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Contentious Proxy Season Ahead As Debate Flares Over Elections, Pay

The 2008 U.S. proxy season could be one of the most contentious in recent memory following the Securities and Exchange Commission's decision to exclude proxy access proposals, and as shareholders continue to seek curbs on executive pay. Thus far, labor and public pension funds have filed two proposals calling for access--at New York-based JP Morgan Chase and Bear Stearns--in a bid to test the agency's decision in court. Meanwhile, dozens of "say on pay" proposals calling for an advisory vote on compensation have been filed, once again placing the issue front-and-center during the annual meeting season.

Some shareholders also intend to challenge companies over their exposure to the subprime mortgage crisis now roiling capital markets. Homebuilders are being targeted with a broad range of proposals that include requests to set up a "mortgage lending compliance committee," while labor fund officials say directors at many financial companies will become targets for "vote no" campaigns.

Concerns over compensation will not be limited to calls for advisory votes on pay in 2008, moreover. Novel proposals will include demands for companies to adopt a policy on the use of so-called 10b5-1 stock-selling plans, and those to limit or bar tax gross-ups for senior executives. Another resolution seeks to place limits on executive employment

agreements.

"The 2008 season will be much as it was last year," says Charles Elson, director of the University of Delaware's Weinberg Center for Corporate Governance, alluding to investors' continued emphasis on matters of pay. "Compensation will again be a main focus."

Board leadership concerns also will feature prominently in 2008. Resolutions to split the chairman and CEO role or to install an independent board chairman are now pending at roughly 20 companies, while a novel proposal is calling on six to 12 companies, including Merrill Lynch, Bank of America, and Verizon, to detail and disclose succession planning policies. Such calls are not surprising in light of the record CEO turnover in recent years that may continue into 2008 as more and more chief executives step down amid heavy losses stemming from the subprime mortgage crisis.

Investors also will press forward with old, new, and updated proposals that seek to improve board accountability. As in past years, scores of majority threshold voting proposals have been filed at companies for the 2008 season. The United Brotherhood of Carpenters and Joiners of America plans to file up to 100 such resolutions, with roughly 80 percent targeting S&P 500 companies. And, notably, a new proposal, filed by the Change to Win Investment Group (CtW) and af-

iliated funds, will call for the exclusion of uninstructed broker votes in director elections.

Director Elections Still a Focus

Much attention this coming proxy season will be focused on efforts by investors to challenge the SEC's late November decision to shelve proxy access. (For more on that decision, please see *SEC Votes to Exclude Access Proposals* in this edition of the *Corporate Governance Bulletin*.)

As of this writing, the American Federation of State, County, and Municipal Employees (AFSCME) has filed binding proposals seeking shareholder access at financial firms Bear Stearns and JP Morgan Chase. North Carolina's state treasurer joined in filing both proposals, and New Jersey's Division of Investment co-filed the Bear Stearns proposal. The funds are seeking a say in board nominations following the disclosure by both firms of billion-dollar losses stemming from investments in mortgage-backed securities. Neither company responded to requests for comment.

The companies also were chosen because of their location, proponents note. The U.S. Court of Appeals for the Second Circuit, which in 2006 ruled that the SEC had erred when it allowed American International Group (AIG) to omit an

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AFSCME-sponsored access proposal, has jurisdiction for New York. Proponents say they will go to court should the firms opt to omit the proposal in a bid to reinstate the Second Circuit's previous ruling, which effectively allowed for investors to file access proposals during the 2007 proxy season.

Richard Ferlauto, director of pension and benefit policy for AFSCME, noted that his fund and public pension funds will file additional access proposals at a number of other companies.

AFSCME also is planning to submit binding proposals calling for the reimbursement of solicitation expenses. Some observers believe this resolution may gain more attention in light of the SEC's action on proxy access.

One such proposal, filed at Houston energy company Apache, calls for reimbursement of "reasonable expenses ... incurred in connection with nominating one or more candidates in a contested election of directors to the corporation's board of directors, including, without limitation, printing, mailing, legal, solicitation, travel, advertising and public relations expenses ..."

Limits would be placed on the repayment of expenses incurred. For example, reimbursement could only occur for elections after the bylaw is approved and for a "short-slate" of nominees (i.e., less than half the board) where one or more is elected and cumulative voting is not allowed. The amount paid to the nominator may "not exceed the amount expended by the corporation in connection with such election."

"If the reimbursement proposals do well, they may in the end supplant access," says Elson. "I think it's the ultimate solution." Elson has long been a champion of such proposals, arguing that proxy-cost reimbursement is a more prudent alternative to access. Others are less optimistic, however, and suggest the proposal may not make it on to proxies in light of the SEC's decision to codify its past interpretation of Rule 14a-8(i)(8) to disallow access proposals.

"It's going to be an interesting issue," Stanley Keller, a partner at Edwards Angell Palmer & Dodge, said of solicitation reimbursement proposals. "But to the extent that it's designed or viewed as promoting an election contest, it could very well be subsumed within the excludability argument." Keller noted that the topic would seem a proper subject under state law, but he believes the SEC will view it as excludable under the recently amended Rule 14a-8(i)(8), which allows for the omission of proposals related to the election of directors. "The question is will it be viewed as promoting an election contest, and my guess is that it will,"

"If the reimbursement proposals do well, they may in the end supplant access..."

*--Prof. Charles Elson,
University of Delaware*

Keller said.

This year's proposal, however, is nearly identical to a resolution last year that was unsuccessfully challenged at the SEC by Apache. Moreover, AFSCME officials point to a footnote in the SEC's new rule on director elections that indicates agency officials will not approve the exclusion of certain proposals, including those that relate to the reimbursement of shareholder expenses in contested elections.

Another proposal, submitted by funds affiliated with CtW, is calling on at least one company, CVS/Caremark, to not count uninstructed broker votes in director elections. At the company's annual meeting in May, former Caremark director Roger Headrick received a 43 percent "against" vote over his role in approving

the pharmacy-benefits company's sale to CVS. The labor funds argued that Headrick would have failed to get a majority of votes cast (which is required for election) had uninstructed "broker votes" been excluded.

The New York Stock Exchange in October 2006 proposed to bar uninstructed broker votes in uncontested director elections by January 2008, but the SEC has yet to approve the rule change. Many investors expected the commission would approve the measure for 2008 in light of its decision to allow companies to exclude proposals on access.

Governance observers suggest that CtW's proposal may have difficulty gaining broad support in light of its purported complexity. "Any new proposal will take time [to generate to support], and broker voting is a complicated issue. The more complicated it is, the tougher it is out of the box, and anytime a vote on an issue requires a great deal of thinking, it takes a while to build support," said Elson. According to corporate lawyer Keller, a decision on whether the measure is a proper subject, and thus not grounds for omission at the SEC, will be based on whether or not it seeks to define voting requirements in the election process.

A longstanding board election proposal also will receive fresh attention in light of the SEC decision to allow the exclusion of proxy access proposals. Majority threshold voting proposals, which typically ask boards to require directors to receive a majority of votes cast "for" and "against," or to step down, will be filed at dozens of companies, proponents say, including many larger firms that have yet to adopt the reform.

Delaware Chancery Court Vice Chancellor Leo E. Strine, Jr., writing in the October edition of the *Journal of Corporation Law*, noted that "shareholder access has gone nowhere," but that "does not mean that management won." Strine, like a growing number of governance watchers including Stanford University Law professor and former SEC commissioner Joseph Grundfest, argued

forcefully that majority voting represents a more "potent weapon" to change the composition of the board and that directors are now "running scared of withhold campaigns, and increasingly ready to make the bargains necessary to avoid being targeted.

The Carpenters' fund, which pioneered majority voting proposals in 2004, plans to submit up to 100 such resolutions in 2008, the vast majority of which will be at large capital S&P 500 companies.

A recent study by Neal, Gerber & Eisenberg partner Claudia Allen found that 44 percent of S&P 500 companies have adopted a "true majority vote election standard," with many more having in place director resignation and other policies that call on directors to resign if they receive a majority of "withhold" votes. Moreover, the recent decision to adopt a majority vote bylaw by pharmaceutical giant Pfizer, whose groundbreaking director resignation policy in June 2005 spurred others to take that partial step instead of adopting a majority vote standard, may also push more companies to adopt bylaws.

"It's *deja vu* all over again," noted Allen in a recent interview. "Majority voting was an outgrowth of the apparent failure of proxy access back in 2003. Frustrations with the SEC in relation to proxy access now will continue to move majority voting along."

Mortgage Crisis Spurs Calls for Reform

A number of labor funds will challenge companies over the subprime mortgage crisis that is now depressing the housing market and threatening to send the wider economy into recession. Investors' targets are primarily homebuilders with mortgage lending operations and financial firms whose exposure to mortgage-backed securities and other risky loans have resulted in losses.

Toll Brothers is one of 12 companies targeted by an Amalgamated Bank proposal calling on companies to estab-

lish a mortgage lending compliance committee. The committee would be composed of independent directors who would "conduct a thorough review of the [c]ompany's regulatory, litigation and compliance risks with respect to its mortgage lending operations..." The committee would report findings and recommendations, as well as progress made, within six months of the 2008 annual meeting.

"As companies such as Toll Brothers face increasing regulatory pressure over their compliance and lending practices, we believe instituting a compliance committee will enable the company to

Labor funds will challenge companies over the subprime mortgage crisis that is now depressing the housing market ...

safeguard shareholder value in the new legal and regulatory climate," noted Scott Zdrazil, Amalgamated Bank's director of corporate governance.

Officials at Toll Brothers, which in early December reported its first quarterly loss in more than two decades due to the weakened housing market, did not respond to requests for comment.

Similarly, the CtW Investment Group and affiliated union funds are filing proposals at nearly a dozen companies that call for enhanced disclosure of lending practices. Companies are not providing sufficient information on their mortgage practices for shareholders to adequately monitor risk, proponents argue.

The labor coalition cites a March 2007 *Business Week* article noting that federal investigators have opened a broad

criminal probe into "lending practices, some financial transactions, and other dealings" at one company, Beazer Homes, to underscore the need for additional disclosures. The resolution to the Atlanta-based homebuilder calls on its board to report within 90 days of the annual meeting on lending practices and to specifically discuss the following:

1. The extent of the company's mortgage originations in subprime, Alt-A, jumbo, and "exotic" mortgages including piggybacks/second mortgages, interest only loans, negative amortization loans, and low/no documentation loans, as well as what percentage of its mortgage originations may be classified as such mortgages;
2. Which of the company's geographic markets are most reliant on mortgages listed in (1) above;
3. The identity of the purchasers that buy the company's mortgage loans in the secondary market;
4. What percentage, if any, of the purchases discussed in (3) have early payment default ("EPD") provisions attached which may require the company to buy back those loans as well as the time frame for those obligations; and
5. How many non-performing loans the company expects it will have to repurchase during the current and upcoming fiscal year.

Homebuilders are not the only ones being targeted in 2008 over disclosures related to subprime mortgages. Financial institutions also are being called on to provide more details on their exposure to risky mortgage-backed securities. Many Wall Street firms have been forced to write down assets valued in the billions of dollars during the second half of 2007 due to their exposure to high-risk loans. CtW is asking Lehman Brothers and oth-

ers to report on mortgage originations and mortgage securitizations as "subprime, Alt-A, or other non-agency loan types." The resolution's resolved clause also calls on the companies to discuss the long-term strategic and financial implications of Lehman's decision to reduce resources and capacity in the subprime area and what the firm anticipates will be its "ultimate realized losses related to the mortgage securities crises."

New Compensation Concerns Spot-lighted

As in past years, investors plan to focus sharply on executive compensation policies and practices. New SEC pay disclosure rules have to some degree helped ease perennial tensions between investors and issuers over pay, as some companies, for instance, chose to scale back or do away with perks, while others strengthened ties between pay and performance. Still, concerns remain, and consequently, investors will again this year file a large volume of "say on pay" proposals calling for an advisory vote on compensation. AFSCME, which pioneered the resolution in 2006, says it filed a dozen such proposals, as of this writing, with other labor funds filing at least another dozen. Public pension funds and retail investors likely will file additional "say on pay" proposals in 2008.

Meanwhile, labor pension funds, troubled by the potential for executives to abuse certain benefits, are filing two new proposals in 2008.

AFSCME plans to submit proposals calling on companies to adopt tighter controls on executive stock sales under "Rule 10b5-1" plans. That SEC rule, enacted in 2000, was meant to provide flexibility to insiders who may not trade on material nonpublic information by allowing them to set up automatic trading protocols that operate regardless of insider trading "windows." However, critics of the rule contend that loopholes allow executives to cancel trades when material nonpublic information would indicate, for example, that a sale may not be ben-

eficial. A September 2007 study by Stanford University researcher Alan D. Jagolinzer found that the rule "appears to enable strategic trade[s]," and SEC officials have warned that the study suggests the possibility of abuses, which they are investigating.

AFSCME's 10b5-1 proposal seeks to close potential loopholes by tightening disclosure requirements and putting in place stronger controls. The resolution calls on boards to adopt principles to help ensure that 10b5-1 plans are not abused. For instance, one principle would limit amendments, or the early termination of plans. Another would require

*AFSCME also is
submitting a new
compensation-related
proposal that seeks to
limit the use of tax
gross-ups ...*

the broker handling 10b5-1 plan trades not to handle other trades for an executive to minimize the likelihood that the executive will inadvertently communicate material nonpublic information to the broker.

The proposal also calls for a 90-day gap between adoption or amendment of a 10b5-1 plan and initial trading under the plan, the barring of executives from trading in company stock outside plans, and a requirement to identify plan transactions on Form 4 reports, which are corporate filings on trades by insiders.

"We believe that 10b5-1 plans, with proper safeguards, can serve a useful function," AFSCME notes in the proposal's supporting statement. "The disclosure-related principles aim to increase transparency regarding 10b5-1

plans."

AFSCME also is submitting a new compensation-related proposal that seeks to limit the use of tax gross-ups, whereby companies cover the tax liability of executives, often following a change in control. Such payments have received widespread coverage in recent years as use of the perk has proliferated and new SEC compensation disclosure rules make it easier for investors to identify such potential payments.

AFSCME's proposal calls on companies to refrain from making or promising to make gross-up payments to its senior executives, except those "provided pursuant to a plan, policy or arrangement applicable to management employees" generally, such as those related to relocation or expatriate tax-equalization policies. The proposal defines a gross-up as "any payment to or on behalf of the senior executive whose amount is calculated by reference to an actual or estimated tax liability of the senior executive." The definition is designed to focus on the often large payments made in conjunction with severance packages awarded after takeovers.

Meanwhile, CalPERS, the California Public Employees' Retirement System, is considering a new proposal for 2008 that would require a double trigger for change-in-control payments to executives, while the AFL-CIO is submitting a new resolution that seeks to curb employment contracts for named executive officers. The limits include capping such agreements at three years, barring ever-green clauses that allow for renewal without shareholder approval, and barring the accelerated vesting of stock-based awards and the use of excise tax gross-ups.

Board Leadership in the Crosshairs
Shareholders also will use old and new proposals in 2008 to address board leadership concerns. Calls for independent board chairs have been filed at roughly 20 companies so far, and that number is expected to grow. Meanwhile, a new pro-

posal seeks to address investors concerns about succession planning.

The Laborers International Union of North America, or LIUNA, will be asking Toll Brothers, Merrill Lynch, Bank of America, and other firms to adopt and disclose a detailed succession planning policy that includes the following features:

- The CEO and the board will collaborate on the CEO succession planning process and will review the plan annually;
- The board and CEO will develop criteria for the CEO position which will reflect the company's business strategy and will use a formal assessment process to evaluate candidates;
- The board and CEO will identify and develop internal candidates;
- The board will begin non-emergency CEO succession planning at least three years before an expected transition and will maintain an emergency succession plan that is reviewed annually; and
- The board will annually produce a report on its succession plan and will solicit feedback on the

plan from key constituents, such as long-term investors, analysts, customers, or suppliers.

"Our proposal is intended to have the board adopt a written policy containing several specific best practices in order to ensure a smooth transition in the event of the CEO's departure," LIUNA writes in its supporting statement to Toll Brothers. CEO Robert Toll's "long tenure indicates a need for a clear succession plan but our Company's Guidelines contain only a general statement in this regard."

LIUNA's proposal is not surprising in light of the high levels of turnover in recent years. For one, CEO departures in recent years have hit an all-time high, according to outplacement firm Challenger, Gray & Christmas, due in part to more top executives opting to join private companies--free from the perceived burdens of the Sarbanes-Oxley Act, post-Enron stock exchange governance requirements, and the demands of shareholders.

But a RiskMetrics Group analysis of 2007 proxy filings finds a growing number of companies are responding to the trend by disclosing that they have established a formal structure for addressing executive succession. Indeed, the per-

centage of companies disclosing a committee with formal responsibility for succession planning has jumped markedly since 2002 and, notably, doubled over the last year. In 2002, just 24 percent of S&P 1,500 companies disclosed such a structure, rising to 40 percent in 2006, then jumping to 80 percent this year.

Notwithstanding the growing prevalence of such committees, LIUNA and other investors say that boards need to ensure that succession planning is handled in a manner that protects shareholder value. "We really see succession planning as part of executive compensation," said Jennifer O'Dell, LIUNA's associate director of corporate affairs. "That's especially the case at a place like Merrill [Lynch] where we've seen large payouts for people leaving and agreements [for large future payouts] for those coming in." O'Dell said her fund wants to see the board and CEO collaborate and develop criteria to ensure orderly, rather than emergency, transitions that likely will cost the company less in terms of compensation.

— *Subodh Mishra*

SEC Votes to Exclude Proxy Access Proposals

U.S. companies will be allowed once again to exclude proxy access proposals from their corporate ballots, the Securities and Exchange Commission has decided. The access-blocking rule, pushed through by the commission's Republican majority in late November, was denounced by Commissioner Annette Nazareth, labor investors, state pension funds, and Democratic lawmakers.

"In a partisan 3-1 vote, the SEC today attacked the rights of investors to nominate corporate directors," the AFL-CIO labor federation said in a statement

after the commission's Nov. 28 open meeting.

The SEC's vote effectively overturns a federal court decision that opened the door for investors to get proxy access on the ballot at three companies in 2007. The commission's action sets the stage for more litigation on the issue, as shareholders this week filed access proposals for 2008 at financial firms Bear Stearns and JP Morgan Chase, and vowed to return to court if the companies seek to omit those resolutions.

The vote by the shorthanded SEC is

a victory for General Motors, Bank of America, and other issuers that urged the commission to bar proposals to allow investors to nominate board candidates to appear on corporate proxy statements. Former SEC Chairman Arthur Levitt (who also is a RiskMetrics Group board member) told Bloomberg News that the SEC's action is "probably the most important vote the commission has taken in nearly 15 years."

The law firm of Watchtell, Lipton, Rosen & Katz, which represents companies and directors, applauded the SEC's

decision. The New York-based firm noted that existing proxy contest mechanisms "are more than sufficient," given the potential "negative effects and risks" of contested elections. "Moreover, shareholders have never had as many other, less disruptive, avenues through which to express their views as they have today," the law firm said in a memo.

SEC Chairman Christopher Cox voted with Commissioners Kathleen Casey and Paul Atkins to reassert the agency's past position that companies may exclude proxy access resolutions. Nazareth, the SEC's only Democratic member after Commissioner Roel Campos departed in September, voted against the measure. Cox said he voted to bar access because it was the only one of two draft rules released by the SEC that could muster a three-vote majority. In July, Cox joined Nazareth and Campos in supporting an alternative proposal that would have imposed a 5 percent ownership threshold and greater disclosure requirements on shareholders seeking to file access bylaw resolutions. Cox said he hoped the SEC would revisit the issue in 2008 and work on crafting a rule to permit some access proposals.

"Today is not the end, and I hope all stakeholders will continue to work with us," he said. "If we use the time between now and the next proxy season wisely, we can act on a new rule proposal next year that does more than just perpetuate the status quo." At least one Republican commissioner appears unlikely to support a federal access rule in the future. Casey said governance reforms should be handled at the state level rather than nationally.

The SEC has repeatedly failed to reach a consensus on proxy access in the past. Nazareth expressed skepticism that the SEC would approve a pro-access rule next year. She said it appears the Republican commissioners voted for the non-access rule simply to put the matter behind them. "I don't see a principled way to vote on the non-access release and be supportive of shareholder rights in the

longer term," Nazareth said. "Indeed, if this amendment were truly intended to be a temporary stop-gap measure ... it would then have a sunset provision. But it does not."

"Shareholder rights face a long uphill battle with this commission," Nazareth said. "I hope that we have not completely lost the opportunity to address these issues."

Ann Yerger, executive director of the Council of Institutional Investors, said the SEC vote is a step in the wrong direction. "It makes no sense for the commission to do the wrong thing now but promise to try to do the right thing next

*"Shareholder rights face
a long uphill
battle with this
commission ..."*

*--Dem. Commissioner
Annette Nazareth*

year," Yerger said in a press release. "This is a sad day for shareowners."

"Ignoring the Pleas of Investors"

Nazareth, who has announced her intention to step down from the commission, criticized the process used to arrive at the decision to block access. "The vast majority of [those submitting public comment] on the non-access proposal opposed it, yet the commission is ignoring the pleas of investors and proceeding down this path," she said at the meeting. Nazareth said the Republicans' move to support the non-access rule was an "11th hour" decision that was only made "after it was clear that an access proposal would fail to pass with a shorthanded commission."

During the meeting, Cox emphasized

the importance of preserving the agency's "status quo" of the last 17 years--the right of companies to exclude proxy access proposals--while the commission debates a possible broadening of access rights next year.

However, Tracey Rembert, senior governance analyst for the Service Employees International Union's (SEIU) capital stewardship program, noted that "the status quo was there were proxy access proposals all this year."

In September 2006, the U.S. Court of Appeals for the Second Circuit ruled that the SEC staff had improperly allowed American International Group (AIG) to exclude a proxy access proposal by the American Federation of State, County, and Municipal Employees (AFSCME). The Second Circuit faulted the agency for its inconsistent interpretations of Rule 14a-8(i)(8), which permits the exclusion of shareholder proposals that "relate to an election of directors." After that ruling, the SEC expressed "no view" on a request by Hewlett-Packard to omit an access proposal. As a result, proxy access resolutions went to a vote at HP and two other firms this year.

AFSCME and several state pension funds, including the nation's largest, the California Public Employees' Retirement System (CalPERS), sent letters to the SEC in mid-November urging Cox to let the AFSCME v. AIG decision stand for 2008. "I fully understand why these requests are being made, because many believe that codifying [the right of companies to exclude proposals] would take the wind out of efforts to improve the way the proxy process works for investors," Cox said.

Commissioners Casey and Atkins reiterated Cox's argument that the absence of a hard-and-fast rule on access would cause legal uncertainty, because the Second Circuit's decision would not apply nationwide if another federal appeals court ruled differently. CalPERS CEO Fred Buenrostro disagreed. "[P]roxy access has created no uncertainty in the market this year,"

he said in a press release. "There have been no related legal challenges because of this illusory uncertainty. Instead of acting responsibly on this issue with a full commission, the SEC has adopted a flawed measure that is contrary to the very purpose for which it was established."

Potential Legal Challenge

While Cox said the SEC acted to prevent legal uncertainty, several investors already are preparing for a potential court fight over the commission's decision. On Nov. 28, AFSCME filed access bylaw resolutions at JP Morgan Chase and Bear Stearns. The companies' shares have fallen because of subprime lending losses, and AFSCME wants shareholder input on board nominees to address concerns about possible mismanagement by top executives.

North Carolina's state treasurer joined in filing both proposals and New Jersey's Division of Investments co-filed the Bear Stearns proposal.

"We'll be urging those companies not to omit proxy access from their ballot," Richard Ferlauto, director of pension and benefit policy for AFSCME, said in a statement. "But if they seek relief from the SEC, we are prepared to go to court to preserve the [AFSCME v. AIG] decision."

Ferlauto added that AFSCME chose the two companies because they are incorporated in New York, one of the three states overseen by the Second Circuit. The likelihood of a ruling opening the door to proxy access once again is greater in a court that already ruled that the SEC misinterpreted its own rules, Ferlauto said.

Lawmakers Express Disappointment

Two prominent Democratic lawmakers--House Financial Services Committee Chairman Barney Frank and Senate Banking Committee Chairman Christopher Dodd--expressed disappointment and said the SEC should have deferred action until it had a full set of five commission-

ers. In a statement, Frank said the SEC's action "will leave shareholders with inadequate recourse to influence insular boards that are unresponsive to shareholder concerns, by effectively precluding shareholders from proposing changes to director election procedures."

Dodd said he may introduce legislation to reverse the SEC's action. "I don't think it's fair," the Connecticut senator told the Reuters news service. Ferlauto said the SEC's decision to bar access for the 2008 season amounts to a black mark on Cox's legacy, branding him as an anti-shareholder chairman. A reputation of unfriendliness to shareholders could

[T]he SEC voted unanimously to adopt an amendment to the proxy rules to promote electronic shareholder forums. ...

eventually drive investors away from U.S. markets, Nazareth warned. Earlier this week, The Wall Street Journal reported that CalPERS and other large U.S. state pension funds are shifting more of their investments to foreign markets.

Investors have the right to nominate or remove directors in virtually all other developed countries. Several pension funds in the United Kingdom and Australia, as well as the London-based International Corporate Governance Network, urged the SEC not to take away the right of investors to file access bylaw proposals. "European investors are clearly not pleased" by the commission's decision, said Rembert of the SEIU.

In an editorial before the SEC vote, the *Financial Times* was skeptical of the argument by U.S. corporate advocates

that proxy access might drive some companies to move overseas. "There's a flip side to the competitiveness argument--international investors, too, can go anywhere," the London-based newspaper wrote. "Why would they choose a country where they have fewer rights?"

Commission Votes to Expand Electronic Forums

Also at the Nov. 28 meeting, the SEC voted unanimously to adopt an amendment to the proxy rules to promote electronic shareholder forums. Posts by companies and shareholders on these electronic forums--whether established by the firm or by investors--will be exempt from proxy solicitation rules, except for a 60-day period before a company's annual meeting, said Tamara Brightwell, a lawyer with the Division of Corporation Finance. Shareholders may continue to post on electronic forums during the 60-day "dark period," unless they're sponsoring a proposal that's on the ballot or are collaborating with other investor groups on a proxy initiative, Brightwell said.

To encourage issuers to participate in electronic chats with investors, the rule spares companies from legal liability for any information posted by an affiliate or a third party on a forum. Cox was careful to note that electronic forums would serve as an addition to--and not a substitute for--the shareholder proposal process under SEC Rule 14a-8. A suggestion in one of the SEC's two July rule proposals that electronic forums could replace non-binding resolutions received widespread criticism from investors. At the meeting, Nazareth welcomed the initiative, but criticized her Republican colleagues for using it as a "counterweight" to the decision to allow companies to resume excluding proxy access proposals.

— L. Reed Walton

Newsmaker Interview: Damon A. Silvers, Associate General Counsel, AFL-CIO

Damon A. Silvers, associate general counsel for the AFL-CIO, spoke with Subodh Mishra of RiskMetrics Group's ISS Governance Services in early December to detail the labor federation's view on what's ahead in 2008. Silvers's responsibilities include corporate governance, pension and general business law issues. Silvers, who led the AFL-CIO legal team that won severance payments for laid off Enron and WorldCom workers, is a member of the Public Company Accounting Oversight Board Standing Advisory Group, the Financial Accounting Standards Board User Advisory Council, and the American Academy of Arts and Sciences Corporate Governance Task Force. He is also a member of the American Bar Association's Subcommittee on International Corporate Governance, the United States Treasury Department Investor's Practice Committee of the President's Working Group on Financial Markets, and the United States Treasury Department Advisory Committee on the Auditing Profession. Prior to working for the AFL-CIO, Silvers was a law clerk at the Delaware Court of Chancery for Chancellor William T. Allen and Vice-Chancellor Bernard Balick. He received a J.D. with honors from Harvard Law School and a M.B.A. with high honors from Harvard Business School, and is a Baker Scholar.

Mishra: *The SEC has shelved proxy access. Where in your estimation does the matter go from here? What should investors look for in the months ahead on this issue?*

Silvers: With respect to proxy access, three parallel tracks are going to happen, but I think that the outcome is not really in doubt. One, a number

of public pension funds, together, I believe, with the [American Federation of State, County, and Municipal Employees] are filing proxy access proposals at a number of companies ... where problems in the real estate market have revealed a variety of internal problems at those companies. I think that those funds have made very clear that they intend to litigate the legitimacy of the SEC's actions [at a Nov. 28 open meeting of the agency, where commissioners voted to codify Rule 14a8(i)(8) on shareholder proposals relating to director elections] in removing proxy access as a subject of shareholder proposals.

I think they're going to do that based not on the SEC's inherent right to define the subjects of 14a8--because I think no one disputes that they had a right to do it--but, rather, the way in which it was done. Beyond that I can't really comment on what the legal strategies are. But I think what's going to happen here, ironically, is perhaps more companies are going to face proxy access proposals than had the SEC not acted, and they are going to have to think about what stance they want to have vis-à-vis their investors around proxy access, and their investors' right to vote on proxy access. Assuming that does result in litigation, there's no telling when that will end or how it will unfold. But I think that activity will mean the issue will be in front of both issuers and investors next proxy season in some form.

Then in parallel to that, [SEC] Chairman [Christopher] Cox certainly spent a long time at the [Nov. 28] open meeting making clear his desire to revisit the issue as soon as he could. I think we have to understand what he's saying to mean that he doesn't today

have the votes among his fellow commissioners to pass what he would like to do, and that he's hoping that Congress will bring him new commissioners who will vote for what he wants.

But it's also very unclear that what he wants would be of any interest to investors. I think in general the investor community looked at what Cox was willing to support last summer and said that it was really not of any value. He indicated in remarks at the [Nov. 28] open meeting that he was willing to move in investors' direction on the two key issues, which were thresholds for filing--that really no one could ever meet at any large cap company--and, secondly, punitive disclosure rules that, as [Democratic] commissioner [Annette] Nazareth pointed out, are more stringent than those required to take over a company ... I think [Cox has] made very clear that substantively he thinks he ought to [provide for a rule allowing for access] and I think the politics of it are very clear that he'll have to. But there's so many "if's" associated with it, which makes it hard to say ... The business community, which carries a lot weight with this administration, is going to be very heavy handed [in order] to stop that from happening, to stop Cox from doing that, and who knows what their ability will be to try to throw a monkey wrench into the works.

The third avenue is that there was quite a fair amount of concern about this issue from [lawmakers on Capitol] Hill in the lead up to [the Nov. 28] open meeting. [House Committee on Financial Services] Chairman [Barney] Frank, [Senate Banking Committee] Chairman [Christopher] Dodd, and Subcommittee [on Securities, Insurance and Investments] Chairman Jack Reed

all engaged very substantively on these issues. I think there's going to be more hearings and more interest from the Hill, with people looking at potential legislative solutions, and there may be some effort in other ways to push the commission in the right direction.

All of this I think tells us that there's a real possibility we could get a usable proxy access rule in the context of 14a8 in 2008 or 2009, and I think its going to be very clear that this will be an item on the agenda facing the next chairman of the SEC, with a different mix of commissioners, and a different situation in Congress. If I were to guess today, I would say that we're very likely to get a Congress that is far more capable of actually acting on this kind of thing, meaning if the SEC didn't act, Congress would be in a position to do so via statute ...

Whoever wins the presidential election, the next SEC chairman will be unwilling to let this thing hang in the way its hanging now, so my guess is that, at the end of the day, we'll see the proxy access issue dealt with in such a manner that shareholders can bring it up at companies, but I wouldn't want to predict exactly what the structure will be...

Mishra: *What, in your estimation, will be the main story this coming proxy season--subprime, compensation, access--and how do AFL-CIO shareholder proposals fit into it?*

Silvers: I think the big story is going to be those three things woven together. No one knows enough about subprime ... nobody knows exactly what the explanation is for the way in which so much of our financial structure in certain parts of our operating companies has become hostage to real estate loans that have no reality to them. But it raises a lot of questions, at many levels. It raises questions about auditing, it raises questions about board effectiveness, it raises questions about executive effectiveness at a whole bunch of companies, and about

the rating agencies, and when those kinds of questions get raised, you immediately move from there to how boards are functioning and the question of how executive compensation structures are reacting to these kinds of massive failures.

Those issues and areas of activity are completely intertwined with the substantive business crisis of the kind represented by subprime. So, we're likely to have proposals on proxy access where there are serious problems, and those problems are largely being manifested over subprime.

Proposals seeking to establish a philosophy over executive compensation, proposals looking at compensa-

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tion consultants and their independence will be a major focus of the AFL-CIO, as will proposals around subprime lending itself. There's a whole community of social investors that have been agitating around this issue for sometime, and anyone who said the issue didn't relate to shareholder value now looks silly. And there likely will be director withhold campaigns. Because the flow of information of what has gone wrong in the financial sector is not well timed to [SEC deadline for shareholder proposal filings for the 2008 annual meeting season], so as annual meetings approach and more information is available ... that suggest certain people weren't doing

their jobs in a way that cost investors a lot of money, we're going to see a focus on those people.

One of the responsibilities investors have is in this area--a director withhold campaign is a more serious act than a shareholder proposal, in general, and so they can't be viewed as substitutes for each other, but I think that director withhold campaigns will be looked at by a number of investors. I think there's deep unhappiness about the extent to which a whole bunch of companies turned out to be principal bets on mortgage markets rather than what they purported to be. I think the most obvious and dramatic one is e*Trade, but similarly the degree to which some of these large financial institutions turned out to have been committed to a particular view of those markets is shocking. And the rating agencies will be a big focus of concerns, and at least one is publicly traded.

Mishra: *How do you respond to critics who charge your push for governance reforms is motivated more by a desire to alter labor relations at portfolio companies than to promote shareholder value? Many are now pointing to a recent University of Chicago study that finds that AFL-CIO affiliated pension funds are more supportive of director nominees once it stops representing workers at a given firm?*

Silvers: I haven't read it, but have heard of it. The study is a non-peer reviewed paper. I think study is too strong a word. It's a paper by a graduate student ... and from what I understand, it asserts a whole pattern in relation to proxy voting by people who are fiduciaries for pension funds, which is completely and utterly false, and if he talked to anybody who was actually involved in these matters, and learned anything about the processes, he would know.

And furthermore, the work was conducted and publicized by a man

named Steve Kaplan [the Neubauer Family Professor of Entrepreneurship and Finance, Graduate School of Business] at the University of Chicago, who was a major advocate for the private equity industry and its tax positions. I don't think you could imagine a more meretriciously conducted set of circumstances, and so I don't take it seriously.

But, in fact, what's interesting about that is the accusation directed against the labor movement--that it's all about collective bargaining or the sort--has been made routinely by some people in the business community. It's kind of a sad commentary on that proposition that the best they could do was a non-peer reviewed paper by a graduate student

Members of our union have a lot of different interests--wages, pension, quality of work issues, quality of life issues, civil and human right, we engage in politics, there's a wide range of issues--and we've never suggested that somehow that's not true. Most market actors have multiple interests at play. Most investment managers have both debt and equity exposures to the companies they invest in, not unlike having an interest in wages and equity. Obviously everybody gets paid; the world is full of conflict. Our members' pension benefits are a very important part of what the labor movement is about. The capital that is set aside for them is a non-trivial economic interest to our members.

If you look at our activities over the last 10 years, you'll see two things. One is we're very tenacious about issues that people broadly understand to be core investor protection issues, and we're tenacious in a way about those issues that people who should be tenacious in a way are not. When you look at accounting and audit rules, or executive pay, or boards, you see institutions who should be fully engaged on these things are no where to be seen, particularly mutual funds. And we're there

... We have a view that in many instances what's in the long-term best interest of companies is also in the best interest of employees. Many in the business community have embraced this view for years, but when we do, there's somehow something wrong with it ...

You hear the accusations from the business community that there's something uniquely conflicted about the labor movement in relation to shareholder activism generally at those moments the business community is strenuously trying to trample on investor rights, and I guess this little blip of the last couple of weeks coming from the University of Chicago happened to coincide with the proxy access vote.

"We have a view that in many instances what's in the long-term best interest of companies is also in the best interest of employees."

Mishra: *What's your view of Elisse Walter and Luis Aguilar, who reportedly have been tapped to succeed outgoing Democratic commissioners? Are you concerned about either potential candidate?*

Silvers: The AFL-CIO has made clear on a number of occasions ... that we want to see highly qualified individuals replace [departed Democratic Commissioner Roel Campos and outgoing Democratic Commissioner Nazareth] who are clear investors advocates. The two names you mentioned await formal nomination by the White House and confirmation hearings, and we'll see whether they meet that criteria.

Mishra: *Corporate lawyer Marty Lipton recently wrote "five years after the enactment of the Sarbanes-Oxley Act of 2002, it has become clear that the decisive reaction by governance reformists to Enron and other scandals has proved to be an overreaction, and measures designed to protect shareholder value are impeding its creation." What's your view on the state of governance five years after SOX?*

Silvers: I think that Sarbanes-Oxley and the accompanying rules enacted by the SEC and the [Public Company Accounting Oversight Board] have proven to significantly increase the degree of investor protection in our market and did solve a genuine competitiveness crises that we faced in 2002 when money was flowing out of our markets in reaction to the news that our financial statements could not be trusted.

We've recovered from that; however, two things have happened that show this is unfinished business. The first thing that happened is that there's been a continuation of problems that are very similar to the problems that brought us Enron and WorldCom, and now the subprime crisis is seemingly bringing us a series of financial consequences comparable in scale to Enron and Worldcom.

We keep having major companies get into trouble around off-balance sheet issues. It just doesn't seem possible that with the combination of our corporations' internal governance processes and the auditors that we still can't get correct off-balance sheet matters. Secondly, we just can't seem to get executive compensation right. We first have this spectacle of wholesale cheating, with the connivance of [executives'] attorneys and potentially their auditors, in the options backdating scandal. And now we see courtesy of [Committee on Oversight and Government Reform] Chairman [Henry] Waxman dramatic evidence that com-

compensation consultants are seriously affected in their judgment by the very sort of outside consulting arrangements that were found in the Sarbanes-Oxley context to have comprised the auditors. And much of this comes back to the weakness of boards.

Now, there's a further challenge here that Marty Lipton might be sympathetic to, which is that for reasons that are not unrelated to the Enron and WorldCom problems, we've seen a large flow of capital

into a variety of short-term investment strategies that are being pursued often in the guise of governance by hedge funds, and to some degree by private equity funds ... It's hard enough to try to get boards to function and act in the long-term best interest of the corporation and not merely as "yes" men and women for the management. But it's even harder to do that in the context when somebody's out there, an opaque somebody, who's trying essentially to

extract cash from the company on a short term basis. The rest of us are stuck ... largely in indexed assets. And bizarrely enough, the business community has fought efforts to create some sort of transparency around such investments ... And that represents a real challenge to the corporate governance system ...

— Subodh Mishra

Getting It Right: Internal Controls for Equity Compensation

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Because the expensing of equity compensation is relatively recent, the body of knowledge relating to internal controls for this area is limited. The Certified Equity Professionals Institute (CEPI), a non-profit, academic organization with a mission of establishing, promoting, and providing certification and continuing education for the equity compensation industry, recently completed a research project entitled Guidance-Procedures-Systems (GPS) that focused on identifying the risks associated with stock op-

tions, and controls that should be implemented to mitigate that risk.

The GPS project highlights the challenges of administering equity compensation and the best practices of industry leaders in the areas of: general administration; grant process; exercise practices; tax and payroll issues; accounting issues; legal issues; and change of employment status. After a public comment period, the research results have been published. In each area, the publication provides illustrations of internal controls and examples of tests for the controls. A soft copy of the final publication is available at <http://cepi.scu.edu/>.

The initial research focused on stock options with time-based vesting issued to employees in the U.S. Some of the key controls relating to reliability of the financial statements are discussed in the following article. (Note: the next publication, on restricted stock and restricted stock units, will be released in mid-2008.)

With the expensing of equity compensation as required by Financial Accounting Standards No. 123R (FAS 123R), stock-based compensation may

have a significant impact on earnings-per-share, especially for companies in the technology sector. The expensing of equity compensation highlights the need for increased attention to the controls surrounding equity compensation. The recent scandal over options backdating has emphasized the importance of effective internal controls and the potential financial impact if such expenses are not handled properly. As acknowledgement of the increased risk relating to this area, the Public Company Accounting Oversight Board (PCAOB) recently issued guidance for external auditors when auditing equity compensation in *Staff Audit Practice Alert No. 1* dated July 28, 2006, and *Staff Questions and Answers*, dated Oct. 17, 2006.

Determining the Fair Value of Equity Compensation

Typically, compensatory options received by an employee are accounted for under FAS 123R whereby the grant date establishes the fair value of the option based upon the grant details and the assumptions used in an option-pricing model. Some of the factors in-

cluded in the most common pricing models are empirical data such as exercise price of the option and current price of the underlying shares on the grant date, as well as subjective data such as expected term and volatility.

Establishment of the grant date requires that the grant has been properly approved and all elements of the grant (such as number of shares, price, and terms) have been fixed. Confirmation of the grant details is critical to validate the expense and establish the proper amortization period. In the *PCAOB Staff Questions and Answers*, specific reference is made to the importance of establishing controls over the underlying data that supports the estimate of the fair value.

Since the fair value of the expense and the amortization period is determined on the grant date and is based upon the underlying terms of the grant, controls surrounding the grant process are critical. Some of the key controls that should be adopted include: formalizing the approval process; establishing and publishing grant dates in advance; standardizing the grant terms; reconciling the details; validating employee demographic data; and verifying the underlying data used for accounting.

Formalize the Approval Process

Corporate law, the company's corporate governance provisions, and the equity plan require the grant to be approved for it to be valid. Therefore, clearly defining the grant approval process and documenting approvals by appropriate parties is a key step in determining that a grant has occurred and the measurement date of the option is established.

Other recommended controls include:

- Formalize and document the approval process by category of grant (e.g., new hire, current employee, Section 16 officer, or contractor);

- Establish and document requirements on who is authorized to approve grants and the limits of their authority;
- Note when multiple authorizations are required;
- If the plan allows for delegation and the company chooses to delegate authority, establish appropriate limits such as the number of shares that can be granted on an overall basis, the number of shares that can be granted to an individual, and the number of shares that can be granted during a specific period of time;
- Indicate who is required to ap-

Because the expensing of equity compensation is relatively recent, the body of knowledge relating to internal controls for this area is limited.

prove grants to specific groups of employees (e.g., compensation committee members, wider board, or the CEO);

- Identify individuals with backup approval authority where appropriate; and
- Utilize grant guidelines wherever possible. Grants in excess of the guidelines should require special handling and an additional approval process.

The grant approval must be documented in writing. Documentation should include grant recipient, price, number of shares subject to the option, and grant terms. Approval at committee or board meetings should be docu-

mented in detail in the meeting notes. Unanimous written consents should be obtained with the date of receipt of the final consent determining the grant date.

Establish and Publish Grant Dates in Advance

Pre-selecting award dates improves transparency and avoids the appearance of timing grant awards to correspond with favorable events. Best practice is to establish a regular grant schedule and publish grant dates in advance. Many companies schedule award dates to coincide with a period when the board is not in possession of material, non-public information (i.e., an "open window"). Certain business situations may require a grant to be made off-schedule. In those cases special approval should be required prior to granting the option.

Employment status is particularly important when an employee receives an option grant as part of the employment offer. These are commonly referred to as "new-hire grants." Best practice is to issue all new-hire grants in accordance with a written policy that provides for options to be issued only at pre-determined regular grant dates. New hires receive grants only on a regular grant date following the date of hire. The offer letter indicates the number of shares to be granted and that the exercise price will be determined on the grant date. Grouping these grants will streamline the approval process and allow for batch processing of all new-hire grants. For example, all new hires in a particular month receive a grant on the 15th of the month after employment begins. Any employee hired in January, for instance, will be granted options on Feb. 15.

Using established grant dates will also minimize errors when recording options in the stock plan database. For example, if the company always grants options on the 10th day of each month, the stock plan database records can

easily be scanned to identify inappropriate grant dates.

Standardize Grant Terms

The terms of the option have a significant impact on the value of the option and the accrual period. For example, the expense associated with an option that vests over three years is accrued over three years; the expense associated with an option that vests over four years is accrued over four years. Changes in the terms of an option may require historical exercise behavior to be reconsidered in determining "expected term" and, therefore, influence the assumptions used in the pricing model.

Each plan has specific provisions regarding the granting of options to employees. Some plans are very restrictive, while others are broad and provide significant latitude in the type of equity instruments to be granted and their terms. Each plan is different and grants made under a plan must adhere to its specific requirements in order to be deemed a valid grant.

When a company operates multiple plans, adhering to the specific plan requirements can be challenging. The company needs to ensure that the grant is made from the appropriate plan and reflects the appropriate terms. In addition, the stock plan database must be able to track grants under different plans with different terms. Best practice is to:

- Standardize option terms (e.g., vesting schedule, etc.) and option documentation to minimize the potential of human error when processing the grant;
- Require special approval before granting options with non-standard terms; and
- Flag options granted with non-standard terms for special handling. If grant provisions are not standard, additional controls are necessary to ensure the option grant conforms to the plan re-

quirements and is a valid grant.

Reconcile the Details

The details of the grant determine the compensation expense, the accrual of the compensation expense, and the fully-diluted earnings per share calculations. Because the grant recommendation system is usually not integrated with the stock plan database, the potential for errors is increased.

To minimize these errors and validate that the information is complete and accurate, specific data capture controls must be implemented when recording option grants (either new-hire

When a company operates multiple plans, adhering to the specific plan requirements can be challenging ...

grants or periodic grants to current employees). As discussed previously, errors can be minimized by using standard grant terms and only granting on scheduled dates. Each option grant should be assigned a unique identifying number.

Prior to entering grants into the stock plan database, it should be confirmed that all grant recipients are still employed by the company as of the date of grant. Some employees may have been terminated since the option was recommended, but before the option was approved. When data is imported from one system to another, error checks should be incorporated into the process-testing for two grants to a

single person on the same day, for example, or ensuring that all details (exercise price, number of shares eligible to purchase under the option, and grant date) are included for each employee. Any errors noted and their disposition should be documented.

After the grants have been recorded, total option grants approved should be reconciled against awards recorded in the stock plan database on an aggregate basis. The reconciliation should include: Total number of shares; total number of employees receiving a grant; and aggregate price.

The reconciliation must be done for each plan under which options are granted. Where non-standard vesting terms are used, an additional reconciliation must be done for aggregate shares vesting per vest date.

Finally, it is important to verify that the stock plan database reflects a grant to the correct employee and the details of the option recorded in the stock plan database agree to the terms of the grant. This can be done by verifying that option terms recorded in the stock plan database correspond to the option approved for some randomly selected employees.

To maintain overall control of plans, it is also critical to reconcile the activity in each plan periodically. The reconciliation should include: shares outstanding; shares authorized; shares authorized and unissued; grants; cancellations-track to terminations and expirations; exercises; and forfeitures.

Detailed records should be compared to total shares. In addition, this information should be reconciled on a monthly basis with the transfer agent (i.e., to confirm that the transfer agent has taken the shares from the appropriate plan) and the broker (i.e., to confirm that all transactions are included).

It is also critical to monitor plan requirements such as the maximum number of shares that can be granted in a single year or to a single person. In addition, it is prudent to project

share needs for the next 12 months and take steps to ensure that the pool of shares is adequate to meet those needs.

Validate Employee Demographic Data

The fair value of an option is based upon the grant details and the assumptions used in the pricing model. The accuracy and completeness of the participant addresses, employment status, and personnel data must be maintained. As the stock plan database generally is not fully integrated with the human resource system, the employee demographic data must be imported from another source or manually entered. Either of these approaches increases the possibility of errors in employee data in the stock plan database. To minimize these errors, develop a standard process to update employee data. Update employee data from the human resource system on a periodic basis and

immediately prior to granting options. Audit this data monthly. Compare employee information in the stock plan database to the data stored in the human resource system and/or payroll system. Due to retirements and terminations, an employee may exist in the stock plan database, but not in the human resource system.

Verify the Underlying Data Used for Accounting

The estimate of fair value must be based on data that is accurate, complete, and valid. Administrators should establish a process to identify what data is required and how that data will be provided. Formal reports that include appropriate information and highlight parameters of the data reported should be prepared, along with a detailed description of each report including:

- Purpose of the report;

- Description of each field and details of how each number is calculated; and
- Details of what is included and excluded (e.g., types of participants, grant details, transaction details, vesting period, and reporting period).

It is prudent for the report formats to be periodically reviewed and updated, and appropriate parties should sign-off on these. Additional development should include a procedure to validate the information included in each report, documenting the assumptions used and the decisions made. A narrative documenting the process used to determine the fair value, including these items, should be prepared quarterly.

— Carol Rutlen

Forward, Then Back, Then Forward on Policies to Curb Defenses

The future of takeover defenses in Europe has been a key focus of debate in recent months as governance watchers closely monitor the words and deeds of regulators, who, they argue, have taken an inconsistent approach to curbing their use.

For years, key European Union (EU) officials voiced support for investor efforts to promote the concept of one-share, one-vote, arguing the right was consistent with broader EU efforts to dismantle takeover defenses. "The [c]ommission intends to undertake a study into the way in which the principle of one-share, one-vote can be translated into reality," Frits Bolkestein, head of the European Commission's Internal Markets, said in

a June 2004 speech. Ireland native Charlie McCreevy would succeed Bolkestein shortly after that speech, but the commitment remained, with McCreevy backing the right of one-share, one-vote during his own confirmation hearings.

In 2006, investors concerned with the wide spread prevalence of takeover defenses on the continent again took heart when the European Court of Justice ruled against the use of "golden share" takeover defenses--giving the holder veto rights over certain transactions--at Holland's dominant telecoms provider and postal carrier, holding that the use of such defenses restricted the free movement of capital. To investors, regulators were tak-

ing the right approach, despite ongoing calls (and actions) by politicians in some member states to allow for the use of poison pills and other defenses.

But that sentiment would begin to change this summer when a key EU official backed calls by politicians to implement defenses as foreign investors took equity positions in aerospace giant EADS. The German and French governments sought to install a golden share at the company following equity purchases by a state-controlled Russian Bank and the investment arm of the government of Dubai. EU Trade Commissioner Peter Mandelson tacitly backed the calls, arguing such a defense was warranted on national security grounds, despite the High Court

ruling that just one earlier that had chastised the Dutch government for doing so.

More recently, those who now question regulators' commitment to dismantling corporate takeover defenses in Europe point to an October decision by McCreevy to back away from his long-held position on equal voting rights. Indeed, on Oct. 3, McCreevy told European lawmakers that he would no longer push companies to adopt a one-share, one-vote capital structure, leaving investors and other proponents of shareholder democracy frustrated. "It's a shame that the capital markets integration project can't muster the strength to take on entrenched positions," noted Anne Simpson, executive director of the International Corporate Governance Network, on the heels of McCreevy's announcement.

McCreevy's decision effectively sanctions companies' continued use of the most common defenses, dubbed "control-enhancing mechanisms," such as multiple voting rights and voting right limitations, which are common in markets ranging from France to Sweden. In his comments to lawmakers, McCreevy said that shareholders should use their existing voting rights to push for better dialogue and enhanced transparency. But, he noted, a further layer of EU action is "not the right way to go," given that existing legislation now helps ensure transparency. McCreevy defended his reversal on the one-share, one-vote principle by citing the results of an EU-commissioned study, published in May, which found control-enhancing mechanisms had little effect on a company's financial performance and governance.

The EC has in recent years weighed the merits of two distinct approaches to concerns over control-enhancing mechanisms. One has centered on the so-called proportionality approach to shareholder rights, underpinned by the

one-share, one-vote principle, while the other centers on the principle of the freedom of contract, whereby companies can choose the capital structure they deem most appropriate, and investors can choose to invest or overlook the stock.

The study examined 464 listed European companies and the regulatory framework in 16 EU jurisdictions as well as Australia, Japan, and the United States. The study found that control-enhancing mechanisms are widely available in all those markets. That, the report's authors say, suggests the principle of freedom of contract is rooted in all legal cultures. "The general conclusion is that [the study] is a balanced piece of work, which indeed sheds some useful light on this complex subject," McCreevy told lawmakers.

But weeks later, investors would hear a different assessment on takeover defenses when, on Oct. 23, the High Court ruled that Volkswagen, Europe's biggest carmaker, could no longer employ a 47-year-old takeover defense that capped voting rights at 20 percent regardless of a shareholder's equity stake. The decision was a major victory for investors and was lauded by regulators as a boost to the nascent EU Takeover Directive, which since 2004 has struggled to level the playing field for defenses among member states.

In its decision, the court criticized provisions of the so-called "Volkswagen Law" that give the federal government and State of Lower Saxony--where Volkswagen is based--the right to appoint two supervisory board members, as well as an 80 percent supermajority requirement required to pass proposals at shareholder meetings. Lower Saxony holds roughly 20 percent of Volkswagen, while the court noted that just 75 percent support is required for the passage of proposals under German law.

The court dismissed arguments by the German government to keep in place protections for Volkswagen on

the grounds that failure to do so would have social, regional, economic, and industrial consequences, stating it was unable to explain or demonstrate why the law was necessary to protect workers or minority shareholders. "By maintaining in force the provisions of the Volkswagen Law concerning the capping of voting rights ... the Federal Republic of Germany has failed to fulfill its obligations," to allow for the free movement of capital, the court held. German justice ministry officials said the government "regretted that the court did not recognize [Berlin's] arguments about protecting Germany as a business location" but added the government would move quickly to rewrite the law, the Financial Times reported.

The High Court again struck down a national, defense-friendly law when it ruled in December that authorities in the Italian city of Milan could not appoint a majority of energy company AEM's board members. The city, which held 51 percent of the company's outstanding stock when it was listed in 1998, now holds just 33 percent of the firm, the court noted in its decision. "In that way they may exercise influence exceeding their levels of investment; that constitutes a restriction on the movement of capital," the court wrote. Regulators also are weighing potential legal action against Hungary, which recently adopted a law to protect its national energy champion, Magyar Olaj-Es Gaz.

But while investors and capital markets have signaled their approval of the court's stance on such defenses, regulatory action on shareholder democracy will not be forthcoming. Speaking to members of Britain's House of Lords on Dec. 6, McCreevy reaffirmed his intent to take no action on one-share, one vote. The net effect may well mean a spike in shareholder activism in 2008 to dismantle takeover defenses.

— Subodh Mishra

IOSCO Issues Hedge Fund Portfolio Valuation Guidance

IOSCO, the International Organization of Securities Commissions, published in November its final report on hedge fund portfolio valuation principles, which are meant to ensure that valuation is done accurately for the benefit of investors.

"Hedge fund asset management techniques are utilized in all asset classes and across numerous jurisdictions," noted Michel Prada, chairman of the French regulator, Autorité des Marchés Financiers, and head of IOSCO's Technical Committee, which crafted the guidance. "The valuation issues relating to investment portfolios and their importance, particularly in current market conditions, to existing and potential investors are the same across a wide range of jurisdictions."

The principles describe techniques which should strengthen the controls, oversight, and independence of the valuation process, IOSCO officials said in a statement announcing the release of the guidance. The principles emphasize the importance of written policies which are implemented consistently and regularly reviewed. These measures should strengthen the valuation process thereby making it more likely that the resulting valuation is appropriate. The guidance may also be helpful for institutional and sophisticated investors in assessing the quality of the valuation framework within hedge funds, officials at the Madrid-based organization say.

The principles are designed to be applicable across a wide range of jurisdictions, as well as a number of different hedge fund and service provider structures. The nine principles as recommended in the final report are as follows:

- Comprehensive, documented policies and procedures should be established for the valuation of financial instruments held or employed by a hedge fund.
- The policies should identify the methodologies that will be used for valuing each type of the financial instruments held or employed by the hedge fund.
- The financial instruments held or employed by hedge funds should be consistently valued according to the policies and procedures.
- The policies and procedures should be reviewed periodically to seek to ensure their continued appropriateness.
- A hedge fund's governing body should seek to ensure that an appropriately high level of independence is brought to bear in the application of the policies and procedures and whenever they are reviewed.
- The policies and procedures should seek to ensure that an appropriate level of independent review is undertaken of each individual valuation and in particular of any valuation that is influenced by the hedge fund's investment manager.
- A hedge fund's policies and procedures should describe the process for handling and documenting price overrides, including the review of price overrides by an independent party (which may be a separate group within the investment manager's organization).
- A hedge fund's governing body should conduct initial and periodic due diligence on third parties that are appointed to perform valuation services.
- The arrangements in place for the valuation of the hedge fund's investment portfolio should be transparent to investors.

Prada's Technical Committee received comments on a consultation report, issued in March, from several interested parties across the industry. The comments were generally favorable and consisted primarily of requests for clarification on how to apply the principles, IOSCO officials say. "Based on the positive response to the principles and the lack of substantive objection, the [c]ommittee published the [f]inal [r]eport largely

unchanged from the [c]onsultation [r]eport and with no substantive changes to the [p]rinciples themselves," officials noted in a statement.

IOSCO is recognized as the international standard setter for securities markets. The organization's membership regulates more than 90 percent of the world's securities markets, and IOSCO is a key international cooperative forum for securities regulatory agencies. IOSCO members regulate more than one hundred jurisdictions.

— *Subodh Mishra*

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ISS Governance Services' Checklist of 2007 Shareholder Resolutions

The following is a list of corporate governance shareholder proposals filed at 2,000 major U.S. corporations known to ISS Governance Services as of Dec. 15, 2007. Included are proposals that have been challenged at the SEC on substantive grounds, and proposals withdrawn after being filed. The "Status" column indicates the current status of the proposals or, if available, the voting support. See the explanation of abbreviations, footnotes and SEC staff decisions at the end of the Checklist.

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
3M Co	Establish outside director qualifications	Rossi Family	omitted	# (I-6)
	Link pay to performance	UBCJA	37.1 %	
	Eliminate supermajority provision	Rossi Family	omitted	# (I-10)
Abbott Laboratories	Repeal classified board	Kessler, L.	withdrawn	# (I-10)
	Link pay to performance	UBCJA	withdrawn	
	Separate chairman/CEO	Cath. Healthcare West	15.7 %	
	Advisory vote on compensation	UUA	41 %	##
ABX Air, Inc.	- Approve/disclose/limit SERPs	Ziebarth, W.	22.1 %	
	Link pay to performance	Teamsters	7.4 %	
Activision, Inc.	Commit to/report on board diversity	United Methodist	10.5 %	
	Advisory vote on compensation	As You Sow Fdn.	69.6 %	(P)
Adobe Systems Inc.	- Require equity awards to be held	AFSCME	28.5 %	
Aetna Inc.	Majority vote to elect directors	IBEW	withdrawn	
	Nominate executive retiree to the board	Aetna Retirees Associatio	3.7 %	
	Adopt cumulative voting	Davis, E.	18.3 %	
Affiliated Computer Services, Inc.	Advisory vote on compensation	AFSCME	24.6 %	##
AFLAC Incorporated	Advisory vote on compensation	Boston CAM	withdrawn	
Alaska Air Group, Inc.	Governance Authority	Nieman, S.	omitted	# (I-3)
	Vote on future poison pill	Chevedden, J.	34.6 %	
	Adopt cumulative voting	Stromberg, Brian	37.5 %	
	Independent board chairman	Hollister, B.	43.9 %	
	Shareholders may call special meeting	Dayton, T.	51 %	
	Shareholders recover proxy contest costs	Davidge, W.	1.9 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Allegheny Energy, Inc.	Add performance criteria to equity-based awards	Premoshis, James	51.7 %	(P)
	Majority vote to elect directors	UBCJA	50.2 %	## (I-10) (P)
	Majority vote to elect directors	Medice, T.	omitted	# (I-11)
	Separate chairman/CEO	Chevedden, J.	15.5 %	
	Shareholders may call special meeting	Lavelly, R.	57.2 %	(P)
	Advisory vote on compensation	Whalen, R.	omitted	# (I-3)
Alliant Energy Corp.	Link pay to performance	Sheet Metal Workers	withdrawn	
Allied Waste Industries, Inc.	Majority vote to elect directors	Teamsters	63.6 %	(P)
AltiGen Communications, Inc.	Create Value Enhancement Committee	Birmingham, Douglas	omitted	(I-7)
Altria Group, Inc.	Adopt cumulative voting	Rossi Family	25.1 %	
AMB Property Corp.	Link pay to performance	UBCJA	39.6 %	
Amerco	Approve and affirm SAC contracts	U-Haul Employees	83 %	(P)
American Express Co.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	
	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Adopt cumulative voting	Davis, E.	28.5 %	
American International Group, Inc.	3/4 of Independent directors must approve executive compensation	Bebchuk, L.	withdrawn	(B)
	Add performance criteria to equity-based awards	Steiner, W.	25.9 %	
	Advisory vote on compensation	Mercy Investment	withdrawn	
Amgen, Inc.	Majority vote to elect directors	IBEW	withdrawn	
	Repeal classified board	Steiner, W.	withdrawn	
AMR Corp.	Add performance criteria to equity-based awards	Haddon, P.	7.9 %	
	Adopt cumulative voting	Davis, E.	34.5 %	
	Shareholders may call special meeting	Chevedden, J.	53.9 %	(P)
	Advisory vote on compensation	Allied Pilots Association	39.3 %	
Analog Devices, Inc.	Majority vote to elect directors	UBCJA	38.8 %	
	Award performance-based stock options	Laborers	44 %	
	Reform option grant practices	LongView	withdrawn	
Anheuser-Busch Companies, Inc.	Majority vote to elect directors	Steiner, W.	omitted	# (B-1)
Anthracite Capital, Inc.	Cap executive pay	Morse, R.	omitted	# (H-3)

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Apache Corp.	Repeal classified board	Kessler, L.	withdrawn	
	Shareholders recover proxy contest costs	AFSCME	13.9 %	## (I-3)
Apple, Inc.	- Require equity awards to be held	AFSCME	38.3 %	
	Majority vote to elect directors	UBCJA	withdrawn	
	Link pay to performance	Teamsters	38.4 %	
	Reform option grant practices	LongView	47.4 %	
	Advisory vote on compensation	AFL-CIO	46.6 %	
Archer-Daniels-Midland Company	Advisory vote on compensation	Conn. Retirement Plans	awaiting tally	
Arkansas Best Corp.	Repeal classified board	LongView	63.8 %	(P)
Ashland Inc.	Majority vote to elect directors	CLPWA	43.6 %	
Astronics Corp.	Eliminate dual class stock	McIntyre, D. & A.	23.1 %	
AT&T Inc	- Approve/disclose/limit SERPs	UBCJA	32.1 %	
	Majority vote to elect directors	Rossi Family	omitted	# (I-10)
	Link pay to performance	Laborers	31.9 %	## (I-2)
	Cap executive pay	Morse, M.	omitted	# (B-1)
	Eliminate supermajority provision	Chevedden, R.	omitted	# (I-10)
	Shareholders may call special meeting	Steiner, W.	65.6 %	## (P)
	Advisory vote on compensation	Brockman, Bruce	43.8 %	##
Autodesk, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
AutoNation, Inc.	Shareholders may call special meeting	Chevedden, J.	33.4 %	
Avery Dennison Corp.	Majority vote to elect directors	UBCJA	withdrawn	
Avis Budget Group, Inc	Combine CEO and President positions	Rossi Family	withdrawn	# (I-1)
Avista Corporation	Repeal classified board	Osborn, John	omitted	# (I-10)
Avon Products, Inc.	Majority vote to elect directors	IBEW	withdrawn	
	Link pay to performance	UBCJA	27.4 %	
Axcelis Technologies Inc	Repeal classified board	NYC funds	91.4 %	(P)
Baker Hughes Incorporated	Eliminate supermajority provision	Rossi Family	omitted	# (I-10)

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Bank of America Corp.	Amend dividend reinvestment plan	Murphy, Thomas	omitted	# (I-7)
	Redeem or vote on poison pill	Chevedden, J.	not in proxy	# (I-10)
	Majority vote to elect directors	UBCJA	withdrawn	
	Change annual meeting	Coleman, Frank	omitted	# (I-7)
	Abolish stock options	Davis, E.	3.9 %	
	Independent board chairman	Rossi Family	16.5 %	
	Shareholders may call special meeting	SEIU	withdrawn	
	Shareholders may call special meeting	Chevedden, R.	withdrawn	
	Set board size	Ramsey, J.	3 %	##
Beazer Homes USA, Inc.	Majority vote to elect directors	Laborers	withdrawn	
Becton, Dickinson and Company	Adopt cumulative voting	Davis, E.	42.1 %	
Bed Bath & Beyond Inc.	Increase efforts to diversify board	Cath. Healthcare West	withdrawn	
	Advisory vote on compensation	AFSCME	35.6 %	
Belo Corp.	Repeal classified board	NYC funds	27.7 %	
Bemis Company, Inc.	Link executive pay to social criteria	Du Pont Workers	11.1 %	## (I-7)
BJ Wholesale Club, Inc	Majority vote to elect directors	UBCJA	not in proxy	
Blockbuster, Inc.	Eliminate dual class stock	Deephaven Capital Mana	61.9 %	(P)
	Advisory vote on compensation	NYC funds	57.8 %	(P)
Borders Group, Inc.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Independent board chairman	Chevedden, J.	omitted	# (I-10)
	Separate chairman/CEO	Chevedden, J.	39.4 %	
	Shareholders may call special meeting	Steiner, W.	68.7 %	(P)
Borg-Warner, Inc.	Majority vote to elect directors	UBCJA	60.8 %	(P)
Boston Properties Inc.	Repeal classified board	Davis, E.	83 %	(P)
Boston Scientific Corp.	- Require equity awards to be held	AFSCME	21.9 %	
Bristol-Myers Squibb Co.	Majority vote to elect directors	Miller, C.	withdrawn	
	3/4 of Independent directors must approve executive compensation	Bebchuk, L.	withdrawn	## (I-10) (B)
	Disclose executive compensation	Davis, E.	8.7 %	
	Adopt cumulative voting	Steiner, W.	47.6 %	
	Recoup Unearned Mgt. Bonuses	Steiner, K.	9.4 %	
	Advisory vote on compensation	AFSCME	withdrawn	
Broadcom Corp.	Reform option grant practices	Teamsters	15.9 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Brocade Communications Systems	No nominee who opposed supermajority elimination	Calpers	omitted	# (I-8)
Brooks Automation, Inc.	Reform option grant practices	LongView	withdrawn	
Burlington Northern Santa Fe Corp.	Majority vote to elect directors	Teamsters	withdrawn	# (I-3)
	Advisory vote on compensation	Rossi Family	omitted	# (I-3)
CA Inc	2/3 of Independent directors must approve CEO compensation	Bebchuk, L.	3.4 %	(B)
Cadence Design Systems, Inc.	Majority vote to elect directors	UBCJA	49.9 %	
Capital One Financial Corp.	Majority vote to elect directors	UBCJA	withdrawn	
	Advisory vote on compensation	Marianists/St. Louis	38.1 %	##
Capital Senior Living Corp.	Sell the company	Mercury Real Estate	29.1 %	# (I-7)
Cardinal Health, Inc.	Award performance-based stock options	NYC funds	awaiting tally	
	Advisory vote on compensation	AFSCME	awaiting tally	
Caterpillar Inc.	Majority vote to elect directors	UBCJA	38.7 %	(B)
	Repeal classified board	Chevedden, J.	omitted	# (H-3)
	Separate chairman/CEO	Mercy Investment	15.6 %	
Centerpoint Energy Inc.	Repeal classified board	Mathis, H.	69.6 %	(P)
	Link pay to performance	Sheet Metal Workers	withdrawn	
CenturyTel, Inc.	Survey on executive pay as excessive, appropriate , too low	CWA	18.7 %	
Chesapeake Corp.	Link pay to performance	NYC funds	11.7 %	
	Study/sell company	Karch Capital	not in proxy	# (B-1)
Chevron Corporation	Establish outside director qualifications	Kaplis, Hilda	omitted	# (C)
	Eliminate supermajority provision	Kessler, L.	omitted	# (I-10)
	Separate chairman/CEO	AFL-CIO	35.5 %	
	Poison pill policy	Bebchuk, L.	16.1 %	(B)
Cincinnati Bell Inc.	Survey on executive pay too high, low or adequate	CWA	withdrawn	# (I-11)
	Reincorporation	Sheet Metal Workers	withdrawn	
	Advisory vote on compensation	Calpers	withdrawn	
Cincinnati Financial Corp.	Reincorporation	UBCJA	withdrawn	
Cintas Corp.	Majority vote to elect directors	UBCJA	awaiting tally	
	Independent board chairman	Massachusetts Laborers' P	awaiting tally	(B)

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Cisco Systems, Inc.	Link pay to performance	UBCJA	awaiting tally	
	Advisory vote on compensation	CBIS	awaiting tally	
Citigroup Inc.	Minimum vesting requirement	Carlevaro, John G.	awaiting tally	
	Majority vote to elect directors	Mathis, H.	withdrawn	
	Adopt cumulative voting	Steiner, K.	18.2 %	
	Independent board chairman	Dee, R.	20.9 %	
	Cap executive pay	Longino III, George F.	25 %	(pre)
	Shareholders may call special meeting	Steiner, W.	62.4 %	## (B-1) (P)
	Advisory vote on compensation	AFSCME	46.2 %	
	Advisory vote on compensation	Chevedden, R.	omitted	# (I-3)
Citizens Communications Co.	Survey on executive pay as excessive, appropriate, low	Smith, Michael	omitted	# (B-2)
Citrix Systems, Inc.	Majority vote to elect directors	UBCJA	awaiting tally	
Clear Channel Communications, Inc.	Vote on future golden parachutes	LongView	withdrawn	
	Link pay to performance	Sheet Metal Workers	42.6 %	
	Increase compensation committee Independence	NYC funds	52.1 %	(P)
	Advisory vote on compensation	UUA	50 %	
Coca-Cola Enterprises Inc.	Vote on future golden parachutes	Teamsters	30.6 %	
Colgate-Palmolive Co.	Majority vote to elect directors	Rossi Family	not in proxy	
	Link pay to performance	UBCJA	36.8 %	
	Shareholders may call special meeting	Steiner, W.	63.6 %	(P)
Comcast Corp.	Report on compensation	Granata, Joseph	4.7 %	(B-1)
	Redeem or vote on poison pill	Kessler, L.	withdrawn	# (E-2)
	Abolish stock options	Davis, E.	2.1 %	
	Independent board chairman	Dee, R.	19.5 %	
	Eliminate dual class stock	CWA	31.2 %	
	Advisory vote on compensation	Sponcer, John	6.8 %	
Comerica Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Community Health Systems, Inc.	Link pay to performance	Laborers	withdrawn	
Computer Sciences Corporation	Commit to/report on board diversity	Marianist Society	34.7 %	
ConocoPhillips	Majority vote to elect directors	UBCJA	withdrawn	(B)
	Establish outside director qualifications	Kay, Sydney	5.9 %	
Consolidated Edison, Inc.	Disclose executive compensation	Davis, E.	14.1 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Constellation Energy Group, Inc.	Repeal classified board	IBEW	withdrawn	
Continental Airlines, Inc.	Add performance criteria to equity-based awards	Chevedden, J.	6.9 %	
Convergys Corp.	Reincorporate to U.S. state	UBCJA	59.5 %	(P)
Cooper Tire & Rubber Co.	Majority vote to elect directors	NYC funds	withdrawn	
	Vote on future golden parachutes	IBEW	withdrawn	
Corning Inc.	Repeal classified board	Steiner, K.	73.3 %	(P)
	Link pay to performance	UBCJA	withdrawn	
Countrywide Financial Corp.	Advisory vote on compensation	AFSCME	34.7 %	
Crawford & Co.	Sell the company	Steiner, W.	7.9 %	
Credence Systems Corp.	Link pay to performance	NYCERS	55.1 %	(P)
Crown Holdings, Inc.	Cap executive pay	Morse, R.	2.8 %	## (B-1)
CSX Corp.	Majority vote to elect directors	Teamsters	57 %	(P)
	Vote on future golden parachutes	IBEW	61.5 %	(P)
	Cap executive pay	Morse, M.	9.2 %	
	Shareholders may call special meeting	Rossi Family	69.6 %	(P)
Cummins , Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Cumulus Media Inc.	Repeal classified board	NYC funds	99.4 %	(P)
CVS Caremark Corp	Majority vote to elect directors	UBCJA	withdrawn	
	Cap executive pay	Shore, Barrie	4.8 %	
	Hire independent compensation consultant	LongView	44.8 %	
	Separate chairman/CEO	Steiner, W.	52.7 %	(P)
	Reform option grant practices	LongView	48.4 %	
D.R. Horton, Inc.	Majority vote to elect directors	Laborers	41.9 %	
Danaher Corp.	- Require equity awards to be held	AFSCME	21.1 %	
Deere & Co.	Majority vote to elect directors	UBCJA	withdrawn	
Dell Inc.	Minimum stock ownership by executives	AFSCME	awaiting tally	
	Declare Quarterly Dividend	bush, L.	awaiting tally	
Developers Diversified Realty Corp.	Reincorporation	UBCJA	withdrawn	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Devon Energy Corp.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	
Dollar Tree Stores, Inc.	Eliminate supermajority provision	Calpers	77.5 %	(P)
Dominion Resources, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Dover Corporation	Majority vote to elect directors	UBCJA	withdrawn	
Dow Jones & Co., Inc.	Independent board chairman	IAPE	12.1 %	
	Separate chairman/CEO	IAPE	awaiting tally	
DPL Inc.	Reincorporate from Ohio to Delaware	UBCJA	32.6 %	## (I-3)
	Link pay to performance	Moberly, D.	20.3 %	+ (I-1)
DTE Energy Co.	Ratify last years pay	Harrison, James	withdrawn	
	Hire independent compensation consultant	Laborers	withdrawn	
Dynegy, Inc.	Link pay to performance	Massachusetts Laborers' P	16.5 %	(P)
E.W. Scripps Co. (The)	Survey on executive pay as excessive, appropriate or too low	CWA	omitted	# (B-1)
Eastman Chemical Co.	- Approve/disclose/limit SERPs	UBCJA	26.4 %	##
	Redeem or vote on poison pill	Chevedden, R.	withdrawn	
Eastman Kodak Co.	Cap executive pay	Morse, R.	not in proxy	## (I-3)
Eaton Corporation	Link pay to performance	UBCJA	withdrawn	
Edison International	Award performance-based stock options	Chevedden, J.	43.1 %	
El Paso Corp	Shareholders may call special meeting	Rossi Family	68.6 %	(P)
	Poison pill policy	Bebchuk, L.	9.1 %	(B)
Electronic Data Systems Corp.	Majority vote to elect directors	Chevedden, R.	withdrawn	
	Shareholders may call special meeting	Rossi Family	59.1 %	(P)
Eli Lilly and Co.	Allow shareholders to amend bylaws (by majority vote)	Calpers	48.8 %	
	Majority vote to elect directors	UBCJA	withdrawn	
	Eliminate supermajority provision	Steiner, W.	62.6 %	(P)
	Separate chairman/CEO	Adrian Dominican Srs.	31.9 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
EMC Corp.	Establish independent audit committee	NYC funds	15 %	## (C)
	Majority vote to elect directors	Laborers	42.9 %	
	Link pay to performance	UBCJA	8.2 %	
	Eliminate supermajority provision	Steiner, W.	83.2 %	(P)
	Advisory vote on compensation	Calpers	withdrawn	
Emmis Communications Corp.	One vote per share	Martin Capital Manageme	24.4 %	
Energy East Corporation	Advisory vote on compensation	Rossi Family	omitted	# (I-3)
Entergy Corp.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	(B)
	Cap executive pay	Morse, R.	4.6 %	+
	Advisory vote on compensation	Rossi Family	omitted	# (I-3)
Equitable Resources, Inc.	Link pay to performance	Sheet Metal Workers	13.1 %	
Equity Residential	Majority vote to elect directors	UBCJA	47.4 %	
Exelon Corp.	Vote on future golden parachutes	IBEW	36.2 %	
	Repeal classified board	SEIU	withdrawn	
	Cap executive pay	Bastian, G.	omitted	# (I-7)
Express Scripts, Inc.	Reform option grant practices	LongView	withdrawn	
Exxon Mobil Corp.	List titles on notice page	Sifferman, T.	omitted	# (I-7)
	2/3 of Independent directors must approve executive compensation	Bebchuk, L.	7.1 %	(B)
	Link executive pay to social criteria	Northstar	11.6 %	
	Adopt cumulative voting	Rossi Family	31.9 %	## (B-1)
	Independent board chairman	RAM Trust	40 %	
	Cap executive pay	Morse, R.	5.1 %	
	Hire independent compensation consultant	AFL-CIO	not filed	
	Shareholders may call special meeting	Steiner, K.	47.7 %	## (B-1)
	Declare annual dividend	Dill, Jonathan	5.7 %	##
	Recoup Unearned Mgt. Bonuses	Steiner, W.	47.2 %	## (I-10)
Advisory vote on compensation	Needmor	41.3 %		
F5 Networks, Inc.	Link pay to performance	Sheet Metal Workers	mtg cancelled	
Fannie Mae	Adopt cumulative voting	Davis, E.	awaiting tally	
	Advisory vote on compensation	AFSCME	awaiting tally	
FedEx Corporation	Separate chairman/CEO	Teamsters	awaiting tally	
	Advisory vote on compensation	Chevedden, J.	awaiting tally	
Feldman Mall Properties, Inc.	Sell the company	Mercury Real Estate	12/28/2007	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Fifth Third Bancorp	Maximize shareholder value	Silverman, Howard	omitted	# (I-7)
	Recoup Unearned Mgt. Bonuses	Calpers	withdrawn	
First American Corp.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	
First Mariner Bancorp	Separate chairman/CEO	Maas, J.	37.8 %	
FirstEnergy Corporation	Reincorporate from Ohio to Delaware	Sheet Metal Workers	34.9 %	
	Majority vote shareholder committee	IBEW	40.1 %	
Fiserv, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Fluor Corp.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
Fonar Corp.	Cap executive pay	Morse, R.	3.9 %	
Ford Motor Company	Add performance criteria to equity-based awards	Chevedden, J.	9 %	
	Disclose executive compensation	Davis, E.	9.8 %	
	Link executive pay to environmental criteria	Wilson, Frederick P.	omitted	# (I-12)
	Limit option awards	Van Driessche, Orlen	withdrawn	# (E-2)
	Shareholders may call special meeting	Leeds, J.	19.8 %	
	Eliminate dual class stock	Chevedden, R. & V.	27.5 %	
Fortune Brands, Inc.	Repeal classified board	Rossi Family	68.2 %	(P)
	Link pay to performance	UBCJA	32.2 %	
Gannett Co., Inc.	Repeal classified board	Davis, E.	not in proxy	
	Independent board chairman	Teamsters	28.6 %	
Gencorp Inc.	Reincorporation	Sheet Metal Workers	withdrawn	
General Dynamics Corp.	Link pay to performance	IBEW	29.1 %	
	Award performance-based stock options	Chevedden, J.	28.1 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
General Electric Co.	Eliminate Dividend Equivalents	CWA	32 %	
	Report on compensation differential	Freeda, William	8.5 %	##
	Defend accuracy of certifications	Holmes, Sandra	omitted	# (I-4)
	Compensaton in stock	Kreilein, Myron	omitted	# (B-1)
	Majority vote to elect directors	UBCJA	withdrawn	
	Eliminate corporate jet	Wilson, James	omitted	# (I-7)
	Survey on executive pay as excessive, appropriate or too low	CWA	omitted	# (I-1)
	Adopt cumulative voting	Davis, E.	32.4 %	
	Independent board chairman	Quirini, H.	30.8 %	
	COLA for pensions	Balyszak, William	omitted	#
	Hire independent compensation consultant	AFL-CIO	withdrawn	
	Limit number of directorships	Steiner, W.	35.1 %	
	Nominate non-executive retiree to board	Mahar, K.	4.3 %	
General Motors Corp.	Add performance criteria to equity-based awards	Donahue, Donald & Ina	21.8 %	
	Disclose executive compensation	Davis, E.	withdrawn	
	Vote on future poison pill	Rossi Family	19.1 %	
	Adopt cumulative voting	Chevedden, R.	26.9 %	
	Cap executive pay	Morse, R.	omitted	# (B-2)
	Eliminate supermajority provision	Kessler, L.	18.2 %	
	Limit number of directorships	Seidenberg, M.	4.6 %	
	Shareholders may call special meeting	Lindaros, James	42.5 %	
	Set board size	Lauve, J.	3.8 %	
	Recoup Unearned Mgt. Bonuses	Chevedden, J.	12.1 %	
	Advisory vote on compensation	Koloski, Philip	omitted	# (B-2)
Genuine Parts Co.	Eliminate supermajority provision	Rossi Family	withdrawn	
Genzyme Corp.	Majority vote to elect directors	AFSCME	withdrawn	## (B)
	Majority vote to elect directors	UBCJA	withdrawn	
	Vote on future golden parachutes	AFL-CIO	37.5 %	# (I-9)
	Majority vote shareholder committee	IBEW	withdrawn	
Gilead Sciences, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Goodrich Corporation	Link pay to performance	IBEW	35.4 %	
H&R Block, Inc.	Independent board chairman	AFL-CIO	September	
Halliburton Co.	Director liability	Harrington Investments	withdrawn	
	Vote on future golden parachutes	LongView	withdrawn	# (I-10) (B)
	Vote on future poison pill	Bebchuk, L.	21.5 %	(B)
Harrah's Entertainment, Inc.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
HCP Inc.	Link pay to performance	UBCJA	35.4 %	
Hearst-Argyle Television, Inc.	Sell the company	Marathon Ptners	9 %	
HESS CORP	Repeal classified board	AFSCME	81.7 %	(P)
Hewlett-Packard Co.	Majority vote to elect directors	UBCJA	withdrawn	
	Report on Sarbanes Oxley costs	Action Fund Mgt.	not in proxy	
	Vote on future poison pill	Rossi Family	73.4 %	(P)
	Link pay to performance	Steiner, W.	53.8 %	(P)
	Separate chairman/CEO	Mathis, H.	17.3 %	
	Equal access to proxy	AFSCME	43 %	# (B)
Home Depot, Inc.	- Approve/disclose/limit SERPs	Laborers	43.6 %	
	Add performance criteria to equity-based awards	Mathis, H.	32.2 %	
	2/3 of Independent directors must approve executive compensation	Bebchuk, L.	withdrawn	(B)
	- Require equity awards to be held	IBEW	withdrawn	
	Director equity holding requirement	Kay, Sydney	omitted	+ (I-1)
	2 nominees for each board seat	Scheffler, Ann	omitted	# (I-3)
	Vote on future poison pill	Chevedden, J.	27.1 %	## (I-10)
	Independent board chairman	AFSCME	33.7 %	(B)
	Independent board chairman	Steiner, W.	withdrawn	(B)
	Link pay to performance	UBCJA	36.9 %	
	Maximize shareholder value	Relational Investors	withdrawn	
	Hire independent compensation consultant	AFL-CIO	withdrawn	
	Recoup Unearned Mgt. Bonuses	Steiner, K.	21.6 %	
	Advisory vote on compensation	NYC funds	43.2 %	
Honeywell International, Inc.	Six Sigma	Webb, Tom	7.2 %	
	Redeem or vote on poison pill	Chevedden, J.	omitted	# (I-10)
	Majority vote to elect directors	AFSCME	withdrawn	(B)
	Shareholders may call special meeting	Kreutzer, J.	74.2 %	(P)
	Award performance-based stock options	Miller, C.	43.3 %	
	Increase board independence	SEIU	omitted	# (I-10)
	Recoup Unearned Mgt. Bonuses	Steiner, W.	24.2 %	
Hovnanian Enterprises, Inc.	Eliminate dual class stock	LongView	1.8 %	
Humana Inc.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
IMS Health Inc.	Repeal classified board	Rossi Family	75.8 %	(P)
Ingersoll-Rand Company Limited	Advisory vote on compensation	AFSCME	56.7 %	(P)
	Advisory vote on compensation	AFSCME	pending	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Ingles Markets, Inc.	Minimum director stock ownership	Mullet, Carol	1.9 %	
Intel Corp.	Cap executive pay	Morse, R.	4.7 %	##
International Business Machines Corp.	Evaluate Age Discrimination in Retirement Plans	Leas, J.	11.5 %	
	Majority vote to elect directors	UBCJA	51.1 %	(P)
	Disclose executive compensation	Krueger, J.	omitted	# (E-2)
	Adopt cumulative voting	Davis, E.	43 %	
	Independent board chairman	Foster, E.	omitted	# (B-2)
	Link pay to performance	Laborers	omitted	# (E-2)
	Cap executive pay	Morse, R.	not in proxy	# (I-3)
	Eliminate supermajority provision	Rossi Family	omitted	# (I-10)
	Pension fund surplus reporting	McGreevy, Jr., William	42.8 %	
International Paper Co.	Majority vote to elect directors	Teamsters	85.5 %	## (I-10) (P)
	Establish outside director qualifications	Calpers	withdrawn	# (I-2)
	Repeal classified board	Steiner, W.	omitted	# (B-1)
Invacare Corp.	Repeal classified board	NYC funds	49 %	
J. C. Penney Co., Inc (HLDG CO)	Majority vote to elect directors	Sheet Metal Workers	56.8 %	(P)
	Vote on future golden parachutes	Bricklayers	75 %	(P)
Johnson & Johnson	- Approve/disclose/limit SERPs	UBCJA	32.9 %	
	Majority vote to elect directors	Sheet Metal Workers	44.8 %	
	Advisory vote on compensation	Steiner, W.	omitted	# (I-3)
Jones Apparel Group, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
	Advisory vote on compensation	Calvert	48.4 %	
JPMorgan Chase & Co.	Performance based restricted stock awards	AFSCME	42.1 %	
	Majority vote to elect directors	Steiner, K.	47.2 %	
	Abolish stock options	Davis, E.	5.3 %	
	Adopt cumulative voting	Rossi Family	37 %	
	Independent board chairman	Dee, R.	15.6 %	
	Award performance-based stock options	Steiner, W.	omitted	# (I-11)
	Advisory vote on compensation	Needmor	40.6 %	
	Advisory vote on compensation	Chevedden, R.	withdrawn	
KB Home	Add performance criteria to equity-based awards	AFL-CIO	54.6 %	(P)
	- Require equity awards to be held	IBEW	13.3 %	
	Vote on future golden parachutes	Bricklayers	85.6 %	(P)
Kellogg Co.	Majority vote to elect directors	Sheet Metal Workers	31.2 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Kellwood Co.	Repeal classified board	Calpers	89.1 %	(P)
	Eliminate supermajority provision	Calpers	withdrawn	
KeyCorp	Repeal classified board	Armstrong, G.	64.5 %	(P)
Kimberly-Clark Corp.	Majority vote to elect directors	UBCJA	withdrawn	
Kohl's Corp.	Majority vote to elect directors	UBCJA	20.6 %	
Krispy Kreme Doughnuts Inc.	Repeal classified board	Courage Special Situation	70.5 %	(B)
Layne Christensen Co.	Spin off division	North Star Partners LP	7 %	
LeapFrog Enterprises, Inc.	Maximize shareholder value	Steiner, W.	0.2 %	
Lear Corporation	Majority vote to elect directors	NYC funds	66.5 %	(P)
	Repeal classified board	Chevedden, J.	omitted	# (I-10)
Legg Mason, Inc.	Independent board chairman	IBEW	52.5 %	(P)
Lehman Brothers Holdings Inc.	Majority vote to elect directors	UBCJA	withdrawn	(B)
	Report on Sarbanes-Oxley costs	Action Fund Mgt.	omitted	# (I-10)
Lennar Corp.	Link pay to performance	Laborers	9.5 %	
Level 3 Communications, Inc.	Eliminate supermajority provision	Calpers	58.2 %	(P)
Lexmark International, Inc.	Majority vote to elect directors	NYC funds	withdrawn	
LifePoint Hospitals, Inc.	Repeal classified board	Accipiter Life Sciences F	not presented	
Limited Brands	Repeal classified board	AFSCME	awaiting tally	
Lincare Holdings, Inc.	Increase efforts to diversify board	Calvert	31.6 %	
Liz Claiborne, Inc.	Majority vote to elect directors	UBCJA	44.7 %	
Lockheed Martin Corp.	Disclose executive compensation	Davis, E.	7 %	
	Advisory vote on compensation	Chevedden, J.	42.1 %	
Loews Corp.	Adopt cumulative voting	Davis, E.	16.2 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Lowe's Companies, Inc.	Vote on future golden parachutes	LongView	29.3 %	
	Establish outside director qualifications	Kay, Sydney	2.2 %	## (I-6)
	Adopt cumulative voting	Davis, E.	not in proxy	
	Repeal classified board	AFL-CIO	withdrawn	
	Repeal classified board	Chevedden, J.	72.8 %	(P)
	Link pay to performance	Laborers	22.8 %	
LSI Corp	Majority vote to elect directors	UBCJA	57.3 %	(P)
Luby's, Inc.	Repeal classified board	Mathis, H.	44.3 %	
Macrovision Corp.	Reform option grant practices	LongView	withdrawn	
Macy's Inc	Entitle shareholders to a paper stock certificate	Davis, E.	not in proxy	
Manor Care, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Marathon Oil Corp	Eliminate supermajority provision	Rossi Family	omitted	# (I-10)
Markel Corp.	Increase efforts to diversify board	Calvert	withdrawn	
Marriott International Inc.	Adopt cumulative voting	Bricklayers	withdrawn	
Marsh & McLennan Companies, Inc.	Majority vote to elect directors	UBCJA	withdrawn	(B)
	Vote on future golden parachutes	Calpers	withdrawn	
Marshall & Ilsley Corp.	Link pay to performance	UBCJA	withdrawn	
Martek Biosciences Corp.	Repeal classified board	LongView	withdrawn	
Masco Corp.	Majority vote to elect directors	Laborers	withdrawn	
	Link pay to performance	UBCJA	withdrawn	
Mattel, Inc.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Link pay to performance	UBCJA	47.3 %	
	Cap executive pay	Morse, R.	1.5 %	
	Separate chairman/CEO	Chevedden, J.	22 %	
McAfee, Inc.	Reform option grant practices	LongView	May	
MeadWestvaco Corp.	Redeem or vote on poison pill	Steiner, W.	79.3 %	(P)
	Majority vote to elect directors	UBCJA	48.5 %	
Merck & Co., Inc.	Eliminate supermajority provision	Steiner, W.	withdrawn	
	Advisory vote on compensation	AFL-CIO	49.2 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Merrill Lynch & Co., Inc.	Add performance criteria to equity-based awards	AFL-CIO	39.5 %	
	Report on Sarbanes-Oxley costs	Action Fund Mgt.	omitted	# (I-7)
	Report on Sarbanes-Oxley costs	Action Fund Mgt.	omitted	# (I-7)
	Adopt cumulative voting	Davis, E.	38.2 %	
	Advisory vote on compensation	AFSCME	45.6 %	
Millennium Pharmaceuticals, Inc.	Link pay to performance	UBCJA	withdrawn	
Millipore Corp.	Link pay to performance	UBCJA	withdrawn	
Molson Coors Brewing Co	Eliminate dual class stock	Teamsters	withdrawn	# (B-1)
Monsanto Co.	Separate chairman/CEO	School Srs./Notre Dame	13.7 %	
Moody's Corporation	Repeal classified board	Rossi Family	49.6 %	
Morgan Stanley	Report on Sarbanes-Oxley costs	Action Fund Mgt.	omitted	# (I-7)
	Majority vote to elect directors	Laborers	withdrawn	
	Link pay to performance	Sheet Metal Workers	withdrawn	
	Eliminate supermajority provision	Rossi Family	59.7 %	(P)
	Advisory vote on compensation	AFSCME	39.2 %	
Nabi Biopharmaceuticals	Allow Third Point to fill board vacancies	Third Point Management	withdrawn	
National Fuel Gas Co.	Restrict director compensation	Belfield, R.	7.7 %	
Nationwide Financial Services, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Neurocrine Biosciences, Inc.	Repeal classified board	NYC funds	54.6 %	(P)
Newell Rubbermaid Inc.	Majority vote to elect directors	UBCJA	75.6 %	(P)
	Eliminate supermajority provision	Steiner, W.	81.5 %	(P)
Newmont Mining Corp.	Separate chairman/CEO	Rossi Family	51.9 %	(P)
News Corporation	Repeal classified board	Davis, E.	awaiting tally	
	Eliminate dual class stock	Mayne, Stephen	awaiting tally	
Nicor Inc.	Eliminate supermajority provision	Rossi Family	66.5 %	(P)
NiSource Inc.	Majority vote to elect directors	Laborers	withdrawn	
	Redeem or vote on poison pill	Chevedden, R.	withdrawn	
Noble Energy, Inc.	Separate chairman/CEO	Stromberg, Brian	24.3 %	
Norfolk Southern Corp.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Northrop Grumman Corp.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Independent board chairman	Chevedden, J.	15.2 %	
	Shareholders may call special meeting	Barthel, G.	omitted	# (I-2)
	Advisory vote on compensation	SEIU	38.1 %	## (I-3)
Novell, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Novellus Systems, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
NSTAR	Record keeping	Crapo, J.	omitted	# (I-3)
Nucor Corp.	Majority vote to elect directors	UBCJA	44.1 %	
NVR, Inc.	Majority vote to elect directors	Laborers	withdrawn	
NYSE Euronext	Entitle shareholders to a paper stock certificate	Davis, E.	omitted	# (I-7)
O Charleys Inc.	Repeal classified board	NYC funds	90.4 %	(P)
Occidental Petroleum Corp.	Add performance criteria to equity-based awards	Rossi Family	29.8 %	
	Advisory vote on compensation	Needmor	48.4 %	
OfficeMax Incorporated	Majority vote shareholder committee	IBEW	51.4 %	(P)
Omicare, Inc.	Link pay to performance	UBCJA	withdrawn	
ONEOK, Inc.	Separate chairman/CEO	Lloyd Noble II Trust	22.8 %	
Paccar Inc.	Majority vote to elect directors	UBCJA	41.9 %	
	Redeem or vote on poison pill	Chevedden, J.	43.6 %	
Par Pharmaceutical Cos., Inc.	Link pay to performance	Sheet Metal Workers	awaiting tally	
	Link pay to performance	NYC funds	withdrawn	
	Advisory vote on compensation	NYC funds	56.8 %	(pre)
Peabody Energy Corp.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	(B)
	Repeal classified board	AFL-CIO	79.8 %	(P) (B)
	Majority vote shareholder committee	SEIU	withdrawn	
PepsiAmericas, Inc.	Majority vote to elect directors	Teamsters	withdrawn	
PerkinElmer, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
	Link pay to performance	IBEW	42.8 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Pfizer Inc.	Abolish stock options	Davis, E.	omitted	# (I-7)
	Establish outside director qualifications	Kay, Sydney	4.2 %	
	Adopt cumulative voting	Rossi Family	42.3 %	
	Advisory vote on compensation	Steiner, W.	withdrawn	
PG&E Corp.	Add performance criteria to equity-based awards	Chevedden, R.	9.7 %	# (I-3)
	Adopt cumulative voting	Levine, S.	48.9 %	
	Advisory vote on compensation	Rossi Family	omitted	
Pier 1 Imports, Inc	Link pay to performance	NYC funds	25.6 %	
Pinnacle West Capital Corp.	Repeal classified board	Rossi Family	withdrawn	
Piper Jaffray Cos	Repeal classified board	Armstrong, G.	omitted	# (I-10)
Plains Exploration & Production Co	Increase efforts to diversify board	Calvert	withdrawn	
Plum Creek Timber Company, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
	Link pay to performance	Sheet Metal Workers	9.7 %	
PNC Financial Services Group, Inc.	Redeem or vote on poison pill	Kessler, L.	withdrawn	
PPG Industries, Inc.	Majority vote to elect directors	UBCJA	withdrawn	(P)
	Vote on future golden parachutes	IBEW	68.7 %	
PPL Corp.	Eliminate supermajority provision	Rossi Family	70.9 %	(P)
Praxair, Inc.	Majority vote to elect directors	Sheet Metal Workers	76.3 %	(P)
	Vote on poison pill	Rossi Family	19.7 %	
Progress Energy, Inc.	Vote on future golden parachutes	IBEW	withdrawn	
Progress Software Corp.	Link pay to performance	Teamsters	45 %	
	Reform option grant practices	LongView	withdrawn	
Prudential Financial Inc	Approve executive compensation	Carrington, W.	omitted	# (I-3)
	Advisory vote on compensation	SEIU	withdrawn	
Puget Energy, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
Pulte Homes Inc.	Majority vote to elect directors	Sheet Metal Workers	47.4 %	(P)
	Repeal classified board	Bricklayers	61.3 %	
	Award performance-based stock options	Laborers	44.8 %	
	Majority vote shareholder committee	AFL-CIO	22.4 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Qwest Communications International Inc.	- Approve/disclose/limit SERPs	Floyd, H.	31 %	
	Add performance criteria to equity-based awards	Graham, P.	17.5 %	
	Separate chairman/CEO	Armstrong, G.	17.6 %	
	Advisory vote on compensation	AFSCME	22.8 %	## (I-3)
R. R. Donnelley & Sons Co.	Majority vote to elect directors	UBCJA	withdrawn	
	Repeal classified board	Steiner, W.	25.1 %	
R.H. Donnelley Corp.	Repeal classified board	Rossi Family	79.1 %	(P) (pre)
Radian Group Inc.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	
Radioshack Corp.	Shareholders may call special meeting	Steiner, W.	71.8 %	(P)
Raytheon Co.	- Approve/disclose/limit SERPs	AFL-CIO	50.2 %	
	Adopt cumulative voting	Chevedden, J.	42.3 %	
	Separate chairman/CEO	Chevedden, R.	14.7 %	
Reliant Energy Inc.	Equal access to proxy	Seneca Capital	withdrawn	# (H-3)
Research Frontiers Inc.	Set board size	Kupfer, Barry	27.5 %	
Rigel Pharmaceuticals, Inc	Majority vote to elect directors	NYC funds	withdrawn	
Rite Aid Corp.	Majority vote to elect directors	UBCJA	not in proxy	
Roper Industries, Inc.	Increase efforts to diversify board	Calvert	withdrawn	
SAFECO Corp.	Majority vote to elect directors	UBCJA	45 %	
Safeway Inc.	Adopt cumulative voting	Davis, E.	36.9 %	
	Independent board chairman	Bricklayers	13.8 %	
	Advisory vote on compensation	Rossi Family	omitted	# (I-3)
Saks Incorporated	Adopt cumulative voting	Davis, E.	31.6 %	
Sandisk Corp.	Add performance criteria to equity-based awards	AFL-CIO	44.7 %	
Sanmina-SCI Corp.	Independent board chairman	Calpers	withdrawn	
	Reform option grant practices	LongView	withdrawn	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Sara Lee Corp.	Report on SEC shareholder proposal rules	Crapo, J.	not applicable	
	Allow shareholders to amend bylaws by majority vote	Calpers	80.6 %	(P)
	Hire independent compensation consultant	AFL-CIO	withdrawn	
	Advisory vote on compensation	AFSCME	48.5 %	
Schering-Plough Corp.	Add performance criteria to equity-based awards	Steiner, W.	29.6 %	## (I-7)
	Redeem or vote on poison pill	Steiner, K.	omitted	# (I-10)
	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Eliminate supermajority provision	Rossi Family	withdrawn	
	Advisory vote on compensation	SEIU	withdrawn	
Sempra Energy	Majority vote to elect directors	Laborers	63.6 %	(P)
	Majority vote to elect directors	Rossi Family	omitted	# (I-11)
	- Approve/disclose/limit SERPs	UBCJA	23.7 %	
	Eliminate supermajority provision	Chevedden, R.	73.8 %	(P)
	Criteria for stock split	Gety, George & Sylvia	omitted	# (B-1)
Semtech Corp.	Reform option grant practices	LongView	withdrawn	
Sierra Pacific Resources	Repeal classified board	Rossi Family	61.9 %	(P)
Simon Property Group, Inc.	Vote on future golden parachutes	Bricklayers	55.4 %	(P)
	Link pay to performance	Massachusetts Laborers' P	30.5 %	
	Increase board independence	Laborers	not in proxy	
	Advisory vote on compensation	IBEW	41.8 %	
Six Flags, Inc.	Increase efforts to diversify board	GBPUMC	withdrawn	
SLM Corporation	Majority vote to elect directors	UBCJA	withdrawn	
Smithfield Foods, Inc.	Shareholder approval of merger with stock issuance	LongView	awaiting tally	
Smurfit - Stone Container Corp.	Cap executive pay	Morse, R.	omitted	# (B-1)
Source Interlink Companies, Inc	Pay cash dividend	Lederley, Jonathan	omitted	# (I-13)
Southwest Airlines Co.	Eliminate supermajority provision	Chevedden, J.	13 %	
Sovereign Bancorp, Inc.	Repeal classified board	Calpers	withdrawn	
Spectrum Brands Inc	Repeal classified board	NYC funds	33.3 %	
Sprint Nextel Corp	Majority vote to elect directors	AFL-CIO	withdrawn	
	Advisory vote on compensation	SEIU	39.6 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Staples, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
	Eliminate supermajority provision	Chevedden, J.	79.5 %	(P)
State Street Corp. (Boston)	Independent board chairman	Jorstad, P.	omitted	# (I-6) (B)
Stratus Properties Inc.	Repeal classified board	Mathis, H.	63.3 %	(P)
Stryker Corp.	Add performance criteria to equity-based awards	AFL-CIO	25.5 %	
Sun Microsystems, Inc.	Eliminate supermajority provision	Steiner, K.	awaiting tally	
	Advisory vote on compensation	AFSCME	awaiting tally	
Sunrise Senior Living Inc.	Recoup Unearned Mgt. Bonuses	LongView	May	
SunTrust Banks, Inc.	Majority vote to elect directors	UBCJA	51 %	(P)
	Repeal classified board	AFSCME	withdrawn	
Superior Industries International, Inc.	Majority vote to elect directors	NYC funds	40.8 %	
Symantec Corp.	Advisory vote on compensation	Herrick, Barbara	48.6 %	
Take-Two Interactive Software, Inc.	Link executive pay to social criteria	Srs. St. Joseph Nazareth	10.6 %	
Target Corporation	Majority vote to elect directors	AFL-CIO	withdrawn	
	Award performance-based stock options	AFL-CIO	withdrawn	
Taubman Centers, Inc.	Repeal classified board	SEIU	55.6 %	
Tenet Healthcare Corp.	Link pay to performance	NYC funds	not in proxy	
Teradyne, Inc.	Majority vote to elect directors	NYC funds	withdrawn	
Textron Inc.	Majority vote to elect directors	UBCJA	withdrawn	
The Allstate Corp.	Majority vote to elect directors	Laborers	withdrawn	
	Eliminate supermajority provision	Rossi Family	withdrawn	
The Bank Of New York Mellon Corp.	Adopt cumulative voting	Davis, E.	37.7 %	
	Eliminate supermajority provision	Steiner, W.	70.1 %	(P)
	Advisory vote on compensation	AFSCME	44.8 %	
	Advisory vote on compensation	Convent of Mary Reparatr	44.8 %	
The Bear Stearns Companies Inc.	Report on Sarbanes-Oxley costs	Action Fund Mgt.	omitted	#
	Link pay to performance	UBCJA	32 %	
	Advisory vote on compensation	Kessler, L.	omitted	# (I-3)

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
The Black & Decker Corp.	Link pay to performance	UBCJA	39.5 %	
The Boeing Co.	Add performance criteria to equity-based awards	Watt, D.	32.3 %	
	Majority vote to elect directors	UBCJA	withdrawn	
	Vote on future poison pill	Chevedden, J.	25.6 %	## (I-10)
	Independent board chairman	Finnegan, T.	19.5 %	
	Recoup Unearned Mgt. Bonuses	Olsen, E.	18.4 %	
	Advisory vote on compensation	Chevedden, R.	42.3 %	
The Charles Schwab Corp.	Majority vote to elect directors	Sheet Metal Workers	48.9 %	(B)
The Chubb Corp.	Majority vote to elect directors	UBCJA	withdrawn	
The Coca-Cola Company	Add performance criteria to equity-based awards	Shepherd, E.	31.9 %	
	Cap executive pay	Morse, M.	not presented	##
	Advisory vote on compensation	Benedictine Srs.	30.4 %	
The Dow Chemical Company	Eliminate supermajority provision	Rossi Family	omitted	# (I-10)
The Goldman Sachs Group, Inc.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
The Goodyear Tire & Rubber Co.	- Approve/disclose/limit SERPs	UBCJA	51.7 %	
	Reincorporation	Sheet Metal Workers	withdrawn	
	Link pay to performance	IBEW	37.8 %	
	Eliminate supermajority provision	Rossi Family	66.8 %	(P)
The Interpublic Group of Companies, Inc.	Eliminate supermajority provision	Steiner, K.	withdrawn	
	Separate chairman/CEO	Steiner, W.	11.7 %	
	Shareholders may call special meeting	Steiner, K.	43.3 %	
The Kroger Co.	Reincorporation	UBCJA	not in proxy	
The Lubrizol Corp.	Reincorporation	UBCJA	withdrawn	
The Macerich Co.	Repeal classified board	SEIU	90.1 %	(P)
The McGraw-Hill Companies, Inc.	Repeal classified board	Rossi Family	77.6 %	(P)
	Eliminate supermajority provision	Steiner, K.	74.7 %	## (B-2) (P)
The New York Times Co.	Separate chairman/CEO	Morgan Stanley Investme	omitted	# (B-1)
	Eliminate dual class stock	Morgan Stanley Investme	omitted	# (B-1)
The Pep Boys - Manny, Moe & Jack	Vote on future poison pill	Chevedden, J.	62 %	(P)

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
The Pepsi Bottling Group, Inc.	Majority vote to elect directors	LongView	withdrawn	##
The Procter & Gamble Company	Abolish stock options	Davis, E.	3.8 %	
The Progressive Corp.	Link pay to performance	UBCJA	withdrawn	
The Ryland Group, Inc.	- Approve/disclose/limit SERPs	Laborers	withdrawn	
The Shaw Group Inc.	Vote on future golden parachutes	Calpers	65.5 %	(B)
The Sherwin-Williams Co.	Reincorporation	Sheet Metal Workers	withdrawn	
The Stanley Works	Repeal classified board	Conn. Retirement Plans	79.2 %	(P)
The TJX Companies, Inc.	Majority vote to elect directors	UBCJA	46.1 %	
The Travelers Companies, Inc.	Majority vote to elect directors	UBCJA	withdrawn	
The Walt Disney Company	Adopt antigreenmail provision	Davis, E.	15 %	
	Majority vote to elect directors	Sheet Metal Workers	withdrawn	+
	Redeem/vote on future poison pill	Bebchuk, L.	58.3 %	
The Williams Companies, Inc.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	
Thermo Fisher Scientific Inc	Majority vote to elect directors	UBCJA	withdrawn	(B)
Thermogenesis Corp.	Majority vote to elect directors	Purnell, Walter	awaiting tally	
Tiffany & Co.	Shareholders may call special meeting	Steiner, W.	omitted	# (I-2)
Time Warner Inc	Independent board chairman	CBIS	16 %	
	Eliminate supermajority provision	Steiner, W.	79.3 %	(P)
	Separate chairman/CEO	Basilian Fathers/Toronto	withdrawn	
	Separate chairman/CEO	Conn. Retirement Plans	withdrawn	
	Restore right to call a special meeting	Steiner, K.	64.8 %	(P)
	Poison pill policy	Bebchuk, L.	% For=3.6	(B)
	Advisory vote on compensation	IBEW	40.6 %	
Timken Co. (The)	Reincorporation	UBCJA	withdrawn	
Tollgrade Communications, Inc.	Repeal classified board	LongView	withdrawn	
Torchmark Corp.	Increase efforts to diversify board	Christus Health	8.2 %	
TOUSA Inc	Link pay to performance	Laborers	awaiting tally	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Tribune Co.	Repeal classified board Independent board chairman	Davis, E. Teamsters	59.7 % not in proxy	(P)
Tyco International Ltd.	Advisory vote on compensation	AFSCME	withdrawn	
U.S. Bancorp	- Approve/disclose/limit SERPs Advisory vote on compensation	UBCJA AFSCME	31.8 % 42.9 %	
UCBH Holdings, Inc.	Repeal classified board	Armstrong, G.	89.8 %	(P)
Ultratech Inc.	Repeal classified board	NYC funds	final vote	
Union Pacific Corp.	Majority vote to elect directors	Sheet Metal Workers	50.3 %	(P)
Unisys Corp.	Majority vote to elect directors	UBCJA	withdrawn	
United Parcel Service, Inc.	Establish outside director qualifications	Kaplis, Hilda	omitted	+ (I-8)
United Rentals, Inc.	Majority vote to elect directors	IBEW	withdrawn	
United Technologies Corp.	Advisory vote on compensation Limit director terms Link pay to performance Advisory vote on compensation	Marianists/St. Louis Davis, E. Teamsters AFL-CIO	withdrawn 3 % 32.1 % 40.1 %	
United Western BanCorp Inc.	Repeal classified board	Armstrong, G.	13 %	
UnitedHealth Group Incorporated	- Approve/disclose/limit SERPs Add performance criteria to equity-based awards Majority vote to elect directors Equal access to proxy Advisory vote on compensation	Laborers AFL-CIO UBCJA Calpers Hermes	28.8 % 41.5 % withdrawn 45.3 % 41.7 %	## (I-8)
Universal Health Realty Income Trust	Independent board chairman	SEIU	37.9 %	
US Airways Group, Inc.	Repeal classified board	Davis, E.	not in proxy	
USG Corp.	- Approve/disclose/limit SERPs	UBCJA	withdrawn	
UST Inc.	Repeal classified board	Rossi Family	omitted	# (I-10)
Valero Energy Corp.	Majority vote to elect directors - Approve/disclose/limit SERPs Advisory vote on compensation	Sheet Metal Workers UBCJA UUA	63 % 33.9 % 53 %	(P) (P)

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Verizon Communications	Increase board independence	SEIU	omitted	# (I-7)
	Majority vote to elect directors	UBCJA	withdrawn	(B)
	Vote on future golden parachutes	AFL-CIO	47 %	## (I-10)
	Vote on future poison pill	Rossi Family	19 %	## (I-10)
	Abolish stock options	Davis, E.	9 %	
	Independent board chairman	IBEW	omitted	# (I-6)
	Link pay to performance	Laborers	omitted	# (I-11)
	Hire independent compensation consultant	CWA	46.1 %	
	Limit number of directorships	Association of BellTel Re	12 %	
	Award performance-based stock options	Steiner, K.	omitted	# (I-11)
Advisory vote on compensation	Jones, C.	50.2 %	## (P)	
Visteon Corporation	Repeal classified board	Leeds, J.	omitted	# (I-10)
Vornado Realty Trust	Majority vote to elect directors	UBCJA	53.5 %	(P)
Vulcan Materials Co.	Link pay to performance	UBCJA	withdrawn	
Wachovia Corp.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Establish outside director qualifications	Kaplis, Hilda	4.6 %	+
	Link pay to performance	UBCJA	withdrawn	
	Separate chairman/CEO	Dee, R.	16.3 %	
	Advisory vote on compensation	AFSCME	38.7 %	
Wal-Mart Stores, Inc.	Disclose Executive Compensation	ICCR	3.2 %	
	Establish outside director qualifications	Kaplis, Hilda	0.9 %	## (I-8)
	Adopt cumulative voting	Steiner, W.	17.8 %	
	Adopt cumulative voting	Bricklayers	withdrawn	
	Link pay to performance	Laborers	14 %	## (I-10)
	Hire independent compensation consultant	AFL-CIO	omitted	# (B)
	Report on stock options by race/sex	Northstar	10.9 %	
	Advisory vote on compensation	LongView	18.4 %	## (I-7)
Warwick Valley Telephone Company	Increase quarterly dividend	Santa Monica Partners	29.5 %	
Washington Mutual, Inc	Redeem or vote on poison pill	Kessler, L.	withdrawn	# (B-1)
	- Approve/disclose/limit SERPs	UBCJA	25.3 %	
	Majority vote to elect directors	IBEW	43.6 %	
	Establish outside director qualifications	Kay, Sydney	3.9 %	## (C) (pre)
	Link pay to performance	Sheet Metal Workers	withdrawn	
Weingarten Realty Investors	Link pay to performance	UBCJA	withdrawn	
Wellman, Inc.	Sell the company	Steiner, W.	not presented	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
WellPoint Inc	Advisory vote on compensation	Conn. Retirement Plans	omitted	#
Wells Fargo & Company	- Approve/disclose/limit SERPs	UBCJA	27.4 %	
	Majority vote to elect directors	IBEW	withdrawn	
	Majority vote to elect directors	AFSCME	withdrawn	
	Advisory vote on compensation	Walden	35.1 %	
Wendy's International, Inc.	Reincorporation	Sheet Metal Workers	withdrawn	# (I-7)
WesBanco, Inc.	Maximize shareholder value	Jewelcor Management	13.9 %	
Weyerhaeuser Co.	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Eliminate supermajority provision	Rossi Family	76.9 %	(P)
WGL Holdings, Inc.	Adopt cumulative voting	Davis, E.	34.9 %	
	Independent board chairman	Taylor, G.	25.3 %	
	Hire independent compensation consultant	Teamsters	28.8 %	
Whirlpool Corp.	Majority vote to elect directors	UBCJA	withdrawn	
Whole Foods Market, Inc.	Separate chairman/CEO	Chevedden, J.	20.3 %	
Wind River Systems, Inc.	Independent board chairman	LongView	withdrawn	# (E-2)
Windstream Corp.	- Require equity awards to be held	IBEW	10.5 %	
Wm. Wrigley Jr. Co.	Cap executive pay	Morse, R.	omitted	# (NA)
Wyeth	No interlocking directorships	AFL-CIO	6.9 %	
	Separate chairman/CEO	United Methodist	42.1 %	
	Increase board independence	SEIU	6.9 %	
	Recoup Unearned Mgt. Bonuses	Steiner, K.	53.2 %	(P)
	Advisory vote on compensation	Rossi Family	41.3 %	
Xcel Energy Inc.	Link pay to performance	Sheet Metal Workers	17.7 %	## (I-10)
	Separate chairman/CEO	Armstrong, G.	36.5 %	##
Xerox Corp.	Majority vote to elect directors	UBCJA	withdrawn	
Yahoo!, Inc.	Link pay to performance	UBCJA	33.8 %	
YRC Worldwide Inc	Majority vote to elect directors	Teamsters	withdrawn	
Yum Brands, Inc.	Vote on future golden parachutes	Bricklayers	59.9 %	(P)
	Link pay to performance	UBCJA	27.4 %	
	Advisory vote on compensation	Glenmary Home Mission	40.7 %	

Company	Resolution	Sponsor/Coordinator	Mtg Date/Status	Footnote
Zimmer Holdings Inc	Majority vote to elect directors	Sheet Metal Workers	withdrawn	
	Eliminate supermajority provision	Rossi Family	80 %	(P)
Zions Bancorporation	Majority vote to elect directors	UBCJA	withdrawn	

Footnotes

- withdrawn The proponents withdrew the proposal, usually after an agreement with the company.
- omitted The Securities and Exchange Commission staff issued a letter indicating it will not pursue legal action against the company for omitting the proposal from the proxy statement.
- # The company challenged the proposal at the SEC.
- ## The SEC staff has rejected the company's challenge.
- + The company challenged the proposal at the SEC. The SEC said the proposal must appear in proxy statement if the proponent revises it according to SEC guidelines.
- (P) The proposal passed, in addition to receiving a majority of the votes cast.
- (pre) Preliminary voting results, not confirmed as final by the company.
- (B) The proposal was offered in the form of a mandatory bylaw amendment.

Sponsors or Coordinators

- | | |
|---|---|
| AFL-CIO – American Federation of Labor – Congress of Industrial Organizations | Laborers – Laborers' International Union of North America |
| AFSCME – American Federation of State, County and Municipal Employees | LongView Fund – LongView Collective Investment Fund |
| Bricklayers - Bricklayers and Trowel Trades International Pension Fund | NYC funds – Pension funds of New York City |
| Calpers – California Public Employees' Retirement System | Nycers – New York City Employees' Retirement System |
| CBIS – Christian Brothers Investment Services | Plumbers, Pipefitters – Plumbers and Pipefitters pension funds |
| CWA – Communications Workers of America | SEIU – Service Employees International Union |
| IBEW – International Brotherhood of Electrical Workers | Teamsters – International Brotherhood of Teamsters |
| ICCR – Interfaith Center on Corporate Responsibility | UBCJA – United Brotherhood of Carpenters and Joiners of America pension funds |
| | UFE/Resp. Wealth – United for a Fair Economy/Responsible Wealth |

Securities and Exchange Commission Staff Decisions

- (b)-1 Proponent failed to meet requirements for stock ownership
- (b)-2 Proponent did not provide verification of stock ownership
- (c) Proponent allowed only one proposal
- (d) Supporting statement exceeds 500 words
- (e)-2 Resolution was filed too late for consideration
- (h)-3 Proponent did not have "good cause" for failure to present proposal at meeting
- (i)-1 Is improper under state law
- (i)-2 Is a violation of state, federal or foreign law
- (i)-3 Contains false or misleading statements
- (i)-4 Relates to a personal claim or redress of a personal grievance
- (i)-5 Relates to less than 5 percent of the company's total assets and less than 5 percent of net earnings and gross sales and "is not significantly related" to the company's business
- (i)-6 Deals with a matter beyond the company's power to effectuate
- (i)-7 Relates to the conduct of the company's ordinary business
- (i)-8 Relates to an election to office
- (i)-9 Is counter to a proposal to be submitted by management at the same meeting
- (i)-10 Is moot by being substantially implemented by the company
- (i)-11 Is a duplicate of an earlier-submitted proposal
- (i)-12 Did not receive the required number of votes cast at a previous shareholder meeting
- (i)-13 Relates to specific amounts of cash or stock dividends