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## **PROXY SEASON 2010 - CAN YOU “SELL” YOUR BOARD TO INVESTORS?**

*Proxy* season last year was the first after the economy tanked, and there were, needless to say, a few angry investors at annual meetings. For proxy season 2010, investors will have new tools, data and resources to direct that anger at the board of directors.

It's hard to overstate how naked the board is becoming to its shareholders. The new disclosure rules on how the board manages risk have grabbed most of the headlines, of course. But consider all the other disclosures required this year on the board itself. How does the board consider and set executive pay? What is its leadership structure -- and why did the board choose that structure? What are the backgrounds and qualifications of each director (not just a basic *vitae*, mind you, but why does the background of each *specialty* suit him or her to serve on your board)? Plus, you'll need to disclose more on possible *disqualifiers*, like past director securities or legal violations, and their service on other boards.

Is your board ready for this proxy season closeup? With the rise of proxy access, the loss of broker votes, and majority voting bylaws, presenting a slate of directors for election is no longer a take-it-or-leave-it choice for shareholders. For 2010, we're seeing the start of a true buyer's market for board choices. Investors now have the data, and increasingly, the proxy tools, to comparison shop their board votes. Selling your proposed slate of directors no longer just means printing their names on the proxy ballot, but actually *marketing* their skills and experience to shareholders. Will your 2010 slate of directors “sell” in this new competitive market?

-- **RDW**

## **THOSE NEW SEC DISCLOSURE RULES ON BOARD SAVVY**

Last month, we gave the lowdown on those new SEC corporate disclosure rules announced in mid-December. While most of the focus has been on the risk and compensation elements, new disclosure is demanded for 2010 on your board, its membership, qualifications and structure. You must disclose:

- The “experience, qualifications, attributes and skills” of directors or nominees that suggest each should serve as a director of your particular company. This applies to all directors, not just those up for election.
- All public company directorships held by the above within the past 5 years, and also their involvement in any legal proceedings for the past 10 years.



- **THE MIXED MESSAGES OF BOARD PAY**
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### **THE MIXED MESSAGES OF BOARD PAY**

*This* month offers a special feature on board of directors’ compensation, detailed in the articles below. In researching this material, I realized how well board pay symbolizes the fix we’re in when it comes to corporate governance overall. There are two major elements in board compensation, cash and equity. A source below says that he finds a 50/50 split between these two is a common mix for board pay at many public companies. But it’s also a good metaphor for the legal, fiduciary and philosophical deadlock over what we want boards to do.

Equity pay, whether in stock, or options, represents the hands-on, value-adding, employee role of the board. It puts them on the side of shareholders, especially as directors accumulate it. Directors are there to give management feedback, ideas (and sometimes a spanking) toward boosting shareholder value. Equity motivates board members to drive results, take risks and improve the stock price. It is a reward for saying “yes.”

Cash encourages a different role. It insulates directors from pay for performance, but rewards a more objective, regulatory function. Directors are paid to assure that legal requirements are met, that financials and controls are in order, and that risks are carefully weighed. They monitor the corporation on behalf of shareholders, and should be as disinterested in the results, good or bad, as an outside audit firm. It is reward for saying “no.”

Two types of board pay. At the extreme, each would motivate behavior no investor would want, so that’s why we see boards today mixing the two. But does that offer the ideal blend – or a mixed message of two battling roles that we demand directors play?

-- **RDW**

### **BOARD PAY: WHAT’S NEW...**

While the business media like to present corporate boards as remote groups cut off from those further down in the company, the current economy gives both something in common – working harder for less pay. Yet there are other trends at work in board member compensation, some big and some smaller, yet vital:

- The shift away from “meeting” fees is accelerating. “Pay is moving away from counting meetings, toward reward based on value delivered,” says Myrna Hellerman, a senior VP with comp consultant Sibson. With so much boardwork (and especially committee work) handled on the phone or online today, pay by the meeting is headed the way of tucking a \$20 gold piece into each director’s board book. While this sounds like boards are being paid on a “retainer” basis, the new trend allows more variation based on role and effort.



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Ralph Ward, Publisher/Editor

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## **SPECIAL FEATURE: BOARDS COST TOO DAMN MUCH!**

*Yes*, public companies have an increasing level of worry over their corporate governance/board issues today, from liability, to risk management, to mandated disclosures, to proxy ballot issues. But ask the corporate counsels and corporate secretaries who actually handle the paperwork of governance, and they have a more down-to-earth problem -- paying the boardroom bills.

The soaring costs of corporate governance last popped up as an issue right after the passage of Sarbanes-Oxley, and especially when Section 404 compliance came into effect. We were all assured that the spike in governance spending would ease after SOX was in place. The *rate* of increase may have declined, but governance costs continue to climb, and it looks like pending reforms will reignite boardroom inflation. Boards need to review far more today, adding to paperwork expenses. Audit, comp, and the board overall face strong legal prods to hire more outside counsel and consulting advice, none of which is cheap. Internal costs for board support, such as research, presentations, and board logistics, are climbing, and have to come out of someone's budget. Money saved through new e-proxy rules is devoured by the IR demands of getting enough investors to vote at all.

No, this isn't a corporate crisis. It's more like a slow drag, an accumulation of governance pennies that add up to serious dollars. Many companies are still at the stage of striving to meet the new governance demands, and just paying the bills as they come in. Stage two, the one we're preparing you for below, is the sticker shock that hits when you total up the numbers.

-- **RDW**

## **4 QUESTIONS FOR YOUR BOARD EXPENSES**

Want to get a handle on exploding board and management expenses? Before coming up with answers, let's ask a few questions:

- Does your current board budget reflect the *true* cost of governance, or only a narrow, board-specific slice? Are there board and governance-related costs currently being eaten by the budgets of other departments (HR, legal, finance, etc.) that wouldn't be incurred if not for board-related demands?

Do you have an internal accounting system that can reflect such "uncounted" time and costs as part of your real board spending? Further, have you set accounting definitions and controls that workably differentiate between