sell before periods of low returns.

Financial crisis flicks mostly ignored by audiences, awards

Wall Street can take solace in knowing that while studios have continued to fund movies about the financial collapse, the audiences are small and the recognition slim. This month's Academy Awards nominations included just one for a Wall Street film, "Margin Call," which reviews 24 hours at a Lehman-like investment bank at the dawn of the financial crisis. 2010's "Inside Job" won a documentary Oscar and got rave reviews, but small audiences. Only HBO's "Too Big To Fail" and the 2009 corporate downsizing drama "Up in the Air" got both acclaim and audience. Box-office receipts have been weak for similar films, including "Wall Street: The Money Never Sleeps," and "Collapse." An estimated seven more films or shows about the collapse are in production.



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